

FILE NO. C9-98-209

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against PETER BRUCE ZATZ,
an Attorney at Law of the
State of Minnesota.

**PETITION FOR REVOCATION OF
PROBATION AND FOR FURTHER
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 pursuant to Rule 12(a), Rules on Lawyers Professional Responsibility, and pursuant to this Court's February 27, 1998, order in the matter.

INTRODUCTION

1. Peter B. Zatz, hereinafter respondent, was admitted to practice law in Minnesota on October 18, 1985. Respondent currently practices law in Eden Prairie, Minnesota. Respondent's disciplinary history is as follows:

a. The Minnesota Supreme Court publicly reprimanded respondent on February 27, 1998, and placed respondent on probation for two years. Respondent's discipline was based upon four counts of neglect and failure to communicate with clients, delay of litigation, failure to promptly return a client file upon termination of representation, failure to comply with court instructions to file a draft order, and furnishing incomplete and inaccurate responses to the Director's Office.

b. Respondent stipulated to a two-year private probation beginning March 8, 1993, based on respondent's failure to maintain the required trust account books and records and respondent's issuance of improper disbursements from his trust account, in violation of Rules 1.15(a), 1.15(b)(3), and 1.15(g),

MRPC, and Lawyers Professional Responsibility Board Opinion No. 9.

Respondent's probation was also based on his failure to pursue diligently two other client matters or to communicate with his clients, in violation of Rules 1.1, 1.3 and 1.4, MRPC.

c. Respondent received an admonition on September 6, 1989, for failing to pursue a registration of title matter diligently and failing to communicate with his client, in violation of Rule 1.3 and 1.4, Minnesota Rules of Professional Conduct (MRPC).

Respondent has committed the following unprofessional conduct warranting revocation of his probation and further public discipline:

FIRST COUNT

Standish Matter

2. Richard Standish retained and paid respondent \$1,500 in December 1997 to represent him in his divorce, which involved no children. Respondent deposited the retainer in his business account. By letter dated January 7, 1998, respondent acknowledged Standish's intention to complete the dissolution proceedings as quickly as possible.

3. On March 11, 1998, respondent served the summons and petition upon Mary Sherman, counsel for Standish's spouse. Based on the parties' negotiations without counsel, respondent drafted a proposed marital termination agreement. On April 6, 1998, Sherman requested a copy of respondent's proposed marital termination agreement. Sherman did not receive a copy of the marital termination agreement until approximately June 3, 1998.

4. On July 14, 1998, the parties executed the marital termination agreement. Standish provided respondent with the \$132 filing fee in cash. Respondent did not place the funds in a trust account. Instead, respondent kept the cash in his office.

5. In or about late August 1998 Standish contacted respondent regarding the status of the dissolution. Respondent told Standish that he had failed to file the Summons and Petition for Dissolution of Marriage and the Marital Termination Agreement because he did not have a current address for Standish's spouse. Respondent advised Standish he would file the documents. In August 1998, Sherman also left several voicemail messages for respondent regarding the status of the marital termination agreement. Sherman spoke with respondent by telephone on August 31, 1998, regarding disputes that had arisen between the parties.

6. On September 3, 1998, Sherman wrote to respondent to ask if there was a delay regarding the marital termination agreement. Respondent failed to respond to Sherman's letter. Thereafter, Sherman left voice mail messages for respondent about every two weeks in September and October 1998. Respondent failed to return Sherman's telephone calls.

7. Standish, who had also left numerous messages for respondent regarding the status of his dissolution, spoke with respondent by telephone on October 14, 1998. Respondent falsely stated he had personally filed the dissolution documents with the court on October 13, 1998. Respondent advised Standish that the court's approval of the documents would take 10 to 40 days.

8. On October 26, 1998, Sherman wrote to respondent to ask whether she should schedule a court hearing to obtain the final papers. Again, respondent failed to respond to Sherman's letter. In November 1998, Sherman left two voice mail messages for respondent. Respondent failed to return Sherman's telephone calls.

9. In late November 1998, Standish left several telephone messages for respondent regarding the status of the dissolution. Respondent advised Standish he would contact the Hennepin County Court Administrator regarding the dissolution.

Several days later, respondent telephoned Standish and advised him that the court had the dissolution file and that Standish should not worry about it.

10. On December 9, 1998, Standish contacted Hennepin County Court Administrator's office. The Court Administrator's office informed Standish that they had no filing or other record of his dissolution documents. Standish telephoned respondent, who stated that he had only just filed the documents at 7:56 a.m. on December 9, 1998. Respondent paid the court filing fee with the funds Standish had given him in July 1998, which respondent had held in cash in his office since that time.

11. Respondent failed to forward a copy of the marital termination agreement and proposed findings to Sherman. Sherman first learned that the dissolution documents had been filed from her client. In addition, the reviewing clerk at the Hennepin County Family Court required several revisions to the marital termination agreement. Sherman wrote to respondent on December 21, 1998, to arrange a meeting with respondent in early January 1999 regarding the revisions. Respondent failed to answer Sherman's letter.

12. Standish filed his complaint with the Director on December 23, 1998. During the last week of December, respondent corrected the errors in the marital termination agreement and filed the appropriate documents. The court approved the divorce on February 26, 1999.

13. In the course of investigating Standish's complaint, the Director asked respondent to produce his entire client file for the matter. The file respondent produced did not contain any of the letters from Sherman, the facsimiles Sherman sent respondent on December 21 and 22, 1998, or the notices from the court.

14. Respondent's conduct violated Rules 1.3, 1.4, 1.15(a), 1.15(c), 3.2, 4.1 and 8.4(c), Minnesota Rules of Professional Conduct (MRPC), and Lawyers Professional Responsibility Board (LPRB) Opinion 15.

SECOND COUNT

Nelson Matter

15. Heidi Nelson retained respondent on January 6, 1998, to represent her in dissolution of marriage proceedings. Nelson signed a retainer agreement and paid respondent \$600. Respondent deposited the funds in his business account.

16. A short time later, Nelson decided to discharge respondent. Respondent agreed to refund a portion of Nelson's fees, even though the retainer agreement stated that the fee was non-refundable. On March 10, 1998, respondent sent Nelson an invoice for services rendered, which reflected a \$379.75 credit, and a check for \$379.75.

17. Several weeks later, Nelson telephoned respondent and indicated that she was unable to locate the check. Nelson asked respondent to review his bank records to determine whether the check had cleared the bank and provide her with a copy of the canceled check or, if the check had not cleared the bank, to place a stop payment on the check and issue her a new one.

18. Nelson contacted respondent at least six times regarding reimbursement of the refunds. On February 5, 1999, Nelson wrote to respondent again requesting a refund of the funds. Respondent failed to respond. Nelson filed her complaint with the Director February 12, 1999.

19. In his February 25, 1999, response to the complaint, respondent acknowledged that he owed the fees to Nelson and stated that he would issue a check as soon as possible.

20. Respondent wrote to the Director on July 23, 1999, and stated that he had not paid Nelson because he had no funds but that he would be able to pay her within one week. The Director met with respondent on August 24, 1999, at respondent's office. Respondent informed the Director that he had sent a check to Nelson the previous week, that the check had not come back from the bank, and that he could not produce any record of the payment because of computer trouble. In his September 30, 1999,

letter, respondent repeated that he was waiting for the check to come back from the bank. Nelson did not receive the \$379.75 from respondent until the first week in November 1999.

21. Respondent's conduct violated Rules 1.3, 1.4, 1.15(c), 8.1(a)(1) and 8.4(c), MRPC, and LPRB Opinion 15.

THIRD COUNT

Mertz Matter

22. Shonda Mertz retained respondent on October 1, 1998, to represent her in a child custody and support matter. Mertz paid respondent \$1,000 for which respondent provided a receipt. There was no written retainer agreement. Respondent deposited the funds in his business account.

23. From October 2 to October 11, 1998, Mertz placed three to five telephone calls to respondent. Respondent failed to return the telephone calls.

24. On October 12, 1998, Mertz hand-delivered to respondent's office a notice of termination and a request for a refund of the \$1,000 retainer.

25. On October 13, 1998, Mertz retained attorney John T. Burns. Burns left telephone messages for respondent on October 13 and 19, November 10 and 11, 1998. Respondent failed to return the telephone calls. Burns did, however, leave a voice message for respondent at each call indicating that Mertz had retained him. Burns requested that respondent forward the Mertz legal file as well as the \$1,000 retainer fee. Respondent never communicated with Burns.

26. Respondent did not forward the file to Burns until early December 1998. The file did not reflect any work performed by respondent. Mertz' \$1,000 retainer was not included with the file.

27. On December 4, 1998, respondent mailed Mertz an \$880 check.

Respondent did not provide Mertz a billing statement or an explanation of how he used the remaining \$120.

28. Respondent's conduct violated Rules 1.3, 1.4, 1.15(c) and 1.16(d), MRPC, and LPRB Opinion 15.

FOURTH COUNT

Howe Conservatorship

29. Patrick W. Stewart retained respondent in early 1994 to represent him in a petition to become a conservator over his uncle, Walter J. Howe. On June 28, 1994, respondent prepared and filed a Petition for Appointment of General Guardian over Walter J. Howe in Hennepin County Probate Court.

30. Respondent represented Patrick Stewart at the August 2, 1994, hearing regarding the petition for conservatorship. On August 29, 1994, Patrick was appointed conservator of the person and estate of Walter J. Howe. On January 30, 1995, the court issued an order which appointed Margaret Stewart, Patrick's wife, as co-conservator of Howe. An inventory showing all property belonging to Howe was to be filed with the probate court on or before September 24, 1994. On October 6, 1994, the court provided respondent with a reminder that the inventory had yet to be filed and that respondent had to file it by October 20, 1994. On October 14, 1994, respondent requested a blank inventory form.

31. The court notified respondent on November 16, 1994, that he had failed to file an inventory regarding the conservatorship. The court ordered respondent to file the inventory by December 16, 1994.

32. Respondent filed the inventory on February 5, 1995. On February 7, 1995, the court returned the inventory for respondent to obtain the signatures of the co-

conservators and instructed respondent to file the completed inventory with the court by February 28, 1995.

33. On March 2, 1995, the court notified respondent that the signed inventory had not been filed and that if respondent failed to file the inventory by March 31, 1995, the court would issue a Notice and Order to Proceed.

34. On May 3, 1995, the court issued a Notice and Order to Proceed, directing respondent to file the inventory by June 9, 1995. Respondent was put on notice that failure to comply with the Notice and Order to Proceed would result in an Order to Show Cause. Respondent filed the inventory with the court on May 30, 1995.

35. On September 29, 1995, the court sent respondent a reminder that he had failed to file the Annual Account, Verification of Assets on Hand, Affidavit of Service of Annual Notice of Right to Petition, Personal Well-Being Report and Order for Examination. The court directed respondent to file the documents by October 13, 1995. Furthermore, respondent was put on notice that failure to file the documents would result in a Notice and Order to Proceed.

36. On February 22, 1996, the court issued respondent a Notice and Order to Proceed. The court ordered respondent to file the Annual Account, Verification of Assets on Hand, Affidavit of Service of Annual Notice of Right to Petition, Personal Well-Being Report and Order for Examination on or before March 22, 1996.

37. Respondent filed the First Annual Account on March 25, 1996, showing assets on hand of over \$200,000. On April 17, 1996, respondent filed the Personal Well-Being Report and the Verification of Assets with the court. Respondent also advised the court that Margaret Stewart had become incapacitated and was unable to sign the final account or to act as co-conservator. The court directed respondent to provide a written report regarding the status of the co-conservator. Upon receipt of the status report the

court would grant a 30-day extension to the Notice and Order to Proceed. Respondent failed to provide the court with the status report.

38. Walter J. Howe died on April 23, 1996.

39. On June 18, 1996, the court telephoned respondent and notified him that they had yet to receive his written status report regarding the co-conservator or the outstanding documents. The court granted respondent an extension to June 28, 1996, to file the documents. Respondent was put on notice that an Order to Show Cause would be issued if respondent failed to file the documents by June 28, 1996.

40. On July 8, 1996, the court identified errors in the inventory and returned it to respondent. The court requested that respondent correct the errors in the inventory and return it by July 19, 1996.

41. On October 16, 1996, the court advised respondent that he needed to correct and amend the First Annual Account and Inventory, petition the court for appointment of a co-conservator, and set the First Annual and Final Accounts on for hearing. The court also notified respondent that the Second Annual Account, (due August 19, 1996, for the time period August 19, 1995 through August 19, 1996), Annual Notice of Right to Petition and Personal Well-Being Report, Order for Examination for the First and Second Account needed to be filed by October 31, 1996. Respondent was put on notice that failure to comply would result in the issuance of a Notice and Order to Proceed followed by an Order to Show Cause.

42. On April 21, 1997, a Notice and Order to Proceed was issued to respondent. Respondent was ordered and directed to file by May 23, 1997, the Amended First Annual Account, Petition For Successor Conservator, Second Annual Account, Vouchers, Annual Notice of Right to Petition and Personal Well-Being Report.

43. On May 28, 1997, respondent brought the Final Account into the court. Respondent determined not to file the Final Account since it contained the incorrect beginning balance and lacked the conservators' signatures.

44. On November 4, 1997, Empire Fire & Marine Insurance Company filed an Objection to Annual Account & Request for Discharge of Bond due to unpaid premiums.

45. On December 29, 1997, the court personally spoke with respondent regarding the delinquent annual accounts. Respondent was granted an extension to January 1998 to file the documents.

46. On April 28, 1998, respondent filed the Amended First and Final Account, but again the court returned it to respondent after a court audit revealed numerous errors. The court asked respondent to file a Second Amended First and Final Account.

47. On August 10, 1998, Empire Fire & Marine Insurance Company filed an Objection to Annual Account & Request for Discharge of Bond due to unpaid premiums.

48. Respondent scheduled numerous appointments with court personnel to review and correct the Annual Account. Respondent failed to appear for the scheduled appointments.

49. On January 29, 1999, the court issued an Order to Show Cause. Patrick W. Stewart and Margaret Stewart were ordered to appear before the court on February 25, 1999, to show cause why the court should not remove them as co-conservators, direct their surety to file the First and Final Accounts, place the matter on the court calendar for adjudication, and surcharge the Stewarts for any defalcation.

50. On February 23, 1999, respondent asked to reschedule the Order to Show Cause hearing due to a death in the family. The matter was rescheduled to March 17, 1999. Thereafter, respondent rescheduled the Order to Show Cause to March 30 and

then to June 4, 1999. Respondent appeared on June 4, 1999, but was unprepared to proceed. At a later date the Order to Show Cause was rescheduled to October 7, 1999.

51. Respondent's file contains a document that purports to be the will of Walter Howe. The handwritten will, one-sentence long, bequeaths all of Howe's assets to Patrick. The will was not witnessed and is dated December 15, 1995, after Patrick became Howe's conservator. Respondent has never probated this will and Howe's many heirs at law have never been notified of the existence of this will. Nevertheless, respondent has been aware that Patrick has, without legal authority, converted Howe's assets into Patrick's name. Respondent has failed to research or advise Patrick regarding his actions or to inform the court of the conversion.

52. Respondent's conduct violated Rules 1.1, 1.2(c), 1.3, 1.4, 1.16(a), 3.2, 3.3(a)(2), 3.4(c) and 8.4(d), MRPC.

FIFTH COUNT

Failure to Follow Probation Terms and Misrepresentation

53. Pursuant to the February 27, 1998, Minnesota Supreme Court order respondent was placed on 2 years supervised probation. The terms of the probation required respondent to submit to his supervisor an inventory of all active client files by the first day of each month during the probation. Attorney James L. Berg agreed to act as respondent's supervisor.

54. Respondent initially met with Berg on July 15, 1998. Respondent failed to provide Berg with an inventory of all active client files. In the first nine months of respondent's probation he submitted only one inventory.

55. By letter dated December 24, 1998, the Director's office reminded respondent that he was required to submit a monthly inventory of active client files to Berg. The Director also scheduled a January 6, 1999 meeting with respondent to discuss

the terms of his probation. Respondent failed to appear at the January 6, 1999, meeting with the Director.

56. On January 11, 1999 the Director met with respondent regarding the terms of his probation. Respondent was put on notice that failure to comply with the terms of the probation could in and of itself result in discipline.

57. On May 24, 1999, Berg met with respondent to review his March and April active client inventory. Respondent and Berg discussed the status of each file. Respondent assured Berg that he was current in his work and he was returning phone calls.

58. Respondent submitted inventories for November 1998, December 1998 (undated) and January 1999 to Berg. Each of the three inventories listed Pat Stewart as a client. The inventories falsely identified the client matter as beginning "9/98," when respondent had actually been representing Stewart for several years. *See supra* Fourth Count. Respondent failed to inform Berg that the First and Second Final Accounts as well as corresponding documents had yet to be filed with the Probate Court regarding the conservatorship. Respondent also failed to inform Berg that the Court had issued an Order to Show Cause regarding the file.

59. Respondent submitted March, April, early July and July 30, 1999, active client inventories to Berg. Patrick Stewart was not listed on any of these four inventories. Respondent removed Pat Stewart from the active client list although respondent knew the matter was still pending.

60. Respondent also represented Mary Jo Dale as the conservator for Dagna Nordis Zimmerman. Respondent appeared for a final hearing in probate court on July 1, 1998. The probate court did not issue a final order in the matter until January 7, 1999. The conservatorship did not appear on respondent's November or December 1998 case inventories.

61. Respondent's conduct violated Rules 8.1(a)(1), 8.4(c), and 8.4(d), MRPC, and the terms of the Minnesota Supreme Court's February 27, 1998, probation order.

WHEREFORE, the Director respectfully prays for an order of this Court revoking respondent's probation, suspending respondent's license to practice law or imposing otherwise 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: November 23, 1999.



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