

FILE NO. C3-00-529

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against DAVID L. BREHMER,  
an Attorney at Law of the  
State of Minnesota.  
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**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
RECOMMENDATION FOR  
DISCIPLINE**

The above entitled matter was heard on July 28, 2000, by the undersigned acting as referee by appointment of the Minnesota Supreme Court. Present at the hearing were:

Timothy M. Burke, Attorney for the Office of Lawyers Professional Responsibility;  
Philip G. Villaume, Attorney for Respondent;  
David L. Brehmer, respondent.

This matter involved the Director's March 16, 2000, petition for disciplinary action and the June 29, 2000, supplementary petition for disciplinary action.

As set forth more fully below, the allegations in the petition for disciplinary action have been deemed admitted. Accordingly, additional evidence regarding those allegations was not required.

In his answer to the Director's supplementary petition for disciplinary action, respondent admitted certain factual allegations made by the Director, denied others, and denied any rule violations. The findings and conclusions made below are based upon the Supreme Court order deeming the allegations of the petition admitted, respondent's additional admissions, the documentary evidence submitted by the parties, the testimony presented, the testimony of respondent, the demeanor and credibility of respondent and the other witnesses as determined by the undersigned, and the reasonable inferences to be drawn from the documents and testimony. If a particular factual finding has been deemed admitted pursuant to Supreme Court order or is admitted in respondent's answer to the supplementary petition for disciplinary action, then even though the Director may have provided additional evidence to establish the finding, no other citation will necessarily be made.

Based upon the evidence submitted to the Court, and upon all the files, records and proceedings herein, the referee makes the following Findings of Fact, Conclusions of Law and Recommendation for Discipline:

**FINDINGS OF FACT**

1. Respondent was admitted to practice law in Minnesota on October 27, 1989. Respondent currently practices law in Bloomington, Minnesota. For all client matters which are the subject of this proceeding, respondent was the attorney of record and the sole attorney responsible for all matters relating to a particular file. (R. test.)

2. After he was admitted to practice law, respondent was a clerk for a law firm until January 15, 1990. From January 15, 1990, until approximately August 1992, respondent was employed as a law clerk for multiple Hennepin County judges. Since then, respondent has been in private practice. (R. test.; R. Exh. 21.)

**Frivolous Litigation, False Statements,  
Violations of Court Orders - Green v. Green Matter**

3. Respondent represented A.G. in *Green v. Green*. Respondent's claim was stated as one to increase A.G.'s child custody and visitation. (Petition for disciplinary action ("Pet." ¶1.)

4. The evidentiary hearing took 16 days. The court found that during the case respondent violated court orders, attempted to perpetrate a fraud on the court, was unprepared, engaged in numerous acts of bad faith, frivolous and/or harassing litigation, and committed other misconduct. (Pet. ¶2.)

5. After the hearing the court found the conduct of respondent and his client to be improper in multiple ways (Pet. ¶3; D. Exh. 8). Respondent was sanctioned \$48,133.65, which was 95 percent of the opposing parties' attorneys' fees and costs incurred relative to the hearing (Pet. ¶3; D. Exh. 8). To date, respondent has neither paid nor made any effort to pay any of this sanction despite demand for payment (Pet. ¶3; D. Exhs. 8 & 9; Green test.). Respondent claims he does not have the financial wherewithal to pay the ordered amount (R. test.).

6. Respondent attempted to appeal on behalf of both himself and his client. On or about September 21, 1999, respondent filed a notice of appeal. Respondent failed to file a proper statement of the case with the notice of appeal. Minn. R. Civ. App. P. 110.02, subds. 1 and 2(a), require an appellant to order a transcript within ten days after the appeal is filed, and to file with the clerk of appellate courts within ten days thereafter a certificate as to transcript. Respondent did not order a transcript (Pet. ¶4).

7. By order filed October 22, 1999, the Court of Appeals ordered respondent and his client to file no later than November 2, 1999, a completed certificate as to transcript and proper statement of the case. Respondent neither complied with, nor submitted any response to, the order (Pet. ¶5).

8. By order filed November 12, 1999, the Court of Appeals dismissed the appeal (Pet. ¶6; D. Exh. 10).

9. On or about January 3, 2000, respondent served and filed a motion to reinstate the appeal. Before filing the motion, respondent had neither ordered a transcript nor filed a proper statement of the case (Pet. ¶7).

10. By order filed January 26, 2000, the Court of Appeals denied respondent's motion to reinstate the appeal (Pet. ¶8; D. Exh. 11).

11. The trial court found that respondent and his client attempted to perpetrate a fraud upon the court. At a pretrial scheduling conference, respondent denied the existence of certain medical records regarding his client, including records relating to drug-related hospitalizations, some of which occurred during the pendency of the child custody proceeding. During the trial, opposing counsel discovered and obtained additional such records. Respondent's client then attempted to deny that the records were hers because they were not in her handwriting. When reminded that medical records would not be in the patient's handwriting but in that of doctors, nurses or the like, respondent's client stated that two persons with the client's name lived in the Twin Cities, had the same date of birth, etc. Respondent offered no other evidence to support this assertion. (Pet. ¶9.)

12. On October 30, 1998, the court had ordered that all applications for relief of any kind regarding the case be brought before Judge Patrice Sutherland (Pet. ¶10).

13. In December 1998 respondent drafted documents seeking *in forma pauperis* (IFP) status for his client and submitted them to the signing judge at the courthouse. That judge signed the requested order. After that judge became aware of the October 30 order (¶ 12, above), that judge vacated his IFP order and described respondent's conduct as an attempted fraud on the court. (Pet. ¶11; D. Exh. 7.)

14. By letter dated January 20, 1999, respondent stated that he and his client understood that any application for IFP status must be brought before Judge Sutherland (Pet. ¶12).

15. On April 20, 1999, respondent's secretary and respondent's client met at the courthouse and again applied for IFP status before the signing judge at the courthouse. This request was denied. (Pet. ¶13.)

16. Although respondent's claim was stated as a claim to increase his client's child custody and visitation, respondent's theory of the case was that custody should be awarded to his client's parents. Respondent attempted to present numerous witnesses for the purpose of establishing that his client's parents were appropriate custodians for the children. However, a prior order precluded his client's parents from participating in the custody trial. Additionally, the court advised respondent that his client's parents could not and would not be awarded custody. Respondent's legal position and the evidence he attempted to introduce in support thereof constituted the presentation of frivolous claims. (Pet. ¶14.)

17. Before the evidentiary hearing, the court ordered respondent to provide witness and exhibit lists no later than October 30, 1998, as respondent had promised on the record to do. Respondent failed to do so. On multiple occasions during the hearing respondent attempted to add witnesses. Many of these witnesses were called for the purpose of providing cumulative or irrelevant testimony. When the court would not allow testimony of some of these persons, respondent made repeated, belligerent objections and was rude and insulting to the court and

opposing counsel. Respondent's behavior continued despite the court repeatedly reminding respondent to cease. (Pet. ¶15.)

18. During the trial, respondent made repeated, lengthy arguments on the admissibility of documents after the documents were admitted into evidence and the objections were repeatedly overruled. (Pet. ¶16.)

19. Throughout the proceedings, respondent relied exclusively on his non-attorney client for the accuracy, credibility and legality of her claims and arguments (Pet. ¶17).

20. Respondent was not prepared for trial. He had not reviewed his client's medical records in other than a most cursory manner and had not prepared most of his witnesses to testify. (Pet. ¶18.)

21. During the hearing, a sequestration order was in effect. Respondent repeatedly violated the sequestration order. On multiple occasions respondent began his direct examination of his witnesses with a synopsis of previous witnesses' testimony. Respondent's conduct continued despite repeated admonitions from the court to cease. (Pet. ¶19.)

22. Before the hearing ended, respondent assisted his client and her family in hiding the parties' children. Respondent advised his client that the *ex parte* order for protection authorized her to hide the children's whereabouts from the custodial father. Respondent's advice was incorrect. (Pet. ¶20.)

Incompetence, Neglect, Unauthorized Practice of Law -  
Mattingly v. Nelson Matter

23. In April 1997 Mark and Diane Mattingly retained respondent to represent them in a dispute arising out of their purchase of a house in Wisconsin. Respondent's retainer agreement provided that the Mattinglys would pay respondent \$150 per hour for his services, pay \$1,000 upon signing the retainer agreement, make monthly payments thereafter to a total retainer fee of \$2,500, and make monthly payments thereafter if respondent's billing exceeded \$2,500. (Pet. ¶22; D. Exh. 12.)

24. During the first meeting with respondent, the Mattinglys paid to respondent a one thousand dollar (\$1,000) retainer (D. Exh. 16, p. 4). Respondent did not deposit the retainer into a trust account (R. test.). Respondent's retainer agreement, however, did not state that the retainer would not be held in a trust account.

25. Respondent attempted to commence the action by serving a summons and complaint. However, under Wisconsin law, the summons and complaint must first be filed with the clerk of court. Wis. Stat. § 810.095. (Pet. ¶23.)

26. In July 1997 two of the defendants, Coldwell Banker Real Estate and Emma Fuller, filed a motion to dismiss. Thereafter, an order was issued which set deadlines for respondent to serve the summons and complaint properly. (Pet. ¶24.)

27. Respondent then failed to serve Coldwell Banker Real Estate and Fuller properly. On or about October 23, 1997, those defendants served and filed a motion to dismiss. On or about December 23, 1997, they served and filed an amended motion to dismiss. Respondent failed to serve or file any response to the motion or the amended motion. In January 1998 those defendants were dismissed from the case. (Pet. ¶25.)

28. At all times material, respondent was not licensed to practice law in Wisconsin. On or about September 9, 1997, respondent retained Barbara Miller to act as local counsel. Before this time, respondent was representing the Mattinglys without affiliating with Wisconsin counsel. This constituted the unauthorized practice of law in Wisconsin. Wis. Stat. § 802.05. (Pet. ¶26.)

29. On October 3, 1997, Keith Rodli, counsel for defendants Mike and Rose Ann Nelson, served on respondent requests for admissions and interrogatories (set I). (Pet. ¶27.)

30. By letter dated October 6, 1997, respondent sent the requests for admissions and interrogatories (set I) to the Mattinglys and requested them to prepare and send to him responses to the interrogatories (Pet. ¶28).

31. On or about November 4, 1997, respondent received from the Mattinglys their draft answers to the requests for admissions and interrogatories (set I) (Pet. ¶29).

32. By letter dated November 17, 1997, Rodli advised respondent that the time to serve responses to the requests for admissions and interrogatories (set I) had passed and respondent had not served any responses. Respondent failed to respond. (Pet. ¶30.)

33. By order dated November 22, 1997, the court ordered respondent to identify expert witnesses no later than December 1, 1997 (Pet. ¶31).

34. On December 1, 1997, respondent served on opposing counsel a list of expert witnesses. The list included as witnesses identification of three companies, but no individuals from those companies. (Pet. ¶32.)

35. By letter dated December 5, 1997, Rodli again informed respondent that no responses to the requests for admissions and interrogatories (set I) had been received and stated that if answers were not received, then a motion to compel would be filed. Respondent failed to respond. (Pet. ¶33.)

36. On or about December 18, 1997, the Nelsons' attorney served and filed a motion to compel discovery (Pet. ¶34).

37. On or about December 16, 1997, Rodli served on respondent more interrogatories (set II) (Pet. ¶35).

38. On or about December 22, 1997, respondent served answers to the requests for admissions and to the interrogatories (set I). The interrogatory answers were not signed under oath. (Pet. ¶36.)

39. On or about January 7, 1998, respondent sent the interrogatories (set II) to the Mattinglys, asked the Mattinglys to supply draft answers, and instructed the Mattinglys to sign a blank signature page for the answers (Pet. ¶37).

40. By order dated January 12, 1998, the court extended the time for respondent to identify the specific names of his clients' proposed expert witnesses (Pet. ¶38).

41. On or about February 2, 1998, respondent identified individual expert witnesses. However, respondent's amended expert witness list also identified eight new purported experts. (Pet. ¶39.)

42. On or about February 6, 1998, Rodli served on respondent a request for production of documents (Pet. ¶40).

43. On or about February 20, 1998, Rodli scheduled depositions for the Mattinglys' expert witnesses. The depositions were scheduled for March 16, 1998. (Pet. ¶41.)

44. On February 23, 1998, Rodli served on respondent additional interrogatories (set III). On or about February 27, 1998, respondent sent the interrogatories (set III) to the Mattinglys and requested them to provide answers at their earliest possible convenience. (Pet. ¶42.)

45. On or about March 2, 1998, Rodli rescheduled the expert witness depositions for March 18 and 24, 1998. The rescheduling was done at respondent's request. (Pet. ¶43.)

46. On March 16, 1998, counsel for some of respondent's proposed expert witnesses would not attend their scheduled depositions because no party to the litigation had retained them as experts (Pet. ¶44).

47. Shortly before March 20, 1998, respondent requested Rodli to reschedule the depositions scheduled for March 24. Rodli declined. (Pet. ¶45.)

48. On or about March 23, 1998, Rodli served on respondent requests for admission (set III) (Pet. ¶46).

49. On or about March 26, 1998, the Mattinglys sent to respondent their draft response to the interrogatories (set III) (Pet. ¶47).

50. On March 24, 1998, the depositions of expert witnesses occurred. Respondent failed to attend. (Pet. ¶48.)

51. On or about May 7, 1998, Rodli served and filed a motion to compel responses to the interrogatories (set III). (Pet. ¶49.)

52. Also on or about May 7, 1998, Rodli sent notices of deposition for respondent's proposed expert witnesses whose depositions were originally scheduled for March 18. The depositions were scheduled for June 1, 1998. (Pet. ¶50.)

53. Neither respondent nor the witnesses appeared on June 1, 1998, for the scheduled depositions (Pet. ¶51).

54. By order dated June 9, 1998, the court granted the motion to compel and ordered full and complete responses to the interrogatories (set III) (Pet. ¶52).

55. On or about June 12, 1998, Barbara Miller, respondent's Wisconsin counsel, served and filed a motion to withdraw from representation. In a letter of that same date to respondent Miller stated:

My file indicates that I have made several attempts to contact you by telephone as well as a letter written to you at the end of March asking you to respond to me. Having received no communication I must move to withdraw from representing the Mattinglys as Wisconsin counsel.

(Pet. ¶53.)

56. On or about June 15, 1998, respondent served responses to the interrogatories (set III). The answers were not signed and were four months late. (Pet. ¶54.)

57. On or about June 22, 1998, Rodli served interrogatories (set IV) on respondent. On or about June 24, 1998, Stanford P. Hill, counsel for Edina Realty and Betty Most, served on respondent interrogatories. Respondent failed to serve responses. (Pet. ¶55.)

58. On or about July 6, 1998, respondent sent the interrogatories (set IV) which had been served on him on June 22, 1998, and the interrogatories from Hill, to the Mattinglys. Respondent provided the following instructions to the Mattinglys:

Please answer each of these to the best of your ability, on separate sheets of paper, as soon as possible, and return those answers to [me] at your earliest convenience. In addition, enclosed please find the 'blank' signature pages, please sign these and send them back to the office along with your answers to both of the enclosed sets of Interrogatories.

(Emphasis in original.) (Pet. ¶56.)

59. On or about June 30, 1998, respondent again sent answers to interrogatories (set III) to Rodli. Although the answers were now signed, they were not executed under oath. (Pet. ¶57.)

60. By letter dated July 6, 1998, Rodli requested respondent to provide signed and notarized responses (Pet. ¶58).

61. Respondent failed to do so (Pet. ¶59).

62. On or about July 9, 1998, respondent requested the Mattinglys to execute the answers to interrogatories (set III) in front of a notary and then return the answers to him (Pet. ¶60).

63. On or about July 20, 1998, respondent served notice of the taking of the deposition of Emma Fuller. Fuller had been dismissed from the lawsuit because respondent failed to effect proper service upon her (¶27, above). By letter dated August 3, 1998, Fuller's attorney, Michael R. Moline, informed respondent that Fuller did not wish to appear voluntarily for deposition as a nonparty but would appear pursuant to a proper subpoena. (Pet. ¶61.)

64. Respondent did not subpoena Fuller for a deposition and did not inform Rodli or Hill that Fuller would not appear without a subpoena. She did not appear. (Pet. ¶62.)

65. On or about July 27, 1998, Rodli filed a motion seeking an order prohibiting the testimony of the Freier employees as expert witnesses, requiring answers, under oath, to be given to the October 3, 1997, and February 23, 1998, interrogatories, and requiring answers to the fourth set of interrogatories and requests for production of documents. (Pet. ¶63.)

66. By letter dated July 29, 1998, Hill informed respondent that the answers to Edina Realty and Betty Most's interrogatories were overdue. (Pet. ¶64.)

67. On August 3, 1998, respondent took the depositions of defendants Mike and Rose Ann Nelson, even though at that time he was without Wisconsin counsel and not admitted to practice law in Wisconsin. Accordingly, this conduct constituted the unauthorized practice of law in Wisconsin. (Pet. ¶65.)

68. On or about August 10, 1998, all remaining defendants served and filed motions to dismiss the case (Pet. ¶66).

69. The court granted the defendants' motions to dismiss. The court stated its reasoning as follows:

The Court having found that the facts set forth in the Affidavits of Keith Rodli and Stanford Hill, each dated August 10, 1998, are true and uncontradicted; and the Court having found that under the Scheduling Order, all discovery was to be completed on or before August 3, 1998, and the Court having found that the plaintiffs have failed to provide responses to various discovery requests of the defendants, despite having been ordered to provide the said responses on August 3, 1998; and that

the Court having found that the conduct of plaintiff's counsel, as set forth in the above-referenced affidavits, is egregious.

(Pet. ¶67; D. Exh. 15.)

70. In a separate order the court further stated:

[P]laintiffs' attorney has engaged in consistent misconduct in this case, including repeatedly ignoring written warnings from opposing counsel that plaintiffs were in violation of discovery statutes, repeatedly forcing defendants' counsel to file motions to compel discovery, repeatedly violating court orders regarding discovery, repeatedly not cooperating in the depositions of expert witnesses, repeatedly placing defendants in a position so that they risked not obeying the Scheduling order, and failing to provide timely and accurate lists of witnesses, and repeatedly failing to properly served [sic] parties . . . .

(D. Exh. 14.)

71. The Mattinglys paid a total of \$1,675 to respondent (Pet. ¶68).

72. At no time during the representation did respondent provide a bill for his services to the Mattinglys or an accounting of the retainer funds they had paid to him (Pet. ¶69).

Neglect, Non-Communication, False Statements, Improper Withdrawal -  
Williams v. Minneapolis Park and Recreation Board Matter.

73. In 1997 Dennis C. Williams, appearing *pro se*, commenced an action against the Minneapolis Park and Recreation Board and others (Pet. ¶71).

74. On or about January 13, 1998, opposing counsel served on Williams interrogatories and requests for production of documents. Williams requested and received an extension of time to answer. (Pet. ¶72.)

75. On March 8, 1998, Williams, on his own behalf, served responses to the interrogatories and requests for production of documents (Pet. ¶73).

76. By letter to Williams dated March 11, 1998, opposing counsel identified alleged inadequacies in Williams' discovery responses and requested full and complete responses within ten days of the letter (Pet. ¶74).

77. In March 1998 Williams retained respondent to represent him in the matter (Pet. ¶75).

78. By letter dated March 23, 1998, opposing counsel confirmed to respondent an extension to April 3, 1998, to provide full and complete discovery responses (Pet. ¶76).

79. On April 6, 7 and 8, 1998, opposing counsel called respondent's office. Respondent did not return any of the calls and did not provide additional discovery responses. (Pet. ¶77.)

80. On or about April 10, 1998, opposing counsel served and filed a motion to compel discovery. Respondent failed to send the motion papers to Williams, failed to inform Williams of the motion, failed to inform Williams of the hearing date for the motion, failed to serve or file any papers in opposition to the motion and failed to attend the motion hearing. (Pet. ¶78.)

81. By order filed April 29, 1998, the motion was granted and sanctions in the amount of \$200 were imposed (Pet. ¶79; D. Exh. 18). Respondent has not paid any part of the \$200.00 (R. test.).

82. During the litigation, respondent told Williams that respondent was initiating discovery. This statement was false. (Pet. ¶80; D. Exh. 19.)

83. On or about October 8, 1998, opposing counsel served on respondent a motion for summary judgment and supporting papers. (Pet. ¶81.)

84. Respondent failed to send the motion papers to Williams, failed to advise Williams of the motion, failed to inform Williams of the hearing date for the motion and failed to serve or file any papers in opposition to the motion (Pet. ¶82).

85. In December 1998 respondent filed a motion to withdraw from representation. The defendants' summary judgment was pending at that time. Respondent failed to serve his motion to withdraw on Williams, failed to tell Williams of his motion to withdraw, and failed to inform Williams of the date for the hearing on his motion to withdraw. (Pet. ¶83.)

86. In his papers supporting his motion to withdraw, respondent stated that he had not been able to communicate adequately with Williams because of Williams' unavailability (Pet. ¶84).

87. On December 10, 1998, respondent sent paperwork regarding his request to withdraw to Williams at an address on Russell Avenue in Minneapolis. At that time, Williams was incarcerated in the Hennepin County Jail. Respondent knew this. (Pet. ¶85.)

88. By order dated December 18, 1998, the defendants' motion for summary judgment and respondent's motion to withdraw were granted (Pet. ¶86; D. Exh. 19).

89. In July 1999 respondent sent to Williams a bill for fees (D. Exh. 20). By letter dated August 8, 1999, Williams requested respondent to provide additional information to substantiate the billing (D. Exh. 20). Respondent failed to respond (R. test.).

Neglect and False Statements – Williams v. City of Minneapolis Matter

90. On or about February 28, 1996, Williams retained respondent to represent him in an action against the City of Minneapolis (the "City") in a wrongful arrest and harassment matter (Pet. ¶88). Williams paid respondent a \$1,000 retainer (Pet. ¶88). Respondent did not deposit the retainer into a trust account (R. test.). Respondent's retainer agreement, however, did not state that the \$1,000 would not be held in a trust account or that Williams would not receive a refund of any of that retainer if it were not earned (Pet. ¶88).

91. In March and April 1996 and March 1997 respondent sent correspondence to the City (Pet. ¶89).

92. Respondent otherwise failed to work on the matter. Respondent did, however, tell Williams that respondent was prosecuting the case. This statement was false. (Pet. ¶90.)

93. Respondent did not refund any of the retainer (R. test.).

Improper Notarization and Neglect – Wimler Matter

94. On or about February 8, 1999, Elaina Wimler retained respondent to bring a motion on her behalf for a change of custody for her minor children (Pet. ¶92). Wimler paid respondent a \$2,500 retainer (Pet. ¶92). Respondent did not place any of the unearned retainer funds into a client trust account (R. test.).

95. During Wimler's initial meeting with respondent, he stated that he would promptly obtain a hearing date for the change of custody motion Wimler wanted respondent to bring. However, not until after March 8, 1999, did respondent, through his assistant, inform Wimler that respondent had obtained a hearing date of April 27, 1999. (Pet. ¶93.)

96. Wimler provided substantial information to respondent for him to prepare an affidavit for her for the motion hearing (Pet. ¶94).

97. On April 5, 1999, Wimler was scheduled to meet with respondent to sign her affidavit. When she arrived at respondent's office, respondent informed her that his legal assistant had Wimler's affidavit and was out for the day. Respondent told Wimler that she could sign a blank signature page which he would notarize and attach to the affidavit. They did this. (Pet. ¶95.)

98. Respondent told Wimler that he would send her affidavit to her for her review before he served and filed it. Respondent failed to do so. Instead, respondent attached the signature page to a draft affidavit of Wimler and on April 8, 1999, served and filed Wimler's affidavit. (Pet. ¶96.)

99. Wimler received and reviewed the affidavit shortly after April 8, 1999. She contacted respondent and told him that there were many mistakes in the affidavit and no supporting documents for the affidavit. Respondent stated that he would correct the affidavit at some future time. However, respondent never filed any supplemental or corrected affidavit of Wimler. (Pet. ¶97.)

100. The original divorce decree provided that any disputes be submitted to mediation before litigation. Nevertheless, respondent served and filed his motion without making any effort to mediate the dispute. (Pet. ¶98.)

101. After opposing counsel received respondent's motion papers, she informed respondent that the decree required the dispute to go through mediation before litigation. Accordingly, the April 27 hearing was canceled (Pet. ¶99).

102. Mediation was conducted on June 4, 1999 (Pet. ¶100).

103. Respondent thereafter put the matter back on for hearing and obtained a hearing date of August 18, 1999. Respondent neither served nor filed any additional papers in support of the motion. (Pet. ¶101.)

104. On or about August 13, 1999, opposing counsel served and filed an affidavit of Wimler's ex-spouse. Respondent provided a copy of the affidavit to Wimler and requested her to give to respondent information to be used in a responsive affidavit. Wimler did so. Respondent, however, thereafter declined to prepare a supplemental affidavit for Wimler's signature. (Pet. ¶102.)

105. At no time has respondent sent to Wimler a bill or accounting of how the retainer funds were used (Pet. ¶103). Respondent has not refunded any of the money to Wimler (R. test.).

Violation of Probation – Failure to Cooperate

106. On August 5, 1999, notice of investigation of a complaint regarding respondent's conduct in the A.G. matter was sent to respondent. The notice requested respondent to provide within 14 days of the notice the information and documents requested in the notice. Respondent failed to respond. (Pet. ¶105.)

107. On August 19, 1999, notice of investigation of a complaint filed by Williams was sent to respondent. The notice requested respondent to provide within 14 days his complete written response to Williams' complaint. Respondent failed to respond. (Pet. ¶106.)

108. By letter dated August 24, 1999, the Director informed respondent that the Director had received no response to the notice of investigation in the A.G. matter and requested respondent to provide at that time the information and documents requested in the notice. Respondent failed to respond. (Pet. ¶107.)

109. By letter dated September 1, 1999, and sent both certified mail, return receipt requested, and first class mail, the Director informed respondent that the Director had received no response to the notice of investigation in the A.G. matter and requested respondent to provide at that time the information and documents requested in the notice. The certified mail receipt was signed for on September 2, 1999. Respondent failed to respond. (Pet. ¶108.)

110. By letter dated September 3, 1999, the Director informed respondent that the Director had received no response to the notice of investigation in the Williams matter and requested respondent to provide at that time his complete written response to the complaint. Respondent failed to respond. (Pet. ¶109.)

111. By letter dated September 13, 1999, and sent both certified mail, return receipt requested, and first class mail, the Director informed respondent that the Director had received no response to the notice of investigation in the Williams matter and requested respondent to provide at that time the information and documents requested in the notice. The certified mail receipt was signed for on September 14, 1999. By letter dated September 16, 1999, respondent provided his response to the complaint. (Pet. ¶110.)

112. During the Director's investigation, respondent's probation supervisor informed the Director that respondent failed to provide to the supervisor case lists of active files since before respondent signed the stipulation for extension of probation (¶183f, below) (Pet. ¶111).

113. On September 13, 1999, notice of investigation was sent to respondent regarding his apparent failure to provide case lists to his probation supervisor. The notice requested respondent to provide within 14 days his response to that allegation, copies of all case lists that he had provided to his supervisor pursuant to his original or extension of probation, and a current case list. Respondent failed to respond. (Pet. ¶112.)

114. By letter dated September 20, 1999, the Director requested respondent to provide the information and documents requested in that letter regarding the Williams matter no later than October 4, 1999. Respondent failed to respond. (Pet. ¶113.)

115. On September 28, 1999, notice of investigation of a complaint filed by Mattingly was sent to respondent. The notice requested respondent to provide within 14 days his complete written response to the Mattinglys' complaint. Respondent failed to respond. (Pet. ¶114.)

116. By letter dated September 29, 1999, the Director informed respondent that the Director had received no response to the notice of investigation regarding the case list matter and requested respondent to provide at that time the information and documents requested in the notice. Respondent failed to respond. (Pet. ¶115.)

117. By letter dated October 6, 1999, the Director informed respondent that the Director had received no response to the Director's September 20 letter in the Williams matter and requested respondent to provide at that time the information and documents requested in the September 20 letter. Respondent failed to respond. (Pet. ¶116.)

118. By letter dated October 7, 1999, sent both certified mail, return receipt requested, and first class mail, the Director informed respondent that the Director had received none of the information and documents requested in the notice of investigation in the case list matter and requested respondent to provide at that time the information and documents requested in the

notice. The certified mail receipt was signed for on October 12, 1999. Respondent failed to respond until November 28, 1999. (Pet. ¶117.)

119. By letter dated October 13, 1999, the Director informed respondent that the Director had received no response to the notice of investigation in the Mattingly matter and requested respondent to provide at that time his complete written response to the Mattinglys' complaint. Respondent failed to respond. (Pet. ¶118.)

120. By letter dated October 14, 1999, and sent both certified mail, return receipt requested, and first class mail, the Director informed respondent that the Director had received no response to the Director's September 20 letter in the Williams matter and requested respondent to provide at that time the information and documents requested in the September 20 letter. The certified mail receipt was signed for on October 15, 1999. Respondent failed to respond. (Pet. ¶119.)

121. By letter dated October 21, 1999, and sent both certified mail, return receipt requested, and first class mail, the Director informed respondent that the Director had received no response to the notice of investigation of the Mattinglys' complaint and requested respondent to provide at that time the information and documents requested in the notice. The certified mail receipt was signed for on October 22, 1999. Respondent failed to respond until November 28, 1999. (Pet. ¶120.)

122. On October 22, 1999, notice of investigation of Wimler's complaint was sent to respondent. The notice requested respondent to provide within 14 days of the notice the information and documents requested in the notice. Respondent failed to respond. (Pet. ¶121.)

123. By letter dated November 8, 1999, the Director informed respondent that the Director had received no response to the notice of investigation of Wimler's complaint and requested respondent to provide at that time the information and documents requested in the notice of investigation of Wimler's complaint. Respondent failed to respond. (Pet. ¶122.)

124. By letter dated November 16, 1999, and sent both certified mail, return receipt requested, and first class mail, the Director informed respondent that the Director had received no

response to the notice of investigation of Wimler's complaint and requested respondent to provide at that time the information and documents requested in the notice. The certified mail receipt was signed for on November 17, 1999. Respondent failed to respond until November 28, 1999. (Pet. ¶123.)

125. Respondent's November 28, 1999, response to the notice of investigation of the case list matter did not include copies of any case lists respondent had provided previously to his supervisor and did not include a current case list (Pet. ¶124).

126. To date, respondent has provided to the Director no case lists that respondent claims to have provided to his probation supervisor and no case lists for matters respondent was handling on or after September 13, 1999, the date notice of investigation of the case list matter was mailed to respondent (Pet. ¶125).

127. By letter dated December 3, 1999, the Director advised respondent that on December 1, 1999, the Director had received letters from respondent regarding other complaints against him but no response to the Director's September 20 letter in the Williams matter, and requested respondent to provide at that time the information and documents requested in the September 20 letter. Respondent failed to respond. (Pet. ¶126.)

128. By letter dated December 6, 1999, the Director requested respondent to provide no later than December 20, 1999, the information and documents requested in that letter regarding the Wimler, *Green v. Green*, Mattingly and case list matters (Pet. ¶127).

129. By letter dated December 13, 1999, the Director informed respondent that the Director had received no response to the Director's September 20 letter in the Williams matter and requested respondent to provide at that time the information and documents requested in the September 20 letter. Respondent failed to respond. (Pet. ¶128.)

130. By letter dated December 17, 1999, respondent provided some of the information and documents requested in the Director's December 6 letter regarding the Wimler, *Green v. Green*, Mattingly and case list matters (Pet. ¶130).

131. In that December 17 letter, respondent stated that he would provide his client file regarding the *Green v. Green* matter, which the Director had requested in the August 5, 1999, notice of investigation, "sometime in early January" 2000. Respondent then failed to do so. (Pet. ¶131.)

132. By letters dated January 18 and 26 and February 2 and 11, 2000, the Director informed respondent that the Director still had not received respondent's client file regarding the *Green v. Green* matter and requested respondent to provide the file. Respondent failed to respond to any of these letters. (Pet. ¶132.)

133. To date, respondent failed to provide his file regarding the *Green v. Green* matter, which the Director requested in the August 5, 1999, notice of investigation (Pet. ¶133).

134. By letter dated January 21, 2000, the Director informed respondent that the Director had learned that respondent failed to pay his attorney registration fee due January 1, 2000, and requested respondent to provide no later than January 28, 2000, an explanation of his failure to pay the fee and a description of his practice since January 1, 2000. Respondent failed to respond. (Pet. ¶134.)

135. By letter dated February 14, 2000, the Director informed respondent that the Director had received no response to the Director's January 21 letter and requested respondent to provide no later than February 21, 2000, the information requested in that January 21 letter (Pet. ¶135).

136. By letter dated February 25, 2000, the Director requested respondent to provide no later than March 3, 2000, his entire client files regarding his representation of Williams. The Director originally requested respondent to provide these files in September 1999. Respondent failed to respond. (Pet. ¶136.)

137. On March 1, 2000, the Director mailed to respondent notice of investigation of a complaint filed against him by Olubunmi Adebajo. The notice requested respondent to provide within seven days the information and documents requested in the notice. Respondent failed to respond. (Pet. ¶137.)

138. By letter dated March 2, 2000, the Director informed respondent that the Director had received no response to the Director's January 21 and February 14 letters regarding respondent's failure to pay his attorney registration fee and requested respondent to provide no later than March 9, 2000, the information requested in that January 21 letter. Respondent failed to respond. (Pet. ¶138.)

139. By letter dated March 7, 2000, the Director informed respondent that the Director had received no response to the Director's February 25 letter regarding the Williams matter and again requested respondent to provide his client files regarding his representations of Williams. Respondent failed to respond. (Pet. ¶140.)

140. To date, respondent has failed to provide his files from his representations of Williams, which the Director originally requested by letter dated September 20, 1999 (Pet. ¶141).

141. By letter dated March 13, 2000, the Director informed respondent that the Director had received no response to the notice of investigation in the Adebajo matter and requested respondent to provide at that time the information and documents requested in the notice of investigation. Respondent failed to respond. (Pet. ¶142.)

142. On March 20, 2000, respondent was personally served with the notice and petition in this matter (admitted in answer to supplementary petition for disciplinary action (Supp. ans.) ¶2; D. Exh. 28). The notice informed respondent that Rule 13, Rules on Lawyers Professional Responsibility (RLPR), required respondent to serve and file his answer to the petition within twenty (20) days of service (Supp. ans. ¶2). Respondent failed to serve or file an answer (D. Exh. 30).

143. By letter dated March 21, 2000, the Director informed respondent that the Director had received no response to the notice of investigation in the Adebajo matter and requested respondent to provide at that time the information and documents requested in the notice. Respondent failed to respond. (Supp. ans. ¶2.)

144. By letter dated March 27, 2000, the Director informed respondent that the Director had received no response to the Director's January 21, February 14 and March 2, 2000, letters regarding respondent's failure to pay his attorney registration fee due January 1, 2000, and

requested respondent to provide within seven (7) days the information requested in that March 27 letter. Respondent failed to respond. (Supp. ans. ¶2; D. Exh. 29.)

145. By order filed April 14, 2000, the Supreme Court ordered, among other things, that the allegations of the petition be deemed admitted and that any written proposals regarding discipline be submitted no later than May 5, 2000 (Supp. ans. ¶2; D. Exh. 30).

146. On May 4, 2000, respondent filed a motion for an extension of the time to serve and file his brief. Respondent failed to serve his motion papers on the Director. (Supp. ans. ¶2; D. Exh. 31.)

147. On May 8, 2000, the Director mailed to respondent notice of investigation of a complaint filed against him by Karen Craig. The notice requested respondent to provide within 10 days of the notice the information and documents requested in the notice. Respondent failed to respond. (Supp. ans. ¶2.)

148. On May 15, 2000, respondent served and filed a motion to vacate his default. In his affidavit in support of his motion respondent claimed that the Supreme Court and Director "have finally 'gotten my attention', and that you will keep my attention until this matter is resolved to your satisfaction." (Supp. ans. ¶2; D. Exh. 33.)

149. By letter dated May 19, 2000, the Director informed respondent that the Director had received no response to the notice of investigation in the Craig matter and requested respondent to provide at that time the information and documents requested in the notice. Respondent failed to respond. (Supp. ans. ¶2.)

150. By order filed May 24, 2000, the Supreme Court granted respondent's May 15, 2000, motion in part and referred this matter to the Hon. Warren Litynski for hearing (Supp. ans. ¶2).

151. On May 26, 2000, the Director mailed to respondent notice of investigation of a complaint filed against him by Dennis Strid. The notice requested respondent to provide within seven days of the notice the information and documents requested in the notice. Respondent failed to respond. (Supp. ans. ¶2.)

152. By letter dated May 26, 2000, the Director informed respondent that the Director had received no response to the notices of investigation in the Adebajo and Craig matters and requested respondent to provide no later than June 2, 2000, (1) the information and documents requested in those notices of investigation and (2) additional information and documents requested in that May 26 letter (Supp. ans. ¶2; D. Exh. 34). Respondent failed to respond (Supp. ans. ¶2; D. Exh. 35).

153. By letter dated June 6, 2000, the Director informed respondent that the Director had received no response to the Director's May 26 letter and no response to the notice of investigation in the Strid matter (Supp. ans. ¶2; D. Exh. 35). The Director also requested respondent to provide at that time the information and documents requested in the notices of investigation in the Adebajo, Craig and Strid matters and the additional information and documents requested in the Director's May 26 letter (Supp. ans. ¶2; D. Exh. 35). Respondent failed to provide any of the requested information or documents (Supp. ans. ¶2; D. Exh. 36).

154. By letter dated June 20, 2000, the Director informed respondent that the Director had received none of the information or documents identified in the Director's June 6 letter, all of which the Director had requested prior to that June 6 letter. The Director also requested respondent to provide at that time the information and documents identified in that June 6 letter. (Supp. ans. ¶2; D. Exh. 36.)

155. By letter dated June 26, 2000, the Director requested respondent to amend and clarify certain previous interrogatory answers within seven days (D. Exh. 39). Respondent failed to respond (D. Exh. 39).

156. On June 29, 2000, the Director served on respondent a supplementary petition for disciplinary action (D. Exh. 37). Both the cover letter and the notice attached to the supplementary petition informed respondent that pursuant to the referee's June 8, 2000, order, to which the parties had agreed, Mr. Brehmer was required to serve and file his answer to the supplementary petition no later than July 10, 2000 (D. Exh. 37). Respondent failed to do so (D. Exh. 39, p. 3).

157. On July 11, 2000, respondent provided to the Director his response to the complaint in the Adebanjo matter, which was due March 7, 2000, his response to the notice of investigation in the Strid matter, which was due June 2, 2000, his response to the notice of investigation in the Craig matter, which was due May 18, 2000, some, but not all, of the information and documents requested in the Director's May 26 letter, and his response to the Director's inquiry regarding his failure to pay the attorney registration fee, which had been due January 28, 2000 (D. Exhs. 38 and 39, pp. 4-5).

158. By letter dated July 12, 2000, the Director informed respondent that the Director has not received respondent's answer to the supplementary petition and informed respondent that if he did not serve his answer by July 14, 2000, the Director intended to move for summary relief (D. Exh. 39, p. 3). On July 17, 2000, respondent served his answer (R. test.).

159. By separate letter dated July 12, 2000, the Director requested respondent to provide the amended and clarified interrogatory responses that the Director had requested on June 26, 2000, and requested respondent to provide the previously requested Green and Williams client files and case lists required by the terms of his probation (D. Exh. 39, pp. 1-2). Respondent failed to respond (R. test.).

160. By separate letter dated July 12, 2000, the Director requested respondent to provide previously requested information and documents regarding the Craig, Wimler, Strid and Adebanjo matters (D. Exh. 39, pp. 4-5). Respondent failed to respond (R. test.).

Neglect, Non-Communication and Improper Notarization – Craig Matter

161. In December 1998 Karen Craig retained respondent to represent her in a post-dissolution proceeding (Supp. ans. ¶4; D. Exh. 41; Craig test.).

162. On or about December 28, 1998, respondent had Craig sign a signature page for an affidavit. Respondent told Craig that he would later attach the signature page she had signed to an affidavit that he would draft. Craig signed, and respondent later attached the executed signature page to, an affidavit he drafted. (D. Exh. 42; Craig test.)

163. Later in 1999 opposing counsel served on respondent papers for a motion to be heard on November 22, 1999 (D. Exh. 46). Minn.Gen.R.Prac. 303.03(a) requires all responsive papers, including affidavits, to be served and filed at least five (5) days prior to the hearing (D. Exh. 44). Respondent did not serve or file a responsive affidavit of Craig before the hearing (D. Exh. 47, R. test.).

164. Respondent had told Craig to arrive at the courthouse 30 minutes before the scheduled hearing time on November 22 to review a responsive affidavit that respondent was to draft (Craig test.). Respondent did not arrive until just before the hearing was to start (Supp. ans. ¶7; Craig test.). At the conclusion of the hearing, respondent requested Craig to sign a responsive affidavit that respondent had drafted (Craig test.; D. Exh. 47). Respondent did not give Craig an opportunity to review the affidavit before she signed it (Craig test.). Respondent then filed the affidavit with the court (Craig test.).

165. On or about January 21, 2000, the court issued its order on the matters heard at the November 22 hearing (D. Exh. 48). Respondent failed to tell Craig, and failed to send to Craig a copy, of the order (Craig test.). Craig learned of the order from a third party (Craig test.).

Misrepresentation to Court, Failure to Abide by Court Rules and Orders,  
and Neglect - Strid Matter

166. In early July 1999 Dennis Strid caused an eviction summons and unlawful detainer complaint to be served on Nancy Krinhop (*Strid v. Krinhop*). Krinhop then retained respondent (Supp. ans. ¶10; D. Exh. 51).

167. On July 22 and August 18, 1999, a trial was conducted. Krinhop disputed the validity of Strid's interest in the property. By order filed October 29, 1999, the court allowed Krinhop to commence a separate action addressing her claims, which would be consolidated with the unlawful detainer action. (Supp. ans. ¶10; D. Exh. 52.)

168. On or about December 28, 1999, respondent mailed to several persons a summons and complaint in *Krinhop v. Strid*. A civil action is properly commenced against any particular defendant when the summons and complaint are properly served upon the defendant.

Minn.R.Civ.P. 3.01. The matter may be filed only after service has been effected on at least one defendant. (Supp. ans. ¶10; D. Exh. 53.)

169. Respondent did not effect proper service of the summons and complaint on Strid. Respondent did not personally serve Strid, and Strid did not accept service (Strid test.). Respondent mailed the summons and complaint to Bruce Olander (D. Exh. 53). Olander represented Strid in the unlawful detainer action (*Strid v. Krinhop*) but was not authorized to accept service for *Krinhop v. Strid* (Strid test.; Olander test.). Additionally, service by mail of a summons and complaint is effective only if the recipient agrees to accept service by mail. Neither Strid nor Olander on his behalf agreed to accept service by mail of the summons and complaint (Strid test.; Olander test.).

170. Respondent filed the summons and complaint at the same time he mailed it to Olander and the other listed defendants (D. Exh. 53 & 54). At this time, no defendant had been properly served with the summons and complaint (R. test.).

171. By order filed February 16, 2000; the court ordered that issuance of a writ of restitution allowing Strid to evict Krinhop from the premises be stayed for 20 days; within that 20-day period respondent utilize the sheriff to personally serve Strid with the summons and complaint in *Krinhop v. Strid*; and if respondent failed to do so within the 20-day period then issuance of the writ would be stayed until the case was resolved (Supp. ans. ¶10; D. Exh. 56).

172. Respondent failed to serve Strid in any way during the 20-day period (Strid test.; R. test.).

173. On March 13, 2000, Strid obtained a writ of restitution from the housing court because he had not been served within the 20-day period. On March 14, 2000, the sheriff served the writ on Krinhop. (Strid test.)

174. On March 15, 2000, respondent placed a telephone call to the court (Coveney test.). Respondent told the judge's law clerk that Olander had stated that respondent could serve the summons and complaint in *Krinhop v. Strid* by mail (Coveney test.). Respondent also told the judge's law clerk that he had mailed the summons and complaint (Coveney test.). This statement

was false (Strid test.; Olander test.; R. test.). Respondent had neither personally served on, nor mailed the summons and complaint to, either Olander or Strid between the time the February 16 order was filed and respondent's conversation with Coveney. (Strid test.; Olander test.; R. test.)

175. In reliance on respondent's false statement, by order filed March 16, 2000, the court voided the writ of restitution (D. Exh. 57; Coveney test.).

176. On March 28, 2000, respondent had Strid personally served with the summons and complaint in *Krinhop v. Strid* (Supp. ans. ¶10).

177. On March 30, 2000, a hearing was conducted (D. Exh. 58; Coveney test.; Olander test.). The judge ordered respondent to provide immediately the papers proving that respondent served Strid after the February 16 order was issued and as he had told the judge's law clerk that he had done (D. Exh. 58; Coveney test.; Olander test.). Respondent failed to respond (D. Exh. 62; Coveney test.; Olander test.).

178. By letter to counsel dated April 11, 2000, the judge's law clerk informed respondent that the judge had not received the papers the judge ordered respondent to provide, requested respondent to provide the papers by April 14, 2000, and stated that after April 14 the judge would issue an order (D. Exh. 58). Respondent failed to respond (D. Exh. 62; Coveney test.).

179. By order filed April 18, 2000, the court vacated the March 16 order and allowed Strid to enforce the writ (D. Exh. 62). On April 28, 2000, Strid enforced the writ and had Krinhop evicted from the house (Strid test.).

180. On or about April 17, 2000, counsel for Strid served on respondent, among other things, requests for admission (D. Exhs. 59 & 60). Minn.R.Civ.P. 36.01 provides that any requests for admission to which a response is not made within 30 days of service are admitted (D. Exh. 61). Respondent failed to respond to the requests for admission (Olander test.).

181. A hearing was conducted on May 19, 2000, on respondent's motion for a temporary injunction in *Krinhop v. Strid*. From the bench, the court granted the motion and directed respondent to that day prepare and fax to the judge an order for the judge's signature. Respondent

failed to do so. To date, respondent has failed to submit the required proposed order. (Olander test.)

#### Unauthorized Practice of Law

182. Respondent was suspended from the practice of law from January 1 through February 29, 2000, for nonpayment of the attorney registration fee (Marchio test.). During that period respondent engaged in the practice of law (R. test.).

183. On or about February 29, 2000, the attorney registration office received from respondent a check in payment of respondent's attorney registration fee plus the penalty (Marchio test.). Shortly thereafter, the attorney registration office mailed to respondent an attorney registration statement and requested respondent to complete the lawyer trust account information required on the statement and then return the completed statement (D. Exh. 66; Marchio test.). Respondent failed to do so (Marchio test.).

#### Disciplinary History

184. Respondent has the following disciplinary history:

a. On September 14, 1995, respondent was issued an admonition for failing to submit a required informational statement in a timely manner, failing to inform his client that the client's case would be dismissed if the informational statement were not filed, and withdrawing from representation without telling his client that the client's case was already beyond the dismissal deadline for filing the informational statement (D. Exh. 1).

b. On February 23, 1996, respondent was issued an admonition for failing to communicate his billing practices clearly to his client, failing to return his client's telephone calls, failing to abide by his client's decisions regarding litigation strategy, failing to pursue his client's matter diligently and failing to communicate adequately with his client (D. Exh. 2).

c. On February 23, 1996, respondent was issued another admonition for failing to pursue his client's matter diligently, failing to return his client's telephone calls, failing to

communicate clearly to the client the status of the client's claim, and asserting a lien on the claim for fees in an unrelated matter (D. Exh. 3).

d. On September 24, 1997, respondent was placed on supervised private probation for a period of two years. Respondent's discipline was for failing to pursue his client's matter and failing to communicate with his clients in the matter (D. Exh. 4).

e. On May 14, 1999, respondent was issued an admonition for pursuing frivolous litigation, failing to file a court-ordered reply brief or written response addressing sanctions, and failing to draft appellate briefs pursuant to court rules (D. Exh. 5).

f. On May 24, 1999, respondent's private probation was extended. Respondent's discipline was for failing to handle a matter with the required thoroughness and preparation, failing to handle a client matter timely, failing to communicate adequately with the client, and failing to identify a client matter on inventories of all active client matters he was required to provide monthly to his probation supervisor. Respondent remains on probation (D. Exh. 6).

#### Mitigating Factors

185. Respondent claims mitigation for three reasons.

a. Respondent testified that during the period of misconduct he had a heavy workload and that since June 1999 he has had substantial turnover in his secretarial staff.

This referee finds that as attorney for his clients Respondent was responsible to ensure that he handled his clients' matters timely, competently, and in conformity with Rules of Professional Conduct, Rules of Procedure, and applicable law. Respondent's attempt to place the blame on office personnel and procedure is without merit.

b. Respondent has recently been going through a bitter marital dissolution proceeding which included a contested child custody issue (R. test., R. Exh. 16).

Family issues can be a mitigating factor. See *In Re Knutson*, 405 N.W.2d 234, 240 (Minn. 1987) where the Court stated; "Because of the mitigating factors-...and numerous family problems-...."

However, the Court finds that the evidence presented regarding family issues is not sufficient to mitigate Respondent's conduct.

c. Respondent presented evidence that he suffers from depression. Specifically, he testified that since before 1980 he has frequently been in therapy for depression, and that since 1997 he has regularly attended therapy sessions and taken Paxil, an anti-depressant medication.

In preparation for this hearing, Respondent was examined by a psychiatrist, Lee H. Beecher, M.D. Dr. Beecher evaluated Respondent in June 2000 and offered testimony and a report (R. Exh. 13). Dr. Beecher diagnosed Respondent with mild dysthemia. He further concluded that Respondent suffered from moderate to severe depression (B. test.).

The only recommendation in Beecher's report relates not to respondent's psychological condition or the treatment thereof, but to respondent's office organization practices (R. Exh. 13).

Respondent also introduced the testimony and report (R. Exh. 14) of Robert Subby, M.A., L.P. Subby saw respondent from 1991 into 1994, twice in December 1999, and twice monthly since March 20, 2000. Subby diagnosed respondent with Dysthemia Disorder, as Beecher did, and with Generalized Anxiety Disorder. Mr. Subby testified that although Respondent was making progress, he had not yet reached the level which he was at when he was in therapy several years ago and that in Mr. Subby's opinion, the next 1½ years would be critical to recovery.

Respondent and Subby testified that in late 1999 and early 2000 respondent's symptoms from depression increased, in January 2000 the dosage of respondent's antidepressant medication was increased, and the increased dosage alleviated some of respondent's symptoms.

Respondent testified that during the past three years, he has regularly attended group and/or individual therapy sessions and taken anti-depressant medication as prescribed.

Respondent, Beecher and Subby testified that respondent's therapy and medication were appropriate to respondent's diagnosis and helped relieve his symptoms. None testified that for much of the past three years respondent has suffered from a severe psychological problem.

"[I]n a case where a respondent attorney raises psychological disability as a mitigating factor, he must prove [1] that he indeed has a severe psychological problem, [2] that the psychological problem was the cause of the misconduct, [3] that he is undergoing treatment and is making progress to recover from the psychological problem which caused or contributed to the misconduct, [4] that the recovery has arrested the misconduct, and [5] that the misconduct is not apt to recur. Finally, the accused attorney must establish these criteria by clear and convincing evidence." *In re Weyhrich*, 339 N.W.2d 274, 279 (Minn. 1983).

Respondent carries the burden to prove each element by clear and convincing evidence. This referee finds that Respondent has failed to carry such burden of proof.

#### Aggravating Factors

186. Much of Respondent's current misconduct is substantially similar to conduct for which he was disciplined at least once previously. Respondent's disciplinary history shows a pattern of misconduct. Respondent's current misconduct is consistent with this pattern. Respondent's conduct has not significantly changed, and he is not amenable to further probation.

187. Respondent has committed numerous acts of serious professional misconduct over an extended period of time.

188. Respondent has committed multiple patterns of professional misconduct.

189. Respondent acknowledges that he was obligated pursuant to the RLPR, the terms of his stipulation for probation and the terms of his stipulation for extension of probation to respond timely to the Director's requests for information and documents.

190. Respondent's misconduct continued after the petition for disciplinary action was filed, after respondent retained counsel, and after this referee was appointed.

191. Respondent introduced the testimony and report (R. Exh. 15) of John Brandt. Brandt has been and is respondent's probation supervisor. Brandt testified that respondent has been cooperative, candid, and current in handling client matters. Brandt's only source of information

was respondent. Brandt also testified, however, that respondent has not regularly provided case lists to Brandt and that the case lists respondent did provide did not include all matters respondent was handling. Respondent's case lists have failed to include matters which are the subject of this disciplinary proceeding (Brandt test.). Brandt also testified that respondent has not consistently implemented Brandt's recommendations to improve client communication procedures.

#### Memorandum

The Memorandum attached hereto is incorporated into these Findings of Fact by reference.

#### CONCLUSIONS OF LAW

1. Respondent's misconduct in the *Green v. Green* matter violated the Minnesota Rules of Professional Conduct (MRPC).
2. Respondent's continuing failure to pay, or to make good faith efforts to pay, the sanction imposed against him in the *Green v. Green* matter violated MRPC.
3. Respondent's misconduct in the *Mattingly v. Nelson* matter violated MRPC.
4. Respondent's misconduct in the *Williams v. Minneapolis Park and Recreation Board* matter violated MRPC.
5. Respondent's continuing failure to pay, or to make good faith efforts to pay, the sanction imposed in the *Williams v. Minneapolis Park and Recreation Board* matter violated MRPC.
6. Respondent's misconduct in the *Williams v. City of Minneapolis* matter violated MRPC.
7. Respondent's misconduct in the *Wimler* matter violated MRPC.
8. Respondent's failure to place unearned retainers from clients *Williams*, *Wimler* and the *Mattinglys* into a client trust account violated MRCP.
9. Respondent's failure to cooperate with the Director violated the terms of his probation and thus violated MRCP.
10. Respondent's request to Craig to sign a signature page which he later attached to an affidavit he drafted violated MRPC.

11. Respondent's failure to timely answer the supplementary petition for disciplinary action and failure to timely respond to the Director's correspondence after the supplementary petition was served violated MRCP.

12. Respondent's failure to file a responsive affidavit timely in the Craig matter violated MRPC.

13. Respondent's failure to provide to Craig a copy of her November 22 affidavit and failures to tell Craig of, or to provide to Craig, the February 1, 2000, order violated MRPC.

14. Respondent's false statement to the court during his March 15, 2000, telephone conversation in the Strid matter violated MRPC.

15. In the Strid matter, respondent's failure to comply with the February 16, 2000, order, failure to provide the papers that the judge during the March 30, 2000, hearing ordered him to provide, failure to respond to requests for admission and failure to provide the proposed order that the judge during the May 19 hearing ordered him to provide violated MRPC.

16. Respondent's failure to commence the *Krinhop v. Strid* matter properly violated MRPC.

17. Respondent's unauthorized practice of law violated MRPC.

18. Respondent violated probation, which violated MRPC.

#### **RECOMMENDATION FOR DISCIPLINE**

The Director recommends that Respondent, David L. Brehmer, should be suspended from the practice of law in the State of Minnesota for a minimum of 24 months. That recommendation seems more than appropriate. Accordingly, the undersigned referee recommends:

1. That Respondent, David L. Brehmer, be indefinitely suspended from the practice of law in the State of Minnesota, and be ineligible to apply for reinstatement for a minimum of 24 months.

2. That Respondent, David L. Brehmer, comply with the requirements of Rule 26, RLPR.

3. That Respondent pay to the Director \$900 in costs, plus disbursements, pursuant to Rule 24, RLPR.

Dated: August 10, 2000.

*Warren E. Litynski*

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The Honorable Warren E. Litynski  
Supreme Court Referee

**MEMORANDUM**

Respondent's misconduct is summarized very well in the introduction to the Director's brief to the referee. Respondent has been disciplined six times previously; while on probation he has attempted to perpetrate frauds on the Court; he has made a false statement to a court; he has violated court orders; he has violated court rules; he has brought bad faith, frivolous and harassing litigation; he has made false statements to a client; he has failed to respond to motions; he has failed to attend depositions; he has failed to respond to discovery; he has neglected client matters; he has failed to communicate adequately with a client; he has represented clients incompetently; he has appeared in court unprepared; he has had clients execute signature pages in blank to be attached later to affidavits or interrogatory responses; he has improperly withdrawn from representation; he has engaged in the unauthorized practice of law in Wisconsin; he has failed to bill clients; he has failed to give clients accountings of funds they had paid to him; and he has failed to cooperate with the disciplinary system.

Dated: August 10, 2000.

*Warren E. Litynski*

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The Honorable Warren E. Litynski  
Supreme Court Referee