

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against BARTON CARL WINTER,
a Minnesota Attorney,
Registration No. 271433.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement contained in the attached October 27, 2006, stipulation for probation (Exhibit 1) pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 25, 1996. Respondent currently practices law in Bloomington, Minnesota.

INTRODUCTION

On October 27, 2006, respondent and the Director entered into a stipulation for private probation. Respondent's probation was based upon an admission that respondent engaged in a pattern of inadequate client communication, inadequate case preparation and incompetent representation in the practice of immigration law.

Among the conditions of respondent's probation was that respondent would abide by the Minnesota Rules of Professional Conduct and commit no further unprofessional conduct, and that if, after giving respondent an opportunity to be heard,

the Director concluded that respondent had not complied with the conditions of the probation, then the Director could file this petition without the necessity of Panel proceedings.

The Director, after giving respondent an opportunity to be heard, has concluded that respondent has not complied with the conditions of the probation.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent has the following disciplinary history:

A. On November 26, 2002, respondent was issued an admonition for admitting to the immigration court that a client had falsely represented himself as a United States citizen in order to gain employment without first obtaining the client's approval to make such an admission or discussing with the client the serious legal ramifications of doing so, in violation of Rules 1.1 and 1.4, Minnesota Rules of Professional Conduct (MRPC).

B. As noted above, on October 27, 2006, respondent was placed on private probation for engaging in a pattern of inadequate client communication, inadequate case preparation and incompetent representation in the practice of immigration law, in violation of Rules 1.1, 1.3, 1.4, and 8.4(d), MRPC.

FIRST COUNT

1. Respondent represented a client in an immigration matter. At the time that respondent undertook the representation, an order for removal had been entered against his client.

2. On March 23, 2007, respondent filed a motion. This motion was styled as a "motion to reopen, remand motion for a stay of removal" [sic]. See Exhibit 2.

3. In immigration matters, once an order for removal has been filed, a motion to reopen may be filed. *Matter of Lozada*, 19 I. & N. 637 at 639 (1988). The requirements for such a motion are clearly defined. In such a motion the movant is required to state whether a complaint has been filed with the state disciplinary system, and if not, why not.

4. Within the March 23, 2007, motion, respondent states, “[respondent’s client] has filed a claim against the former attorney with the State Board of Professional Responsibility and given him notice of the intent to use ineffective assistance in a Motion to Reopen. . . .” This was a false statement. As of the date that the motion was filed, respondent’s client had not filed a complaint with the state disciplinary system. Respondent had knowledge of this fact.

5. Prior to filing the motion, respondent had prepared a complaint form on behalf of his client, who at that time was being held by immigration authorities in another state. Respondent sent a copy of the complaint form to his client by fax, with a request that respondent’s client be allowed to sign it. Respondent’s client did sign the complaint form, and dated it March 23, 2007. This form was returned by fax to respondent. However, respondent did not forward the complaint form to the state disciplinary authorities. A copy of the signed but unsubmitted complaint form, dated March 23, 2007, was included as an attachment to the motion.

6. Respondent has failed to correct the record in this matter.

7. The former attorney (hereinafter complainant) began work on a response to respondent’s complaint after receiving respondent’s notification that such complaint would be filed. Between the receipt of the notification on March 27, 2007, and April 16, 2007, complainant spent several hours drafting an extensive response to the complaint. On April 16, 2007, complainant contacted the Office of the Director of Lawyers Professional Responsibility to inquire about the matter, and then discovered that no

complaint had been filed. Complainant submitted his complaint by letter dated April 25, 2007, received on April 26, 2007.

8. Respondent filed the complaint with the Office of the Director of Lawyers Professional Responsibility by letter dated April 21, 2007, received by them on April 25, 2007.

9. Respondent's conduct, in that he knowingly made a false statement of fact to a tribunal, and has subsequently taken no action to correct that false statement, violated Rules 3.3(a)(1), 3.4(c), 4.1, 8.4(c) and 8.4(d), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: April 30, 2008.



MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and



ROBIN J. CRABB
ASSISTANT DIRECTOR
Attorney No. 387303