

# PUBLIC MATTER

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**FILED**  
**MAY 01 2015**  
 STATE BAR COURT  
 CLERK'S OFFICE  
 LOS ANGELES

10 STATE BAR COURT

11 HEARING DEPARTMENT - LOS ANGELES

13 In the Matter of: ) Case Nos.: 12-J-16931  
 14 JOHN OWEN MURRIN, III, ) **NOTICE OF DISCIPLINARY CHARGES**  
 No. 75329, )  
 15 )  
 16 A Member of the State Bar. )

18 **NOTICE - FAILURE TO RESPOND!**

19 **IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE**  
 20 **WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT**  
**THE STATE BAR COURT TRIAL:**

- 21 (1) **YOUR DEFAULT WILL BE ENTERED;**  
 22 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU**  
**WILL NOT BE PERMITTED TO PRACTICE LAW;**  
 23 (3) **YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN**  
**THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION**  
**AND THE DEFAULT IS SET ASIDE, AND;**  
 24 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.**  
 25 **SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE**  
 26 **OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN**  
**ORDER RECOMMENDING YOUR DISBARMENT WITHOUT**  
 27 **FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,**  
 28 **RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

27 ///

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1 The State Bar of California alleges:

2 JURISDICTION

3 1. John Owen Murrin, III ("Respondent") was admitted to the practice of law in the  
4 State of California on July 8, 1977, was a member at all times pertinent to these charges, and is  
5 currently a member of the State Bar of California.

6 PROFESSIONAL MISCONDUCT IN A FOREIGN JURISDICTION

7 2. On or about September 19, 2012, the Supreme Court of Minnesota ordered that  
8 Respondent be suspended from the practice of law for six months upon Respondent's violation  
9 of Minnesota Rules of Professional Conduct 3.2 and 8.4(d) by his repeatedly filing voluminous  
10 and frivolous pleadings in three separate court actions. Thereafter, the decision of the foreign  
11 jurisdiction became final.

12 3. A certified copy of the final order of disciplinary action of the foreign jurisdiction is  
13 attached hereto as **Exhibit "1"** and incorporated herein by this reference.

14 4. A certified copy of the Minnesota Supreme Court Findings of Fact, Conclusions of  
15 law, and Recommendation for Discipline is attached hereto as **Exhibit "2"** and incorporated  
16 herein by this reference.

17 5. A copy of the statutes, rules, or court orders of the foreign jurisdiction found to have  
18 been violated by Respondent is attached hereto as **Exhibit "3"** and incorporated herein by this  
19 reference.

20 6. Respondent's culpability as determined by the foreign jurisdiction indicates the  
21 following California statutes or rules have been violated or warrant the filing of this Notice of  
22 Disciplinary Charges:

- 23 a) Bus. & Prof. Code Section 6068(c);  
24 b) Bus. & Prof. Code Section 6068(g);  
25 c) Bus. & Prof. Code Section 6103.

26 ISSUES FOR DISCIPLINARY PROCEEDINGS

27 7. The attached admissions of misconduct and final order are conclusive evidence that  
28 Respondent is culpable of professional misconduct in this state subject only to the following

1 issues:

- 2 a) The degree of discipline to impose;
- 3 b) Whether, as a matter of law, Respondent's culpability determined in the proceeding in
- 4 the other jurisdiction would not warrant the imposition of discipline in the State of
- 5 California under the laws or rules binding upon members of the State Bar at the time the
- 6 member committed misconduct in such other jurisdictions; and
- 7 c) Whether the proceedings of the other jurisdiction lacked fundamental constitutional
- 8 protections.

9 8. Respondent shall bear the burden of proof with regard to the issues set forth in

10 subparagraphs b) and c) of the preceding paragraph.

11 **NOTICE - INACTIVE ENROLLMENT!**

12 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR**

13 **COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE**

14 **SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL**

15 **THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO**

16 **THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN**

17 **INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE**

18 **ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE**

19 **RECOMMENDED BY THE COURT.**

20 **NOTICE - COST ASSESSMENT!**

21 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC**

22 **DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS**

23 **INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING**

24 **AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND**

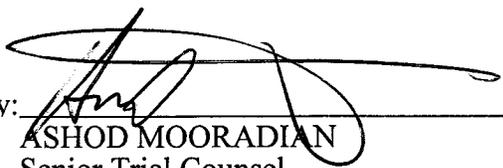
25 **PROFESSIONS CODE SECTION 6086.10.**

26 Respectfully submitted,

27 THE STATE BAR OF CALIFORNIA

28 OFFICE OF THE CHIEF TRIAL COUNSEL

DATED: May 1, 2015

By:   
ASHOD MOORADIAN  
Senior Trial Counsel

RECEIVED  
SEP 19 2012  
OFFICE OF LAWYERS  
PROF. RESP.

STATE OF MINNESOTA  
IN SUPREME COURT

A11-0108

Original Jurisdiction

Per Curiam

In re Petition for Disciplinary Action  
against John O. Murrin, III, a Minnesota  
Attorney, Registration No. 7679X.

Filed: September 19, 2012  
Office of Appellate Courts

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Martin A. Cole, Director, Kevin T. Slator, Senior Assistant Director, Office of Lawyers  
Professional Responsibility, Saint Paul, Minnesota, for petitioner.

John O. Murrin, III, Long Beach, California, pro se.

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SYLLABUS

1. The referee assigned to conduct an attorney discipline evidentiary hearing did not clearly err in finding that an attorney violated Minn. R. Prof. Conduct 3.2 and 8.4(d) when the attorney repeatedly filed voluminous and frivolous pleadings in three separate actions in three different courts.

2. A suspension for 6 months with the requirement that the attorney petition for reinstatement at the end of the suspension is the appropriate discipline for an attorney found to have violated Minn. R. Prof. Conduct 3.2 and 8.4(d) by repeatedly filing voluminous and frivolous pleadings in three separate court actions.

Suspension ordered.

## OPINION

PER CURIAM.

In December 2010, the Director of the Office of Lawyers Professional Responsibility filed a petition for disciplinary action against Respondent John O. Murrin, III, alleging that Murrin had violated Minn. R. Prof. Conduct 3.2 and 8.4(d). The Director's allegations arose from Murrin's conduct while attempting to recoup money Murrin lost in a Ponzi scheme.<sup>1</sup> More specifically, the alleged misconduct involved legal actions Murrin commenced in three separate courts: (1) Hennepin County District Court, (2) United States District Court for the District of Minnesota, and (3) United States Bankruptcy Court for the District of Minnesota. We assigned a referee to conduct an evidentiary hearing on the petition. After conducting the evidentiary hearing, the referee found that Murrin violated Minn. R. Prof. Conduct 3.2 and 8.4(d) in each of the three courts and recommended that Murrin be suspended from the practice of law for 1 year.

On appeal to our court, Murrin makes the following four primary arguments:

(1) the Director exceeded his authority under Rule 8(a) of the Rules on Lawyers Professional Responsibility (RLPR) by conducting an investigation into Murrin's conduct

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<sup>1</sup> **Ponzi scheme.** A fraudulent investment scheme in which money contributed by later investors generates artificially high dividends or returns for the original investors, whose example attracts even larger investments.

- Money from the new investors is used directly to repay or pay interest to earlier investors, usu. without any operation or revenue-producing activity other than the continual raising of new funds. This scheme takes its name from Charles Ponzi, who in the late 1920s was convicted for fraudulent schemes he conducted in Boston.

*Black's Law Dictionary* 1198 (8th ed. 2004).

without the approval of the Executive Committee of the Lawyers Professional Responsibility Board; (2) the referee gave improper collateral estoppel effect to certain court orders and admonishments by judges who presided over Murrin's actions; (3) certain aspects of the disciplinary proceedings deprived Murrin of due process; and (4) Murrin did not engage in unprofessional conduct warranting discipline. We conclude that the referee's findings are not clearly erroneous and hold that Murrin violated Minn. R. Prof. Conduct 3.2 and 8.4(d), and that he should be suspended from the practice of law for 6 months.

Respondent John O. Murrin III was admitted to practice law in Minnesota in 1978. Before this disciplinary proceeding, Murrin's disciplinary history included two admonishments: (1) one in 1985 for improper behavior at a deposition, and (2) the other in 1999 for offering an improper employment agreement. During his career, Murrin practiced bankruptcy, divorce, and trade practices law, as well as general litigation. Murrin is now semi-retired.

In 2004, Murrin and his wife invested \$600,000 in Avidigm Capital Group, Inc., a real estate organization. Avidigm agreed to make interest payments to the Murrins for 15 months and then return the principal of \$600,000 to the Murrins. At first, Avidigm made regular interest payments to the Murrins. But in 2006, the Murrins became aware that Avidigm was no longer making payments. Additionally, Avidigm failed to return the Murrins' principal investment and a \$900,000 security in land that Avidigm earlier had offered to protect the Murrins' investment turned out to be worth \$200. After conducting

an investigation of Avidigm, the Murrins discovered that Avidigm was operating a Ponzi scheme, and that the Murrins had been defrauded.

In 2007, Murrin and/or his wife commenced three separate actions in three different courts against Avidigm and the individuals allegedly responsible for the fraud. Murrin, his wife, and another lawyer, Christopher LaNave, each represented the Murrins in various capacities. The Director requests that we discipline Murrin based on Murrin's conduct in these three actions. We will review of the facts of each of these actions in turn.

*Action in Hennepin County District Court*

On January 12, 2007, Murrin's wife filed a Summons and Complaint in Hennepin County District Court, listing herself as a pro se attorney. A month later, on February 12, 2007, Murrin filed a First Amended Complaint and signed the complaint as "Attorney for Plaintiff." The amended complaint named nearly 50 defendants, contained 493 paragraphs on 131 pages, and listed 27 counts.

On April 20, 2007, Murrin filed a motion to amend his First Amended Complaint to include an additional defendant. The district court granted the motion and Murrin filed a Second Amended Complaint, which named the new defendant and asserted an additional count against the defendant. In June 2007, that defendant removed the case to the United States District Court for the District of Minnesota. Murrin moved to remand the case to state district court. The federal district court granted Murrin's motion and remanded the case to state district court, where a state district court judge, other than the judge who previously heard the case, presided. After reviewing the case on remand, the

state district court considered the Second Amended Complaint to be the operative complaint.

On January 9, 2008, Murrin filed a motion requesting leave to file a Third Amended Complaint. Murrin signed the Third Amended Complaint as the attorney. On January 10, 2008, three defendants appeared before the district court and argued that they “were unable to determine what claims were being leveled against them.” The court “independently reached the same conclusion” and on January 15 ordered Murrin to “provide the Court and opposing parties with a chart clearly delineating which claim is being pursued against which Defendant for each cause of action contained in the Second Amended Complaint.” On January 25, Murrin submitted a chart to the court, but the court concluded that the “chart provided no further clarification to the Court or to Defendants.” On February 14, the district court denied Murrin’s motion to file the proposed Third Amended Complaint because the court concluded that the “[d]efendants [stood] to suffer prejudice if [Murrin were] granted leave to amend.”

The court explained that both the Second and proposed Third Amended Complaint “were incomprehensible and rife with errors.” For example, the court stated that the complaints “failed to provide accurate statutory citations and consequently alleged that Defendants violated statutes regarding Minnesota’s unorganized militia statute,” as well as other unrelated statutes. Further, the court stated that in addition to “cit[ing] to statutes which have been repealed, renumbered, or never existed,” the complaints “lumped distinct causes of action into single counts.” Finally, the court stated that the “flaws [in the Second Amended Complaint] have not been adequately addressed by the Third

Amended Complaint.” The court noted that Murrin’s “Third Amended Complaint is 187 pages in length and contains 777 individually numbered paragraphs. As with the Second Amended Complaint, it is unclear what claims are being asserted and on which factual allegations [Murrin] relies.” Thus, in addition to denying Murrin’s motion to file a Third Amended Complaint, the court concluded that Murrin’s Second Amended Complaint failed to comply with Minn. R. Civ. P. 8.01, which requires complaints to contain a “short and plain statement of the claim,” and Minn. R. Civ. P. 8.05(a), which requires that each averment of a pleading is “simple, concise, and direct.”

On April 11, Murrin filed a motion requesting leave to file a Fourth Amended Complaint. Murrin signed the Fourth Amended Complaint, which named 43 defendants, contained 1,668 numbered paragraphs on 272 pages, and listed 132 counts. The district court subsequently denied Murrin’s motion to amend because Murrin “continue[d] to allege claims that could not be made as a matter of law or on the known factual record.”

On April 29, the parties appeared before the district court for a hearing. At this hearing, the defendants indicated that they intended to pursue sanctions against Murrin. The court later stated that following this hearing, Murrin was “aware that [his] behavior in litigating this case was sanctionable.”

Before the district court had an opportunity to rule on Murrin’s motion to file the Fourth Amended Complaint, Murrin filed a Fifth Amended Complaint. The Fifth Amended Complaint named 43 defendants, contained 945 paragraphs on 165 pages, and listed 64 counts. The court later noted that the Fifth Amended Complaint “again . . . allege[d] claims that could not be made as a matter of law or on the known

factual record and alleges claims against Defendants with whom [Murrin] had already settled or parties who were no longer part of the case.”

On June 13, the district court dismissed with prejudice the Second Amended Complaint in its entirety against all but two defendants. For the two remaining defendants, the court dismissed the Second Amended Complaint without prejudice. The court concluded that the complaint “violated Rules 8.01, 8.05, 9.02, and 10.02 of the Minnesota Rules of Civil Procedure and failed to give Defendants fair notice of the claims alleged against them.” In dismissing the complaint, the court noted that Murrin “abused the litigation process and . . . refused to follow the rules and directives of the court. A sanction under Rule 41.02(a) is justified.” The court then dismissed the Murrins’ lawsuit as to all defendants. The court also granted summary judgment in favor of three defendants.

On December 2, the district court, ruling on several defendants’ motions for sanctions, concluded that Murrin, Murrin’s wife, and LaNave “engaged in oppressive, unethical, and deceitful litigation strategies. What should [have been] a simple collection action against Avidigm and its principals [w]as . . . transformed into a prohibitively complex litigation.” The court then ordered sanctions against Murrin, Murrin’s wife, and LaNave totaling over \$463,000.00. The court found Murrin, Murrin’s wife, and LaNave jointly and severally liable for the sanctions, and permanently enjoined each of them from bringing another action based upon the subject matter in the case.

Murrin appealed. The court of appeals first affirmed the district court’s disposition of the case in *Murrin v. Mosher*, No. A08-1418, 2009 WL 2366119 (Minn.

App. Aug. 4, 2009), *rev. denied* (Minn. Oct. 28, 2009). Then the court of appeals affirmed the sanctions against Murrin, stating that the district court did not abuse its discretion by invoking its inherent authority to impose the sanctions, but concluded that the sanctions against Murrin's wife were inappropriate. *See Murrin v. Mosher*, No. A09-314, 2010 WL 1029306 (Minn. App. Mar. 23, 2010), *rev. denied* (Minn. Aug. 10, 2012).

*Action in the United States District Court for the District of Minnesota*

On January 12, 2007, Murrin's wife filed a First Amended Complaint in Ramsey County District Court, listing herself as a pro se attorney. It appears that the complaint named nearly 30 defendants, including "Doe[] I – X." The complaint contained 626 paragraphs on 153 pages and listed 35 counts. The record indicates that certain defendants removed the case to federal district court.

Once in federal district court, both a magistrate judge and a federal district court judge presided over Murrin's case. On September 20, 2007, Murrin filed a motion requesting leave to file a Second Amended Complaint. The proposed Second Amended Complaint, which Murrin signed, contained 745 paragraphs on 186 pages and listed 36 counts. In deciding whether to grant Murrin's motion to amend, the federal district court compared Murrin's "litigation strategy" to "*peine forte et dure*—a method of torture by which heavier and heavier weights are placed on the chest of a defendant until the defendant either confesses or suffocates." The court explained that it would "not permit [Murrin] to bury [his] opponent[]—and the Court—under mountains of paper." For that reason, the court dismissed the Murrins' First Amended Complaint for failing to comply

with Fed. R. Civ. P. 8.<sup>2</sup> The court went on to deny Murrin's motion to file a Second Amended Complaint, stating that "like the first amended complaint, [the Second Amended Complaint] is an endless, repetitious, and confounding collage of allegations. Needless to say, the Court will not give [Murrin] permission to commit an even more egregious violation of Rule 8." Finally, the court stated that in order to continue the litigation, Murrin had to file an amended complaint by March 31, 2008, that met certain length and content requirements.

On March 30, LaNave filed a Third Amended Complaint. This complaint contained 187 paragraphs on 67 pages and listed 31 counts. The record indicates that between March 30 and November 24 Murrin filed or attempted to file a Fourth Amended Complaint and a Fifth Amended Complaint. In response, the magistrate judge presiding over the case ordered Murrin to "file a **FINAL** Amended Complaint containing those claims which have not previously been dismissed, and which we have granted leave to plead." On November 24, Murrin filed a motion requesting leave to file a Sixth Amended Complaint.<sup>3</sup> The magistrate judge concluded that Murrin's Sixth Amended Complaint violated the court's earlier order. The magistrate judge then stated that he would "not legitimize [Murrin's] disobedience of the clear directives of the Court," and

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<sup>2</sup> To the extent that the magistrate judge recommended that some of Murrin's claims be dismissed with prejudice and on the merits, the court adopted the magistrate judge's recommendation. The court then dismissed the remainder of the First Amended Complaint.

<sup>3</sup> Murrin states in his brief to this court that these complaints "sought only to deal with . . . nonappearing parties . . . ."

denied Murrin's motion for leave to amend. Finally, the magistrate judge again ordered Murrin to "file a FINAL Amended Complaint that conforms, to the letter, with the prior rulings of this Court."

On April 15, Murrin filed a Sixth Amended Complaint in an effort to comply with the magistrate judge's order. Murrin also sought a default judgment against Avidigm and its CEO, who had failed to answer and appear. The federal district court granted default judgment in the amount of \$1,760,000 against Avidigm and its CEO, but denied in part the Murrins' request for \$250,000 in attorney fees. The court stated that "[a]ny competent attorney could have filed a complaint against Avidigm and [its CEO]—a simple complaint running five to ten pages—and, once Avidigm and [its CEO] failed to answer, obtained a default judgment for the amount due under the contract." *Murrin v. Avidigm Capital Grp., Inc.*, No. 07-CV-1295, 2010 WL 1257642 at \*2 (D. Minn. Mar. 25, 2012). The court went on to explain that "[i]t should not have taken three years, four lawsuits, thousands of pages of filings, and a half-million dollars in attorney's fees to get to this point." *Id.* Based on this reasoning, the court concluded the "Murrins' fee request [was] patently unreasonable" and awarded only \$10,000 in attorney fees. *Id.* at \*3.

*Action in United States Bankruptcy Court for the District of Minnesota*

On February 27, 2007, two of the named defendants in the Hennepin County action filed for Chapter 7 bankruptcy and listed the Hennepin County action as a contingent claim against them. Murrin responded by commencing an adversary proceeding against these defendants in the bankruptcy court. The bankruptcy court later

stated that the “original [adversary] complaint was 45 unnumbered pages in length, plus a three-page documentary attachment. It is an understatement to note that the wording of the text was dense, repetitious, fervid, and hyperbolic.” *In re Scott*, 403 B.R. 25, 30 (Bankr. D. Minn. 2009).

Counsel for the defendants—the debtors in the bankruptcy proceeding—answered the adversary complaint, but expressed the debtors’ concern about the “length and prolixity of the complaint, and its relative lack of direct references to acts by the [debtors] that could be linked to any harm that had been inflicted on [Murrin] by or through Avidigm.” The bankruptcy court agreed with debtors’ counsel. Murrin then sought leave to amend the complaint; but, the court denied this request because the “proposed amendments neither simplified the text of the complaint nor shortened it . . . and certainly did not clarify the basis for a dischargeability claim.” Murrin again sought leave to amend. This time, the court granted Murrin’s motion, but “the field was left clear for a dispositive motion from the defense, for dismissal or judgment on the pleadings.”

The debtors then moved for dismissal and the bankruptcy court granted the motion. In dismissing the case, the court stated: “Murrin had ample opportunity to step far back from the invested and emotionally-charged posture of a party-litigant . . . and to act professionally as an officer of the court to avoid a waste of judicial and party resources.” *In re Scott*, 403 B.R. at 46. The court went on to explain that Murrin “did not make responsible use of that opportunity. He certainly is not to be granted a fourth try. This matter is ripe for a disposition with prejudice to further litigation on the merits.”

*Procedural History of Disciplinary Action*

The Hennepin County District Court judge presiding over Murrin's action in that court sent a letter concerning Murrin's conduct to the Director of the Office of Lawyers Professional Responsibility and attached to her letter a copy of her order imposing sanctions on Murrin, Murrin's wife, and LaNave. After receiving the judge's letter, the Director's office commenced an investigation into Murrin's conduct and gave Murrin notice of that investigation. The Director's office testified at Murrin's evidentiary hearing that a sitting judge who files a complaint against an attorney with the Director has the "opportunity to [decline to] be a complainant." In this case, the judge declined to be a complainant, and the investigation continued in the Director's name instead.

Following the Director's investigation, the matter was submitted to a Panel of the Lawyers Professional Responsibility Board, which found that there was probable cause to believe that public discipline against Murrin was warranted. The Director then filed a petition for disciplinary action against Murrin, alleging Murrin violated Minn. R. Prof. Conduct 3.2<sup>4</sup> and 8.4(d)<sup>5</sup>. On January 27, 2011, Murrin filed a motion with our court requesting the following relief: (1) a stay in the disciplinary proceedings for various reasons, (2) an order barring the Director from issuing a press release about the disciplinary proceeding, (3) an order sealing his disciplinary file during the stay, and

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<sup>4</sup> Rule 3.2 states: "A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client."

<sup>5</sup> Rule 8.4(d) states: "It is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice."

(4) the consistent appointment of a referee “who is not personally familiar with or friends with the particular judges and parties, and their counsel involved in the underlying cases.” We denied Murrin’s motions except the request to stay the proceedings, which we referred to the referee to be appointed. *In re Murrin*, No. A11-108, Order at 2-3 (Minn. filed Mar. 3, 2011). We then appointed a referee.

The referee held an evidentiary hearing on this matter on August 1 and 2, 2011. At the hearing, Murrin, Murrin’s wife, and a paralegal who had worked for Murrin testified. Also at the hearing, the referee admitted into evidence various orders by the judges involved in the Hennepin County, District of Minnesota, and Bankruptcy Court proceedings. Some of these orders included the previously discussed admonishments by the judges in these proceedings.

Following the hearing, the referee found that Murrin’s conduct in each of the three actions violated Minn. R. Prof. Conduct 3.2 and 8.4(d). As to aggravating or mitigating factors, the referee found that Murrin had “no appreciation, no understanding of the damage his complaints inflicted upon the defendants. Neither does he comprehend his duty to the courts.” The referee also found that Murrin’s “attitude toward the evidence presented at [the] hearing approaches the delusional in its unfailing rejection of the reasoned, learned criticisms of his litigation conduct.” The referee recommended that Murrin be suspended from the practice of law for 1 year. The referee based this recommendation on Murrin’s “egregious, persistent conduct which disrupted litigation in three different courts, causing excessive delay and enormous costs to the opposition and

to the courts.” Murrin appealed the referee’s findings and recommendations to our court, and requested a transcript of the hearing.

Before our court, Murrin makes the following arguments: (1) the Director exceeded his authority under Rule 8(a) of the Rules on Lawyers Professional Responsibility (RLPR) by conducting an investigation into Murrin’s conduct without the approval of the Executive Committee of the Lawyers Professional Responsibility Board; (2) the referee gave improper collateral estoppel effect to certain court orders and admonishments by judges who presided over Murrin’s actions; (3) certain aspects of the disciplinary proceedings deprived Murrin of due process; and (4) Murrin did not engage in unprofessional conduct warranting discipline.

#### I.

We first turn to Murrin’s argument that the Director exceeded his authority under Rule 8(a), RLPR, by conducting an investigation into Murrin’s conduct without the approval of the Executive Committee of the Lawyers Professional Responsibility Board. Interpretation of the Rules on Lawyers Professional Responsibility is a legal question we review de novo. *In re Nathanson*, 812 N.W.2d 70, 77 (Minn. 2012). In doing so, we consider the plain meaning of the rule’s language. *Id.*

Rule 8(a), RLPR, states:

At any time, with or without a complaint or a District Committee’s report, and upon a reasonable belief that professional misconduct may have occurred, the Director may make such investigation as the Director deems appropriate as to the conduct of any lawyer or lawyers; provided, however, that *investigations to be commenced upon the sole initiative of the Director shall not be commenced without the prior approval of the Executive Committee.*

(Emphasis added.) Under the plain meaning of this rule, the Director may commence an investigation without Executive Committee approval when the Director is not acting upon his sole initiative—that is, the Director does not need Executive Committee approval to commence an investigation when the Director is acting pursuant to a complaint. *See Nathanson*, 812 N.W.2d at 77 (analyzing the language in Rule 8(a), RLPR, and explaining that the Director does not act upon his sole initiative when he acts “pursuant to a complaint”). In contrast, when the Director does act upon his sole initiative, the limitation set out in Rule 8(a)—the requirement of Executive Committee approval—applies to the Director’s investigation. Rule 8(a), RLPR; *See Nathanson*, 812 N.W.2d at 77. Here, it is undisputed that the Director did not obtain approval from the Executive Committee before commencing the investigation into Murrin’s conduct. Thus, we must determine whether the Director commenced the investigation upon his sole initiative.

Murrin argues that because the Hennepin County District Court judge who sent the letter of complaint<sup>6</sup> to the Director declined to be named as a complainant, the Director acted upon his sole initiative. Therefore, Murrin argues the Director violated Rule 8(a), RLPR, by commencing the investigation into Murrin’s conduct without obtaining approval from the Executive Committee. We conclude that Murrin’s argument lacks merit.

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<sup>6</sup> The judge’s complaint took the form of a letter. When a sitting judge reports to the Director a formal, written, credible allegation of attorney misconduct, we deem that report sufficient to constitute a complaint.

We conclude that when a judge sends a complaint to the Director notifying the Director about an attorney's misconduct, and the Director then commences an investigation into the attorney's conduct based on the judge's complaint, the Director is not acting upon his sole initiative. We reach this conclusion even if, as in this case, the judge subsequently decides against being named as the complainant. Here, because the judge declined to be the named complainant, the Director's name was ultimately substituted for the judge's name on the complaint; but, the Director's investigation nevertheless was prompted by the judge's complaint. Therefore, we conclude that the Director did not commence the investigation upon his sole initiative. Accordingly, we hold that the Director did not violate Rule 8(a), RLPR, because he was not required to obtain Executive Committee approval before commencing his investigation.

## II.

We next turn to Murrin's argument that the referee gave improper collateral estoppel effect to several admonishments contained in court orders that were admitted into evidence at Murrin's disciplinary hearing. Specifically, Murrin argues that the referee failed to conduct an independent review of the facts underlying the admonishments contained in the court orders. In other words, Murrin is concerned that the referee accepted as fact the judges' admonishments that Murrin violated certain state and federal rules of civil procedure and court orders instead of independently determining whether Murrin violated those rules and orders.

Collateral estoppel is "[t]he binding effect of a judgment as to matters actually litigated and determined in one action on later controversies between the parties

involving a different claim from that on which the original judgment was based.” *Black’s Law Dictionary* 279 (8th ed. 2004). We have explained that collateral estoppel “precludes relitigation ‘of issues which are both identical to those issues already litigated by the parties in a prior action and necessary and essential to the resulting judgment.’ ” *In re Morris*, 408 N.W.2d 859, 862 (Minn. 1987) (quoting *Ellis v. Minneapolis Comm’n on Civil Rights*, 319 N.W.2d 702, 704 (Minn. 1982)). A plaintiff who asserts collateral estoppel “to prevent a defendant from relitigating an issue previously decided against the defendant” is using “offensive collateral estoppel.” *Black’s Law Dictionary* 279 (8th ed. 2004) (defining “offensive collateral estoppel”). We have said that offensive collateral estoppel is improper in disciplinary proceedings. *See Morris*, 408 N.W.2d at 862-63. But, we allow a referee to independently consider the transcripts and other documentation from prior proceedings involving the attorney misconduct. *Id.* at 863.

At the evidentiary hearing, Murrin made arguments based on collateral estoppel. The referee responded to Murrin’s arguments by stating that he was not giving collateral estoppel effect to the admonishments from the judges presiding over the relevant cases. The referee further stated that he could not simply accept the judges’ admonishments of Murrin as fact. Specifically, at the evidentiary hearing, he stated: “I agree with you that I have to independently review the documents which you are submitting and which the Lawyers Board contends violate the different cited rules of the Lawyers Professional Responsibility Code. And I will do that.” Further, Murrin had an opportunity to litigate the relevant conclusions and contest the admonishments contained in the judicial orders admitted as evidence. The hearing transcript is replete with Murrin’s explanations as to

why his conduct was proper in the cases giving rise to those orders. Finally, while the referee included excerpts from the court orders in his findings of fact, there is no indication in the record that the referee failed to independently review the facts of the three cases and the facts presented during the hearing. For the foregoing reasons, we conclude that the referee did not give improper collateral estoppel effect to the admonishments contained in the court orders admitted into evidence at Murrin's evidentiary hearing.

### III.

We next turn to Murrin's argument that the disciplinary proceedings deprived him of due process. Murrin raises arguments based on several aspects of the proceedings. Foremost among those arguments are the following: (1) the admonishments of Murrin in the court orders admitted at the evidentiary hearing constituted inadmissible hearsay; (2) Murrin was unable to cross-examine the judges whose orders were admitted at the evidentiary hearing; (3) "lumping" Murrin's conduct in three separate cases into one disciplinary proceeding was improper because the Director was able to create an "overall impression" of misconduct even if none of the incidents was proved independently; (4) the Director did not establish which incidents of misconduct were specifically attributable to Murrin and which were attributable to LaNave; and (5) the referee was biased because he had to "pit the credibility of a fellow judge against [Murrin]." Whether due process is required in a particular proceeding, and whether due process has been afforded, are questions of law we review de novo. *See State v. LeDoux*, 770 N.W.2d 504, 512 (Minn. 2009).

Disciplinary proceedings are neither civil nor criminal. *In re Garcia*, 792 N.W.2d 434, 441 (Minn. 2010). Accordingly, while due process must be afforded in disciplinary proceedings, we have said that these proceedings “‘are not encumbered by technical rules and formal [due process] requirements.’” *Id.* (quoting *In re Gherity*, 673 N.W.2d 474, 478 (Minn. 2004)). Instead, we have set out the following guidelines for determining whether an attorney received due process in a disciplinary proceeding: if the charges against the attorney were “‘sufficiently clear and specific’” and the attorney was “‘afforded an opportunity to anticipate, prepare and present a defense,’” due process was provided. *Id.* (quoting *In re Gherity*, 673 N.W.2d at 478). In reaching this conclusion, we may also consider whether the attorney had an opportunity for a hearing at which he could present evidence of good character and mitigating circumstances. *Id.*

Several factors support a conclusion that Murrin was afforded due process in the disciplinary proceedings against him. First, the charges against Murrin were clear and specific. The petition recounts the individual complaints filed by Murrin and the relevant court orders, and then asserts that Murrin’s conduct “violated Rules 3.2 and 8.4(d), MRPC.” Additionally, Murrin filed an answer indicating he understood the charges against him. Second, Murrin was able to anticipate, prepare, and present a defense. At an evidentiary hearing before a neutral factfinder, Murrin had the opportunity to present evidence on his own behalf, call witnesses, and cross-examine witnesses. *See In re Garcia*, 792 N.W.2d at 441. Third, Murrin had the opportunity to present “evidence of good character and mitigating circumstances” at that hearing. *Id.* For the foregoing

reasons, we conclude that Murrin was afforded due process in the disciplinary proceedings against him. *See id.*

#### IV.

The final issue for our consideration is whether Murrin engaged in unprofessional conduct warranting discipline. Because Murrin ordered a transcript of the evidentiary hearing, the referee's findings of facts and conclusions of law are not conclusive. *In re Lyons*, 780 N.W.2d 629, 635 (Minn. 2010). Nevertheless, we have said that we "give great deference to the referee's findings and will not reverse those findings unless they are clearly erroneous, especially when the referee's findings rest on disputed testimony or in part on credibility, demeanor, and sincerity." *Id.* Additionally, while we give "great weight" to the sanction recommended by the referee, we alone make the final determination as to the appropriate discipline. *Id.* at 636.

Murrin argues that his conduct is "fully explainable in a manner which does not involve any professional wrongdoing and so there should be no basis for discipline." He appears to argue that in each instance, he commenced the original actions and filed the amended complaints based on a good-faith belief that the complaints were necessary to the action or were an attempt to accommodate specific requests by the courts. He also argues that he was "bumping into the conflict between" the requirements that he submit a "short and plain statement" of his claims and the requirement that he plead fraud with particularity. *See* Minn. R. Civ. P. 8.01 ("A pleading which sets forth a claim for relief . . . shall contain a short and plain statement of the claim . . ."); Minn. R. Civ. P. 9.02 ("In all averments of fraud or mistake, the circumstances constituting fraud or

mistake shall be stated with particularity.”). We first must determine whether the referee’s findings that Murrin violated Minn. R. Prof. Conduct 3.2 and 8.4(d) were clearly erroneous. *See In re Lyons*, 780 N.W.2d at 634-35. A referee’s findings are clearly erroneous only if we are “‘left with the definite and firm conviction that a mistake has been made.’” *Id.* at 635 (quoting *Gjovik v. Strobe*, 401 N.W.2d 664, 667 (Minn. 1987)).

Here, the record supports the referee’s findings that Murrin engaged in professional misconduct in each of the three separate court actions. The record included nearly all of the complaints filed in each case, as well as the specific court orders violated by Murrin when he filed the amended complaints. While the record included the judicial admonishments of Murrin within the relevant court orders, these admonishments were not essential to the referee’s determination; the referee could have made identical factual findings based on the enormous number of pages filed and the procedural history of the actions without reference to the specific admonishments by the judges.

Additionally, the referee’s findings were based on his evaluation of Murrin’s “credibility, demeanor, and sincerity” during the evidentiary hearing. *See In re Lyons*, 780 N.W.2d at 634-35. For example, the referee stated that “[e]ven at the hearing, [Murrin] asserted that his only duty was to his client . . . .” The referee also stated that Murrin’s “attitude toward the evidence presented at [the] hearing approche[d] the delusional in its unflinching rejection of the reasoned, learned criticisms of his litigation conduct.” As noted earlier, we defer in particular to a referee’s findings on such matters as “credibility, demeanor, and sincerity.” *Id.* Because the record supports the referee’s

findings, and given our deference to the referee, we are not “ ‘left with the definite and firm conviction that a mistake has been made.’ ” *Id.* (quoting *Gjovik*, 401 N.W.2d at 667 (Minn. 1987)). Thus, we conclude that the referee’s findings that Murrin violated Minn. R. Prof. Conduct 3.2 and 8.4(d) were not clearly erroneous. *Id.*

Having concluded that the referee’s findings are not clearly erroneous, we now must determine the appropriate discipline for Murrin. We have said that “the purposes of disciplinary sanctions for professional misconduct are to protect the public, to protect the judicial system, and to deter future misconduct by the disciplined attorney as well as by other attorneys.” *In re Oberhauser*, 679 N.W.2d 153, 159 (Minn. 2004). When determining the appropriate discipline for attorney misconduct, we consider the following four factors: “(1) the nature of the misconduct; (2) the cumulative weight of the disciplinary violations; (3) the harm to the public; and (4) the harm to the legal profession.” *In re Nelson*, 733 N.W.2d 458, 463 (Minn. 2007). Although discipline is determined on a case-by-case basis after considering both aggravating and mitigating circumstances, we may look to similar cases for guidance on the appropriate discipline. *In re Rooney*, 709 N.W.2d 263, 268 (Minn. 2006).

#### *Nature of the Misconduct*

The nature of Murrin’s misconduct is serious. Murrin failed to comply with several court orders, continued to name defendants in his pleadings even after the defendants had been dismissed from the actions by the court, continued to assert claims after the claims had been dismissed, and required three courts and nearly 50 defendants to

spend the time and money necessary to wade through thousands of pages of frivolous, unnecessary, or convoluted claims.

*Cumulative Weight of the Disciplinary Violations*

We distinguish between a “brief lapse in judgment” or “a single, isolated incident” and “multiple instances of mis[conduct] occurring over a substantial amount of time,” because the latter warrants more severe discipline. *In re Fairbairn*, 802 N.W.2d 734, 743 (Minn. 2011) (citation omitted) (internal quotation marks omitted). In this case, Murrin filed or attempted to file five complaints in the Hennepin County case. In the federal District of Minnesota case, Murrin filed or attempted to file six complaints. In the Bankruptcy Court case, Murrin filed or attempted to file three complaints. Nearly all of these complaints were or could have been dismissed by the courts under Minn. R. Civ. P. 8.01 and 8.05 or Fed. R. Civ. P. 8. Further, Murrin persisted in misconduct for approximately 2 years—from early 2007 until late 2008.

*Harm to the Public and Legal Profession*

An attorney’s failure to follow court rules undermines public confidence in the legal system. *In re Ulanowski*, 800 N.W.2d 785, 801 (Minn. 2011). Further, frivolous claims harm the legal profession because the claims waste court resources. *Id.* Here, Murrin caused harm to the public and legal profession by failing to follow court rules and wasting the resources of three courts. First, Murrin failed to follow court rules and court orders requiring that Murrin’s complaints meet certain requirements. Second, Murrin filed or attempted to file multiple complaints and/or amended complaints that were eventually dismissed by all three courts for failure to comply with such rules and orders,

or for asserting frivolous claims. Third, Murrin cost nearly 50 defendants substantial time and expense in order to defend themselves against the claims alleged within those complaints.

*Aggravating and Mitigating Factors*

In addition to considering the four factors discussed above, we also may consider any aggravating and mitigating factors. *In re Aitken*, 787 N.W.2d 152, 162 (Minn. 2010). Here, the referee identified two aggravating factors: Murrin's disciplinary history and Murrin's lack of remorse. The referee's identification of aggravating factors is not clearly erroneous. Murrin admitted to his disciplinary history of two previous admonishments. Further, the referee's determination of Murrin's lack of remorse was based on Murrin's behavior and demeanor at the evidentiary hearing, and we defer to such determinations. *See In re Lyons*, 780 N.W.2d at 635.

As to mitigating factors, the referee found none. Murrin argues, however, that several mitigating factors exist. First, Murrin argues that his 35-year track record as an attorney—as well as the facts that no dishonesty is alleged and “no client has . . . been hurt (other than his own self)” —should serve as mitigating factors. Murrin also appears to argue that the significant court-related sanctions imposed against him should serve as a mitigating factor. Finally, Murrin argues that “his persistence [in] help[ing] the FBI secure convictions and freeze over \$400,000 for victims of the [P]onzi scheme,” and his success in the United States District Court litigation should serve as mitigating factors.

With the exception of the lack of harm to a particular client, none of the factors asserted by Murrin appears to be a mitigating factor that we have considered in the past.

*See Aitken*, 787 N.W.2d at 163. Moreover, the referee did not make a finding as to any of the mitigating factors asserted by Murrin. *See Albrecht*, 779 N.W.2d at 537-38 (“But the fact that the referee may treat an attorney’s . . . past good results in difficult cases as mitigating factors does not mean that it is clearly erroneous for the referee to choose not to do so.”). However, we take this opportunity to acknowledge specifically Murrin’s success in the United States District Court litigation. As noted earlier, Murrin won a \$1,760,000 default judgment against Avidigm and its CEO. That said, while we may consider whether an attorney was successful in the underlying suit giving rise to a disciplinary proceeding against that attorney, the attorney’s success in the underlying suit cannot overshadow clear and continuous misconduct. Here, we recognize that Murrin’s pleadings could not have been wholly frivolous because he won a default judgment. But, to the extent that Murrin named defendants in his pleadings who had been earlier dismissed from the litigation and filed claims that had been earlier dismissed from the litigation, we conclude that his pleadings were frivolous.

We also note that this case is different from most disciplinary cases in which an attorney has violated Minn. R. Prof. Conduct 3.2 and 8.4(d). In most cases, the attorney’s violations of the rules arose from the attorney’s *neglect* of client matters. *E.g., In re Crandall*, 699 N.W.2d 769, 770-71 (Minn. 2005). This case presents the opposite circumstances: Murrin alleged misconduct arises from his overzealous *advocacy*. Thus, we seek guidance from a limited number of similar cases when determining the appropriate discipline for Murrin.

For example, in *In re Pinotti*, we suspended a lawyer for a minimum of 90 days based on the lawyer's conduct, which we said "far exceed[ed] the limits of professional representation, despite the numerous warnings of lower tribunals and heavy sanctions imposed." 585 N.W.2d 55, 63 (Minn. 1998). Similar to Murrin, the lawyer in *Pinotti* "[ignored] . . . court orders . . . [and] marched relentlessly onward with a barrage of frivolous motions and appeals to the great detriment of his clients and in total disregard of the waste of judicial resources." *Id.* Also similar to Murrin, the lawyer in *Pinotti* was "unrepentant" and refused to acknowledge that his conduct violated the Rules. *Id.* at 63 (citing *In re Weiblen*, 439 N.W.2d 7 (Minn. 1989)).

In determining the appropriate discipline in *Pinotti*, we looked to *In re Jensen*, 542 N.W.2d 627, 634 (Minn. 1996), in which we imposed an 18-month suspension on an attorney who "filed a frivolous claim, failed to follow the rules of civil and appellate procedure . . . and disobeyed a court order." *Pinotti*, 585 N.W.2d at 62. We also looked to *In re Nora*, 450 N.W.2d 328, 330 (Minn. 1990), and *In re Graham*, 453 N.W.2d 313, 325 (Minn. 1990), in which we imposed 30-day and 60-day suspensions, respectively, on attorneys who filed frivolous actions. *Pinotti*, 585 N.W.2d at 62-63. Finally, we looked to *In re Tieso*, 396 N.W.2d 32, 32-33 (Minn. 1986), in which we imposed a 3-month suspension on an attorney who filed a single claim that was "groundless, frivolous and unwarranted under existing law." *Pinotti*, 585 N.W.2d at 63 (internal quotations marks omitted).

We conclude that Murrin's conduct was more extreme than that of the lawyer in *Pinotti*, if for no other reason than the sheer length of Murrin's filings and the number of

defendants burdened.<sup>7</sup> We understand that the particular circumstances of some lawsuits require complex and lengthy pleadings, and we note that in those circumstances, such pleadings are proper. But, when an attorney uses convoluted, frivolous pleadings—in violation of specific court orders—to delay litigation and confuse his opponents, that attorney violates the respective mandates in Minn. R. Prof. Conduct 3.2 and 8.4(d) to “make reasonable efforts to expedite litigation,” and to avoid “conduct that is prejudicial to the administration of justice.” Based on the record before us, we conclude that Murrin engaged in a pattern of seemingly endless pleadings that contained frivolous claims and were unnecessarily burdensome in length, violated court orders, wasted courts’ resources, delayed litigation, and prejudiced the administration of justice.

Accordingly, we hold that the record supports the referee’s factual findings and legal conclusions that Murrin violated Minn. R. Prof. Conduct 3.2 and 8.4(d). But, we disagree with the referee’s recommendation that we suspend Murrin from the practice of law for 1 year. Instead, we conclude the appropriate discipline is a 6-month suspension with the requirement that Murrin petition for reinstatement.

Accordingly, we order that:

1. Respondent John O. Murrin III is suspended from the practice of law in the State of Minnesota for 6 months, effective 14 days from the date of the filing of this opinion.

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<sup>7</sup> In *Pinotti*, no mention of the length of the lawyer’s filings is made, and it appears the filings only affected eight or fewer defendants. *Id.* at 56-62.

2. At the end of his suspension, Murrin must petition for reinstatement to the practice of law under Rule 18(a)-(d), RLPR. Reinstatement is further conditioned upon successful completion of the professional responsibility portion of the state bar examination within 1 year of the end of his suspension.

Suspended.

OCT 02 2012

**FILED** H

FILE NO. A11-108

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against JOHN O. MURRIN, III,  
a Minnesota Attorney,  
Registration No. 7679X.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW and  
RECOMMENDATION FOR  
DICIPLINE

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The above-entitled matter came on for hearing before the undersigned on August 1 and 2, 2011, upon the Director of the Office of Lawyers Professional Responsibility's petition seeking discipline to be imposed upon the attorney John O. Murrin III (Murrin).

Kevin T. Slator, Esq., Assistant Director, Office of Lawyers Professional Responsibility, 345 St. Peter Street, No. 1500, St. Paul MN 55102-1218, appeared on behalf of the petitioner.

John O. Murrin III, Esq., the respondent, 7045 Los Santos Drive, Long Beach CA 90815, appeared *pro se*.

Based upon the testimony of the witnesses, the exhibits and arguments of counsel, the undersigned makes the following as:

**FINDINGS OF FACT**

1. The litigation out of which the Director's complaint arises is the Murrins' lawsuit against Avidigm Capitol Group, Inc. (Avidigm), its principals and those persons

and other entities whom the Murrins perceived as responsible with Avidigm for their investment loss.

2. On or about September 1, 2004, the Murrins invested \$600,000 with Avidigm, the terms of which required Avidigm to pay interest to the Murrins for fifteen (15) months and then return the principal amount after that period.

3. Avidigm made several interest payments until it then defaulted on January 20, 2006, and also failed to return the \$600,000 principal to the Murrins.

4. Murrins found Avidigm to be insolvent. They and others had been victimized by Avidigm and its president, Steven J. Mattson, who was subsequently convicted in federal court of the aiding and abetting the making false statements to a bank.

5. The security which Avidigm claimed protected the Murrins' investment was non-existent.

6. The Murrins began the laborious process of investigation which initially focused upon the auditors whose reports found Avidigm to be a financially viable company and suggested that it represented a reasonable investment.

### **I. Hennepin County**

7. The Murrins filed their First Amended Complaint (J1, D3) February 12, 2007, which was 132 pages long, containing 493 paragraphs and naming 47 defendants (including the "Does").

8. The Murrins filed a Second Amended Complaint June 20, 2007, which was 144 pages long, containing 493 paragraphs and naming the 48 defendants (J3).

9. The Murrins filed a Third Amended Complaint (Joint 3, D5) October 3, 2011, which was 187 pages long, contains 777 paragraphs and adds an additional 50 defendants (J5).

10. Respondent's Fourth Amended Complaint was filed with his motion on April 11, 2008, containing 272 pages, 1,668 paragraphs and naming 43 defendants (J4).

11. Respondent's Fifth Amended Complaint was 165 pages long, 945 paragraphs, 64 counts against 43 defendants.

12. John O. Murrin signed each of the above complaints in the capacity as "Attorney for Plaintiffs."

13. In response to motions by some of the defendants, Judge Denise Reilly held a hearing on January 10, 2008, and issued an order (D6) dated January 15, 2008, which found that the Respondent did not "clearly delineat[e] which claim is being pursued against which defendant for each cause of action contained in the Second Amended Complaint."<sup>1</sup>

14. On January 25, Respondent and some of the defendants' lawyers again appeared on Respondent's motion for approval of his Third amended Complaint and on some of the defendants' motions.

15. Judge Reilly made the following comments concerning the plaintiff's various complaints described above.

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<sup>1</sup> This finding presumably uses the civil burden of proof. My findings below must meet the "clear and convincing" test.

### Second Amended Complaint

- a) Order dated January 15, 2008 (D6): Found that Respondent did not "clearly delineat[e] which claim is being pursued against which defendant for each cause of action contained in the Second Amended Complaint."
- b) Order dated February 14, 2008 (D8): Found that the Second Amended Complaint and the chart Respondent was ordered to prepare were "incomprehensible," had serious deficiencies and were unintelligible and failed to put defendants on notice as to the alleged claims against them.
- c) Order dated February 14 (D8): Found that the Third Amended Complaint did not adequately cure the serious deficiencies in the Second Amended Complaint.
- d) Additionally Respondent did not provide accurate statutory citations, cited repealed statutes, statutes renumbered, and statutes which never existed.
- e) Respondent lumped distinct causes of action into single counts which confused the defendants and the Court.
- f) Found that the Third Amended Complaint would only further prejudice defendants (Reilly Order of December 2, 2008).

### Third Amended Complaint

g) It fails to provide accurate statutory citations. Ex. 8 Reilly Memorandum, pp. 7-8.

h) It lumps separate, multiple causes of actions into single counts. Ex. 8 Reilly Memorandum, p. 8.

i) It does not make clear what claims are alleged against what parties and what facts support which claims.

*Id.*<sup>2</sup>

16. The Court of Appeals affirmed Judge Reilly's orders and her findings above in *Murrin v. Mosher*, No. A08-1418 (unpublished August 4, 2009). Review denied October 28, 2009.

17. On December 2, 2008, the Court of Appeals affirmed the District Court's order for sanctions and the bases cited to support those sanctions under the trial court's inherent authority to manage litigation in the trial courts. *Murrin v. Mosher*, A09-314, A09-315, A09-816, A09-1400 (unpublished March 23, 2010). Review denied August 10, 2010.

## **II. United States District, District of Minnesota**

### First Complaint

18. In January 2007 Respondent and Devonna Murrin, as *pro se* plaintiffs, signed a United States District Court, District of Minnesota amended complaint 156 pages long, with 626 paragraphs, naming 20 defendants (D.Ex.30).

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<sup>2</sup> Respondent protested that to identify which defendant was implicated would be a laborious task.

19. Judge Patrick J. Schiltz dismissed the First Amended Complaint by order dated February 25, 2008, for failure of the Murrins to comply with Rule 8, Fed.R.Civ.P.

20. The Murrins' conduct in making their motion to serve and file a Second Amended Complaint parallels and resembles his conduct in the Hennepin County District Court litigation because the complaint in the second amended version now contains 187 pages, 745 paragraphs. (R.Ans.¶34)

21. Magistrate Judge Raymond L. Erickson, in his Order dated November 26, 2008, addressed the Murrins' multiple amendments.

We accept that the plain intendment of Rule 15(a), Federal Rule of Civil Procedure, as underscored by the Supreme Court's opinion in Foman v. Davis, 371 U.S. 178, 182 (1962), mandates that leave to amend "shall be freely given when justice so requires." Liberty of amendment, however, is not a license, and is subject to restraint. "A district court appropriately denies the movant leave to amend if 'there are compelling reasons such as undue delay, bad faith, or dilatory motive, **repeated failure to cure deficiencies by amendments previously allowed**, undue prejudice to the non-moving party, or futility of the amendment. (citations omitted) The Plaintiffs have had repeated opportunities to properly support a punitive damages claim against the remaining Defendants, beyond that related to Section 604.14, and they have abjectly failed in their proofs. We will not allow a sixth bite out of that apple.

(D.Ex. 38, pp. 5-6)

22. Magistrate judge Erickson heard the Murrins' motion to file a Fourth Amended Complaint (D.Ex.34) but before Erickson, (M.J.) could rule on the motion, the Murrins filed a Fifth Amended Complaint.<sup>3</sup> (D.Ex.35)

23. On September 5, 2008, Erickson (M.J.) ordered the Murrins to file a final complaint, omitting as defendants those against whom the Murrins' complaint had been dismissed.

24. Instead of complying with the order to file a final amended complaint "containing those claims which have not been previously dismissed, and which we have granted leave to plead" (D.Ex.36), the Murrins filed a motion to amend with a Sixth Amended Complaint which included "precisely the language" the Court had previously rejected. (D.Ex. 37)

25. In his November 26, 2008, order Erickson, (M.J.) commented about the Murrins' failure to comply with his previous order to file a final amended complaint, noting:

Now, apparently of the belief that they should be afforded a further attempt at demonstrating a prima facie case for punitive damages as to a variety of their claims against the remaining Defendants, the Plaintiffs have submitted a further Affidavit, together with another raft of exhibits, which plainly evince the Plaintiffs' attempt to circumvent the Court's directive that they file a "Final Amended Complaint": containing only those claims previously allowed by the Court.

(D.Ex.38, p.4)

26. The Murrins finally achieved the ordered result, a Final Amended Complaint.

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<sup>3</sup> This too replicates the Murrins' conduct in the state court litigation.

27. In his December 8, 2008, order Schiltz, J. addressing the Murrins' appeal of the Judge Magistrate's November 26, 2008, order denying the Murrins permission to seek punitive damages in connection with any claim other than their Minn. Stat. § 604.14 claim (civil liability for theft) noted:

Plaintiffs now claim that they understood this language to give them permission to plead punitive damages in connection with all of their claims. But this claim of confusion is almost surely contrived. Judge Erickson's order cannot possibly be read to grant permission to plead punitive damages in connection with any claim other than the § 604.14 and conspiracy claims.

(D.Ex.39, p.2)

28. Judge Schiltz also noted that, "Plaintiffs have proven themselves singularly unwilling or unable to comply with the rules and instructions of this Court...."

*Id* at p. 4.

29. Murrins sought "nearly \$500,000 in fees and costs with these lawsuits" (the four Avidigm related lawsuits). The Court (Schiltz, J.) in allowing only \$10,000 commented:

In addition, the Murrins' contractual right to attorney's fees is limited to "reasonable" fees. This Court has first-hand knowledge of the Murrins' litigation strategy, which the Court earlier observed "resembles nothing so much as *peine forte et dure* – a method of torture by which heavier and heavier weights are placed on the chest of a defendant until the defendant either confesses or suffocates." Docket No. 337 at 2. Perhaps never in the history of this District has more paper been filed by a litigant to less effect. By way of example, the Court points out that the docket in this case contains over *four hundred entries* despite the fact that this action has barely progressed past the *pleading stage*. The Murrins have proven to be singularly incapable of following

the Federal Rules of Civil Procedure and singularly incapable of following the directions of this Court.

This is all the more astonishing in light of the fact the Murrins could have obtained a judgment on their breach-of-contract claims against Avidigm and Mattson within a couple of months of filing suit and for a tiny fraction of the fees and costs they claim to have incurred. The parties' contracts are clear; the breach has never been in dispute; the amount of damages is readily calculable; and, most importantly, both Avidigm and Mattson have been in default since this case was removed to federal court in February 2007. Any competent attorney could have filed a complaint against Avidigm and Mattson – a simple complaint running five to ten pages – and, once Avidigm and Mattson failed to answer, obtained a default judgment for the amount due under the contract. It should not have taken three years, four lawsuits, thousands of pages of filings, and a half-million dollars in attorney's fees to get to this point. The Murrins' claim that they should recover a quarter of a million dollars for pursuing their breach-of-contract claims is absurd.

(D.Ex.41, pp. 4-5)

### **III. Bankruptcy Court**

30. On February 27, 2007, Jason and Clichelle Scott sought discharge from their debts in the United States Bankruptcy Court, District of Minnesota, naming the Murrins as configured claimants.

31. On June 4, 2007, the Murrins then filed an adversary complaint against the Scotts, 48 pages long, including 3 pages of exhibits, containing 141 paragraphs.

(D.Ex.50)

32. After the Murrins' two motions to amend their complaint (the Court denied one, granted the other<sup>4</sup>), the Bankruptcy Judge Gregory F. Kishel found in response to the Scotts' motion to dismiss:

Plaintiff John O. Murrin is an attorney who has practiced for over thirty years in this state. He had three chances to lay out a "short and plain statement" of his and his wife's case against the Debtors for nondischargeability. His third effort did not come materially closer to doing that than his first did. Murrin had ample opportunity to step far back from the invested and emotionally-charged posture of a party-litigant, to look at the situation from the cool distance of an advisor-advocate, and to act professionally as an officer of the court to avoid a waste of judicial and party resources. He did not make responsible use of that opportunity. He certainly is not to be granted a fourth try. This matter is ripe for a disposition with prejudice to further litigation on the merits.

403 B.R.25, 46 (D.Minn. 2009)

#### Aggravating/Mitigating Factors

33. Respondent has no appreciation, no understanding of the damage his complaints inflicted upon the defendants. Neither does he comprehend his duty to the courts, i.e., to follow the rules or to respect the judicial process.

34. Even at hearing the Respondent asserted that his only duty was to his client or, at least, that that duty took precedence over any other duty.

35. He further argued that the First Amendment to the United States Constitution permitted his form of pleading.

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<sup>4</sup> The judge referred to the complaints' allegations as a rambling, non-sequential rhetorically-embellished complaint.

36. He further expresses the belief, unsubstantiated and unfounded, that courts are against him, are in cahoots negatively to deal with him, are overbearing, impinging on his First Amendment rights and do not understand the attorney's duty to his client.

37. Respondent's attitude toward the evidence presented at hearing approaches the delusional in its unfailing rejection of the reasoned, learned criticisms of his litigation conduct.

38. Respondent admitted his history of prior discipline, which is: (1) a September 5, 1985, admonition for engaging in an altercation at a deposition and improperly terminating the deposition in violation of DR 1-102(A)(5), Minnesota Code of Professional Responsibility (the predecessor to Rule 8.4(d), Minnesota Rules of Professional Conduct [MRPR] (D.Ex.62); and (2) a September 1, 1999, admonition for participating in offering and making an employment agreement that restricted a former employee's right to practice in violation of rule 5.6, MRPC (D.Ex. 63).

39. Each of the above findings of fact meet the "clear and convincing" burden of proof as to those facts referred in the attached Memorandum.

#### CONCLUSIONS OF LAW

1. Respondent's conduct in Hennepin County district Court violated Rules 3.2 and 8.4(d) MRPC.

2. Respondent's conduct in the United States District Court, District of Minnesota violated Rules 3.2 and 8.4(d) MRPC.

3. Respondent's conduct in United States Bankruptcy Court, District of Minnesota violated Rules 3.2 and 8.4(d) MRPC.

4. Respondent's consistently repetitious conduct warrants the imposition of professional discipline.

#### IV. Recommendation for Discipline

1. Respondent's egregious, persistent conduct which disrupted litigation in three different courts, causing excessive delay and enormous costs to the opposition and to the courts warrants a year's suspension from the practice of law.

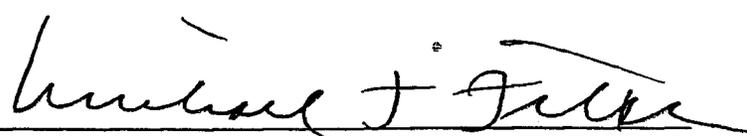
2. This recommendation is made not only in recognition of the harm done but also in light of Respondent's unapologetic attitude, because of his failure to comprehend the damage caused by his tactics and because of his inability in hindsight to empathize in the slightest those who he has harmed and disrupted in the performance of their duties.

3. The attached Memorandum is made a part hereof.

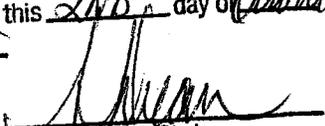
4. These Findings of Fact, Conclusions of law shall be mailed to the attorneys of record by United States mail and such service shall be sufficient for all purposes.

DATED: November 2, 2011

BY:

  
MICHAEL F. FETSCH  
DISTRICT COURT JUDGE - RETIRED  
SERVING AS REFEREE BY

State of Minnesota, Appellate Courts  
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 2ND day of November  
20 11

  
Asst. Deputy Clerk

## MINNESOTA SUPREME COURT APPOINTMENT

### MEMORANDUM

Respondent's vexatious, unreasonable conduct was not limited to his complaints. Judge Reilly awarded costs and attorney's fees (Davisson and Smogoleski) for Respondent's failure timely to respond to discovery. (D.6, p.3)

At the same hearing Respondent asked the Court to have the Murrins deposition taken in a single block of time to be divided among all defendants because it would be unreasonable for the Court to require the Murrins as residents of California to return for individual depositions. The Court pointed out that in their complaint the Murrins identified themselves as "residents of the State of Minnesota, mostly residing in Duluth, St. Louis County, Minnesota," noting that the Murrins chose the forum in which to litigate and are not entitled to limit defendants' discovery options.

This but another example of how the Respondent judges matters, not in relation to an objective standard, but only whether the course of action serves his self interest. (D.6, p.3)

Respondent's intransigence in the face of judicial findings, his unwillingness to modify his behavior even though basic due process rights of defendants are at stake provides additional insight to his character.<sup>5</sup>

The damage which defendant caused when measured in financial terms almost defies belief. He continues to be unrepentant, incapable of perceiving the harm he has caused. His inability to accept any responsibility for this conduct, which propelled him into these disciplinary proceedings, approaches the extremities of intractability.

Respondent continually asserted at hearing that his duty to his client, i.e., himself and often his wife, trumped all other duties as an attorney. His failures, on the most practical of levels would have the result that, if every lawyer conducted his litigation in the Murrin style, the civil courts would suffocate.

The Comment to 8.4 MRPC emphasizes the lawyer's duty:

... a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to the practice of law. Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

It is for the above reasons that the recommendation for discipline takes this severe form.

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<sup>5</sup> The conduct of the Respondent "... demonstrated 'willfulness and contempt for the court's authority' in addition to prejudice to the parties involved." D.Ex.15, pp. 10-11

The answer under the test contained in the Comment to Rule 3.2 MRPC is a resounding "No":

The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay.

**M.F.F.**

# Minnesota Rules of Professional Conduct

## RULE 3.2: EXPEDITING LITIGATION

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

### Comment

[1] Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

# Minnesota Rules of Professional Conduct

## RULE 8.4: MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(g) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, status with regard to public assistance, ethnicity, or marital status in connection with a lawyer's professional activities;

(h) commit a discriminatory act prohibited by federal, state, or local statute or ordinance that reflects adversely on the lawyer's fitness as a lawyer. Whether a discriminatory act reflects adversely on a lawyer's fitness as a lawyer shall be determined after consideration of all the circumstances, including:

(1) the seriousness of the act,

(2) whether the lawyer knew that the act was prohibited by statute or ordinance,

(3) whether the act was part of a pattern of prohibited conduct, and

(4) whether the act was committed in connection with the lawyer's professional activities; or

(i) refuse to honor a final and binding fee arbitration award after agreeing to arbitrate a fee dispute.

### Comment

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to the practice of law. Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

[4] Paragraph (g) specifies a particularly egregious type of discriminatory act-harassment on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. What constitutes harassment in this context may be determined with reference to antidiscrimination legislation and case law thereunder. This harassment ordinarily involves the active burdening of another, rather than mere passive failure to act properly.

[5] Harassment on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status may violate either paragraph (g) or paragraph (h). The harassment violates paragraph (g) if the lawyer committed it in connection with the lawyer's professional activities. Harassment, even if not committed in connection with the lawyer's professional activities, violates paragraph (h) if the harassment (1) is prohibited by antidiscrimination legislation and (2) reflects adversely on the lawyer's fitness as a lawyer, determined as specified in paragraph (h).

[6] Paragraph (h) reflects the premise that the concept of human equality lies at the very heart of our legal system. A lawyer whose behavior demonstrates hostility toward or indifference to the policy of equal justice under the law may thereby manifest a lack of character required of members of the legal profession. Therefore, a lawyer's discriminatory act prohibited by statute or ordinance may reflect adversely on his or her fitness as a lawyer even if the unlawful discriminatory act was not committed in connection with the lawyer's professional activities.

[7] Whether an unlawful discriminatory act reflects adversely on fitness as a lawyer is determined after consideration of all relevant circumstances, including the four factors listed in paragraph (h). It is not required that the listed factors be considered equally, nor is the list intended to be exclusive. For example, it would also be relevant that the lawyer reasonably believed that his or her conduct was protected under the state or federal constitution or that the lawyer was acting in a capacity for which the law provides an exemption from civil liability. *See, e.g.,* Minn. Stat. Section 317A.257 (unpaid director or officer of nonprofit organization acting in good faith and not willfully or recklessly).

[8] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

DECLARATION OF SERVICE

by
U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 12-J-16931

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES

- By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))
By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))
By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))
By Fax Transmission: (CCP §§ 1013(e) and 1013(f))
By Electronic Service: (CCP § 1010.6)

- (for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)
(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 9414 7266 9904 2010 0719 90 at Los Angeles, addressed to: (see below)
(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking No.: addressed to: (see below)

Table with 4 columns: Person Served, Business-Residential Address, Fax Number, Courtesy Copy to:
John Owen Murrin, III, Murrin Law Firm, 7045 E Los Santos Dr, Long Beach, CA 90815, Electronic Address

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS').

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: May 1, 2015

SIGNED:

Charles C. Bagai
Declarant