

May 29, 2024

Via Electronic Mail: dhashmall@felhaber.com

David L. Hashmall

PERSONAL AND CONFIDENTIAL

220 South Sixth Street, Suite 2200
Minneapolis, MN 55402

Re: *In the Matter of the Complaint of TIMOTHY A. HUTCHINSON against DANIEL J. VAN LOH
(#0297513)*

Dear Mr. Hashmall:

This letter is written in response to the May 15, 2024 Notice of Investigation Pursuant to 8(a), Rules on Lawyers Professional Responsibility, and specifically to the allegation that I violated Rule 4.3.

DOCUMENTS PROVIDED

Enclosed please find the following:

1. May 27, 2021 Stipulated HRO Following Hearing – Brittany Anderson
2. May 27, 2021 Stipulated HRO Following Hearing – Steven Anderson
3. July 13, 2023 HRO Following Hearing – Brittany Anderson
4. July 13, 2023 HRO Following Hearing – Steven Anderson
5. September 14-October 14, 2021 Email Exchange between Dan Van Loh and Timothy Hutchinson
6. June 4, 2021 Correspondence from Mr. Hutchinson to Brittany (Hutchinson) Anderson
7. May 27, 2021 Court Transcript.

CASE BACKGROUND

I have represented Steven Anderson and his wife, Brittany (Hutchinson) Anderson since April 2021 on a *pro bono* basis in two Harassment Restraining Order proceedings against the complainant, Timothy Hutchinson. This factual history is laid out in the HRO Petitions and Affidavits Mr. Hutchinson provided. These submissions demonstrate significant and serious harassment of Steven and Brittany, Mr. Hutchinson's daughter, that stem from his role in the wedding planning of Steven and Brittany. When attempts to reconcile differences were unsuccessful in therapy, Mr. Hutchinson commenced a public campaign to malign Anderson and/or get him fired from his job as a college/young adults pastor at Calvary Church, Roseville, MN. Complainant subsequently made threats that he communicated to Calvary's senior pastor, elder board and legal counsel that he planned to interfere with public worship with a banner campaign against Steven Anderson. The court granted a 10-year extension for the HRO on behalf of Steven Anderson due to the severity of the violations and threats of harassment against Steven that also potentially impacted unrelated and innocent attendees at the church where Steven was employed. The Court also extended the HRO for two years on behalf of Mr. Hutchinson's daughter, Brittany, for his violations of the May 27, 2021 HRO.

Based on Mr. Hutchinson's request in the May 27, 2021 Stipulated HRO, there was an agreed upon exception to the HRO where Mr. Hutchinson "may only contact the Petitioner [Brittany (Hutchinson) Anderson] in writing through her attorney. In any communication sent through counsel, Respondent may not disparage or harass the Petitioner or Steven Anderson." [Emphasis Added]

The HRO made it clear that I represented Brittany and her husband, Steven. Complainant then contacted me in my capacity as the attorney for Steven and Brittany to forward a letter to Brittany, pursuant to the HRO. Notably, the content of the correspondence directly violated the exception to the HRO as it was disparaging and harassing towards Steven Anderson. Mr. Hutchinson further acknowledges my role as Brittany's attorney (and not his attorney) by saying that:

"I am fairly certain your lawyer is reading this, so here's the disclaimer. (as I've stated over and over and over again, repeatedly since this conflict began...) Nothing stated here is meant to infer or condone any illegal activities, or anything of a violent nature. I am a law abiding citizen and will comply with all laws, including the Restraining Order." [Emphasis Added]

The above statement was made following a bolded caption: "**He Treated Me Like a Game – Now I'm Going to Show Him How It's Played.**"

Having been licensed since November 1999, I have interacted with hundreds of self-represented parties over the past twenty-five years, both in my capacity as an attorney and mediator. I currently serve on the State ADR Ethics Board and understand the importance of establishing clear professional boundaries in whatever representation or ADR capacity I serve. As a mediator, I clarify that I am neutral and that I cannot provide legal advice to either party, represented or not. As a litigator, I take similar precautions with unrepresented parties to first of all determine if they are represented by legal counsel. I then confirm that I represent my client, cannot provide the unrepresented party with legal advice, and they should consult with an attorney if they want legal advice. My interaction with Mr. Hutchison was no exception.

I have extensive experience and training with emotionally or mentally dysregulated parties, particularly in deescalating otherwise emotional situations. I at all times treated Mr. Hutchinson with kindness and respect, understanding that any escalation could result in adverse behavior by Mr. Hutchinson towards my clients.

RESPONSE TO MAY 8, 2024 EMAIL RESPONSE TO OLPR QUESTIONS.

The May 15, 2024 Notice of Investigation instructs me to limit my response to claims related to Rule 4.3, Communication with Unrepresented Parties. It would appear that the OLPR concerns were outlined in the May 3, 2024 letter to Mr. Hutchinson so I will focus my reply on the May 8, 2024 responsive email.

1. Did Mr. Van Loh tell you that his client's interests were different from your own interests?

The short answer is: yes. I did and continued to advise Mr. Hutchinson that the interests of my clients were adverse to his legal interests. The nature of my representation of Mr. Hutchinson's daughter, Brittany, and her husband, Steven, as being adverse to Mr. Hutchinson has always been clearly communicated by me, established with subsequent communication and acknowledged by Mr. Hutchinson. I have neither provided nor suggested any form of legal advice or offered information that could be construed as legal advice to Mr. Hutchinson. His behavior,

written communication to me and May 8, 2024 email to the OLPR reflects Mr. Hutchinson's understanding that his interests were at all times adverse to my clients.

- a. **May 27, 2021 HRO Hearing.** My initial contact with Mr. Hutchinson was limited to my office serving my Certificate of Representation (COR) for the May 27, 2021 HRO Hearing and a court facilitated "settlement conference" prior to the hearing. This is standard protocol for HRO's to see if the parties agree to enter into a HRO without findings or the need for trial. At this time, I had not met nor had I exchanged any communication with Mr. Hutchinson, other than my standard service letter with the COR.

Mr. Hutchinson appeared at the May 27, 2021 HRO hearing without counsel. My first question when meeting with unrepresented parties is whether they are represented by an attorney. If not, I clarify that my role is on behalf of my client and am not providing them with legal advice and that they should contact an attorney if they wanted legal advice. I followed the same protocol during this court facilitated settlement conference. When he agreed to an HRO without a hearing, the court inquired and confirmed of Mr. Hutchinson that he was willing to be bound by the HRO's even though he didn't have an attorney to give him legal advice." [Emphasis added.]

- b. **"Mr. Van Loh at times made suggestions in order to get me to change the direction of my approach to this ongoing matter. Example; in an email he said that I should leave my daughter alone so she can heal, instead of hiring a lawyer to sue her husband for defamation of character." (See 1(A) of Mr. Hutchinson's May 8, 2024 Email to the OLPR.)**

I did not suggest to Mr. Hutchinson that he should not hire an attorney to sue Steven Anderson for defamation. Mr. Hutchinson incorrectly summarized two different statements I made to him, took them out of context and disregarded my comment to him in the first paragraph of the email that prefaces the entire email with my saying "Understanding I represent your daughter Brittany and cannot give you legal advice..." [Emphasis added.]

The conversation to which Mr. Hutchinson is referring is the October 14, 2021 email I sent to him as part of an ongoing conversation regarding his request for arbitration. He begins with a request in his September 15, 2021 email wondering whether I was still representing Steven Anderson. He also noted his intent to retain counsel, both statements reflecting that he was aware I represented Steven and Brittany and not Mr. Hutchinson. The entirety of this email conversation was subsequent to the first paragraph establishing that I represented Steven and Brittany Anderson.

I specifically stated the following in the October 14, 2021 email: *"I reiterate my comments that your threats of lawsuits or "other moves" undermine your efforts for future reconciliation with Brittany. She needs a break and respectfully request that you respect her wishes, including with your threatened legal attacks against Steven."*

This response was provided after conferring with my client and communicating her wishes; it was clearly not legal advice. I reminded Mr. Hutchinson that his threats and comments were in violation of the HRO and communicated on behalf of my clients their

request that he stop. I at no time communicated or insinuated that Mr. Hutchinson should not hire an attorney.

- c. **“He also lied and said that if I did not accept the first HRO without finding of fact, that my daughter’s future employment and prevent her from going on international missionary trips.”** I did not make this statement nor did I make any representation that could have implied that an HRO against Mr. Hutchinson would have any effect on either of my clients. First of all, my client did not have any international missions trip planned. Second, the suggestion that the HRO would have an adverse effect on a petitioner’s employment is factually and logically untrue and I would not have made any such representation.
- d. **“Please see attached file, which contains an email threat that Mr. Van Loh and I had back in 2021. You will notice that what [sic] he says all of their allegations are private unless I share them. “He also says that he represents my daughter and cannot advise me.” (See 1(A) of Mr. Hutchinson’s May 8, 2024 Email to the LBPR.)** See my response to 1(b) above. I did in fact inform Mr. Hutchinson that I represent his daughter and that I cannot advise him. The comment regarding the public nature of the HRO allegations is contained in the September 16, 2021 email where I responded to Mr. Hutchinson’s desire for his family to know whether “Steven’s” allegations (noting that his daughter made the same allegations) were accurate or not. I clarified in my September 16, 2021 to Mr. Hutchinson that the allegations contained in Steven and Brittany’s HRO Petitions had not been made public or otherwise shared with his family.
- e. **“But what he says to me in a video hearing and on the phone are much different.”** Mr. Hutchinson does not provide any specific statement I made by phone or at the hearing to which I can provide a response. I would not have made statements offering advice or suggesting that I represent him and further would have clarified in any out of court conversations who I represented, that I could not provide him legal advice, and to consult with an attorney if he wanted legal advice. Any statements in a court hearing would have simply been legal advocacy on behalf of my client.

2. **Did You Ask for Mr. Van Loh for his advice?**

- a. **“No, never. He is not my attorney so I would never ask his advice.”** I agree that Mr. Hutchinson never asked for my advice. I agree that I was not his attorney and appreciate his acknowledgment and understanding that I was not his attorney.
- b. **But he seemed to have no problem giving it to me without my asking.”** My response to the “advice” he alleges is provided in #3 below.

3. **What did Mr. Van Loh tell you?**

- a. **“He said that if I went to trial when the first HRO was filed, that it would harm my daughter in her future employment and overseas missionary efforts.”** I neither made nor implied any negative employment repercussion for Brittany if the HRO was contested at an evidentiary hearing. In fairness to Mr. Hutchinson, he may have confused the two HRO’s in his recollection between the HRO filed on behalf of his

daughter, Brittany, and the HRO on behalf of his son-in-law, Steven, who Mr. Hutchinson was actively attempting to get fired from his position at Calvary Church where Steven was employed. But I did not make any such statement in Brittany's case.

- b. **"He also said, "This is what Brittany Wants." Well, Brittany was manipulated by her husband, Steven, through a barrage of terrible lies about me."** I acknowledge communicating to Mr. Hutchinson *my client's wishes* that she did not want to have contact with her father and she did not wish to participate in arbitration over the HRO allegations that were just resolved with a stipulated HRO. Any exchange with Mr. Hutchinson, especially the September 15-October 14, 2021 Email exchange, was contemplated and agreed to by the parties and ordered by the court to have me serve as a conduit for communication between Mr. Hutchinson and Brittany, in the clear capacity as her attorney.
- c. **"The first HRO allowed me to write letters to my daughter and have them delivered through her attorney, Mr. Dan Van Loh. After, in an email he said that I should not contact my daughter anymore because it was preventing her from healing. This was in response to a letter I sent with proof her husband was lying."** Mr. Hutchinson correctly states that the HRO allowed him to write letters to his daughter *and have them delivered through me, her attorney* (noting the caveat that the letters were not to be harassing or disparaging of Steven Anderson, a condition that Mr. Hutchinson violated). Hence, in my October 14, 2021 email, I asked for Mr. Hutchinson to refrain from future communication with Steven and Brittany *because the content of his letters was in violation of the HRO*. See below for the copied/pasted text:
- *"I appreciate the reply and explanation. We'll have to agree to disagree on your understanding of what constitutes libel and slander. Understanding that I represent your daughter Brittany and cannot give you legal advice, I encourage you to give some thought to whether you are missing the opportunity to understand Brittany's perspective through this process.*

That said, I do not think that any further dialogue on this issue will be helpful. I remind you of the terms of the HRO given your comment/threat that "a lawsuit, however, is not my next move." Per the HRO, you are to refrain from direct and indirect contact with both Steven and Brittany. Hence, both direct and indirect attempts of communication or behavior with the intention of reaching or impacting Steven and Brittany may be considered a violation of the HRO which may then have criminal penalties for any violations. On behalf of both Steven and Brittany, I am requesting that you refrain from any attempts to communicate with them.

I reiterate my comments that your threats of lawsuits or "other moves" undermine your efforts for future reconciliation with Brittany. She needs a break and respectfully requests that you respect her wishes, including with your threatened legal attacks against Steven." [-October 14, 2021 Email from Dan Van Loh to Timothy Hutchinson' Emphasis Added]

This dialogue was pursuant to a stipulated court order for Mr. Hutchinson to communicate with me as Brittany's attorney. My comments to Mr. Hutchinson confirmed again what had already been established in the initial September 14, 2021 email - that I do not represent Mr. Hutchinson. I was not providing him with legal advice.

4. Did Mr. Van Loh advise you to secure counsel?---"No, never."

I did not advise Mr. Hutchinson to secure counsel *in writing*. I told him at the May 27, 2021 HRO settlement conference that I was not his attorney, I represented Steven and Brittany Anderson and therefore could not provide him with legal advice. If he wanted legal advice, he should consult with an attorney.

Rule 4.3(d) provides that "*a lawyer shall not give legal advice to the unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of the unrepresented person are or have a reasonable possibility of being in conflict with the interests of the client.*" Notably, the rule does not place on the attorney an affirmative duty to always and/or repeatedly advise unrepresented parties to secure legal counsel, only that this should be the only advice given, if any. Furthermore, Rule 4.3 is silent about an ongoing duty to advise unrepresented parties to secure counsel.

The comments to Rule 4.3 are helpful. Comment 2 states that:

The rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether a lawyer is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents a party whose interests are adverse and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations. [Emphasis added.]

- My interaction with Mr. Hutchinson related to the first HRO was limited to the May 27, 2021 HRO court hearing where I appeared on behalf of my clients. Hence, there is no reasonable inference that Mr. Hutchinson could have drawn that his interests were anything but adverse to the interests of my clients.
- Mr. Hutchinson acknowledged several times in his own filing to the OLPR that I was not his attorney.

- I established in the May 27, 2021 settlement conference that occurred outside the courtroom that I represented Steven and Brittany Anderson, I was not Complainant's attorney, could not give him legal advice and advised him of his right to counsel.
- Mr. Hutchinson acknowledged on the record at the May 27, 2021 hearing that he was aware of and waived his right to counsel.
- My September-October, 2021 email exchange with Mr. Hutchinson was pursuant to a court order and on behalf of my client, Brittany Anderson.
- My representation of Steven (and Brittany) was confirmed at the beginning and end of the September-October, 2021 email exchange with Mr. Hutchinson, including language that I represented Steven and Brittany and could not give him legal advice.

5. What else did Mr. Van Loh do, or not do, which you believe is unethical?

Per the Notice of Investigation, I am not responding to this allegation because Mr. Hutchinson's responses are unrelated to Rule 4.3. Please let me know if any response is required.

SUMMARY

As I write my response, my clients and I share a concern that Mr. Hutchinson will misappropriate any information herein. If any of my response is shared with him, I request that he be advised that the information is not to be disseminated outside of the investigatory proceedings.

I ask that you consider the entirety of Mr. Hutchinson's ongoing campaign to harass and harm my client, Steven Anderson, which includes the Court finding that both Mr. Hutchinson and his witnesses lacked credibility at the second HRO evidentiary hearing on July 13, 2023. (*Notably, Mr. Hutchinson has also filed an ethics complaint against the presiding referee, The Hon. Elizabeth Clysdale.*)

Comment 1 to Rule 4.3 identifies a legitimate concern that an unrepresented person might assume that a lawyer is a disinterested authority on the law. The comment goes on to state that "*In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where the lawyer knows or reasonably should know that the interests are adverse, disclose that the client has interests opposed to those of the unrepresented person.*" This in fact was communicated to and acknowledged by Mr. Hutchinson.

I acknowledge the lack of written communication with Mr. Hutchinson advising him to secure counsel. Comment 2 to Rule 4.3 gives consideration to the setting in which the behavior or acts are alleged to have occurred. My role at the May 27, 2021 and July 13, 2023 HRO hearings was innately adversarial where it was on the record with a presiding judicial officer. Hence, it is neither customary nor appropriate to preface open courtroom conversations with unrepresented parties with a caveat that the unrepresented litigant should consult with an attorney before answering questions, presenting evidence, calling witnesses or reaching agreements. When we discussed settlement outside the courtroom, I advised him verbally to consult with an attorney in conjunction with my informing him that I could not provide him with legal advice because my client's interest was adverse to his legal interests.

To illustrate Mr. Hutchinson's understanding of my role and his need to secure legal counsel, he acknowledged his intent to hire an attorney to sue my client, something that was never discouraged, and repeatedly acknowledges that he knew that I was not his attorney. Mr. Hutchinson then attempts to connect a message from my clients, both Steven and Brittany, that Brittany needs space and time to heal, as an attempt to discourage him from retaining legal counsel, which is misleading and inaccurate.

Regarding the September 14-October 14, 2021 email exchange provided and referred to by Mr. Hutchinson with his complaint, my responses were a) pursuant to a court order to communicate with Mr. Hutchinson; b) in my capacity as Brittany's attorney; and c) in response to his comments and questions to me in the capacity of representing my clients. Those email exchanges showed that I also clarified, in writing, that I represented Steven and Brittany and I was not providing him with legal advice. Mr. Hutchison clearly knew my role was adversarial and it was understood that any communication with me could be against his own interests. During this exchange, he threatened to retain legal counsel and I did not discourage him from doing so, knowing that he was aware of his right to confer with counsel, and I was not that counsel.

I want to fully cooperate with this process, so please do not hesitate to give me a call or reach out to me if you have further questions or need additional information.

Very truly yours,

CAPISTRANT VAN LOH, P.A.

/s/ Daniel J. Van Loh

Daniel L. Van Loh
Attorney at Law

DJV/
Attachments