

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against RICHARD J. COLEMAN,
a Minnesota Attorney,
Registration No. 136141.

**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 May 7, 1982. Respondent currently practices law in West St. Paul, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

- A. On July 16, 2001, respondent was issued an admonition for failing to place an advance retainer into a client trust account.
- B. On July 16, 2001, respondent was issued another admonition for failing to place an advance retainer into a client trust account.

COUNT ONE

Disruption of Proceedings Before a Tribunal,
Misrepresentation to the Director - Moua Matter

1. Respondent represented Kou Moua in a first degree murder case.

2. On September 17, 2002, the seventh day of trial, respondent objected to a statement made by the presiding judge. The judge overruled the objection. Respondent requested a recess. The judge declined. Respondent then left the courtroom even though court was still in session.

3. As a result of respondent's actions, the court declared a mistrial and sanctioned respondent \$700.

4. Minn. Gen. R. Prac. 2.03(a) provides:

The lawyer is an officer of the court and should at all times uphold the honor and maintain the dignity of the profession, maintaining at all times a respectful attitude toward the court.

5. In December 2002 respondent told the Director that respondent disagreed with the sanction and would file an application for a writ of mandamus.

6. By letter dated May 20, 2003, the Director asked respondent to update the Director on the status of respondent's writ application.

7. On June 3, 2003, respondent spoke by telephone with an Assistant Director. Respondent stated that; (1) he had filed the application in February 2003; (2) he understood that the Court of Appeals had 90 days to rule; (3) he had not received a ruling within that period and asked his staff to inquire with the Court of Appeals; and (4) he was informed by his staff that the Court of Appeals had no record that the application was filed. Respondent also stated that in February 2003 he had paid the filing fee in the form of a money order.

8. These statements were false. Respondent neither served nor filed a petition for writ of mandamus until at least June 27, 2003.

9. Respondent's conduct in the Moua matter violated Rules 3.4(c), 3.5(h), 8.1(a)(1) and (2), and 8.4(c) and (d), Minnesota Rules of Professional Conduct (MRPC).

COUNT TWO

Description of Trial Calendar - Podlasek Matter

10. Respondent represented Stacey Podlasek against criminal charges in Ramsey County.

11. Trial was scheduled to commence on January 29, 2002. That day, respondent sought a continuance. The judge denied the request and instructed counsel to appear in the judge's chambers the following day. Respondent did not state that he was unavailable to do so.

12. The next day, respondent did not appear until late in the morning. Respondent's explanation for his late arrival was that he had forgotten that he was assigned to public defender duty in Dakota County that week.

13. Respondent ultimately filed for a writ of prohibition to obtain the requested continuance. By order filed February 20, 2002, the Court of Appeals denied respondent's petition for a writ of prohibition. The Court of Appeals stated that respondent:

[H]as not shown that the scheduling conflicts that necessitated his requests for continuances resulted from any cause other than his own oversight. . . . We note that defendants [respondent's clients], who could have challenged the denial of the continuance requests on appeal from any conviction, obtained a de facto continuance by the filing of this petition and the stay of district court proceedings.

14. Trial in the Podlasek matter was then rescheduled to begin on the morning of May 20, 2002. Respondent appeared at the courthouse that morning and spoke with the prosecutor. Respondent went to the chambers of the assigned judge, Hon. James A. Dickinson, and told Judge Dickinson that respondent had discussed the matter with the prosecutor and wanted Judge Dickinson to allow respondent to leave because he had an appointment elsewhere that morning. Judge Dickinson told respondent to be on call for jury trial the next day, May 21, 2002. Respondent did not indicate he had any conflict on May 21 or any other day that week. The prosecutor

understood that respondent was then going to speak with the judge to determine if the judge would accept a plea agreement. The prosecutor was unaware respondent intended to leave at that time.

15. Later that day, Judge Dickinson's law clerk spoke by telephone with respondent and reminded respondent that the matter was set for trial the next day at 9:00 a.m. Respondent stated that he would be present.

16. Early on the morning of May 21, respondent left a voicemail message for Judge Dickinson. Respondent stated that he would not appear that morning because he had another matter in Dakota County Court in Hastings. Later that morning, Judge Dickinson telephoned the chambers of a Dakota County judge and spoke with respondent who was present in chambers. Judge Dickinson stated that he wanted respondent and respondent's client to appear in front of Judge Dickinson on May 28 at 9:00 a.m. Respondent inquired about the purpose of the hearing. Judge Dickinson told respondent that he and his client were to appear for the jury trial and regarding a motion for sanctions the prosecution had made against respondent. Respondent stated that he would appear on May 28 with counsel for himself.

17. On the morning of May 28, respondent telephoned Judge Dickinson approximately 20 minutes before the hearing was scheduled to begin and stated that respondent was present in Dakota County on another matter and would not appear in front of Judge Dickinson that day. This was the first time respondent informed Judge Dickinson of a scheduling conflict for May 28.

18. The case was ultimately resolved by plea bargain.

19. Respondent's conduct in the Podlasek matter violated Rules 1.3, 3.2, 3.5(h) and 8.4(d), MRPC.

COUNT THREE

Failure to Place Retainer in Trust Account, Failure to Attend Court Hearings, Failure to Communicate, Failure to Refund Retainer - Havir Matter

20. On or about June 12, 2001, Gary Havir retained respondent to represent Havir against criminal charges. On or about that date, Havir paid respondent a \$1,000 retainer.

21. Respondent failed to deposit the retainer into a client trust account.

22. A pre-trial hearing in the matter was scheduled for July 10, 2001.

Approximately two weeks before the scheduled hearing date, Havir told respondent that Havir was not able to attend a hearing on July 10. Respondent stated that he would have the hearing rescheduled. This was the last conversation respondent had with Havir.

23. On or about September 11, 2001, Havir received a telephone call from respondent's brother, who stated that Havir was due in court that day. This was the first Havir learned of the hearing scheduled for that day.

24. Havir appeared in court that day. Respondent did not appear.

25. The judge informed Havir that Havir had not been present for a hearing which had occurred on July 31, 2001. Havir informed the judge that Havir was not aware of the hearing.

26. Havir then terminated respondent's services and retained new counsel. Havir, through successor counsel, requested a refund of the retainer. Respondent failed to respond or refund any of the retainer.

27. Respondent's conduct in the Havir matter violated Rules 1.3, 1.4, 1.16(d), 3.2 and 8.4(d), MRPC, and Rule 1.15(a), MRPC, as further interpreted by Lawyers Professional Responsibility Board Opinion No. 15 ("Opinion 15").

COUNT FOUR

Failure to Explain Basis of Fee, Failure to Place Retainer in Trust Account, Failure to Attend Meeting, Failure to Communicate, Failure to Safeguard File - Green and Sagisser Matter

28. In May 2002 Sherry Green and Dennis Sagisser retained respondent to advise them concerning a possible criminal investigation.
29. There was no written retainer agreement.
30. Green and Sagisser paid a \$2,000 retainer. Respondent did not deposit the funds into a client trust account.
31. Respondent claims that the fee was a flat fee. Green and Sagisser claim that respondent advised them that the \$2,000 were to secure respondent's services and he would account to them for how he spent the \$2,000.
32. Green, Sagisser and respondent were scheduled to meet on May 17, 2002. Respondent failed to attend the meeting and failed to respond to multiple calls from Green and Sagisser until on or about June 5, 2002. This was the last communication between respondent, and Green and Sagisser. Respondent thereafter failed to respond to multiple requests from Green and Sagisser for communication.
33. As set forth more fully in Section F, below, in September 2002 Green and Sagisser filed a complaint with the Director against respondent. As part of the Director's investigation, the Director requested documents from respondent's client file regarding his representation of Green and Sagisser. Respondent advised the Director that he was unable to find the file.
34. Respondent's conduct in the Green and Sagisser matter violated Rules 1.3, 1.4 and 1.5(b), MRPC, and Rule 1.15(a), MRPC, as further interpreted by Opinion 15.

COUNT FIVE

Failure to Place Retainer in Trust Account, Failure to Communicate, Improper Withdrawal - Yang Matter

35. In the spring of 2001 Susan Yang retained respondent regarding a pending criminal investigation. At that time Yang paid a retainer of at least \$1,000. Respondent did not deposit the retainer into a client trust account.

36. There was no written retainer agreement.

37. In June 2001 Yang was arrested. Yang telephoned respondent to secure his attendance at court hearings. Respondent did not return Yang's calls and did not attend the hearings. Yang was ultimately represented by a public defender.

38. Respondent stated to the Director that respondent believed his representation had ended prior to Yang's arrest, and therefore respondent was not obligated to appear on Yang's behalf. Yang believed that respondent continued to represent her after her arrest. There is no writing or other document memorializing a communication from respondent to Yang that respondent's representation of Yang had ended.

39. Respondent's conduct in the Yang matter violated Rules 1.15(a), MRPC, as further interpreted by Opinion 15, and Rule 1.16(d), MRPC.

COUNT SIX

Failure to Cooperate

40. On December 4, 2001, notice of investigation of Havar's complaint was mailed to respondent. The notice instructed respondent to respond to the Havar complaint within 14 days. Respondent failed to do so.

41. By letter dated December 17, 2001, the district ethics committee (DEC) investigator requested respondent to respond to Havar's complaint within 14 days. Respondent failed to do so.

42. On January 3, 2002, respondent left a voicemail message for the DEC investigator stating that he would provide his response to Havir's complaint as soon as possible. That day, the investigator left a voicemail message for respondent that he could have additional time to respond and should respond during the week of January 14, 2002.

43. By letter dated January 22, 2002, the investigator informed respondent that the investigator had not received any response to Havir's complaint. The investigator asked respondent to contact the investigator if he needed additional time to prepare his response.

44. On February 18, 2002, respondent spoke by telephone with the DEC investigator and gave a brief oral explanation regarding Havir's complaint. The investigator told respondent that respondent needed to submit a written response.

45. By letter dated April 15, 2002, the investigator informed respondent that the investigator had still not received respondent's written response to Havir's complaint. On April 23, 2002, respondent provided his written response.

46. On June 6, 2002, the Director requested respondent to provide additional information and documents relating to the Havir complaint by June 20, 2002. Respondent failed to respond.

47. By letters dated June 21 and July 1, 2002, the Director reminded respondent that the Director had not received the requested information and documents. Respondent failed to respond to either letter.

48. By letter dated July 9, 2002, the Director again informed respondent that the information and documents requested in the Havir matter had not been received. Respondent was requested to provide the information and documents and also advised that failure to cooperate with the Director's investigation could constitute a separate ground for discipline. Respondent did not respond until July 16, 2002.

49. On October 4, 2002, notice of investigation of the complaint filed by Green and Sagisser was mailed to respondent. The notice requested respondent to respond in writing within 14 days. Respondent failed to do so.

50. On October 16, 2002, the Director mailed to respondent the notice of investigation in the Moua matter. The notice requested respondent to respond in writing within 14 days. Respondent failed to do so.

51. By letters dated October 22 and November 4, 2002, the Director informed respondent that he had not responded to the Green and Sagisser complaint. Respondent was requested to provide a written response.

52. By letters dated October 31 and November 8, 2002, the Director informed respondent that he had not responded to the notice of investigation in the Moua matter. Respondent was requested to provide a written response.

53. By letter dated November 12, 2002, and faxed to the Director on November 13, 2002, respondent provided what he described as a partial response to the notice of investigation in the Moua matter. He further explained that he was in the midst of a lengthy homicide trial and requested an extension of time until after the completion of trial to provide his full response.

54. On November 14, 2002, the Director granted respondent's extension request and asked him to contact an Assistant Director when the trial concluded to discuss a mutually acceptable date by which respondent could respond. Respondent failed to do so.

55. On November 20, 2002, the jury returned its verdict in respondent's murder trial. On December 4, 2002, the Director wrote respondent requesting that he call an Assistant Director to discuss the timing of respondent's response in the Moua matter and to the Green and Sagisser complaint. Respondent did not do so.

56. On December 9, 2002, respondent wrote the Director indicating that he would send a copy of his petition for an extraordinary writ of mandamus as his response to the notice of investigation in the Moua matter.

57. By letter dated December 12, 2002, the Director asked respondent to advise the Director when the petition for a writ of mandamus would be received. Respondent did not respond.

58. By separate letter dated December 12, 2002, the Director reminded respondent that no response to the Green and Sagisser complaint had been received. Respondent was again requested to submit a written response to the Green and Sagisser complaint.

59. On December 20, 2002, respondent's assistant telephoned the Director's Office and requested another copy of the Green and Sagisser complaint. On December 23, 2002, respondent provided his response to the Green and Sagisser complaint.

60. By letter dated December 20, 2002, the Director informed respondent that the Director still had not received a copy of respondent's petition for a writ of mandamus in the Moua matter. On December 23, 2002, respondent provided to the Director a "draft" of the application for a writ of mandamus.

61. On January 2, 2003, notice of investigation of Yang's complaint was mailed to respondent, requesting his written response within 14 days. Respondent failed to respond.

62. By letter dated January 27, 2003, the Director requested respondent to provide an update on the status of respondent's application for a writ of mandamus in the Moua matter.

63. By separate letter dated January 27, 2003, the Director requested respondent to provide further information and documents regarding the Green and Sagisser complaint. Respondent failed to do so.

64. On February 10, 2003, respondent spoke by telephone with an Assistant Director. Respondent stated that he had not yet filed the petition for an extraordinary writ of mandamus in the Moua matter because he had not yet obtained one document that he needed to attach to the petition, but that he anticipated that he would do so within the next couple of days.

65. By separate letters dated January 27, 2003, and February 4, 2003, the Director's Office informed respondent that it had not received a response to Yang's complaint and again requested respondent to provide a written response. Respondent failed to respond.

66. By letters dated February 11 and 19, 2003, the Director's Office informed respondent that it had not received a response to the Director's January 27 letter regarding the Green and Sagisser complaint. Respondent was again requested to provide the information and documents. Respondent failed to respond.

67. By certified letter dated February 12, 2003, the Director's Office reminded respondent that it had not received a response to Yang's complaint and requested respondent to submit a written response. The certified mail receipt was signed on February 13, 2003. Respondent did not respond until February 28, 2003.

68. By letter dated February 27, 2003, the Director's Office informed respondent that it still had not received a response to the Director's January 27 letter regarding the Green and Sagisser complaint. On February 28, 2003, respondent provided some but not all of the additional information requested in the Green and Sagisser complaint.

69. By letter dated March 4, 2003, the Director notified respondent that his February 28 letter regarding Green and Sagisser's complaint did not respond to all of the inquiries in the Director's January 27 letter. Respondent was requested to provide the omitted information and documents. Respondent failed to do so.

70. On March 4, 2003, the Director requested respondent to provide further information and documents regarding Yang's complaint. Respondent failed to respond.

71. On March 19, 2003, the Director wrote respondent again requesting the information sought in the Director's March 4 letter regarding the Green and Sagisser complaint. Respondent failed to respond.

72. On March 19, 2003, the Director wrote respondent against requesting the information sought in the Director's March 4 letter regarding Yang's complaint. Respondent provided additional information regarding Yang's complaint on March 27, 2003. However, he failed to respond to the specific inquiries contained in the Director's March 4 letter.

73. On April 1, 2003, the Director wrote respondent that his March 27 letter regarding Yang's complaint failed to address the specific inquiries contained in the Director's March 4 letter. Respondent was again requested to respond to inquiries contained in the Director's March 4 letter. Respondent failed to do so.

74. On April 11, 2003, the Director requested respondent to appear at the Director's Office on April 21, 2003, and to bring with him the information and documents requested in the January 27 and March 4 letters regarding Green and Sagisser's complaint and the Director's March 4 letter regarding Yang's complaint.

75. Respondent appeared at the Director's Office on April 21, 2003. Respondent provided oral answers to the inquiries in the Director's January 27 and March 4 letters regarding Green and Sagisser's complaint, oral answers to the inquiries in the Director's March 4 letter regarding Yang's complaint, but none of the documents requested in those letters.

76. On June 3, 2003, respondent spoke with an Assistant Director regarding the status of respondent's petition for an extraordinary writ of mandamus in the Moua matter (*see* ¶¶ 7-8, above). Respondent stated that in February 2003 he had filed the

petition but that the Court of Appeals had no record of it. Respondent also stated he intended to file another petition within a couple of days.

77. By letter dated June 5, 2003, the Director requested respondent to provide certain documents along with the petition for a writ of mandamus in the Moua matter. The requested documents included proof of respondent's claimed February 2003 filing. Respondent failed to respond.

78. On June 18, 2003, the Director mailed to respondent notice of investigation of Hogy's complaint, requesting a written response within 14 days. Respondent failed to respond.

79. By letter dated June 20, 2003, the Director again requested respondent to provide at that time the documents and petition for writ of mandamus requested in the Director's June 5 letter concerning the Moua matter.

80. By letter dated June 26 [sic], 2003, respondent provided to the Director a copy of an application for writ of mandamus in the Moua matter that respondent served and filed on June 27, 2003, together with a letter from respondent's assistant. Respondent did not, however, provide the balance of the documents requested in the Director's June 5 letter, including proof of the purported February 2003 filing.

81. On July 2, 2003, the Director again requested proof of the purported February 2003 filing of the mandamus writ with the Court of Appeals. By letter dated July 7, 2003, respondent and his assistant informed the Director that the requested documents did not exist.

82. By letter dated July 3, 2003, the Director again requested respondent to provide his written response to the Hogy complaint. Respondent failed to respond.

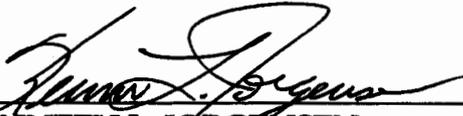
83. On July 11, 2003, the Director again requested a written response to the Hogy complaint.

84. By letter dated July 14, 2003, respondent informed the Director that respondent had requested documents from the court to respond to Hoky's complaint and requested more time to respond. On July 18, 2003, respondent responded to Hoky's complaint.

85. Respondent's failure to cooperate violated Rule 8.1(a)(3), MRPC, and Rule 25, RLPR.

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent from the practice of law or imposing otherwise 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: September 30, 2003.


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