

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against THOMAS M. BRUDVIG,
an Attorney at Law of the
State of Minnesota.

**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. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 5, 1979. Respondent currently practices law in Roseville, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On May 26, 1998, respondent received an admonition for failing to diligently pursue a client matter and failing to communicate with his client in violation of Rules 1.3 and 1.4, Minnesota Rules of Professional Conduct (MRPC).

B. On June 11, 1997, respondent received an admonition for depositing a non-refundable retainer into his general business account without having the client sign a retainer agreement containing the appropriate disclosures. Respondent's conduct

violated Rule 1.15(a), MRPC, and Lawyers Professional Responsibility Board Opinion No. 15.

C. On July 8, 1993, respondent was publicly reprimanded and placed on probation by the Minnesota Supreme Court for unintentionally misappropriating client funds from his trust account, failing to maintain adequate trust account books and a records, failing to reduce a contingent fee agreement to writing and neglecting two client matters. *In re Brudvig*, 503 N.W.2d 102 (Minn. 1993).

D. On April 18, 1991, respondent received an admonition for his failure to inform his client that he had not succeeded in resolving a portion of her claim in violation of Rule 1.4, MRPC.

FIRST COUNT

A. Schmidt Matter

1. In March of 1999 Karen Schmidt met with respondent concerning the possibility of his representing her in a wrongful termination action against her former employer. Schmidt had worked for her employer for more than 18 years before being discharged.

2. Schmidt provided respondent with documentation relating to her case. Respondent agreed to handle the representation on a contingent fee basis, although he failed to reduce that agreement to writing. Over the course of the next several months Schmidt was in contact with respondent on several occasions concerning the status of her lawsuit.

3. On December 17, 1999, Schmidt filed a complaint against her former employer with the Department of Human Rights. On April 5, 2000, the department issued its notice that Schmidt's claim was being dismissed. The department found that the evidence did not substantiate Schmidt's allegations of discrimination.

4. In its April 5, 2000, letter, the Department of Human Rights informed Schmidt that she could bring a civil action against her former employer in district court but such an action would have to be commenced within 45 days. Schmidt understood that respondent would be commencing such a lawsuit.

5. On June 20, 2000, Schmidt gave respondent a personal check for \$1,500, which she understood was to be used to hire an investigator. Respondent failed to place the funds in his trust account.

6. Over the next year Schmidt contacted respondent on numerous occasions concerning the status of her case. During those contacts she requested copies of documentation and other information that had been obtained as part of the investigation. She never received any of the requested information from respondent.

7. On June 21, 2001, Schmidt wrote to respondent expressing her frustration with his handling of her case. She demanded that he contact her and/or return all of her documents regarding the case by the end of the month. Respondent did not provide the file as requested.

8. Respondent's conduct violated Rules 1.3, 1.4 and 1.15(a) and (f), MRPC.

B. Christopherson Matter

9. Norman and Debra Christopherson operated Oakridge Auto Body, Inc., in Bethel, Minnesota. In October of 1998, the Christophersons hired respondent to represent them in a zoning issue with the City of East Bethel. The Christophersons gave respondent a \$1,500 retainer.

10. On January 25, 1999, respondent wrote to various city officials concerning the Christophersons' request to explain their business. Respondent asked that an official of the city contact him.

11. On February 12, 1999, a representative of the city responded to respondent's letter. The city official explained that the council had considered the

matter at their October 7, 1998, meeting. He also outlined additional steps that would need to be taken by the Christophersons. Respondent failed to follow through on the necessary work.

12. On March 16, 1999, the Christophersons met with respondent. At that meeting, they stated their desire to move the matter forward. Respondent indicated that he thought he could have the work completed in two to three weeks. However, after that meeting, respondent did no further work on behalf of the Christophersons. The Christophersons subsequently made several unsuccessful attempts to contact respondent by telephone.

13. On June 16, 1999, the Christophersons wrote to respondent explaining their desire to move the matter forward. They indicated that if respondent was too busy to handle their case, they would appreciate him informing them of that fact. Respondent failed to reply.

14. On January 12, 2000, when they still had not heard from respondent, the Christophersons filed an ethics complaint. After receipt of a notice of investigation from the Director's Office, respondent refunded the unused portion of the retainer and returned the Christophersons' documents to them.

15. Respondent's conduct violated Rules 1.3 and 1.4, MRPC.

C. Recovery Equipment Sales Corp. Matter

16. Respondent represented Recovery Equipment Sales Corporation (RES) and Jay Waalen in a suit against Twin Cities Wrecker Sales, Inc., and several individuals. The defendants counterclaimed and after RES's action was dismissed, the defendants were permitted to proceed with their counterclaims.

17. The defendants scheduled depositions for July 16, 1998, but the depositions were postponed at respondent's request. The defendants then rescheduled the depositions to July 21, 1998. A letter attached to the amended deposition notices

requested that respondent notify the defendants' attorney in writing if he was unable to attend the rescheduled depositions.

18. Respondent failed to provide defendants' counsel with written notification that his clients would not be attending the depositions. The defendants then filed a motion for sanctions.

19. On August 5, 1998, the district court was scheduled to hear the sanctions motion. Just before the hearing began, the district court informed defendants and their counsel that one of the plaintiffs had filed bankruptcy that morning and that neither the plaintiffs nor respondent would be coming to the sanctions hearing.

20. The district court then granted defendants' default judgment against plaintiffs and imposed sanctions against respondent, ordering him to pay defendants' attorney fees costs for the deposition and the sanction hearing.

21. The district court entered a judgment on the order pending a decision on respondent's motion to have the sanctions order vacated. However, after a hearing, the district court denied the motion to vacate and the Minnesota Court of Appeals subsequently upheld the decision. *Recovery Equipment Sales Corp. v. Twin City Wrecker Sales, Inc.*, C3-99-40 (Minn. Ct. App. 1999).

22. Respondent's conduct violated Rule 3.4, MRPC.

D. Hayes Matter

23. Respondent represented Judith Hayes (then Rauschendorfer) in a dispute with her employer, the United States Postal Service.

24. On June 2, 1998, the U.S. Department of Labor sent Rauschendorfer notice that her workers' compensation claim had been denied. The notice informed her that she had the right to submit new evidence or, if she had no additional evidence, to appeal the decision. A copy of this letter was sent to respondent as well.

25. Respondent never submitted additional documentation, despite Rauschendorfer's understanding that respondent was to obtain an affidavit from a former co-worker. It was Rauschendorfer's belief that this co-worker would provide evidence to refute her employer's contentions. Respondent did not submit additional evidence within the required time and Rauschendorfer lost the opportunity to submit such evidence.

26. Rauschendorfer subsequently contacted respondent asking whether he had submitted a brief in support of her appeal. On numerous occasions, respondent assured her that he had. However, despite her requests to do so, respondent never provided her with a copy of the brief.

27. After waiting for more than a year for respondent to provide the brief, Rauschendorfer filed an ethics complaint with the Director's Office. In response to the notice of investigation from the Director, respondent acknowledged that he had not filed a brief.

28. Respondent's conduct violated Rules 1.3, 1.4, 4.1 and 8.4(c), MRPC.

E. Feges Matter

29. Respondent represented James Feges in his marital dissolution. Respondent represented Feges at the trial. On June 23, 1998, the court issued its judgment and decree.

30. Several weeks after the court issued its decision, Feges met with respondent. Feges indicated that there were several portions of the court's order with which he took exception and that he wanted respondent to appeal. Respondent told Feges that he would be appealing the decision in Anoka County. Respondent further told Feges that it would take a while for him to complete the matter and he should be patient.

31. Several months passed and Feges still had not heard anything from respondent. In October of 1998, Feges telephoned the Anoka County Courthouse to see if respondent had filed anything further on his case. Respondent was told that nothing had been filed and at that time he contacted respondent.

32. Respondent acknowledged that no appeal had been filed, but told Feges that they would be better off dealing with the various issues one at a time. Feges agreed to let respondent pursue the case in such a manner. However, over the next several months, respondent often failed to return Feges' calls.

33. One of the issues that Feges had directed respondent to appeal was the trial court's order that Feges pay \$3,000 in attorney fees to his wife's attorney. By December of 1998 the attorney had reduced the fees to judgment. In January of 1999, Feges called respondent concerning the judgment. Respondent told Feges that he would contact the opposing attorney to make an offer to settle the case. Respondent never contacted Feges again.

34. Respondent's conduct violated Rules 1.3 and 1.4, MRPC.

F. Vomela Matter

35. On August 8, 1991, John Vomela retained respondent to represent him in a claim arising out of an automobile accident. Vomela gave respondent \$500 to pay costs relating to the representation.

36. Vomela had allegedly sustained injuries on July 22, 1979, when the vehicle he was driving was rear-ended by a bus. Prior to his retaining respondent, Vomela had been represented by several different attorneys on the same matter.

37. Over the next several years, respondent assured Vomela that he was working on the file. However, respondent did nothing to pursue the litigation against the MTC.

38. In July of 2000, respondent told Vomela that they would have to have the matter scheduled in district court. However, Vomela never received notice of a court date. When he attempted to contact respondent about this, respondent would rarely return his calls.

39. Vomela last attempted to contact respondent in September 2000. After waiting approximately a month without hearing anything further from respondent, Vomela filed an ethics complaint with the Director's Office.

40. Respondent's conduct violated Rules 1.3 and 1.4, MRPC.

G. Chamlongsong Matter

41. On May 26, 1999, Taeng Chamlongsong retained respondent to represent her in a dissolution proceeding. Chamlongsong's spouse was living somewhere in California and there were issues of service relating to the dissolution.

42. After being retained, respondent hired a private investigator to attempt to locate Khamsouk Vongprachanh, Chamlongsong's husband. On June 8, 1999, respondent received a report from the investigator indicating he had been unable to locate Vongprachanh.

43. On June 28, 1999, respondent filed with the Hennepin County district court an application for ultimate service (and other documents) in the dissolution proceeding. After this, respondent failed to do any further work on the file for more than a year.

44. On August 8, 2000, respondent mailed a copy of the summons for publication in California. During the course of the representation, respondent had failed to contact Chamlongsong or keep her informed of the status of the matter.

45. In October 2000 Chamlongsong was able to reach respondent. She asked him about the status of her case and when it would be completed. Respondent told her the matter would be completed shortly. However, by December 7, 2000, the matter was

not resolved and Chamlongsong had been unable to reach respondent. At that time she filed an ethics complaint with the Director's Office.

46. Respondent never completed work on the file.

47. Respondent's conduct violated Rules 1.3 and 1.4, MRPC.

H. Schluender Matter

48. In December of 1990, Annette Schluender contacted respondent to represent her in a commitment proceeding. Schluender had been committed on two occasions, the first from August through October of 1989, and the second from September through November 1990.

49. After providing information about the case to respondent, Schluender contacted respondent periodically concerning her case. She understood that respondent would obtain her personnel file and medical file. Respondent only obtained her personnel file and certain medical records.

50. On March 5, 1991, respondent wrote to the Mayo Clinic's legal counsel in an apparent effort to address Schluender's concerns by seeking an apology and either a restoration of her job or a positive recommendation. The Mayo Clinic refused to comply with respondent's request. Respondent did no further work on the file.

51. From the spring of 1991 through late 1995, respondent had no significant communication with Schluender. By May of 1993, it became clear to Schluender that respondent was not pursuing her case. On May 20, 1993, she wrote to respondent concerning her unanswered messages and other concerns about her case.

52. From 1995 through mid-1996, respondent did not respond to Schluender's attempts to communicate with him. When she called he would decline her phone calls or promise to call her back and then fail to do so.

53. On August 10, 1995, after repeated efforts by Schluender to contact respondent, they spoke about the status of her case. Respondent agreed to pursue the

matter further. On September 25, 1995, Schluender wrote to respondent confirming that fact and providing him with the name of a potential witness. However, respondent did little work on the file until July of 1996, after Schluender had threatened to sue respondent.

54. At that time, respondent commenced a lawsuit against the Mayo Clinic, the St. Peter Regional Treatment Center, and the State of Minnesota. However, for the next several months, respondent failed to provide Schluender with information regarding the status of her case.

55. On November 6, 1996, respondent wrote to Schluender indicating that the State of Minnesota had been dismissed as a defendant, but that the matter would proceed to a pre-trial with the Mayo Clinic. Respondent suggested in his letter that the court had dismissed the State of Minnesota. However, respondent had agreed to voluntarily dismiss the action against the State of Minnesota and the St. Peter Regional Treatment Facility without providing notice to Schluender.

56. On April 9, 1997, respondent executed a notice of dismissal of the action against the Mayo Clinic. The court entered an order of dismissal on August 1, 1997. Again, respondent did not consult with Schluender and did not inform her of his action.

57. On February 4, 1998, Schluender wrote to respondent concerning the status of her case. On February 9, 1998, respondent notified Schluender of the dismissal. Respondent subsequently suggested to Schluender that there were other avenues that could be pursued, but respondent did no further work on the representation.

58. Respondent's conduct violated Rules 1.3 and 1.4, MRPC.

I. Bowe Matters

59. In March of 2000, Donald Bowe met with respondent regarding a problem he was having obtaining clear title on an automobile. Bowe could not get title for the

vehicle after he filed bankruptcy and one of the creditors holding the title refused to turn it over.

60. Respondent told Bowe that on one of his visits downtown he would review the bankruptcy file and determine what needed to be done. He also told Bowe that he would be willing to undertake the representation.

61. Respondent understood that there was no particular urgency or priority in resolving the matter. However, he did not communicate his understanding to Bowe. Respondent never followed through on the matter.

62. Respondent also represented Bowe in a possible medical malpractice action involving the death of Bowe's wife. On March 7, 2000, Bowe gave respondent \$300 to review his wife's medical records as part of proceeding with the malpractice claim.

63. By December of 2000, when respondent had not commenced a medical malpractice action nor resolved the title problems, Bowe filed an ethics complaint with the Director's Office. As of the date of this petition respondent had yet to conclude either representation.

64. Respondent's conduct violated Rules 1.3 and 1.4, MRPC.

I. Pellman Matter

65. Some time in 1995 Reino Pellman retained respondent to represent him in a workers' compensation injury. Pellman had injured his knee and he believed that injury was related to his employment at Crystal Cabinets. On February 13, 1996, Pellman provided respondent with an employment authorization enabling respondent to obtain Pellman's employment records. Pellman also provided respondent with a medical authorization.

66. Respondent did nothing with either authorization until September 12, 1996, when he wrote to Pellman's employer and his physician to obtain records.

67. On September 16, 1996, Crystal Cabinets provided respondent with Pellman's employment records. However, respondent did nothing further with the file.

68. On August 29, 1997, Pellman wrote to respondent exhorting him to conclude the matter. Pellman had been discharged by Crystal Cabinets and believed he had a possible employment discrimination case as well. Pellman instructed respondent to complete both matters.

69. Over the course of the next several months, Pellman continued to press respondent to resolve his cases. In late 1997, Pellman contacted the Department of Labor and Industry (DOLI) concerning whether there had been any additional claims filed.

70. DOLI wrote to Pellman explaining that its records only showed an injury as of June 9, 1987. The department indicated that it "would appear your attorney would have to file a claim petition on your behalf to establish the claim and achieve benefits for you." The letter also indicated that the department was sending a copy to respondent with the "request that he contact you and bring you up to date on his activity on your claim." Respondent did not contact Pellman and did nothing to advance his case.

71. On July 28, 1999, when respondent still had not filed a claim petition on Pellman's behalf, or commenced a lawsuit concerning a possible employment discrimination case, or informed Pellman that he could not pursue the matter further, Pellman filed an ethics complaint with the Director's Office.

72. Despite numerous requests from Pellman, respondent never commenced a workers' compensation proceeding or informed Pellman that he would be unable to pursue the matter. Finally, on March 31, 2001, respondent withdrew and referred Pellman to another attorney.

73. Respondent's conduct violated Rules 1.3 and 1.4, MRPC.

K. Hayek Matter

74. Michael Hayek was involved in a dispute with his former wife, Sandy Huffman, concerning child support for their daughter. The daughter had recently relocated to Texas to live with Huffman. On February 28, 1999, Huffman wrote to Hayek requesting that he release her from her obligation to pay child support. Hayek contacted respondent to represent him concerning this issue.

75. On March 31, 1999, respondent wrote to Hayek regarding the change of custody and child support issues and instructing Hayek to inform him if he could be of further assistance. On May 7, 1999, John McCord, Huffman's attorney in Texas, wrote to Hayek with a petition seeking to modify child support. On May 19, 1999, respondent wrote to McCord informing him that he represented Hayek and suggesting that the parties stipulate to a proposed settlement.

76. On May 31, 1999, McCord wrote to respondent. In that letter he indicated that he did not wish to force Hayek to incur the expense of hiring local counsel, nor did he wish to take a default judgment against him. McCord requested information concerning Hayek's income and stated that he would provide at least five days notice before seeking default judgment.

77. Over the course of the summer, the parties continued to negotiate. On July 29, 1999, respondent wrote to McCord and asked McCord to contact him as soon as possible. McCord attempted to call respondent, but received a recorded message that respondent's number was not working. Respondent did not follow up with McCord and McCord entered an order with the Texas court establishing child support guidelines.

78. On September 13, 1999, a district court in Texas issued an order requiring Hayek's employer to withhold child support from his earnings.

79. On September 28, 1999, respondent wrote to McCord offering to have Hayek pay \$50 a month in child support. The court had ordered \$470 per month withheld from Hayek's earnings. However, McCord did not respond and respondent did not follow-up with him until October 21, 1999, when he again wrote to McCord. Respondent did nothing further with the file.

80. In April of 2000, the Texas attorney general's office contacted Hayek to inform him that he was six months in arrears on child support. Hayek contacted respondent who sent several letters to the Texas attorney general's office. However, respondent then allowed the matter to languish for several months.

81. On August 21, 2000, respondent faxed Hayek a copy of the Texas court's order. Respondent advised Hayek to contest the matter, but respondent was not admitted in Texas and did nothing further with the case.

82. In January of 2001, Hayek contacted the Texas department of child support to learn that no action had been taken on his file. On February 1, 2001, Hayek wrote to respondent discharging him as his attorney.

83. Respondent's conduct violated Rules 1.3 and 1.4, MRPC.

L. Huebner Matter

84. On September 2, 1992, Huebner retained respondent to represent him in a liability claim arising out of an automobile accident. On January 14, 1993, respondent wrote to American Family Insurance, the insurer for the other driver, informing them of his representation of Huebner. Respondent did nothing further on the file.

85. On October 26, 1993, American Family wrote to respondent informing him that if they did not hear from him within 15 days, they would be closing their file.

86. On January 7, 1994, respondent wrote to American Family indicating that Huebner had in fact reached the no-fault threshold and that he was in the process of following-up with the physician for the purposes of a final evaluation. While

respondent did some subsequent work on the file, he did not obtain a report from the doctor.

87. On May 13, 1994, American Family again wrote to respondent concerning Huebner's claim. The insurer requested a copy of the final evaluation by the physician and a settlement demand. Respondent did nothing further with the file for nearly one year.

88. On April 10, 1995, respondent wrote to American Family. In his letter, he stated that he expected a final medical report shortly and as soon as that was received, he would be forwarding it to them. Respondent did not contact American Family again for more than a year.

89. On September 3, 1996, Huebner called respondent requesting information regarding a liability claim as well as a workers' compensation claim that he had discussed with respondent. On September 20, 1996, respondent finally made a settlement demand and the case was settled in December of 1996.

90. Respondent's conduct violated Rules 1.3 and 1.4, MRPC.

M. Larsien Matter

91. Barbara Larsien is a court reporter for Kirby A. Kennedy & Associates. In November and December of 1999, Larsien billed respondent for services provided. Despite several follow-up requests, respondent never paid the bills and never responded to inquiries from Larsien.

92. On January 11, 2001, Larsien sued respondent in conciliation court. Respondent failed to appear for the hearing. On January 12, 2001, the conciliation court issued its notice of a judgment against respondent in the amount of \$1,196.55.

93. On February 9, 2001, Kirby A. Kennedy & Associates mailed respondent a notice that there was an unsatisfied conciliation court judgment against him. Respondent was informed that if payment was not received by February 26, 2001, they

would be filing a complaint against him with the Director's Office. Respondent never replied to that letter and has not satisfied the outstanding judgment.

94. Respondent's conduct violated Rule 3.4(c), MRPC.

N. Non-Cooperation

95. Respondent failed to respond to letters and notices of investigation sent in connection with the complaints against him as follows:

Vomela Matter:

a. On October 25, 2000, the Director sent respondent a notice of investigation of the complaint of John Vomela. This notice requested a response to the complaint within 14 days. Respondent did not reply to that notice.

b. On November 29, 2000, the Director sent respondent a follow-up letter asking for an immediate response. Respondent failed to reply.

c. On December 13, 2000, the Director sent respondent another request for a response. In the December 13 letter, the Director reminded respondent that the failure to cooperate with the Director's investigation could form the basis for discipline. Respondent did not reply.

d. On January 8, 2001, the Director again wrote respondent, requesting a response not only to the complaint itself, but also addressing his failure to cooperate with the Director's investigation.

e. Respondent subsequently contacted the Director and agreed to meet with a representative of the Director's Office to discuss the Vomela complaint.

Bach Matter:

On February 8, 2000, the Director sent respondent a notice of investigation of the complaint of Robert Bach. The notice requested a response within 14 days. Respondent failed to respond.

f. On March 1, 2000, the Director sent respondent a follow-up request asking for an immediate response to the complaint.

g. On March 15, 2000, the Director wrote respondent, again requesting a response and informing him that his failure to cooperate with the

investigation could lead to disciplinary action. The March 25 letter was sent certified mail and received by respondent March 16.

h. On March 27, 2000, respondent responded to the complaint.

i. On December 14, 2000, the Director sent respondent a request for additional information in connection with the investigation. The Director requested a response within 14 days. Respondent failed to reply.

j. On January 4, 2001, the Director sent a follow-up request, reminding respondent that his failure to cooperate with the investigation could result in discipline.

k. On January 14, 2001, respondent spoke with the Director's Office and agreed to send a response by January 25, 2001. Respondent failed to do so.

Christopherson Matter:

a. On February 8, 2000, the Director sent respondent a notice of investigation of the complaint of Norman and Debra Christopherson. The notice requested a response within 14 days. Respondent did not reply within the required time.

b. On March 1, 2000, the Director sent respondent a follow-up request for information. Respondent did not reply.

c. On March 15, 2000, the Director wrote respondent, again requesting an immediate response to his earlier letters. The letter was sent certified mail and received by respondent March 16.

d. On March 28, 2000, the Director received a response from respondent.

Larsien Matter:

e. On March 21, 2001, the Director sent respondent notice of investigation of the complaint of Barbara Larsien. The notice requested a response within 14 days. Respondent failed to reply.

f. On June 19, 2001, the Director sent respondent a follow-up request for information. Respondent did not reply to that letter.

Schmidt Matter:

g. On July 23, 2001, the Director sent respondent a notice of investigation of the complaint of Karen Schmidt. The notice requested a response to the complaint within 14 days.

h. Respondent never provided a written response to the Schmidt complaint.

96. Respondent's failure to cooperate with the investigations of the Director's Office violated Rule 8.1, MRPC, and Rule 25, Rules on Lawyers Professional Responsibility.

WHEREFORE, the Director respectfully prays for an order of this Court 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: October 30, 2001.



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