

STATE OF WISCONSIN

IN SUPREME COURT

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST PETER JAMES
NICKITAS, ATTORNEY AT LAW.

CASE CODE 30912

13AP1770D

OFFICE OF LAWYER REGULATION,

CASE NO.

RECEIVED

Complainant;

AUG 08 2013

PETER JAMES NICKITAS,

CLERK OF SUPREME COURT
OF WISCONSIN

Respondent.

COMPLAINT AND MOTION

NOW COMES the Wisconsin Supreme Court - Office of
Lawyer Regulation (OLR) by Assistant Litigation Counsel
Jonathan E. Hendrix, and alleges as follows:

1. The OLR was established by the Wisconsin Supreme
Court and operates pursuant to Supreme Court Rules. This
Complaint and Motion is filed pursuant to SCR 22.22.

2. Respondent Peter James Nickitas (Nickitas) is an
attorney who was admitted to the State Bar of Wisconsin on
September 19, 1991. Nickitas is also admitted to practice
law in Minnesota. The most recent address Nickitas
furnished to the State Bar of Wisconsin is Peter James
Nickitas Law Office LLC, 431 S 7th Street Suite 2446, P.O.
Box 15221, Minneapolis, MN 55415-0221.

3. Nickitas' professional disciplinary history in Wisconsin consists of a 90 day suspension in 2006, reciprocal to a similar Minnesota suspension. Nickitas's misconduct involved a consensual sexual relationship with a client; entering into multiple business transactions with a client without written disclosure of the potential conflicts and without providing for fair and reasonable terms for his client; failing to timely appeal a final judgment and subsequently filing motions previously decided by the unappealed judgment; and failure to notify OLR of the Minnesota suspension. *Disciplinary Proceedings Against Nickitas*, 2006 WI 20, 289 Wis. 2d 18, 710 N.W.2d 464.

2013 Minnesota Discipline

4. On May 7, 2013, the Supreme Court of Minnesota suspended Nickitas's Minnesota law license for 30 days¹ for undertaking representation despite a conflict of interest, engaging in inappropriate conduct toward opposing counsel, and bringing a claim in bad faith and for an improper purpose. The Minnesota Court found these actions violated Rules 1.7(a)(2), 3.1, 4.4(a), and 8.4(d)

of the Minnesota Rules of Professional Conduct. Nickitas admitted substantially all allegations, and agreed that a 30 day suspension was appropriate.

5. Three documents relating to the suspension, *In re Petition for Disciplinary Action Against Peter James Nickitas, Minnesota Supreme Court No. A12-0821*, are attached hereto and incorporated herein as Exhibit 1. Exhibit 1 contains certified copies of:

(a) The *Petition for Disciplinary Action* in the matter filed with the Supreme Court of Minnesota on May 10, 2012;

(b) A *Stipulation for Discipline*, filed on April 12, 2013;

(c) The Supreme Court of Minnesota's *Order* filed on May 7, 2013 suspending Nickitas.

6. Nickitas notified OLR of the Minnesota suspension within 20 days of its effective date.

¹ The Minnesota court also ordered Nickitas to undergo probation for two years, and pass the professional responsibility portion of the Minnesota state bar examination within one year.

COUNT ONE

7. By virtue of the Minnesota suspension, Nickitas is subject to reciprocal discipline in Wisconsin pursuant to SCR 22.22.²

² SCR 22.22 provides that:

(1) An attorney on whom public discipline for misconduct or a license suspension for medical incapacity has been imposed by another jurisdiction shall promptly notify the director of the matter. Failure to furnish the notice within 20 days of the effective date of the order or judgment of the other jurisdiction constitutes misconduct.

(2) Upon the receipt of a certified copy of a judgment or order of another jurisdiction imposing discipline for misconduct or a license suspension for medical incapacity of an attorney admitted to the practice of law or engaged in the practice of law in this state, the director may file a complaint in the supreme court containing all of the following:

(a) A certified copy of the judgment or order from the other jurisdiction.

(b) A motion requesting an order directing the attorney to inform the supreme court in writing within 20 days of any claim of the attorney predicated on the grounds set forth in sub.(3) that the imposition of the identical discipline or license suspension by the supreme court would be unwarranted and the factual basis for the claim.

(3) The supreme court shall impose the identical discipline or license suspension unless one or more of the following is present:

(a) The procedure in the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process.

(b) There was such an infirmity of proof establishing the misconduct or medical incapacity that the supreme court could not accept as final the conclusion in respect to the misconduct or medical incapacity. (c) The misconduct justifies substantially different discipline in this state.

(4) Except as provided in sub.(3), a final adjudication in another jurisdiction that an attorney has engaged in misconduct or has a medical incapacity shall be conclusive evidence of the attorney's misconduct or medical incapacity for purposes of a proceeding under this rule.

Motion Requesting Order To Show Cause

NOW COMES the OLR, by Assistant Litigation Counsel Jonathan E. Hendrix, and moves the Supreme Court of Wisconsin, pursuant to SCR 22.22(2)(b), for an order that Peter James Nickitas inform the Court in writing within 20 days of any claim by him, predicated upon the grounds set forth in SCR 22.22(3), that the imposition of discipline reciprocal to that imposed in Minnesota would be unwarranted, and of the factual basis for any such claim.

(5) The supreme court may refer a complaint filed under sub. (2) to a referee for a hearing and a report and recommendation pursuant to SCR 22.16. At the hearing, the burden is on the party seeking the imposition of discipline or license suspension different from that imposed in the other jurisdiction to demonstrate that the imposition of identical discipline or license suspension by the supreme court is unwarranted.

(6) If the discipline or license suspension imposed in the other jurisdiction has been stayed, any reciprocal discipline or license suspension imposed by the supreme court shall be held in abeyance until the stay expires."

WHEREFORE, the Office of Lawyer Regulation asks the Wisconsin Supreme Court to suspend Attorney Peter James Nickitas's Wisconsin law license for thirty days as discipline reciprocal to that imposed upon him in Minnesota, and that the Court grant such other and further relief as may be just and equitable, including an award of costs.

Dated this 9th day of August, 2013.

OFFICE OF LAWYER REGULATION



JONATHAN E. HENDRIX
Assistant Litigation Counsel
State Bar No. 1047173

110 East Main Street, Room 315
Madison, Wisconsin 53703
Telephone: 608-266-8334

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against PETER JAMES NICKITAS,
a Minnesota Attorney,
Registration No. 212313.

PETITION FOR
DISCIPLINARY ACTION

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

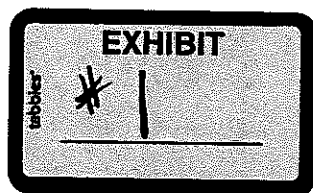
The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 26, 1990. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's history of prior discipline, including admonitions, is as follows:

- A. On July 2, 1997, respondent was issued an admonition for disclosing information related to a former client to the former's client disadvantage.
- B. On April 27, 1999, respondent was issued an admonition for failing to handle a client's matter with adequate diligence and promptness.



C. On July 23, 2003, respondent was issued an admonition for directing a sexist epithet to a *pro se* person with whom respondent was dealing on behalf of a client.

D. On August 11, 2005, the Supreme Court suspended respondent, effective 14 days from the date of that order, for 90 days for engaging in a consensual sexual relationship with a client, entering into multiple business transactions with the client without written disclosure of the potential conflicts of interest and without advising the client of the desirability of obtaining independent counsel, and failing to handle a client matter with adequate diligence and promptness. On January 1, 2006, respondent was reinstated to the practice of law.

FIRST COUNT

Hurley Matter

1. Bashir Osman was involved in a traffic accident with Jason Hand. West Bend Mutual Insurance Company (West Bend) was Hand's insurer.
2. The vehicle Osman was driving was a taxi cab owned by Northwind Transportation (Northwind). Northwind claimed that Osman operated the vehicle as an independent contractor cab driver.
3. West Bend and Northwind entered into arbitration of Northwind's claims for damages to the vehicle it owned and business interruption losses. The arbitration was conducted through Arbitration Forums. Respondent represented Northwind, and Michelle Hurley represented West Bend.
4. The arbitration hearing occurred on February 24, 2009. This was the first time respondent met Hurley in person.
5. During and after the arbitration hearing, respondent made insulting comments to Hurley. After Hurley made her presentation to the arbitrator, respondent made his presentation. As part of his presentation, respondent stated that Hurley could

not read and needed glasses. After the arbitration hearing concluded, respondent told Hurley that he knew of a good place for her to get the glasses she needs.

6. The arbitrator awarded Northwind \$1,101.26. Respondent thereafter served and filed a motion in district court to vacate the award, claiming it was erroneous and insufficient.

7. The hearing on the motion to vacate occurred on September 22, 2009. This was the second time respondent met Hurley in person.

8. After the motion hearing concluded and while still in the courthouse, respondent made multiple threatening and/or insulting comments to Hurley. After the hearing, Hurley was in the courthouse building, as Hurley was leaving the courtroom, respondent yelled at her that he hoped she "sleep[s] with the fishes." Hurley was shocked. After pausing a moment to recover from the shock, she continued proceeding toward the courthouse exit. As Hurley was about to exit the building, respondent, who was trailing, caught up to Hurley, got in front of her and went nose-to-nose to her and began screaming at Hurley. Respondent had to be pulled away by an associate of his as a bailiff approached.

9. Respondent's actions shook and scared Hurley. Hurley thereafter refused to be alone in a room with respondent and always had another person accompany her at hearings at which respondent would be present.

10. By order filed October 16, 2009, the court vacated the arbitration award. The matter was referred back to Arbitration Forums.

11. Arbitration Forums does not require the parties to an arbitration to respond to discovery.

12. Respondent thereafter commenced an action, *Osman v. Hand*, arising out of the same accident. Respondent identified himself as counsel for Osman.

13. Osman had not initiated contact with respondent about representation. Instead, respondent was contacted by Daniel Ehrman. Ehrman was handling

Northwind's claim as an insurance adjuster. Ehrman told respondent that Osman was interested in retaining respondent to represent Osman in an action against Hand.

14. Respondent prepared and gave to Ehrman a representation agreement and consent to simultaneous representation, for Ehrman to provide to Osman.

15. Northwind and Osman had conflicting interests. As respondent understood, Northwind had a claim against Osman for damage to the vehicle. These included claims for property damage and business interruption losses.

16. Respondent failed to advise Osman of any actual or potential conflict of interest in respondent's simultaneous representation of Osman and Northwind.

17. Respondent did not obtain Osman's informed consent to respondent's representation despite the conflict. Although respondent had obtained from Osman a signed consent to respondent's simultaneous representation of Osman and Northwind, respondent did not inform Osman of the reasonably foreseeable risks from, or of the reasonable alternatives to, respondent's representation of Osman while respondent was also representing Northwind. To the contrary, the consent form that respondent drafted for Osman to sign erroneously stated that there was no conflict.

18. During the *Osman v. Hand* matter, respondent engaged in discovery. Among other things, respondent served written discovery and took the deposition of the defendant.

19. Respondent sought this discovery in *Osman v. Hand* in the hope that it would provide information helpful to Northwind's separate arbitration proceeding against West Bend, Hand's insurer.

20. Trial in *Osman v. Hand* was scheduled for March 24, 2011. Shortly before the hearing, respondent told Osman that the interests of Osman and Northwind were not materially adverse. In fact, and as noted above, they had materially adverse interests. To ensure Osman attended and was available to testify, Hurley attempted to have a subpoena served on Osman.

21. After unsuccessful attempts at service, the process server called Osman. During their telephone conversation, Osman said that he did not know the name of Jason Hand, the defendant, or the matter the process server was discussing.

22. Shortly before the trial date, Hurley served and filed motions *in limine*. The motions noted that the signatures of Osman on various documents were inconsistent, in that some of the signatures bore a relationship to the handwriting of the owner of Northwind.

23. At the start of trial on March 24, the court conducted an *in camera* examination of Osman. Osman told the judge that he did not go to respondent and ask the matter be brought to court, and that when suit was brought Osman did not know it was being brought in his name. Instead, it was brought to Osman to participate.

24. By order filed March 25, 2011, the court dismissed the *Osman v. Hand* matter. The court found that the matter was brought in bad faith and for an improper purpose.

25. By letter dated April 14, 2011, respondent requested the court to reconsider the March 25 order.

26. Respondent thereafter served and filed a motion for consideration of that March 25 order and for an evidentiary hearing.

27. The hearing on the motion was conducted on June 23, 2011.

28. During the hearing, respondent and counsel for Hand stipulated that the *Osman v. Hand* matter would remain dismissed.

29. By order filed June 24, 2011, the court memorialized the stipulation that the *Osman v. Hand* matter would remain dismissed and confirmed "the finding that this action was brought in bad faith for an improper purpose refers to the actions and/or inactions of [respondent]."

30. By letter dated August 2, 2011, respondent requested the court to allow respondent to file a motion to reconsider that June 24 order.

31. By letter dated August 3, 2011, the court denied respondent's request.

32. Respondent's representation of both Osman and Northwind violated Rule 1.7(a)(2), Minnesota Rules of Professional Conduct (MRPC), respondent's filing and pursuit of a claim in bad faith violated Rules 3.1 and 8.4(d), MRPC, and his harassing and bullying statements and conduct toward Hurley violated Rules 4.4(a) and 8.4(d), MRPC

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent from the practice of 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: April 30, 2012.

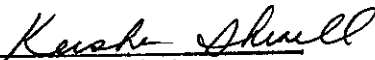


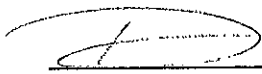
MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY

Attorney No. 148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and

State of Minnesota, Supreme Court
I hereby Certify that the foregoing Instru-
ment is a true and correct copy of the
original as the same appears on record in
my office this 23rd day of July
20 12


Asst. Deputy Clerk


TIMOTHY M. BURKE
SENIOR ASSISTANT DIRECTOR
Attorney No. 19248x

FILE NO. A12-0821

STATE OF MINNESOTA

IN SUPREME COURT

OFFICE OF
APPELLATE COURTS

APR 12 2013

FILED

In Re Petition for Disciplinary Action
against PETER JAMES NICKITAS,
a Minnesota Attorney,
Registration No. 212313.

**STIPULATION
FOR DISCIPLINE**

THIS STIPULATION is entered into by and between Martin A. Cole, Director of the Office of Lawyers Professional Responsibility, hereinafter Director, and Peter James Nickitas, attorney, hereinafter respondent.

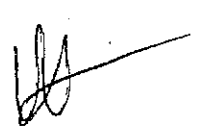
WHEREAS, respondent has concluded it is in respondent's best interest to enter into this stipulation,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the undersigned as follows:

1. Pursuant to the Rules on Lawyers Professional Responsibility (RLPR), the parties agree to dispense with further proceedings under Rule 14, RLPR, and respondent agrees to the immediate disposition of this matter by the Minnesota Supreme Court under Rule 15, RLPR.

2. Respondent understands this stipulation, when filed, will be of public record.

3. It is understood that respondent has certain rights pursuant to Rule 14, RLPR. Respondent waives these rights, which include the right to a hearing before a referee on the petition; to have the referee make findings and conclusions and a recommended disposition; to contest such findings and conclusions; and to a hearing before the Supreme Court upon the record, briefs and arguments.



4. Respondent withdraws the answer filed herein and unconditionally admits the allegations of the petition, except paragraph 8 of the petition. As to paragraph 8, respondent admits that he told Hurley, "I hope you sleep with the fishes," that doing so was unprofessional and could have no substantial purpose other than to burden, harass, or the like, that although respondent did not intend to threaten Hurley, she was threatened by this statement, and that respondent apologized at a subsequent hearing to both Hurley and the court.

5. Respondent understands that based upon these admissions, this Court may impose any of the sanctions set forth in Rule 15(a)(1) - (9), RLPR, including making any disposition it deems appropriate. Respondent understands that by entering into this stipulation, the Director is not making any representations as to the sanctions the Court will impose.

6. The Director and respondent join in recommending that:

a. The appropriate discipline is a 30-day suspension pursuant to Rule 15, RLPR, effective 14 days from the date of the Court's suspension order, followed by unsupervised probation for a period of two years;

b. The reinstatement hearing provided for in Rule 18(a) through (d), RLPR, be waived;

c. Respondent be required to successfully complete the professional responsibility portion of the state bar examination within one year of the date of this Court's order;

d. Respondent comply with Rule 26, RLPR;

e. Respondent pay \$900 in costs pursuant to Rule 24(a), RLPR;

f. Respondent be reinstated following the expiration of the suspension provided that at least 15 days before the expiration of the suspension period, respondent files an affidavit with the Clerk of Appellate Courts and the Director's Office establishing that respondent is current with Continuing Legal

Education, has fully complied with Rules 24 and 26, RLPR, and has satisfactorily completed all other conditions imposed by the Court in its decision; and

g. Upon reinstatement respondent shall be placed on unsupervised probation for a period of two years upon the following conditions:

i. Respondent shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation and promptly respond to the Director's correspondence by the due date. Respondent shall provide to the Director a current mailing address and shall immediately notify the Director of any change of address. Respondent shall cooperate with the Director's investigation of any allegations of unprofessional conduct which may come to the Director's attention. Upon the Director's request, respondent shall provide authorization for release of information and documentation to verify compliance with the terms of this probation.

ii. Respondent shall abide by the Minnesota Rules of Professional Conduct.

7. This stipulation is entered into by respondent freely and voluntarily, without any coercion, duress or representations by any person except as contained herein.

8. Respondent hereby acknowledges receipt of a copy of this stipulation.

9. Respondent has been advised by the undersigned counsel concerning this stipulation and these proceedings generally.

STATE OF MINNESOTA
IN SUPREME COURT

A12-0821

OFFICE OF
APPELLATE COURTS

MAY 7 2013

FILED

In re Petition for Disciplinary Action against
Peter James Nickitas, a Minnesota Attorney,
Registration No. 212313.

ORDER

The Director of the Office of Lawyers Professional Responsibility has filed a petition for disciplinary action alleging that respondent Peter James Nickitas committed professional misconduct warranting public discipline, namely, undertaking representation despite a conflict of interest, engaging in inappropriate conduct toward opposing counsel, and bringing a claim in bad faith and for an improper purpose, in violation of Minn. R. Prof. Conduct 1.7(a)(2), 3.1, 4.4(a), and 8.4(d). Respondent waives his procedural rights under Rule 14, Rules on Lawyers Professional Responsibility (RLPR), withdraws his previously filed answer, and admits the allegations in the petition, except for portions of one paragraph. The parties jointly recommend that the appropriate discipline is a 30-day suspension followed by 2 years of unsupervised probation.

This court has independently reviewed the file and, except for the recommendation regarding probation, approves the jointly recommended disposition. Based on respondent's acts of admitted misconduct, we conclude that the public will be better protected if respondent's probation is supervised.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that:

1. Respondent Peter James Nickitas is suspended from the practice of law, effective 14 days after the filing of this order, for a minimum of 30 days;

2. Respondent shall comply with Rule 26, RLPR (requiring notice of suspension to clients, opposing counsel, and tribunals);

3. Respondent shall pay \$900 in costs and disbursements pursuant to Rule 24, RLPR;

4. Respondent shall be eligible for reinstatement to the practice of law following the expiration of the suspension period provided that, not less than 15 days before the end of the suspension period, respondent files with the Clerk of Appellate Courts and serves upon the Director an affidavit establishing that he is current in continuing legal education requirements, has complied with Rules 24 and 26, RLPR, and has complied with any other conditions for reinstatement imposed by the court;

5. Upon reinstatement to the practice of law, respondent shall be subject to probation for 2 years, subject to the following conditions:

(a) Respondent shall cooperate fully with the Director's Office in its efforts to monitor compliance with his probation and promptly respond to the Director's correspondence by the due date. Respondent shall provide the Director with a current mailing address and shall immediately notify the Director of any change of address. Respondent shall cooperate with the Director's investigation of any allegations of unprofessional conduct that may come to the Director's attention. Upon the Director's request, respondent shall provide authorization for release of information and documentation to verify compliance with the terms of this probation;

(b) Respondent shall abide by the Minnesota Rules of Professional Conduct;

(c) Respondent shall be supervised by a licensed Minnesota attorney, appointed by the Director to monitor compliance with the terms of this probation. Respondent shall provide notice to the Director of names of four attorneys who have agreed to be nominated as respondent's supervisor within 2 weeks from the date of the court's order. If, after diligent effort, respondent is unable to locate a supervisor acceptable to the Director, the Director will seek to appoint a supervisor. Until a supervisor has signed a consent to supervise, respondent shall on the first day of each month provide the Director with an inventory of active client files described in paragraph (d) below. Respondent shall make active client files available to the Director upon request;

(d) Respondent shall cooperate fully with the supervisor in his/her efforts to monitor compliance with this probation. Respondent shall contact his supervisor and schedule a minimum of one in-person meeting per calendar quarter. Respondent shall submit to the supervisor an inventory of all active client files by the first day of each month during the probation. With respect to each active file, the inventory shall disclose the client's name, the type of representation, the date opened, all action respondent took to ensure compliance with the applicable rules regarding conflicts of interest, the most recent activity, the next anticipated action, and the anticipated closing date. Respondent's supervisor shall file written reports with the Director at least quarterly, or at such more frequent intervals as may reasonably be requested by the Director; and

(e) Within 30 days from the filing of the court's reinstatement order, respondent shall provide to the Director and to his probation supervisor, if any, a written plan outlining office procedures designed to ensure that respondent is in compliance with probation requirements. Respondent shall provide progress reports as requested.

6. Within 1 year of the date of filing of this order, respondent shall file with the Clerk of Appellate Courts and serve upon the Director proof of successful completion of the professional responsibility portion of the state bar examination. Failure to timely file the required documentation shall result in automatic re-suspension, as provided in Rule 18(e)(3), RLPR.

Dated: May 7, 2013

BY THE COURT:



Alan C. Page
Associate Justice

State of Minnesota, Supreme Court
I hereby Certify that the foregoing Instru-
ment is a true and correct copy of the
original as the same appears on record in
my office this 23rd day of July
20 13


Asst. Deputy Clerk