

FILE NO. C3-00-529

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against DAVID L. BREHMER,
an Attorney at Law of the
State of Minnesota.

**SUPPLEMENTARY 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 supplementary petition for disciplinary action pursuant to Rules 10(e) and 12(a), Rules on Lawyers Professional Responsibility (RLPR).

Respondent is currently the subject of a March 16, 2000, petition for disciplinary action ("petition"). The Director has investigated further allegations of unprofessional conduct against respondent. As set forth more fully below (¶¶ 145-59), respondent has not responded to additional complaints against him.

Based on the information the complainants provided and on the Director's additional investigation, the Director alleges that respondent has committed the following additional unprofessional conduct warranting public discipline:

COUNT SIX (continued)

Failure to Cooperate

145. On March 20, 2000, respondent was personally served with the notice and petition in this matter. The notice informed respondent that Rule 13, RLPR, required respondent to serve and file his answer to the petition within twenty (20) days of service. Respondent failed to serve or file an answer.

146. 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 (*see* petition ¶¶ 137 & 142) and requested respondent to provide at that time the information and documents requested in the notice. Respondent failed to respond.

147. 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, (*see* petition ¶¶ 134-35 & 138) and requested respondent to provide within seven (7) days the information requested in that March 27 letter. Respondent failed to respond.

148. 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.

149. 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.

150. 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.

151. 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."

152. 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.

153. 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.

154. 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.

155. 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. Respondent failed to respond.

156. 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. 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. Respondent failed to provide any of the requested information or documents.

157. 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.

158. To date, respondent has failed to respond to the notices of investigation in the Adebanjo, Craig and Strid matters and failed to provide the information and documents requested in the Director's January 21 and May 26, 2000, letters.

159. Respondent's conduct violated the terms of his stipulation for extension of probation, Rule 8.1(a)(3), Minnesota Rules of Professional Conduct (MRPC), and Rule 25, RLPR.

COUNT SEVEN

Neglect, Non-Communication, Improper Notarization and Mishandling Client Funds - Craig Matter

160. In December 1998 Karen Craig retained respondent to represent her in a post-dissolution proceeding.

161. 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.

162. Later in 1999 opposing counsel served on respondent papers for a motion to be heard on November 22, 1999. 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. Respondent did not serve or file a responsive affidavit of Craig before the hearing.

163. 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. Respondent did not arrive until just before the hearing was to start. At the conclusion of the hearing, respondent requested Craig to sign a responsive

affidavit that respondent had drafted. Respondent did not give Craig an opportunity to review the affidavit before she signed it. Respondent then filed the affidavit with the court. To date, respondent has not provided to Craig a copy of her November 28 affidavit.

164. On or about February 1, 2000, the court issued its order on the matters heard at the November 22 hearing. Respondent failed to tell Craig, and failed to send to Craig a copy, of the order. Craig learned of order later in February 2000 from a third party.

165. Respondent's request to Craig to sign a signature page which he later attached to an affidavit he drafted violated Rule 8.4(c), MRPC.

166. Respondent's failure to file a responsive affidavit timely violated Rule 1.3, MRPC.

167. 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 Rule 1.4, MRPC.

COUNT EIGHT

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

168. 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.

169. 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.

170. 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.

171. 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. Respondent mailed the summons and complaint to Bruce Olander. Olander represented Strid in the unlawful detainer action (*Strid v. Krinhop*) but was not authorized to accept service for *Krinhop v. Strid*. 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.

172. Respondent filed the summons and complaint at the same time he mailed it to Olander and the other listed defendants. At this time, no defendant had been properly served with the summons and complaint.

173. 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.

174. Respondent failed to serve Strid in any way during the 20-day period.

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

176. On March 15, 2000, respondent placed a telephone call to the court. 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. Respondent also told the judge's law clerk that he had mailed the summons and complaint. This statement was false. Respondent had neither personally served on, nor mailed the summons and complaint to, either Olander or Strid at any time after the February 16 order was filed.

177. In reliance on respondent's false statement, by order filed March 16, 2000, the court voided the writ of restitution.

178. On March 28, 2000, respondent had Strid personally served with the summons and complaint in *Krinhop v. Strid*.

179. On March 30, 2000, a hearing was conducted. 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. Respondent failed to respond.

180. 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. Respondent failed to respond.

181. By order filed April 18, 2000, the court vacated the March 16 order and allowed Strid to enforce the writ.

182. On or about April 17, 2000, counsel for Strid served on respondent, among other things, requests for admission. 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. Respondent failed to respond to the requests for admission.

183. 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.

184. Respondent's false statement to the court during his March 15, 2000, telephone conversation violated Rules 3.3(a)(1), 4.1, and 8.4(c) and (d), MRPC.

185. 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 Rules 1.3, 3.2, 3.4(c) and 8.4(d), MRPC.

186. Respondent's failure to commence the *Krinhop v. Strid* matter properly violated Rules 3.4(c) and 8.4(d), MRPC.

COUNT NINE

Unauthorized Practice of Law

187. Respondent was suspended from the practice of law from January 1 through February 29, 2000, for non-payment of the attorney registration fee. During that period respondent engaged in the practice of law.

188. 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. Shortly thereafter, the attorney registration office mailed to respondent an attorney registration statement and requested respondent to complete the interest on lawyer trust account information required on the statement and then return the completed statement. Respondent failed to do so.

189. Respondent's conduct violated Rule 5.5(a), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent from the practice of law or imposing appropriate discipline,

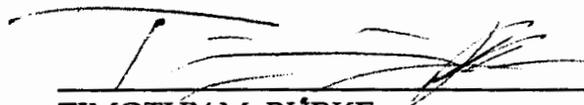
awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: June 29, 2000.



EDWARD J. CLEARY
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 17267
25 Constitution Avenue, Suite 105
St. Paul, MN 55155-1500
(651) 296-3952

and



TIMOTHY M. BURKE
SENIOR ASSISTANT DIRECTOR
Attorney No. 19248x

This supplementary petition is approved for filing pursuant to Rule 10(e), RLPR,
by the undersigned.

Dated: June 29, 2000.



CHARLES E. LUNDBERG
CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD