

FILE NO. \_\_\_\_\_  
STATE OF MINNESOTA  
IN SUPREME COURT

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In Re Petition for Disciplinary  
Action against JAMES V. BEAL,  
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, upon the parties' agreement, pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent is, and has been, since October 16, 1968, admitted to practice law in Minnesota. Respondent has paid through December 31, 1989, the registration fee required by Rule 2, Rules for Registration of Attorneys. Respondent currently practices law in Shorewood, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

On October 4, 1985, respondent was suspended from practice by the Minnesota Supreme Court for charging and collecting illegal fees in workers' compensation matters, commingling of personal and client funds, failure to keep required books and records, failure to properly account to clients and filing improper attorney's liens. In re Beal, 374 N.W.2d 715 (Minn. 1985).

Respondent was reinstated to practice by order of December 8, 1986.

FIRST COUNT

Illegal Fees

A. In 1974 respondent represented Edwin and Dorothy Rusch in a workers' compensation claim against Federal Cartridge Corporation, whose insurance carrier was Aetna Life & Casualty Company. Jack DeVaughn, an attorney practicing with respondent at that time, associated with respondent in trying the case.

B. On June 28, 1974, the workers' compensation judge ordered that payments be made to the Rusches for Edwin's permanent total disability and Dorothy's nursing services. Respondent was awarded attorney's fees as follows:

IT IS FURTHER ORDERED that the employer and insurer deduct from the payments for nursing services rendered by Mrs. Dorothy Rusch 25% thereof, said amount to be paid directly to the law firm of Beal & DeVaughn subject to maximum legal fees of \$4,000.

A copy of the order is attached as Exhibit 1.

C. From July 1, 1974 to September 30, 1975, Aetna, pursuant to the order, paid Beal & DeVaughn \$140 every fourth week until fees totalling \$4,000 were paid.

D. Minn. Stat. § 176.081 (1974) provided that no claim for legal services in a workers' compensation matter was valid or binding unless approved in writing by the workers' compensation judge. Minn. Stat. § 176.081, subd. 2 (as amended in 1975) permitted an attorney to petition for attorney fees in excess of the amount approved by the workers' compensation judge. Respondent did not petition for fees in addition to those awarded in the June 28, 1974, order.

E. Despite the judge's award of 25% of the recovery as attorney's fees, to a maximum of \$4,000, respondent collected from the Rusches additional fees for over thirteen years. From December 1, 1975 through January 1989, the Rusches upon respondent's instructions made payments to respondent of \$70 per month, and over \$11,000 in total payments. Respondent during this

time represented the Rusches only on one medical issue in the total permanent disability claim and one minor conciliation court claim.

F. Respondent states that he voluntarily ceased practicing law as of January 1, 1985. He was suspended by order of the Minnesota Supreme Court on October 4, 1985. He applied for reinstatement on October 2, 1986. Respondent during this cessation and suspension of his practice negotiated \$770 in checks from the Rusches on January 18, 1985; \$490 in checks on August 7, 1985; and \$560 in checks on May 23, 1986.

G. In January 1989 the Rusches contacted Mr. DeVaughn to learn respondent's new office address and telephone number as respondent had apparently closed his office without notifying them. Upon Mr. DeVaughn's advice, the Rusches asked respondent for an explanation for the payments and stopped payment on the eight most recent checks, which had not been cashed. Respondent at that time told the Rusches they did not need to send any further payments to him. After DeVaughn filed a complaint with the Director's Office, respondent repaid the Rusches \$6,720.

H. Respondent's conduct in charging the Rusches a fee in excess of that approved by the workers' compensation judge prior to September 1, 1985, violated the disciplinary rules, including but not necessarily limited to DR 1-102(A)(5), DR 1-102(A)(6) and DR 2-106(A), Minnesota Code of Professional Responsibility (MCPR). Respondent's conduct after August 31, 1985, violated Rule 1.5(a) and Rule 8.4(d), MRPC.

#### SECOND COUNT

##### Failure to Maintain Books and Records.

A. Respondent has certified on his annual attorney registration statements for 1987, 1988, and 1989, that his law office books and records comply with Rule 1.15(g), MRPC.

B. For at least the years 1987, 1988, and 1989, respondent failed to maintain on a current basis any ledger or any other

record showing receipt or deposit of the \$70 per month from the Rusches.

C. Respondent failed to maintain books and records, as required by LPRB Amended Opinion No. 9, sufficient to demonstrate accurately his law office income and expenses.

D. Respondent's certification to the Minnesota Supreme Court on his annual attorney registration statements that his books and records complied with Rule 1.15(g), MRPC, violated the Rules of Professional Conduct, including but not necessarily limited to Rule 1.15(h) and Rule 8.4(c), MRPC.

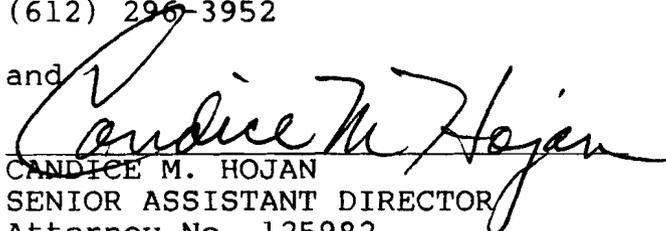
E. Respondent's failure to maintain adequate books and records violated the Rules of Professional Conduct, including but not necessarily limited to Rule 1.15(g), MRPC, and LPRB Amended Opinion 9.

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent, 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: June 20, 1989.

  
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