

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary  
Action against KELLY P. CALLAHAN,  
an Attorney at Law of the  
State of Minnesota.  
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**PETITION FOR  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges the following unprofessional conduct warranting public discipline::

1. Kelly P. Callahan, hereinafter respondent, was admitted to practice law in Minnesota on October 5, 1979. Respondent last practiced law in Albert Lea, Minnesota. Respondent's history of discipline includes:

a. An admonition issued October 21, 1985, for failing to communicate with a client and for failure to timely respond to the district ethics committee investigator, in violation of DR 6-101(A)(3), Minnesota Code of Professional Responsibility (MCPR).

b. A two-year private probation beginning on August 11, 1986, for failing to diligently pursue a client matter, failing to communicate with the client, and for misrepresenting the status of the matter, in violation of DR 6-101(A)(3), MCPR (prior to September 1, 1985), and Rules 1.3, 1.4, and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

## FIRST COUNT

### Neglect of Personal Injury Matter

2. Respondent represented G.S. and M.S., both individually and as the parents of their son L.S., in a personal injury action arising out of an automobile accident on June 23, 1995. On behalf of his clients, respondent began a lawsuit in October 1996 against the driver of the vehicle that allegedly caused the accident and against the bar in which the driver had allegedly been drinking prior to the accident. The driver turned the claim over to his insurer, American Family Insurance Company, which arranged for attorneys Robert Birnbaum and Mary Leahy to represent the driver.

3. Birnbaum served several sets of discovery on respondent on August 22, 1997. Respondent failed to respond to the discovery. Birnbaum wrote to respondent on December 1, 1997, to ask for the discovery responses. When respondent still failed to respond, Leahy wrote to respondent on April 8, 1998, to renew the request. Respondent did not provide a response.

4. Leahy notified respondent by letter dated May 8, 1998, that if respondent did not respond to the discovery requests, Leahy would be forced to bring a motion to compel. On September 21, 1998, Leahy served respondent with a notice of motion and motion to compel the discovery responses, scheduled for October 20, 1998.

5. Respondent did not submit a response to the motion and failed to appear at the court hearing on October 20, 1998. The court entered an order that same day directing the plaintiffs to respond to all discovery requests within 10 days. The order provided that if plaintiffs failed to respond, the defendant could seek dismissal with prejudice and on the merits. The court also awarded the defendant driver \$400 in attorney's fees and his costs and disbursements in bringing the motion to compel.

6. Respondent's failure to respond to discovery continued. On December 10, 1998, Leahy served a notice of motion and motion to dismiss. The motion was scheduled for January 26, 1999.

7. Respondent appeared at the motion hearing. Respondent accepted responsibility for the failure to respond to discovery and acknowledged that although he had informed his clients that a hearing was taking place that day, he did not disclose the nature of the hearing to his clients. Respondent also acknowledged receiving the court's October 20, 1998, order. Respondent brought the discovery responses to court with him.

8. The court allowed respondent to serve the discovery responses on opposing counsel. The court also awarded additional attorney's fees to the defendant driver and submitted a complaint to the Director's Office.

9. Respondent orally settled the personal injury action with both defendants in July 1999. Because of respondent's additional delays in sending a *Schmidt-Clouthier* notice to M.S.'s auto insurer for her underinsured motorist claim, the family did not receive their liability settlement until January 2000, when respondent left his law firm. At the time respondent ceased practicing law, he had not resolved the underinsurance claim and had not paid the sanctions. Respondent's law firm resolved both of these issues after respondent left the firm.

10. Respondent's conduct in handling the personal injury matter violated Rules 1.3, 1.4, and 3.2, MRPC.

## SECOND COUNT

### Neglect of Personal Injury Matter

11. R.G. retained respondent in October 1992 to pursue R.G.'s injury claims arising out of an accident in which R.G. was a passenger of a bus that was struck by a car. Respondent began collecting medical records and communicated with various insurers regarding R.G.'s claims.

12. Respondent also assisted R.G. in filing a claim for Supplemental Security Income (SSI) benefits in January of 1993. R.G.'s SSI claim was denied in March 1993. Respondent did not submit a request for reconsideration on R.G.'s behalf.

13. Respondent worked diligently collecting medical records and facilitating no-fault payments on R.G.'s behalf through the beginning of 1994. By that time, R.G. had been diagnosed with a chronic pain syndrome arising out of the accident but with an unknown cause.

14. During 1994, respondent received several requests from insurance companies for updated information regarding R.G.'s medical condition. Respondent responded to those requests but took little other action on R.G.'s case. In September 1994 respondent assisted R.G. in submitting a new application for supplemental security income (SSI).

15. Respondent's file shows only sporadic activity regarding R.G.'s case in 1995. In July 1995 respondent responded to several inquiries from R.G.'s bank regarding an unpaid car loan and provided information to State Farm Insurance Company in August 1995 regarding payments on R.G.'s behalf by the Minnesota Department of Human Services. In September 1995 respondent received an invitation from the insurer for the driver of the vehicle that struck the bus to participate in a claims settlement day in November 1995. Respondent did not respond to the letter, did not appear at the settlement day and made no settlement offers on R.G.'s behalf. Respondent did attend the SSI appeal hearing with R.G. in October 1995.

16. Respondent received an adverse SSI decision in March 1996. Respondent failed to advise R.G. regarding his right to submit a further SSI appeal to the social security appeals council. In June 1996, respondent forwarded to State Farm Insurance Company a medical bill for payment. In August 1997 respondent wrote another letter to State Farm Insurance Company regarding their denial of payments for some replacement pads for medical equipment that R.G. was using. These were the only activities respondent undertook on R.G.'s behalf between 1996 and January 2000.

17. Respondent left his job at his law firm in January 2000. In March 2000, R.G. called the firm for an update on his case. The firm then discovered that the statute

of limitations for R.G.'s liability claims had passed without preparation or service of a summons and complaint.

18. Respondent's conduct violated Rules 1.1, 1.3 and 1.4, MRPC.

### THIRD COUNT

#### Failure to Cooperate

19. The Director mailed to respondent a notice of investigation of Judge William A. Johnson's complaint on February 19, 1999. Steven Schwab, the chair of the Tenth District Ethics Committee (DEC), wrote to respondent on March 15, 1999, to inform him that the investigation had been assigned to Dr. Wallace Alcorn, a public member of the Tenth DEC.

20. When respondent failed to respond to the complaint within the required two-week period, Alcorn wrote a second letter to respondent on April 2, 1999. Respondent failed to submit any response or otherwise contact the investigator. The Tenth DEC met in June 1999 and referred the matter back to the Director's Office for further action.

21. The Director wrote to respondent by certified mail on June 28 and July 16, 1999. On July 22, 1999, respondent contacted the Director's Office by telephone, stated that he had been on vacation when the Director's first letter arrived, and that he was preparing documents to send to the Director.

22. The Director received no documents or further communication from respondent. The Director sent respondent another request for the information by certified mail on August 18, 1999. Respondent did not respond. The Director issued charges of unprofessional conduct on September 2, 1999.

23. Respondent did appear for the pre-hearing meeting on September 28, 1999. Respondent generally admitted the allegations regarding the G.S. family personal injury matter, which respondent said had been verbally settled. Respondent stated he

had not neglected any other cases. The Director learned of respondent's neglect of the R.G. matter after respondent left his law firm in January 2000.

24. Respondent's conduct in failing to cooperate with the disciplinary investigation and failing to disclose his neglect of R.G.'s case violated Rules 8.1(a)(1), 8.1(a)(3) and 8.4(d), MRPC.

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: August 22, 2000.



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