

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against CHARLES CLAYTON,
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 July 24, 1981. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

1. On January 14, 1987, respondent received an admonition for his delay in filing a confession of judgment and obtaining the judge's order, and his failure to communicate with his client in violation of DR 6-101(A)(3), Minnesota Code of Professional Responsibility.

2. On June 17, 1991, respondent received an admonition for failing to maintain a separate account for client funds in violation of Rule 1.15(a), Minnesota Rules of Professional Conduct (MRPC), and Lawyers Professional Responsibility Board Amended Opinion 9.

3. On February 17, 1993, respondent received an admonition for representing a client on a contingency basis without a written retainer agreement in violation of Rule 1.5(c), MRPC, for failing to keep his client advised of the status of his case in violation of Rule 1.4(a), MRPC, and for failing to return the client's file within a reasonable time after termination of representation in violation of Rule 1.16(d), MRPC.

4. On July 2, 1997, respondent received an admonition for a conflict of interest in violation of Rule 1.7(a) and (b), MRPC, and fraud and breach of fiduciary duty in violation of Rule 8.4(c), MRPC.

FIRST COUNT

1. In September of 1990, Jesse Diaz began investing through a securities broker named Michael Wheelock. The brokerage firm of Hayne, Miller & Farni, Inc. employed Wheelock. In his application for a securities license, Wheelock had failed to disclose several customer complaints of fraudulent activities and as a result of that failure, Wheelock later consented to the revocation of his securities license.

2. In 1992, Diaz hired respondent to represent him in a claim against Hayne, Miller regarding securities purchased through Wheelock. Diaz and respondent agreed that respondent would represent Diaz on a contingent fee basis, but respondent failed to put the fee agreement in writing.

3. Between 1992 and 1995, respondent continued to represent Diaz and the parties discussed a possible settlement of Diaz's case. On May 18, 1995, respondent wrote to Wes Hayne (of Hayne, Miller) offering to settle the case for \$40,000. They did not settle the case and on June 2, 1995, respondent prepared a summons and complaint on Diaz's behalf against Hayne, Miller & Farni, Inc.

4. During this time, the FBI was investigating the Hayne, Miller brokerage firm and eventually closed it.

5. In August of 1995, respondent had Wes Hayne personally served with the summons and complaint. On August 30, 1995, Hayne wrote to respondent indicating

he had not been an employee of Hayne, Miller since July of 1994 and suggesting that he serve Kevin Miller.

6. On November 10, 1995, respondent wrote to Diaz, falsely stating to him that he had obtained a final judgment against Hayne, Miller. Diaz called respondent on several occasions after that, at which time respondent repeated the misrepresentation.

7. On December 31, 1996, respondent filed an affidavit of default. On February 13, 1997, the court issued a judgment against Hayne, Miller for \$93,819.33. The judgment was entered on March 10, 1997. By this time Hayne, Miller was no longer in operation and could not be pursued for the judgment.

8. Diaz then instructed respondent to file suit against broker Michael Wheelock. Respondent did not believe that Wheelock had any assets, but told Diaz that he would commence an action against him.

9. Diaz later contacted respondent to see if he had commenced the litigation against Wheelock. Rather than acknowledging that he had not, or addressing his concerns about being able to recover from Wheelock, respondent misrepresented to Diaz that he had commenced suit.

10. When Diaz later contacted respondent about the status of the litigation he believed had been commenced, respondent falsely told Diaz that he had taken Wheelock's deposition.

11. As Diaz continued to contact respondent about the Wheelock "litigation," respondent continued to misrepresent the facts of the matter. Respondent later told Diaz that the court had entered judgment against Wheelock, when no such judgment had been obtained.

12. Diaz repeatedly called respondent to get information about his efforts to collect on the Hayne, Miller and Wheelock judgments. Sometimes Diaz called respondent as many as 10 to 15 times during a month. Respondent rarely returned these phone calls.

13. In June of 1998, Diaz hired another attorney, Thomas Monahan, to investigate the progress of these lawsuits. On June 18, 1998, Monahan wrote to respondent, requesting information on the status of the Hayne, Miller case and the Wheelock case. Respondent did not reply to this letter.

14. On July 20, 1998, Monahan again wrote to respondent, requesting an immediate response to the inquiry of June 18, 1998. Monahan explained that Diaz was "very anxious" to resolve the matter. Respondent did not reply.

15. After respondent failed to answer repeated requests by Diaz and his new attorney regarding the original inquiry, Diaz filed an ethics complaint with the Director's Office. In response to the notice of investigation issued by the Director's Office, respondent acknowledged that he had not commenced an action, nor obtained a judgment, against Wheelock as he had told Diaz.

16. Respondent's conduct in representing Diaz on a contingent fee basis without a written retainer agreement was a violation of Rule 1.5(c), MRPC.

17. Respondent's conduct in failing to diligently pursue the Diaz representation was a violation of Rule 1.3, MRPC.

18. Respondent's conduct in failing to respond to Diaz's reasonable requests for information regarding the representations was a violation of Rule 1.4, MRPC.

19. Respondent's conduct in failing to commence a lawsuit as instructed by his client was a violation of Rule 1.2, MRPC.

20. Respondent's conduct in making misrepresentations about the status of the Wheelock matter to Diaz is a violation of Rule 8.4(c), 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: May 16, 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



CRAIG D. KLAUSING
SENIOR ASSISTANT DIRECTOR
Attorney No. 202873