

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary  
Action against DAVID E. ALBRIGHT,  
an Attorney at Law of the  
State of Minnesota.  
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**PETITION FOR  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rule 10(a), Rules on Lawyers Professional Responsibility. The Director alleges:

1. David E. Albright, hereinafter respondent, was admitted to practice law in Minnesota on June 21, 1985. Respondent currently practices law in St. Paul, Minnesota. Respondent has the following disciplinary history:

a. The Director and respondent stipulated to an admonition on February 7, 1986, for respondent's conduct in persuading a court clerk, without authority, to remove a notice of dismissal from the district court's file and for failing to reveal to the court of appeals that he had removed the document only after the federal district court had dismissed his identical lawsuit in violation of DR 1-102(A)(5), Minnesota Code of Professional Responsibility.

b. The Director issued respondent an admonition on March 14, 1991, for failing to pay a valid judgment entered against him in violation of Rule 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

c. The Director issued respondent an admonition on January 10, 1996, for representing both himself and his clients at a motion hearing to add

respondent as a third party defendant in a legal malpractice matter and for failing to advise his clients of a trial continuance in violation of Rules 1.4(b) and 1.7(b), MRPC.

### FIRST COUNT

#### Failure to Timely File Individual Income Tax Returns and Misrepresentations to the Director

2. Respondent failed to timely file his 1993 through 1998 federal individual income tax returns, although required by law to do so.
  - a. Respondent filed his 1993, 1994 and 1995 federal individual income tax returns on November 17, 1997.
  - b. Respondent filed his 1996 federal individual income tax return on October 30, 1998.
  - c. Respondent filed his 1997 and 1998 federal individual income tax returns on October 24, 1999.
3. Respondent failed to timely file his 1993 through 1998 Minnesota individual income tax returns, although required by law to do so.
  - a. Respondent filed his 1993, 1994 and 1995 Minnesota individual income tax returns on December 15, 1997.
  - b. Respondent filed his Minnesota individual income tax returns for the years 1996, 1997 and 1998 on June 15, 2000.
4. On May 24, 1999, as part of his response to an unrelated client complaint, respondent wrote to the Director to self-report that, among other things, he was, "late in filing [his] 1993, 94, 95, and 96 tax returns." The Director initiated an investigation and requested that respondent produce the various tax returns.

5. In his June 22, 1999, letter to the Director, respondent stated that he had enclosed his 1993 through 1996 tax returns. Respondent only provided copies of his 1993 through 1995 individual state and federal income tax returns.

6. On July 6, 1999, the Director informed respondent that his 1996 individual income tax returns were not enclosed with his June 22, 1999, letter, and requested that he provide those returns or, if they were not yet filed, to describe the status of those returns. In his July 19, 1999, response, respondent stated:

With respect to the missing tax returns, I dictated the letter to you before I realized that I had given my last copies to Sharon Schwartz of the Internal Revenue Service. She had requested my copies, after I had filed them with Kansas City, to supplement her file.

Respondent did not disclose that, as of July 19, 1999, he had not filed his 1996, 1997 and 1998 state income tax returns.

7. On August 31, 1999, the Director wrote to respondent to inquire about the filing status of respondent's 1997 and 1998 tax returns. On September 16, 1999, respondent replied that he had an extension until October 15, 1999, to file his 1998 federal return and that his accountant would be completing his 1997 and 1998 returns within the week. Respondent stated that as soon as he picked up the returns he would file them and send the Director a copy.

8. On October 6, 1999, respondent delivered to the Director what he identified as "copies of [his] 1997 and 1998 tax returns." The Director subsequently obtained IRS records reflecting that respondent did not file his 1997 and 1998 federal returns until October 24, 1999. Respondent did not enclose his 1997 and 1998 state returns.

9. On December 10, 1999, the Minnesota Department of Revenue (DOR) wrote to respondent to inform him they had not received his state returns for the years

1996 and 1997 and to request that he file those returns or provide proof that he was not required to file.

10. On February 4, 2000, DOR notified respondent that they had not received his state income tax returns for 1996 and 1997, that DOR had concluded that respondent did not intend to file, and that DOR had prepared commissioner filed returns under the authority of Minn. Stat. § 289A.35. For the 1996 and 1997 tax years, the DOR assessed respondent \$24,358.32 for outstanding taxes, penalties and interest.

11. On February 11, 2000, respondent telephoned the DOR and stated that he would be filing his tax returns.

12. On March 2, 2000, the Director wrote to respondent to request copies of his 1996, 1997 and 1998 state tax returns. Respondent did not respond. The Director wrote again on April 10, 2000, and renewed his request for the returns.

13. On April 19, 2000, respondent wrote to the Director by facsimile stating that his 1996 through 1998 state tax returns had been completed by his tax preparer and respondent intended to pick them up and file them on April 20, 2000.

14. On May 1, 2000, respondent provided the Director with copies of his state returns for 1996, 1997 and 1998. Respondent's 1996 state return was dated April 28, 2000, and respondent's 1997 and 1998 state returns were dated April 10, 2000. The returns and the cover letter create the impression that respondent had filed the state returns. Respondent did not provide copies of his 1999 federal and state tax returns.

15. On June 2, 2000, the Director and respondent met to discuss, in part, his failure to file his 1996 through 1998 state returns. Despite specifically discussing his tax filing status and the notices respondent received from the DOR (*see* ¶¶ 11 - 13, *supra*), respondent did not disclose to the Director that he still had not, as of that date, filed his 1996 through 1998 state returns. At the same meeting, the Director requested a copy of

respondent's 1999 federal and state tax returns. Respondent agreed to provide them. The Director confirmed the request by letter dated June 5, 2000.

16. On June 6, 2000, respondent wrote to the Director by facsimile and disclosed that he had not filed his state returns for 1996, 1997 and 1998. Respondent also provided an unsigned cover letter to the Minnesota Department of Revenue dated June 6, 2000, which appeared to file his outstanding state tax returns. The Director later discovered that respondent did not file his 1996, 1997 and 1998 state tax returns until June 15, 2000.

17. The Director requested respondent's 1999 state and federal returns by letter dated July 3, 2000. On July 11, 2000, respondent provided the Director with copies of a signed 1999 state return and unsigned 1999 federal return. Respondent stated that he intended to file the returns that day by mail. Respondent later provided evidence that showed he did not file his 1999 returns on time. Instead, respondent filed a request for an extension on or about April 15, 2000, and issued a \$5,000 check on April 17, 2000, for estimated taxes.

18. Respondent's failure to timely file his 1993 through 1998 state and federal income tax returns violated Rule 8.4(d), MRPC, and the Minnesota Supreme Court's holding in *In re Bunker*, 199 N.W.2d 628 (Minn. 1972).

19. Respondent's lack of cooperation in the Director's investigation regarding the status of filing his 1996, 1997 and 1998 Minnesota income tax returns and his 1999 federal and state returns violated Rule 8.1(a)(1), MRPC.

## SECOND COUNT

### Improper Use of Trust Funds

20. In early 1997, on behalf of the estate of Thomas L. Corrigan, Jr., respondent negotiated an option to purchase agreement with Heritage Development, Inc. to buy 65 acres of real property from the estate. Although respondent did not

represent the estate in any other transactions, he performed this single task on behalf of decedent's son, Thomas L. Corrigan, III [hereafter "Tom Corrigan"]. Respondent had no direct contact with the two personal representatives, Tom's sisters. On August 15, 1997, respondent deposited to his trust account \$25,000 in option money on behalf of Corrigan.

21. In fall 1997, respondent had difficulty paying investment-related debts. Respondent asked Tom Corrigan if respondent could borrow some of the option funds. Tom agreed. Respondent did not create any written documentation for the loan, discuss the loan with the personal representatives of the estate, or advise Tom Corrigan or the personal representatives that they should discuss the loan with independent counsel.

22. Respondent made the following trust account disbursements for payment of his personal debts:

<u>Date</u>	<u>Check No.</u>	<u>Amount</u>	<u>Payee</u>
8/19/97	103	\$4,600	Harry Marriott
10/6/97	107	7,500	David E. Albright
10/16/00	Wire transfer	7,500	Unknown
10/24/97	108	1,000	David E. Albright
10/30/97	Wire transfer	2,500	Unknown
<b>TOTAL:</b>		<b>\$23,100</b>	

23. By wire transfers on January 14 and 21, 1998, respondent returned the estate funds to his trust account. Shortly thereafter, respondent withdrew \$25,000 from his trust account in person at his bank and forwarded the funds to the estate.

24. During the period from at least July 1997 through January 1998, respondent failed to maintain a trust account check register or subsidiary client ledgers, failed to perform monthly reconciliations, and failed to retain cancelled trust account

checks and duplicate deposit slips. Respondent falsely certified on his 1998 attorney registration statement that he properly maintained his trust account.

25. Respondent's borrowing of Corrigan's trust account funds for payment of personal debts and failure to maintain required trust account records violated Rules 1.8(a) and 1.15, MRPC, and Lawyers Professional Responsibility Board Opinion No. 9.

### THIRD COUNT

#### Datnoff Matter

26. Respondent represented Stephen Datnoff in a civil action to recover photographs that Datnoff had submitted to a publisher. The matter was resolved through arbitration in April 1998 and provided, in part, for the opposing party to return Datnoff's property.

27. By electronic mail on June 3, 1998, Datnoff requested that respondent return his personal papers and books of photographs. Respondent replied on June 4, 1998, that he would bundle up Datnoff's papers and ship them to him in a couple of days. Respondent did not do so.

28. On August 23, 1998, Datnoff again requested by electronic mail that respondent return his papers. On September 10, 1998, respondent replied by electronic mail that he would return Datnoff's materials by parcel post the next day. Respondent did not do so.

29. After Datnoff filed a complaint with the Director's Office on January 8, 1999, respondent located and returned Datnoff's documents.

30. Respondent's failure to promptly deliver Datnoff's property violated Rules 1.15(c)(4) and 1.16(d), MRPC.

## FOURTH COUNT

### Brown Matter

31. In April 1999, respondent represented Dale Brown in a criminal matter in Itasca County. Included in the discovery respondent received from the prosecutor was a statement that John Newman had given to law enforcement implicating Brown in the crime.

32. After receiving the discovery, respondent met with Peggi and Steve Jacobson. At the time, Newman was incarcerated in the Lino Lakes correctional facility. Respondent states that the Jacobsons told respondent that Newman was telling other inmates at the facility that "Brown had informed on [Newman]." In fact, Newman was cooperating with the prosecution of Brown.

33. Respondent claims that the Jacobsons told respondent that another Lino Lakes inmate (LeClair) was requesting that the Jacobsons provide him with proof that it was Newman who was cooperating with the prosecution and not Brown. Respondent provided the Jacobsons with a copy of Newman's statement. Steve Jacobson subsequently mailed a copy of Newman's statement to LeClair at the Lino Lakes facility.

34. Rule 9.03, subdivision 4 of the Minnesota Rules of Criminal Procedure requires that discovery documents:

[F]urnished to an attorney under discovery rules or orders shall remain in the custody of and be used by the attorney only for the purpose of conducting that attorney's side of the case . . . .

35. After the statement was sent to the Lino Lakes facility, a member of the Hell's Angels gang handed the statement to Newman in a threatening manner. A copy of the statement was also found in a prison bathroom. Newman was transferred from the Lino Lakes facility due to safety concerns and thereafter became reluctant to cooperate with the prosecution.

36. After the district court learned that respondent was the source for providing Newman's statement to the Lino Lakes inmates, respondent was disqualified from representing Brown. The court further ordered that Brown could thereafter only review discovery documents inside of his new counsel's office.

37. Respondent's conduct in giving a copy of the Newman statement to the Jacobsons violated Rules 3.4(c) and 8.4(d), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court imposing the discipline recommended in the stipulation filed herewith or for such other, further or different relief as may be just and proper.

Dated: January 3, 2002.

  
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