

FILE NO. C8-99-969

STATE OF MINNESOTA

IN SUPREME COURT

-----  
In Re Petition for Disciplinary Action  
against GREGORY ALLEN CARPENTER,  
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 an April 21, 1999, petition for disciplinary action. On August 25, 1999, the day scheduled for the referee hearing on said petition, a stipulation was read into the record whereby respondent admitted the allegations of the petition, withdrew his answer to the petition for disciplinary action, and agreed to enter into a written stipulation with the Director's Office recommending a six-month suspension, commencing November 1, 1999. On September 16, 1999, a written stipulation embodying the terms read into the record was filed with the Court. Prior to the Court taking action on the stipulation, new allegations of professional misconduct came to the Director's attention. The Director has investigated these further allegations of unprofessional conduct against respondent.

The Director alleges that respondent has committed the following additional unprofessional conduct warranting public discipline:

## SECOND COUNT

### Kindja Matter

1. On or about February 20, 1997, Jozef Kindja retained respondent to represent him in proceedings before the Immigration and Naturalization Service (INS).

2. On December 3, 1997, an order of the Immigration Judge was entered denying Kindja's application for asylum and his application for withholding of deportation. Kindja's application for voluntary departure was granted until February 28, 1998. The December 3 order specifically noted that appeal was reserved by Kindja and that an appeal was due by January 2, 1998. Respondent agreed on the record to represent Kindja in the appeal.

3. Respondent did not file a notice of appeal until January 7, 1998.

4. On June 19, 1998, the Board of Immigration Appeals determined that the appeal was untimely in that the notice of appeal had not been served on or before January 2, 1998. The appeal was dismissed and the December 3, 1997, decision of the Immigration Judge was deemed final.

5. Thereafter, Kindja obtained new counsel who brought an emergency motion to reopen the proceedings. The motion cited, as its basis, respondent's failure to timely file the appeal.

6. An evidentiary hearing on the emergency motion was scheduled for November 12, 1999.

7. On September 28, 1999, respondent was personally served with a subpoena duces tecum requiring him to appear at the November 12, 1999, hearing and to bring with him his client files relating to Mr. Kindja.

8. Respondent failed to appear at the November 12, 1999, hearing.

9. Respondent's conduct in failing to file Kindja's appeal in a timely manner and in failing to produce his file and appear at hearing pursuant to subpoena violated

Rules 1.3, 1.16(d), 3.2, 3.4(a) and (d), and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

### THIRD COUNT

#### Proeun Matter

10. On September 20, 1999, Kean Proeun retained respondent to represent him in proceedings before the INS. Respondent was given a \$6,000 retainer for the representation. Respondent told Proeun and members of his family that this fee would cover the entire representation.

11. In October 1999 respondent filed an application for asylum and/or withholding of removal on behalf of Proeun. The hearing on the application was scheduled for November 16, 1999.

12. Respondent told Proeun and members of Proeun's family that he would not be practicing law after November 1, 1999, and that he would arrange for transfer of the file and the balance of the unearned retainer to substitute counsel in time for the November 16, 1999, hearing.

13. Respondent failed to transfer the Proeun file to substitute counsel in time for that counsel to prepare and attend the November 16, 1999, hearing. Consequently, Proeun appeared at the hearing unrepresented and the hearing was continued.

14. Respondent forwarded only \$1,000 of the \$6,000 retainer to substitute counsel.

15. Respondent had not provided Proeun with \$5,000 worth of services. Respondent knew at the time he accepted the retainer that, because of his imminent suspension, his involvement in the Proeun matter would be limited.

16. Substitute counsel had not previously agreed with either Proeun or respondent to handle the balance of the case for a \$1,000 fee and told the Proeun family that the fee would be insufficient for him to proceed.

17. Respondent's failure to return the unearned portion of the \$6,000 retainer constitutes misappropriation.

18. At a meeting with Proeun's family in October 1999, respondent asked Proeun's brother, Alexander Proeun, for his passport. Alexander Proeun gave respondent his passport. Respondent has failed to return the passport to Alexander Proeun.

19. Respondent's conduct in misappropriating a portion of the \$6,000 retainer, failing to fully refund the unearned retainer, failing to return Alexander Proeun's passport, and failing to timely transfer his file to substitute counsel violated Rules 1.3, 1.15(a) and (b), 1.16(d), and 8.4(c), MRPC.

#### FOURTH COUNT

##### Villarreal Matter

20. In 1998 Robin and Geraldo Villarreal retained respondent to represent Geraldo Villarreal in proceedings before the INS.

21. By October 1999, the Villarreals had paid respondent over \$3,000 in requested attorneys fees.

22. Respondent failed to respond to the Villareal's multiple requests for information and failed to diligently pursue the proceedings before the INS.

23. Respondent's conduct in failing to act with reasonable diligence and promptness in the Villarreal matter and failing to adequately communicate with the Villarreals violated Rules 1.3 and 1.4, MRPC.

##### Additional Non-Cooperation

24. On November 18, 1999, the Director mailed a Notice of Investigation pertaining to the Jozef Kindja complaint to respondent. That Notice requested that respondent provide a written response to the complaint to the district ethics committee investigator within 14 days.

25. On November 22, 1999, in connection with the Director's motion to stay consideration of the September 16, 1999, stipulation for discipline, the Director wrote to respondent asking him for a response to both the motion to stay consideration of the stipulation and to the allegations in the Proeun matter.

26. On November 24, 1999, the district ethics committee investigator in the Kindja matter wrote to respondent asking that he send his complete file regarding Jozef Kindja within the next ten days.

27. On December 3, 1999, the Director mailed a Notice of Investigation in the matter of the Proeun complaint to respondent at his last known address. That Notice requested that respondent provide a written response within ten days of the notice.

28. On December 6, 1999, the Director sent an e-mail request to respondent asking him to contact the Director's Office immediately regarding the Proeun matter.

29. On December 13, 1999, the Director sent an e-mail message to respondent requesting that he contact the Director's Office immediately regarding the Kindja and Proeun matters.

30. On December 15, 1999, the Director mailed a Notice of Investigation to respondent regarding the complaint of Robin Villarreal against respondent. The Notice requested that respondent provide a response to the Director within fourteen days.

31. Respondent has not responded in any fashion to any of the above requests for information.

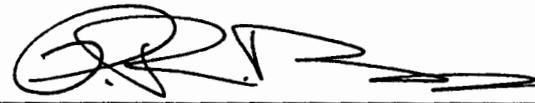
32. Respondent's failure to respond to the Director's requests for information in the above matters violated Rule 8.1(a)(3), MRPC, and Rule 25, RLPR.

WHEREFORE, the Director respectfully prays for an order of this Court disbarring respondent, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: Jan 4, 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

  
PATRICK R. BURNS  
SENIOR ASSISTANT DIRECTOR  
Attorney No. 134004

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

Dated: 1-6, 2000.

  
JOEL THEISEN  
PANEL CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD