

STATE OF MINNESOTA

IN SUPREME COURT

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

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In the Matter of the Petition for  
Disciplinary Action against  
JAMES V. BEAL, Respondent.  
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DIRECTOR'S  
PETITION FOR  
DISCIPLINARY ACTION

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of Lawyers Professional Responsibility, hereinafter Director, at the direction of a Lawyers Professional Responsibility Board Panel, files this petition and alleges:

Respondent, is, and has been, since October 16, 1968, admitted to practice law in Minnesota. Respondent has paid through December 31, 1982, the registration fee required by Rule 2, Rules for Registration of Attorneys.

Respondent has committed the following unprofessional conduct warranting public discipline:

COMPLAINT NO. 1

- A. Respondent represented Lee E. Engen, on a worker's compensation claim against SICO, Inc. whose insurance carrier was St. Paul Companies.
- B. On November 6, 1979, respondent received a partial settlement of \$1,753.50. Attorney's fees for the partial

settlement were withheld pending approval by the workers compensation commission. Respondent failed to deliver the partial settlement to Engen. Instead, respondent deposited the partial settlement in his trust account and paid Engen \$1,000. From the remaining funds, \$370 was used to pay expert witness fees. Respondent paid the balance of \$383.50 to his partner, Warren Horner, for work Horner had done for Engen. Engen objected because Engen had submitted his Wisconsin Judicare card to Horner and believed Wisconsin Judicare would pay for the work.

- C. Of the \$370 paid to expert witnesses, respondent paid \$295 to Dr. Titrud. St. Paul Companies later sent respondent a \$295 check payable to Titrud. On January 8, 1980, respondent returned this to St. Paul Companies falsely representing he had personally paid Titrud and requesting the check be made payable to respondent. St. Paul Companies did so and respondent converted this check for his personal or business purposes.
- D. On November 26, 1979, Leigh J. Gard, compensation judge of the worker's compensation commission, hereinafter judge, awarded Engen benefits. Respondent was awarded attorney's fees of 20% of Engen's benefits to a maximum aggregate fee of \$5,000.

- E. On December 28, 1979, St. Paul Companies sent respondent two checks payable to Engen totalling \$13,410.58, hereinafter award, and two checks payable to respondent totalling \$4,023.01 for attorney's fees.
- F. Respondent failed to deliver Engen's checks to Engen.
- G. On or about January 2, 1980, respondent met with Engen and Evelyn Weigle, a close friend of Engen, in respondent's office. Respondent stated he did not believe Engen could handle such a large amount of money. Respondent represented he could preserve a portion of the award in respondent's trust account and invest a portion in interest bearing certificates of deposit. Engen initially opposed this idea but eventually agreed. Respondent deposited the award in respondent's trust account.
- H. There is no written agreement between Engen and respondent permitting respondent to retain the award.
- I. Out of the \$13,410.58 award, Engen received \$5,426.10 as follows:

<u>Check No.</u>	<u>Dated</u>	<u>Amount</u>
1197	January 2, 1980	\$300
1198	January 2, 1980	\$500
1205	February 1, 1980	\$500
1208	February 21, 1980	\$700

1209	March 1, 1980	\$500
1217	March 31, 1980	\$500
1220	April 16, 1980	\$812.54
2007	June 12, 1980	\$500
2017	July 17, 1980	\$500
2036	November 3, 1980	\$613.56

J. Engen never received the remaining \$7,984.48.

K. Respondent paid out of the award at Engen's request Engen's creditors other than respondent or members of respondent's firm \$3,521.03 as follows:

<u>Check No.</u>	<u>Dated</u>	<u>Creditor</u>	<u>Debt</u>	<u>Amount</u>
1203	1/15/80	Town and Country	Van	\$2,738.95
2047	2/23/81	IRS	Taxes	782.08

L. Weigle owned a business called Evie's Upholstery. One supplier of this business was Bear Upholstery Supplies. Respondent paid out of the award, \$310.37 to Bear Upholstery Supplies at Engen's request as follows:

<u>Check No.</u>	<u>Dated</u>	<u>Amount</u>
2012	undated	\$223.91
2016	July 7, 1980	86.46

M. Respondent paid to himself or to members of his firm \$1,585.71 out of the award as follows:

<u>Check No.</u>	<u>Dated</u>	<u>Payee</u>	<u>Amount</u>
1218	3/31/81	James V. Beal	\$500.00
1227	4/28/81	James V. Beal	\$725.71
2024	8/8/80	Warren Horner	\$360.00

These payments were for attorney's fees on legal matters unrelated to the worker's compensation case. Only the payment to Horner was authorized by Engen.

- N. The balance of \$3,567.37 is no longer in respondent's trust account and cannot be accounted for from respondent's trust account records. Respondent converted the funds for his personal or business use.
- O. Without Engen's authorization, respondent credited himself with \$3,026.45 out of the award for miscellaneous attorney's fees and expenses. Respondent's services consisted almost entirely of office conferences and telephone calls, most of which were not on legal matters.
- P. Respondent never invested, nor attempted to invest any of Engen's award.
- Q. Respondent's conduct violated the disciplinary rules, including but not necessarily limited to DR 1-102(A)(1), DR 1-102(A)(3), DR 1-102(A)(4), DR 1-102(A)(5), DR 1-102(A)(6), DR 2-106(A), DR 7-101(A)(2), DR 9-102(B)(3), and DR 9-102(B)(4),

Minnesota Code of Professional Responsibility (MCPR).

COMPLAINT NO. 2

- A. Director realleges and incorporates by reference paragraphs A through P of Complaint No. 1.
- B. Respondent prepared or provided to Engen accountings of the award on January 4, 1980, April 16, 1980, May 15, 1980, and November 3, 1980, which are attached hereto and made a part hereof as Director's Exhibits A, B, C and D, respectively. Each accounting contains errors and is inconsistent with the other accountings.
- C. Director's Exhibit A shows a \$5,000 deposit to Wayzata Bank and Trust on Engen's behalf. Respondent never made this deposit, nor did he inform Engen of his failure to do so until November, 1980. The \$5,000 deposit shown on Director's Exhibit A is not mentioned on Director's Exhibits B, C or D.
- D. Director's Exhibit B purports to be a final accounting of the award, with computations starting from the balance shown on Director's Exhibit A without accounting for the \$5,000 deposit to Wayzata Bank and Trust or the \$3,000 held in "Town and Country Reserve". Director's Exhibit B appears to charge Engen for damages to respondent's speedboat that allegedly occurred while Engen and Weigle were making a cover for the speedboat.

Director's Exhibit B represents as of April 16, 1980, Engen had only \$812.54 coming from the award. This figure was apparently reached as follows:

January 4, 1980, balance	\$3,940.05
Disbursements to Engen	(2,200.00)
Attorney's fees and costs claimed by Respondent	(1,227.51)
Credit for speedboat cover	300.00
	<u>\$ 812.54</u>

- E. Director's Exhibit C represents that respondent deducted from the award the payments listed in paragraph B of Complaint No. 1 which were actually paid out of the November 6, 1979, partial settlement.
- F. Director's Exhibit D purports to be a final accounting of the award and shows a \$613.56 balance. Director's Exhibit D represents respondent deducted from the award and credited himself with \$2,726.45 for attorney's fees and costs for work respondent claims to have performed for Engen on miscellaneous matters other than the worker's compensation case. Director's Exhibit D represents respondent paid Engen's \$782.08 obligation to the IRS out of the award, but this payment was not made until February 23, 1981.
- G. On April 28, 1980, respondent deposited in his trust account a \$540.80 worker's compensation benefit check payable to Engen. This was not credited to Engen on either Director's Exhibits C or D. Respondent paid Engen only \$142.60 out of this deposit

and deducted this amount from the award in computing the balance for Director's Exhibit D. Respondent also deducted \$93.50 from the award, an amount respondent claimed as fees out of a worker's compensation check Engen received after the award.

- H. Respondent's conduct violated the disciplinary rules, including but not necessarily limited to DR 1-102(A)(1), DR 1-102(A)(4), DR 1-102(A)(5), DR 1-102(A)(6), DR 7-101(A)(2), DR 9-102(B)(3), and DR 9-102(B)(4), MCP.R.

COMPLAINT NO. 3

- A. Director hereby realleges and incorporates by reference paragraphs A through P of Complaint No. 1 and A through G of Complaint No. 2.
- B. After January 4, 1980, St. Paul Companies made periodic worker's compensation payments to Engen, paying twenty percent (20%) of each payment directly to respondent as attorney's fees. By January 8, 1981, respondent had received \$5,000 in attorney's fees, the maximum permitted by the judge's order.
- C. Respondent never petitioned the worker's compensation commission for additional attorney's fees.

- D. MINN. STAT. § 176.081 (1980) provides no claim for legal services in a worker's compensation case is an enforceable lien against the compensation unless approved in writing by the worker's compensation commission.
- E. Despite the judge's award of 20% attorney's fees to a maximum of \$5,000, respondent charged Engen 25% of all benefits Engen received. To collect this difference, respondent credited himself with \$670.53, 5% of the award, see Director's Exhibits A and D, and required Engen to make payments to respondent out of Engen's benefit checks. For example, Director's Exhibit D shows respondent credited himself and charged the award \$93.50, 25% of a \$374 mileage check paid to Engen. Engen sent respondent 25% of at least six mileage checks he received after January, 1981, to pay respondent's attorney's fees in the worker's compensation case.
- F. Between January 8, 1981, and February 3, 1981, St. Paul Companies withheld \$304.92 from payments due Engen because respondent had expressed an intention to file for additional attorney's fees. On February 3, 1981, respondent instructed St. Paul Companies to release this money to Engen and stop withholding attorney's fees. On February 10, 1981, St. Paul Companies sent Engen a check for \$304.92 which respondent required Engen to sign "Pay to order of atty. Jim V. Beal".

- G. Respondent's conduct violated the disciplinary rules, including but not necessarily limited to DR 1-102(A)(1), DR 1-102(A)(5), DR 1-102(A)(6), DR 2-106(A) DR 5-103(A), and DR 9-102(B)(3), MCPR.

COMPLAINT NO. 4

- A. Director realleges and incorporates by reference paragraphs A through P of Complaint No. 1 and A through G of Complaint No. 2.
- B. Prior to May 28, 1980, respondent maintained a trust account at the Golden Valley Bank with account no. 05-3074. On May 28, 1980, the account was transferred to its present location at the Wayzata Bank and Trust Co. with customer no. 06-300-8.
- C. Respondent deposited the award in his trust account. Respondent did not maintain a ledger or other record showing the disbursements, deposits, or balance of the award.
- D. Respondent did not maintain any ledger, or other record showing the deposits, disbursements, or balance of funds held in respondent's trust account for other clients.
- E. Respondent has no trust account records to clearly distinguish client funds from personal funds.

- F. Respondent used his trust account as a "reserve" from which he drew funds as needed instead of withdrawing fees as earned. See Director's Exhibit E.
- G. Respondent has used his trust account to pay for office rent and expenses. See Director's Exhibit F.
- H. On May 3, 1979, respondent deposited \$30,000 in his trust account. The deposit slip represents that \$10,000 of the deposit was from respondent's personal funds. Respondent's trust account shows a May 4, 1979, balance of \$3,174. The monthly trust account statements between this deposit and the deposit of the award all show a balance of less than \$10,000 except for the September 28, 1979, statement.
- I. Respondent has certified on his annual attorney registration card for 1979, 1980, 1981, and 1982, that his trust account records comply with DR 9-102.
- J. Respondent's conduct violated the disciplinary rules, including but not necessarily limited to DR 1-102(A)(1), DR 1-102(A)(4), DR 1-102(A)(5), DR 1-102(A)(6), DR 9-102(A), DR 9-102(B)(3), DR 9-103(A), and DR 9-103(B), MCPBR, and Opinion 9 of the Lawyers Professional Responsibility Board, a copy of which is attached hereto as Exhibit G.

COMPLAINT NO. 5

- A. Director realleges and incorporates by reference paragraphs A through P of Complaint No. 1.
- B. Engen hired Horner to represent Engen on an income tax case. This work was completed on or before August 8, 1980. Engen's liability to the Internal Revenue Service was \$782.08.
- C. On August 8, 1980, respondent paid Horner out of the award \$360 for attorney's fees for the tax work.
- D. Respondent was supposed to pay Engen's taxes out of the award. On November 3, 1980, respondent sent Engen Director's Exhibit D indicating the award had been entirely disbursed and the taxes paid. Respondent did pay the taxes on February 23, 1981, out of respondent's trust account. Engen incurred interest and penalty charges totalling \$196.96.
- E. Respondent's conduct violated the disciplinary rules, including but not necessarily limited to DR 1-102(A)(1), DR 1-102(A)(4), DR 1-102(A)(5), DR 1-102(A)(6), DR 6-101(A)(3), DR 7-101(A)(2), and DR 7-101(A)(3), MCPR.

COMPLAINT NO. 6

- A. Director realleges and incorporates by reference paragraphs A through P of Complaint No. 1.

- B. Respondent drafted wills for Engen and Weigle naming respondent personal representative even though they had requested Weigle's daughter be named personal representative. Engen and Weigle signed the wills and later realized respondent was named personal representative.
- C. Respondent's conduct violated the disciplinary rules, including but not necessarily limited to DR 1-102(A)(1), DR 1-102(A)(5), DR 1-102(A)(6), DR 5-101(A), and DR 7-101(A)(2), MCPR.

COMPLAINT NO. 7

- A. Director realleges and incorporates by reference paragraphs A through P of Complaint No. 1.
- B. Dr. Robert Bednar performed chiropractic services for Engen because of Engen's injuries. Bednar sent respondent his \$2,862.00 bill and requested respondent submit it to St. Paul Companies.
- C. On January 29, 1980, respondent sent Bednar's itemized statement to St. Paul Companies' attorney and requested payment be processed through respondent's office. St. Paul Companies sent respondent a \$2,862.00 check payable to Bednar. Respondent informed Bednar that his services for collecting this bill would be 25% of the check and refused to deliver the

check to Bednar. Instead, respondent required Bednar to endorse the check and then issued Bednar a \$2,146.50 check and took the remaining \$715.50 as his fee, even though his only service to Bednar was to submit the bill for payment.

- D. Respondent's conduct violated the disciplinary rules, including but not necessarily limited to DR 1-102(A)(1), DR 1-102(A)(5), DR 1-102(A)(6), and DR 2-106(A), MCP.R.

COMPLAINT NO. 8

- A. Respondent formerly represented eight shareholders of M.R.I. corporation in a shareholder's derivative suit. The shareholders contended that certain officers of the corporation had engaged in improper practices to the corporation's detriment.
- B. The shareholders dismissed respondent and substituted themselves as attorney pro se. The lawsuit was settled on October 20, 1980, over respondent's objections. Respondent billed the shareholders \$23,092.25. The shareholders have not paid this bill.
- C. On November 25, 1980, respondent filed an attorney's lien against the homesteads of shareholders Raymond and Wanda Burt, Robert J. Younkin, John A. James and Loyola Younkin under MINN. STAT. § 481.13 (1980) which grants attorneys a

lien against the subject matter of the representation. The homesteads of these shareholders were not part of the subject matter of respondent's representation.

- D. The attorney's lien filed by respondent against Loyola Younkin is in the name of Kenneth Younkin, her husband, who has an interest in the homestead, but who was not respondent's client.
- E. Respondent's conduct violated the disciplinary rules, including but not necessarily limited to DR 1-102(A)(1), DR 1-102(A)(5), DR 1-102(A)(6), and DR 5-103(A), MCPR.

WHEREFORE, the Director respectfully prays for an order of this court imposing such discipline as appropriate, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: April 8, 1982.



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