

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against CORTLEN G. CLOUTIER,
an Attorney at Law of the
State of Minnesota.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 4, 1957. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On August 14, 1991, respondent received an admonition for failing to pursue a client's child support increase matter, failing to take action to terminate an escrow arrangement and failing to adequately communicate with his client, in violation of Rules 1.3 and 1.4, Minnesota Rules of Professional Conduct (MRPC).

B. On July 23, 1993, respondent received an admonition for failing to take action on a client's claim and refusing to release the client's file, in violation of Rules 1.3 and 1.16(d), MRPC.

C. On October 14, 1993, respondent received an admonition for engaging in an intimate personal relationship with a vulnerable client, in violation of Rule 1.7(b), MRPC.

D. On July 26, 1994, respondent received an admonition for failing to have in place reasonable law firm policies and procedures to ensure that non-lawyer assistants' conduct complied with the MRPC, failing to adequately supervise his legal assistant and failing to ensure that proper trust account procedures were followed, in violation of Rules 1.15 and 5.3(a) and (b), MRPC.

E. On March 26, 1997, respondent entered into a stipulation for probation resulting from his failure to timely file certain state and federal tax returns for the period of 1991 through 1995. The stipulation required, among other things, that respondent timely file his tax returns, make arrangements to pay prior tax obligations and penalties, and cooperate fully with the Director's Office.

FIRST COUNT

A. Failure to Timely File State Individual Income Tax Returns

1. Respondent had sufficient gross income in 1996, 1997, 1998 and 1999 to require him to file state individual income tax returns. Any and all extensions respondent received to file the 1996, 1997 and 1998 returns had expired. Respondent failed to file his 1996 state income tax return until January 1, 1998. Respondent failed to file his 1997 state individual income tax return until April 30, 1999. Respondent failed to file his 1998 state individual income tax return until June 27, 2000. Respondent failed to file his 1999 state individual income tax return until June 14, 2001.

2. Respondent's conduct in failing to file and timely file state tax returns violated Rule 8.4(d), MRPC.

SECOND COUNT

B. Failure to File Federal Individual Income Tax Returns

3. Respondent had sufficient gross income in 1997, 1998 and 1999 to require him to file federal individual income tax returns. Any and all extensions respondent received to file the returns had expired. Respondent failed to file his 1997 federal income tax returns until April 30, 1999. Respondent's tax liability for 1997 was \$3,492.48

as of January 30, 2002. Respondent failed to file his 1998 federal income tax returns until June 27, 2000. Respondent's 1998 tax liability was \$3,147.49 as of January 30, 2002. Respondent failed to file his 1999 federal income tax returns until June 15, 2001. Respondent received an extension to file his 2000 federal income tax return until August 15, 2001. Respondent failed to file his 2000 federal income tax return until October 17, 2001.

4. Respondent's conduct in failing to file and timely file federal tax returns violated Rule 8.4(d), MRPC.

THIRD COUNT

C. Failure to Pay Federal and State Employee Withholding Tax

5. In 1996, 1997, 1998, 1999 and 2000 respondent had employee(s) in connection with his law practice. Although respondent withheld state taxes from his employees' paychecks, respondent failed to timely pay state quarterly employee withholding taxes as follows:

<u>Quarter</u>	<u>Amount Due at Time of Filing</u>	<u>Amount Due as of February 16, 2002</u>
June 1996	\$2,147.96	\$2,181.16
September 1996	3,327.00	6,735.67

6. Although respondent withheld federal taxes from his employees' paychecks, respondent failed to timely pay federal quarterly employee withholding taxes as follows:

<u>Quarter</u>	<u>Amount Due at Time of Filing</u>	<u>Amount Due as of January 30, 2002</u>
March 1996	\$16,984.46	\$26,393.41
June 1996	21,063.92	43,671.75
September 1996	20,354.18	36,671.95
December 1996	20,155.95	1,260.13
March 1997	8,956.49	533.80
June 1997	6,605.44	6.75
December 1997	7,744.81	10.86

7. Respondent's failure to timely file federal and state quarterly employee withholding returns and failure to timely pay federal and state employee withholding taxes violated Rule 8.4(d), MRPC.

FOURTH COUNT

D. Non-Cooperation Matter

8. On March 26, 1997, respondent entered into a stipulation for private probation pursuant to Rule 8(d)(3), RLPR. A copy of the March 26, 1997, stipulation is attached as Exhibit 1. The terms of the probation required, among other things, that respondent timely file all required state and federal tax returns, timely pay the taxes due thereon, and fully cooperate with the Director's efforts to monitor respondent's compliance with the tax filing and payment requirements.

9. Respondent failed to comply with the terms of the stipulation by failing to fully cooperate with the Director's efforts as follows:

<u>Date of Request</u>	<u>Information Sought</u>	<u>Response Received</u>
April 1, 1997, letter May 6, 1997, letter	Respondent's 1996 individual income tax returns, inter alia.	On May 14, 1997, respondent forwarded copies of his 1996 Minnesota individual income tax return which was dated January 16, 1997. Respondent did not file his 1996 state return until January 1, 1998.
April 1, 1997, letter July 16, 1997, letter August 27, 1997, letter	Proof of respondent's payment agreements w/IRS & DOR and proof of quarterly estimated tax payments.	September 3, 1997. Respondent advised he had been unable to negotiate w/IRS & DOR since at least January 1997 because his law firm's bankruptcy filing had been converted to a Chapter 7.
Stipulation January 15, 1998 March 6, 1998	Proof of quarterly employer withholding payments for 2 nd and 3 rd quarters of 1997.	March 10, 1998

Stipulation April 20, 1998 May 13, 1998	Proof of quarterly estimated tax payments for the 1 st quarter of 1998.	June 8, 1998
Stipulation September 28, 1998 November 5, 1998	Proof of filing and payment of quarterly and annual tax and execution of authorizations for the release of information to Minnesota DOR & IRS.	November 10, 1998
December 14, 1998 January 14, 1999	Reason why respondent failed to file his 1996 and 1997 state individual income tax returns and his 1997 federal individual income tax return. Respondent also was asked to state why his December 1997 quarterly employee withholding tax was not timely filed.	

10. Respondent's conduct in failing to cooperate with the Director's reasonable requests for information relating to respondent's compliance with the terms of his probation violated Rules 8.1(a)(3) and 8.4(d), MRPC.

FIFTH COUNT

E. Julie Pourrier Matter

11. Respondent failed to cooperate with the Director's investigation. Pourrier filed an ethics complaint against respondent on January 28, 2000. The Director's notice of investigation was sent to respondent on February 4, 2000. No response was received. The Director again requested a response to the complaint by letter dated July 19, 2000.

12. By letter dated August 1, 2000, respondent acknowledged representing Pourrier on two separate workers' compensation matters and indicated he would retrieve his file from storage. Respondent indicated he would provide a response to the complaint "by not later than August 11, 2000."

13. Despite his assurances, respondent did not respond to the January 18, 2000, notice of investigation until March 30, 2001.

14. Respondent's conduct in the Julie Pourrier matter violated Rule 8.1(a)(3), MRPC, and Rule 25, Rules on Lawyers Professional Responsibility.

SIXTH COUNT

F. Rodney Garayt Matter

15. Rodney Garayt and his then-wife, Julie Young-Garayt, retained respondent to represent them in a voluntary bankruptcy proceeding. Ms. Young-Garayt signed the written retainer agreement on October 21, 1998. Mr. Garayt signed the retainer agreement on November 18, 1998. Under the terms of the retainer agreement, respondent was paid \$800 in fees and \$175 in filing fees to bring a joint bankruptcy petition.

16. At the time the retainer agreement was signed, the parties were involved in dissolution proceedings, and respondent was representing Ms. Young-Garayt in the dissolution.

17. Mr. Garayt was separately represented for the dissolution proceeding. The dissolution trial originally was scheduled for hearing in December 1998 but twice was postponed.

18. The dissolution trial finally was rescheduled for February 5, 1999. Respondent appeared with Ms. Young-Garayt, and Mr. Garayt appeared with his attorney. The parties engaged in extensive negotiations throughout the day on February 5, 1999, and stipulated to the facts and issues. The stipulation, with handwritten changes made thereon and with additions and other changes, was read into the record and was approved by the court.

19. The district court then issued a final continuance order dated February 5, 1999, in which it ordered that findings of fact, conclusions of law and judgment and decree must be submitted to the court on or before March 5, 1999.

20. On February 11, 1999, Mr. Garayt's attorney sent respondent findings of fact, conclusions of law, order for judgment, and judgment and decree for his input regarding any changes that were required prior to submission to the court.

21. After receiving no response, Mr. Garayt's attorney sent a follow-up letter to respondent on February 22, 1999, which again requested his input and reminded respondent of the court's order requiring submission of the final documents not later than March 5, 1999. In her letter, Mr. Garayt's attorney also indicated that if she did not hear from respondent by Friday, February 26, 1999, she would assume respondent had no objection to the proposed document and would mail the same to the court.

22. On March 3, 1999, Mr. Garayt's attorney submitted the findings of fact, conclusions of law, order for judgment, and judgment and decree to the court. She noted that the documents were provided to respondent for his review but that no response was received.

23. The district court's order dissolving the marriage and determining custody, visitation, and property issues was filed on March 5, 1999.

24. Respondent failed to diligently pursue the bankruptcy matter and failed to file the joint bankruptcy before the court's order was issued and the marriage was dissolved. Respondent also failed to keep Garayt adequately informed as to the status of the bankruptcy proceeding.

25. When Mr. Garayt later inquired about the status of the bankruptcy matter, he was told that respondent could no longer file a joint petition in light of the finalized dissolution. He further was told that he had to pay respondent an additional \$400 in fees and \$175 in filing fees before respondent would pursue a bankruptcy petition on his behalf.

26. On or about August 7, 2000, respondent filed a bankruptcy petition on behalf of Ms. Young-Garayt. The bankruptcy court issued an order discharging her debts on November 7, 2000.

27. Respondent's conduct in the Garayt matter violated Rules 1.3 and 1.4, MRPC.

SEVENTH COUNT

G. Anthony Brown Matter

28. Respondent represented Ms. Odel Thompson in the preparation of her will, which was signed May 4, 1999. Ms. Thompson died on December 23, 1999. Anthony Brown is Ms. Thompson's grandson and was named in her will to act as personal representative of the estate.

29. Before Ms. Thompson's death, she was named a beneficiary of her sister's will. Ms. Thompson's sister, Mrs. Onita Theus, lived in California and died on July 15, 1998. An attorney in California, Matthew Long, administered the California estate. Ms. Thompson was entitled to approximately \$30,000 from her sister's estate.

30. On January 10, 2000, the Hennepin County economic assistance department (the county) filed a demand for notice in the Hennepin County probate court. The demand for notice indicated that the county had a financial or property interest in Ms. Thompson's estate, and demanded notice of all orders and filing pertaining to the estate.

31. By letter dated February 16, 2000, attorney Long requested that respondent provide him with a copy of Ms. Thompson's will. Because no response was received, he sent respondent a second letter requesting that information on March 9, 2000.

32. On March 21, 2000, respondent wrote to attorney Long and indicated that a copy of the will was on deposit with the Hennepin County clerk's office.

33. On November 10, 2000, respondent's office sent a letter to attorney Long in response to his inquiries. The letter stated, in part, that:

We will be petitioning the Probate Court in Hennepin County, Minnesota, for formal appointment of Anthony James Brown as personal representative of Odel Thompson's Estate, pursuant to her Last Will and Testament. A signed copy of the that Will is enclosed for your file.

We will send you a copy of the Order Appointing the Personal Representative as soon as that is issued by the Court.

34. Respondent failed to diligently pursue the appointment of Mr. Brown as personal representative of the estate and failed to diligently facilitate the estate's receipt of money from the California estate of Ms. Thompson's sister. Respondent also failed to keep Mr. Brown adequately informed as to the status of the probate matter.

35. On November 14, 2000, attorney Long sent a letter to respondent's firm asking for the order appointing the personal representative by November 30, 2000, because he was required to file it with the court as soon as possible. Attorney Long further stated that upon receipt of the document, he should be able to forward the distribution to Ms. Thompson's estate to respondent's office.

36. On December 6, 2000, attorney Long sent a letter to respondent's firm indicating that the petition for the final distribution of the California estate was approved by the court and that he anticipated making a final distribution the following week. However, he noted that, "Before this can occur, I will need a copy of the court order showing the appointment of the personal representative for the Thompson estate."

37. On January 3, 2001, attorney Long sent respondent a copy of the cashier's check for \$30,288.35 payable to the estate of Odel Thompson and again requested documents appointing the administrator of Ms. Thompson's estate. Respondent did not respond.

38. On February 5, 2001, attorney Long again wrote to respondent's firm requesting documents relating to Ms. Thompson's estate and an update on the status of the proceedings. Respondent did not respond.

39. On February 21, 2001, attorney Long sent another letter to respondent's firm and indicated that if he did not receive something regarding Ms. Thompson's estate, he would deposit the money into court in California. He requested a response within 10 days. Respondent respond to this letter on March 7, 2001.

40. In his March 7, 2001, letter to attorney Long, respondent indicated that:

We are being delayed in getting the Court to appoint Odel Thompson's grandson Anthony James Brown personal representative by a medical assistance lien.

We will send you a copy of the Order Appointing the Personal Representative as soon as that is issued by the Court.

41. Because the county filed a demand for notice, respondent was required to give advance notice to the county of any attempt to obtain an appointment of a personal representative. Minn. Stat. § 524.1-401. Upon receipt of the notice, and in the absence of an agreement with the county regarding the estate, the county likely would have objected to the appointment of a personal representative, which would have delayed the proceeding. The county also could have requested that the personal representative be required to post a bond. Accordingly, the county generally works informally with estates so that the demand for notice withdrawn before they seek the appointment of a personal representative.

42. On March 13, 2001, attorney Long sent a letter to respondent indicating that he would take no action so long as the matter was moving forward and he was kept informed.

43. On March 27, 2001, respondent wrote to attorney Long and, in part, assured that he would continue to keep attorney Long informed.

44. Other than receiving a phone call from Mr. Brown by telephone on April 16, 2001, respondent then took no action on the file until he received a June 5,

2001, fax from the county. The fax was a sample of an escrow agreement which respondent and Mr. Brown were required to sign before the county would withdraw its demand for notice.

45. Respondent faxed back a draft of an escrow agreement to the county on June 12, 2001. The draft was approved.

46. On June 27, 2001, attorney Long sent respondent another letter which again requested documents from the probate proceeding for Ms. Thompson. The letter further indicates that if no such documents were received within 30 days, he would deposit the funds into court.

47. Mr. Brown signed the escrow agreement with the county on June 28, 2001. Respondent signed the agreement on July 5, 2001.

48. On July 12, 2001, the county withdrew its Demand for Notice.

49. On August 1, 2001, attorney Long sent respondent a copy of the pleadings he drafted to deposit the money otherwise due to Ms. Thompson's estate into court. Attorney Long indicated that he would file the pleadings on August 6, 2001, unless he received the probate court documents before then. Respondent did not respond.

50. On August 17, 2001, attorney Long filed a petition in the California courts to deposit the \$30,288.35 into court.

51. On August 24, 2001, respondent sent Mr. Brown a letter indicating that the Hennepin County probate registrar was on vacation so the documents could not be filed until September 4, 2001.

52. On September 20, 2001, respondent received notice that the California court had granted attorney Long's petition to deposit the approximately \$30,000 into court.

53. Also on September 20, 2001, the Hennepin County probate registrar issued the Letters Testamentary indicating that Mr. Brown was appointed as personal representative of Ms. Thompson's estate.

54. On September 25, 2001, respondent sent a letter to attorney Long forwarding a certified copy of the Letters Testamentary and asking how to obtain the money from the California court. The letter indicates that a copy was sent to Mr. Brown.

55. On September 28, 2001, Mr. Brown filed an ethics complaint with the Director's Office. At the time he filed the ethics complaint, he was unaware that the Letters Testamentary had been issued.

56. Respondent's conduct in the Brown matter violated Rules 1.3 and 1.4, MRPC.

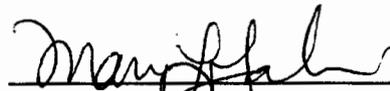
WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent from the practice of law, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: June 18, 2002.



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