FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against KEVIN P. CARROLL, 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 (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 30, 1981. Respondent currently does not practice law and is employed by the City of Carver as the City Administrator.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's history of prior discipline is as follows:

1. Respondent received an admonition on July 19, 1988, for failing to place funds in an interest bearing trust account in violation of Rule 1.15(a), Minnesota Rules of Professional Conduct (MRPC).

2. Respondent received an admonition on April 23, 1997, for neglecting a legal matter entrusted to him and failing to return multiple calls from his clients in violation of Rules 1.3 and 1.4, MRPC.

FIRST COUNT

1. In August of 1994 Cynthia Henry hired respondent for representation in a marriage dissolution. In late November or early December 1995, respondent and opposing counsel reached an agreement which entitled Henry to receive the parties' income tax refunds for the years 1993, 1994 and 1995. This agreement was later memorialized in a Marital Termination Agreement which was executed by the parties in late December 1995 and filed with the court.

2. On December 4, 1995, respondent and Henry entered into an agreement detailing how the 1994 tax refunds had been divided and how the 1993 and 1995 tax refunds would be divided between Henry and respondent in order to pay Henry's outstanding legal fees (Exhibit 1). The agreement acknowledged that the 1994 state and federal tax refunds had already been deposited into respondent's trust account (Exhibit 1, page 1). The agreement also recited that after partial payments had been made to respondent and Henry from the 1994 refunds, Henry's outstanding fees on December 4, 1995, were $7,120.

3. The agreement further provided for specific amounts or percentages to be paid to respondent from the remainder of the 1994 refund and the 1993 and 1995 refunds which had not yet been received. *See* Exhibit 1, paragraphs 4b, c, and d. The agreement also provided that once the payments received by respondent reduced Henry's bill to $1,000, the remaining $1,000 would be "written off." *See* Exhibit 1, paragraph 5.

4. Henry's divorce judgment and decree also required Henry's ex-husband to pay attorney fees. The December 4, 1995, agreement between respondent and Henry did not state whether the attorney fees to be paid by Henry's ex-husband were to be applied to Henry's bill (Exhibit 1).

5. On or about April 11, 1996, respondent received a $700 check from Henry's ex-husband in partial payment of the attorney fees (Exhibit 2). Respondent wrote Henry and told her he would apply the $700 towards her outstanding fees.

6. Between December 4, 1995, and April 13, 1996, respondent disbursed to himself the following amounts from Henry's tax refunds and the $700 attorney fee payment:

Date	Description (Source of Funds)	Amount	Total Paid to Respondent
12/4/95	Remainder of 1994 State and Federal Refund[1]	$1,000.00	$1,000.00
2/27/95	1993 Federal Refund	1,819.72	2,819.72
3/15/96	1993 State Refund	780.28	3,600.00
4/11/96	Attorney fees check ($700) from Henry's ex-husband	700.00	4,300.00
4/22/96	1995 Federal Refund	1,855.50	6,155.50
5/13/96	1995 State Refund	746.50	6,902.00

These disbursements reflect that respondent paid himself a total of $6,902 from the tax refunds and attorney fees check. However, the agreement between respondent and Henry only authorized respondent to receive $6,120.[2]. Therefore, respondent improperly retained $782 of Henry's funds from the 1995 tax refund checks.

7. In May, July, August, September and October 1996, respondent received five additional checks totaling $1,200 from opposing counsel in partial payment of Henry's ex-husband's attorney fees obligation under the decree. Respondent did not inform Henry of the receipt of these checks, did not disburse any of these funds to her, and did not provide Henry with an accounting of the funds. Respondent did not deposit these funds into his trust account and instead used them for his own benefit. Respondent's retention and use of these five checks constitutes an additional $1,200 improperly retained by respondent.[3]

8. Beginning in July 1996 and until she filed an ethics complaint in October 1998, Henry and a lay advocate repeatedly asked respondent for accountings of the tax

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[1] *See* Exhibit 1, paragraph 4(b).

[2] The agreement provided that $1,000 would be deducted from Henry's bill of $7,120 once the total payments reached $6,120. *See* Exhibit 1, paragraph 5.

[3] The total amount respondent improperly retained and/or overpaid himself under the agreement is $1,982 representing the $782 improperly retained from the 1995 tax refunds, plus the entire $1,200 of attorney fee payments received from Henry's ex-husband after April 1996.

refunds and attorney fees. Respondent did not provide the accounting and did not refund any amounts to Henry.

9. Respondent's conduct violated Rules 1.4, 1.15(b)(1), (2) and (4), and 8.4(c) and (d), MRPC.

SECOND COUNT

Becker Matter

10. On or about February 20, 1992, Janet Becker retained respondent to represent her in a claim for injuries that she sustained in a fall outside of a medical clinic on February 4, 1992.

11. Respondent did not commence suit against the defendants until February 4, 1998, nor did he make any settlement demands upon the defendants during the intervening six years. During this period respondent misrepresented to Becker that her case had been served or filed.

12. On February 4, 1998, respondent served the defendants. Respondent did not, however, prepare affidavits of service evidencing his service of the lawsuit upon the defendants. After serving the defendants, respondent filed the lawsuit in Dakota County on February 4, 1998.

13. After February 4, 1998, respondent took no further action on the lawsuit. Respondent failed to respond to discovery from the defendants' counsel and failed to forward the discovery to Becker. In fact, respondent failed to even open some of the mail from the defendants' counsel. Respondent similarly failed to respond to telephone and letter inquiries from Becker and her husband concerning the case.

14. On March 3, 1998, the court administrator assessed respondent a $50 fee for failing to file a certificate of representation. The assessment notice sent to respondent also stated that continued failure to file the certificate would result in dismissal of the case (Exhibit 3). Respondent did not file the certificate of representation, nor did he pay the $50 assessment.

15. On or about April 6, 1998, the court dismissed Becker's lawsuit without prejudice for failure to file the certificate of representation. By this time, the statute of limitations had expired on Becker's injury claims. Respondent does not have legal malpractice insurance coverage for any claims relating to the dismissal of Becker's injury claims.

16. After being unable to communicate with respondent and discovering from the court administrator that her case had been dismissed, Becker retained new counsel in June 1998. Respondent failed to respond to requests from Becker's new counsel to forward Becker's client file. Respondent did not forward the file to Becker's counsel until late October 1998.

Mann Matter

17. On July 11, 1997, Stephen Mann hired respondent for representation in a marriage dissolution. Mann paid a retainer of $500.

18. On July 18, 1997, respondent represented Mann at a hearing for temporary relief in Dakota County. On August 15, 1997, the court issued the temporary relief order. Respondent forwarded the temporary relief order to Mann on August 26, 1997. After August 26, respondent failed to perform any further services on the Mann divorce and failed to respond to Mann's inquiries concerning the matter.

19. On November 18, 1997, Mann located respondent in the Dakota County Courthouse in Hastings. Respondent was at the courthouse on a matter unrelated to Mann's divorce. Mann confronted respondent about his lack of action and communication concerning Mann's divorce. Respondent agreed to contact Mann to set up a meeting. Mann never heard from respondent again.

20. On December 3, 1997, Mann sent respondent a certified letter terminating his services and requesting his client file. Respondent did not respond, nor did he inform Mann of a pre-hearing or settlement conference in Mann's divorce which had been scheduled by the court for December 18, 1999.

21. On December 17, 1997, complainant sent another certified letter requesting his file. Respondent failed to respond to this request.

22. On December 18, 1997, neither respondent or Mann appeared for the pre-hearing or settlement conference which had been scheduled by the court.

23. In late December 1997 Mann filed an ethics complaint against respondent. In January 1998 Mann obtained a default judgment against respondent for the $500 retainer. The judgment was not paid until respondent refinanced his home in April or May 1998 and the judgment was discovered by the title company. Mann's client file was not returned until July 20, 1998.

Falkenstein Matter

24. On April 14, 1997, Allan Falkenstein hired respondent for representation in a marriage dissolution. Falkenstein paid a retainer of $750.

25. On June 13, 1997, respondent drafted a summons and complaint and mailed copies to Falkenstein. Because respondent used an inaccurate address, Falkenstein did not receive the summons and complaint.

26. On July 17, 1997, Falkenstein wrote to respondent indicating he had not heard from respondent since April 1997. On July 17, 1997, respondent served the summons and petition on Falkenstein's wife.

27. On July 23, 1997, Mrs. Falkenstein's counsel returned the admission of service and also sent a letter to respondent requesting certain financial information. Respondent did not forward the request for information to Falkenstein until August 26, 1997, and thereafter failed to communicate with Falkenstein.

28. Falkenstein returned the requested financial information to respondent on October 4, 1997. Respondent failed, however, to ever forward this financial information to opposing counsel.

29. On October 26, 1997, Falkenstein wrote to respondent terminating his representation and requesting a refund of his retainer. Falkenstein again wrote to respondent on November 7, 1997, requesting a refund. Respondent did not respond.

30. In March 1998 Falkenstein retained new counsel who wrote to respondent requesting that respondent execute a substitution of counsel and forward Falkenstein's file. Respondent did not respond or forward the file. During March, April and May, Falkenstein and his new counsel called respondent and left messages requesting respondent to sign the substitution of counsel and forward Falkenstein's file. Respondent did not respond.

31. In June 1998 Falkenstein filed an ethics complaint against respondent alleging his failure to sign the substitution of counsel and failure to forward Falkenstein's client file. The Falkenstein ethics complaint was forwarded to respondent's counsel for response.

32. On July 14, 1998, respondent refunded Falkenstein's $750 retainer and forwarded Falkenstein's client file. Respondent did not, however, return the executed substitution of counsel until October 21, 1998.

33. Respondent's conduct in the Mann, Becker and Falkenstein cases constitutes a pattern of neglect, non-communication and incompetence in violation of Rules 1.1, 1.3 and 1.4, MRPC.

34. Respondent's misrepresentations to Becker about the status of her case violated Rules 4.1 and 8.4(c), MRPC.

COUNT THREE

Failure to File Tax Returns

35. Respondent failed to file or timely file federal employer withholding returns for his law office as follows:

Period	Date Filed	Amount Due
March 1995	8/9/96	$ 953.96
March 1996	8/9/96	44.34
December 1996	7/24/98	1,068.72
March 1997	Not filed	unknown
June 1997	7/24/98	3,795.65
September 1997	Not filed	unknown
December 1997	Not filed	unknown

36. Respondent also failed to file state quarterly employer withholding returns for the quarters December 1996 through December 1997.

37. Respondent failed to file, or timely file, federal and state corporate returns for respondent's law office as follows:

Period	Date Filed	Amount Due
1994 - federal	12/18/96	$ 345.34
1995 - federal	10/11/96	0.00
1996 - federal	Not filed	unknown
1997 - federal	Not filed	unknown
1995 - state	9/26/96	0.00
1996 - state	Not filed	unknown
1997 - state	Not filed	unknown

38. Respondent's conduct in failing to timely file state and federal withholding and corporate tax returns for his law office violated Rule 8.4(d), MRPC.

FOURTH COUNT

Non-Cooperation

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

40. **Mann Complaint:**

(a) December 24, 1997, notice of investigation;

(b) January 5 and 24, 1998, letters from the district investigator;

(c) a note left on respondent's office door by the district investigator on February 9, 1998;

(d) June 23, 1998, certified letter from the Director's Office; and

(e) July 8 and August 4, 1998, letters to respondent's counsel.

41. After receiving the June 23 letter, respondent retained counsel who contacted the Director's Office on July 1, 1998. Respondent's counsel provided a copy of the Mann file to the Director's Office on July 20, 1998, and a written response to the Mann complaint on October 23, 1998.

42. **Falkenstein Complaint:**

(a) June 9, 1998, notice of investigation;

(b) June 23, 1998, certified letter; and

(c) August 4, 1998, letter.

43. After receiving the June 23 letter, respondent retained counsel who contacted the Director's Office on July 1, 1998. Respondent's counsel provided the Director with a copy of the Falkenstein file on July 17, 1998, and a written response to the ethics complaint on October 23, 1998.

44. **Becker Complaint:**

(a) February 11, 1998, notice of investigation;

(b) February 13, 1998, letter from the Director;

(c) February 17 and March 16, 1998, letters from the district investigator;

(d) March 16 and May 14, 1998, phone messages from the district investigator;

(e) June 23, 1998, certified letter from the Director; and

(f) August 4, 1998 letter.

45. After receiving the June 23 letter, respondent retained counsel who contacted the Director's Office on July 1, 1998. Respondent's counsel provided a copy of the Becker file to the Director on July 20, 1998, a partial response to the Becker complaint on August 27, 1998, and a completed response on October 23, 1998.

46. **Henry Complaint:**

(a) October 19, 1998, letter requesting a written response and an accounting of the Henry funds; and

(b) an October 30, 1998, request to have respondent sign an authorization giving the Director access to bank records for respondent's trust account.

47. Respondent provided the signed bank authorization in December 1998, but claimed he was unable to provide an accounting for the Henry funds because he

could not locate his trust account records for 1995 and 1996. Consequently, the Director has had to incur $180 in costs to obtain records of 1995 and 1996 trust account transactions from respondent's bank.

48. Respondent's conduct in failing to cooperate with the Director's investigations of the Mann, Becker, Falkenstein and Henry complaints constitutes a pattern of non-cooperation in violation of Rule 8.1(a)(3), MRPC, and Rule 25, RLPR.

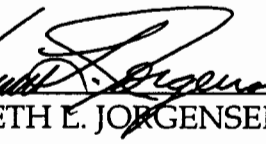
49. Respondent's conduct in failing to maintain and preserve his trust account records violated Rule 1.15(g), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent from the practice of law, 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: February 17, 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



KENNETH E. JORGENSEN
FIRST ASSISTANT DIRECTOR
Attorney No. 159463