FILED
December 4, 2023
OFFICE OF
APPELLATE COURTS

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against PAUL E. OVERSON,
a Minnesota Attorney,
Registration No. 0195005.

PETITION FOR DISCIPLINARY ACTION

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility (Director) files this petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney (respondent) was admitted to practice law in Minnesota on October 28, 1988. Respondent currently practices law in Lake Elmo, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

On August 22, 2012, respondent was issued an admonition for withdrawing from representation the business day before his client's deposition.

FIRST COUNT

A.B. and J.B. Matter

1. A.B. and J.B. had a child together.

2. On June 23, 2022, A.B. filed a petition for an order for protection (OFP) against J.B. J.B. disputed the abuse allegations and asked that the matter be set for hearing. A hearing was scheduled and, ultimately, rescheduled for July 25, 2022.

3. On June 27, 2022, J.B. commenced a separate custody proceeding.

4. By July 11, 2022, both parties had counsel in the OFP matter. Respondent represented A.B., and attorney R.M. represented J.B.

5. On July 25, 2022, the hearing on the petition for an OFP was held before Judge F.G. Respondent, R.M. and both parties were present. Before the hearing began, the parties reached an agreement.

6. At the start of the hearing, respondent informed the court that the parties had agreed that the issues in the OFP case would be dealt with in the custody case, and the OFP case could be dismissed. R.M. then read the details of that agreement into the record. The judge asked each party if the agreement was correct, and both A.B. and J.B. replied it was.

7. At the end of the hearing, the judge directed the attorneys to submit a dismissal order for the court to sign. No one specified who would draft the proposed order, neither attorney did so, and no order of dismissal was entered.

8. During communications in the couple months after the hearing, respondent's client told respondent of additional allegations that respondent's client felt justified an OFP and that she wanted a hearing on those allegations. Respondent did not take any action at that time to file a motion to seek a new OFP based upon the new allegations.

9. On September 2, 2022, an Initial Case Management Conference (ICMC) was held by Zoom in the custody matter. Presiding was Judge D.M., a different judge than the judge who had presided at the OFP hearing. J.B. appeared and was self-represented. Respondent was present with his client, A.B.

10. Because the court file in the OFP matter did not contain a dismissal order, Judge D.M. erroneously believed that the OFP matter remained pending and required resolution. In fact, it was already resolved. *See* ¶¶ 5-6, above.

11. The court started the hearing by informing the parties of the purposes of an ICMC and confirming the parties wanted to participate in Early Neutral Evaluation.

12. The court then stated:

> THE COURT: Now, as I was digging around in the file in preparation for today, I think there's an OFP file that was in limbo. If we need to do something about that, which means that if -- if that is still a request, I need to get something on the calendar for a hearing on that. What I saw, Mr. Overson, was that that was a request by your client that [R.M.] had stepped in at that point and wanted that handled by a district court judge rather than by a referee, and I think there was an initial hearing in front of Judge [F.G.] but the actual trial hasn't been scheduled, and I think a trial -- now that this file is in front of me, the trial would be in front of me as well, so if the request stands -- and I think it was set on for hearing without a temporary order -- if that request stands and you're requesting a trial date, I'll set that up. Is that your request on your client's behalf, Mr. Overson?
>
> MR. OVERSON: I will consult with my client, Your Honor.
>
> THE COURT: Okay. Do you want to talk to her now while I'm taking other cases --
>
> MR. OVERSON: Sure.
>
> THE COURT: -- so I've got a plan of action?
>
> MR. OVERSON: That would be good.
>
> THE COURT: Great. You'll see an invitation to join meeting. I'll let you have that conversation, and when you're finished with that and come back -- Mr. Overson, when you're

on camera, I'll know that you're ready for me to recall the case.

MR. OVERSON: Okay. Thank you.

THE COURT: Okay. Thanks. [J.B.], hang around. Let's find out what's happening with that.

13. At this point, respondent and his client met in a separate breakout room. Respondent's client reiterated her fear of J.B. and told respondent that she wanted a hearing on her request for an OFP. Respondent did not explain to his client that the prior request had been resolved, and that to proceed, a new request would need to be filed, even though respondent knew these facts to be true.

14. Then, the hearing continued:

THE COURT: [J.B.] is still here and Mr. Overson has returned as well. Mr. Overson, you were talking about the OFP case with your client. Tell me where that stands today.

MR. OVERSON: Where that stands, Your Honor, is that we would like to set a trial date on that. It doesn't have to be immediate. It could be two weeks out or something. In the meantime, if [J.B.] has an attorney on that case, which maybe that's [R.M.], and maybe we just work something out possibly in advance of that.

THE COURT: Sure.

MR. OVERSON: We would like to at least set a date for that.

THE COURT: Okay.

15. While none of respondent's statements to the tribunal actually were false, respondent knew and remembered at the time he made this statement to the court that the parties had resolved and agreed to dismiss the OFP matter. Yet, respondent failed to inform the court that the parties had agreed to dismiss the OFP matter, failed to inform the court that the parties had agreed to handle those issues in the custody matter

without an order for protection, and failed to inform the court that all that remained in the OFP matter was entry of a dismissal order. Instead, respondent stated that he wanted a trial date in the OFP matter.

16. Respondent made his statement knowing his statement would mislead the court into believing the OFP matter was not settled. Respondent's statement led the court to believe a hearing was needed on these allegations and allowed his client and J.B. to understand that there would be such a hearing, despite and without disclosing the parties' agreement to dismiss the OFP case.

17. Respondent could not have made a verbal request for a hearing in the OFP matter on any allegations not included in the original petition for an OFP. An OFP hearing may only occur upon written request, and respondent had not filed a written request setting forth any new allegations. Respondent, an experienced practitioner, was aware of these requirements.

18. Relying on respondent's misleading statement, the judge said he would work to schedule a hearing in the OFP matter:

THE COURT:	Perfect. All right. So, Mr. [J.B.], I do show that [R.M.] is representing you on the order for protection file, correct?
[J.B.]:	Correct, Your Honor.
THE COURT:	Okay. Let me -- I need to do a little bit of playing around with the calendar. I'll figure out a date. We'll get an order out that will address that.
MR. OVERSON:	Okay.
THE COURT:	Okay. Great. So I'll look to hear from you on the custody file. You look to hear from me on the OFP file.

19. Respondent failed during the hearing to correct his misleading statement and failed during the hearing to inform the court that the parties had agreed to dismiss the OFP matter.

20. After the hearing, respondent continued to fail to correct his misleading statement and continued to fail to inform the court the parties had agreed to dismiss the OFP matter. Respondent also failed after the hearing to submit a proposed order for dismissal to the judge who heard the OFP matter.

21. As a result of respondent's conduct, the court looked to schedule a hearing on allegations not properly part of a matter, and to do so in a matter the parties had agreed to dismiss.

22. J.B. was concerned the court was looking to schedule a hearing in the OFP matter when the parties had resolved that matter. J.B. contacted R.M., his counsel in the OFP matter, who on September 8, 2022, sent a letter to Judge F.G., the judge in the OFP matter. R.M. requested the court enter an order dismissing the OFP matter based on the parties' agreement. The court did so.

23. The next day, September 9, 2022, which was a week after the ICMC, R.M. sent a letter to Judge D.M., the judge in the custody matter, enclosing the transcript of the July 25 hearing in the OFP matter and notifying Judge D.M. that the OFP matter had been dismissed.

24. Respondent's conduct in knowingly making a misleading statement to the court during a hearing, and subsequent failure to correct his misleading statement, violated Rule 8.4(c) and (d), Minnesota Rules of Professional Conduct.

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.



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Nov 17 2023 4:00 PM

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