

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary  
Action against MICHAEL H. DAUB,  
an Attorney at Law of the  
State of Minnesota.  
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**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 April 20, 1979. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Failure to Timely File State and Federal  
Individual Income Tax Returns and Pay Taxes

1. Respondent failed to file, or failed to timely file, Minnesota individual tax returns for the years 1983 through 1999. The Minnesota Department of Revenue (MDOR) reports the dates on which respondent filed returns as follows:

<b>Tax Year</b>	<b>Due Date</b>	<b>Filing Date</b>
1983	4/15/84	6/16/99
1984	4/15/85	6/16/99
1985	4/15/86	6/16/99
1986	4/15/87	6/16/99
1987	4/15/88	6/16/99
1988	4/15/89	6/16/99
1989	4/15/90	6/16/99
1990	4/15/91	6/16/99
1991	4/15/92	6/16/99
1992	4/15/93	6/16/99
1993	4/15/94	6/16/99
1994	4/15/95	6/16/99
1995	4/15/96	6/16/99
1996	4/15/97	6/16/99
1997	4/15/98	Return Not Filed
1998	4/15/99	Return Not Filed
1999	4/15/00	Return Not Filed

2. The Minnesota Department of Revenue indicates that respondent has an outstanding tax liability of \$152,455.56. Respondent has failed to pay individual income taxes as follows:

<b>Tax Year</b>	<b>Outstanding Tax Liability</b>
1983	\$1,226.47
1984	\$7,948.21
1985	\$15,084.35
1986	\$8,508.02
1987	\$23,298.28
1988	\$4,409.97
1989	\$10,371.89
1990	\$8,856.53
1991	\$12,619.97
1992	\$10,809.28
1993	\$13,183.10
1994	\$13,382.22
1995	\$11,077.36
1996	\$11,679.91

3. Respondent failed to file timely federal individual income tax returns for the years 1981, 1983 through 1989, and 1993 through 1996. Respondent has failed to file tax returns for 1997 through 1999. The Internal Revenue Service (IRS) reports that the dates on which respondent filed returns are as follows:

Tax Year	Due Date	Filing Date
1981	4/15/82	11/16/82
1982	4/15/83	Filed Timely
1983	4/15/84	8/22/90
1984	4/15/85	9/25/90
1985	4/15/86	9/24/90
1986	4/15/87	9/25/90
1987	4/15/88	9/25/90
1988	4/15/89	9/25/90
1989	4/15/90	8/22/90
1990	4/15/91	Filed timely within extension period.
1991	4/15/92	Filed timely within extension period.
1992	4/15/93	Filed timely within extension period.
1993	4/15/94	10/26/94
1994	4/15/95	10/23/95
1995	4/15/96	10/21/96
1996	4/15/97	3/25/98
1997	4/15/98	No Return Filed
1998	4/15/99	No Return Filed
1999	4/15/00	No Return Filed

Based upon the tax returns respondent has filed, the IRS does not show an outstanding tax liability for respondent.

4. Respondent's failure to file, or file in a timely manner, Minnesota and federal individual income tax returns violates Rules 8.4(b) and (d), Minnesota Rules of Professional Conduct (MRPC), and the Minnesota Supreme Court's holding in *In re Bunker*, 199 N.W.2d 628 (Minn. 1972).

## SECOND COUNT

### A. Rousslang Matter.

5. On October 29, 1992, Lucille Rousslang was injured in an automobile accident. Rousslang subsequently retained respondent to represent her concerning the accident. The representation proceeded and in January of 1994 respondent met with Rousslang concerning a possible settlement demand in her case.

6. On February 13, 1994, after Rousslang had not heard from respondent since their January meeting, she wrote to him asking that he contact her. Respondent did not reply to Rousslang's letter and he also failed to reply to follow-up letters that she sent on March 28, 1994, and May 15, 1994. Rousslang was finally able to speak with respondent in June of 1994.

7. Rousslang then did not hear from respondent for several months. On December 19, 1994, she wrote to respondent asking if he was going to file a claim against the other insurance company. Respondent did not reply. Respondent found it increasingly difficult to set aside a block of time sufficient to review the file, gather the appropriate information or draft a demand letter and as a result the case languished.

8. On December 6, 1996, Rousslang wrote to respondent concerning her case. Respondent never replied. On September 30, 1997, Rousslang wrote to respondent demanding to know what had happened and explained that she had left several messages that respondent had not returned. Respondent never replied to these inquiries.

9. On September 17, 1998, Rousslang called respondent and left a message informing him that she would be in contact with the Director's Office if he did not respond. Respondent failed to reply. On October 29, 1998, the statute of limitations expired on Rousslang's cause of action. Rousslang subsequently filed an ethics complaint with the Director's Office.

10. Respondent's conduct violated Rules 1.3, 1.4, and 3.2, MRPC.

B. Sparks Matter.

11. On April 26, 1994, Amy Sparks retained respondent to represent her in a claim arising out of an August 22, 1992, automobile accident.

12. Over the next three years (1995, 1996 and 1997) respondent did not perform any work which could be characterized as moving the case forward. During the same time, respondent's contacts with Sparks were infrequent.

13. On August 21, 1998, one day before the statute of limitations was due to expire, respondent served a summons and complaint on the opposing party.

14. The defendant in the Sparks civil action filed an answer and on September 10, 1998, requested that Sparks identify any experts she intended to call at trial. Respondent did not identify an expert.

15. On July 23, 1999, the trial court issued a scheduling order requiring Sparks to disclose her expert witnesses and their opinions before December 17, 1999. Respondent failed to disclose Sparks' expert(s) by the December 17, 1999, deadline. Pursuant to the trial court's scheduling order, discovery closed on January 7, 2000.

16. On February 3, 2000, attorneys for the defendant wrote to respondent again requesting disclosure of any expert his client intended to call as a witness. Respondent failed to reply to that letter.

17. On February 8, 2000, a court-ordered mediation was held. Respondent identified no expert at the mediation. The attorneys for the defendant indicated they would object to any new expert or expert testimony.

18. On April 18, 2000, the trial court held an informal discovery conference regarding the fact that respondent had not identified Sparks' expert nor had he provided answers to interrogatories concerning prior accidents. Following the pretrial, the court issued an amended scheduling order dated May 1, 2000. The amended

scheduling order gave respondent until July 1, 2000, to identify expert witnesses and to provide the opinion the expert would give at trial.

19. On May 15, 2000, the defendant served requests for admission on respondent. Respondent failed to reply to those requests.

20. On August 23, 2000, the trial court held a hearing on the defendant's motion to exclude expert testimony and to compel discovery. Although he had received notice of the hearing, respondent failed to properly calendar the matter and as a result, failed to appear for the hearing. Respondent also failed to notify his client of the hearing. The trial court subsequently granted the defendant's motion to exclude Spark's expert testimony.

21. A pretrial conference in the Spark's case was scheduled to take place on November 1, 2000. Respondent did not inform Sparks of the pretrial until seven hours before the scheduled conference at which time he also withdrew from representing Sparks.

22. Respondent's conduct violated Rules 1.3, 1.4, 1.16, and 3.2, MRPC.

C. Shin Matter.

23. On May 28, 1999, Oak Hui Shin retained respondent to represent her in a marital dissolution. Respondent subsequently had Shin's husband served with the summons and complaint. Mr. Shin subsequently retained counsel. On August 20, 1999, respondent wrote to Ms. Shin advising her of that fact.

24. On September 15, 1999, respondent wrote to Ms. Shin to notify her that a referee had been assigned to her case. That was the last contact respondent had with Ms. Shin concerning the substance of the representation.

25. Over the next several months, Ms. Shin attempted to reach respondent by telephone. She was unable to contact him and respondent did not return the messages Ms. Shin left with him. On November 16, 1999, Ms. Shin wrote to respondent regarding

his failure to return her calls or to provide her with information about the dissolution. Ms. Shin stated that in the event she needed to find another lawyer, she would like to have her money returned to her. Respondent never replied to that letter.

26. On January 18, 2000, Ms. Shin again wrote to respondent. She asked him to call her as soon as possible because she wanted to know whether he still wished to work for her or not. Respondent did not reply.

27. On January 24, 2000, Ms. Shin wrote to respondent informing him that he was no longer her attorney. Although respondent had Ms. Shin pay a \$2,500 nonrefundable retainer agreement, by his own accounting respondent had not provided \$2,500 worth of legal services by the time he was discharged. In October of 2000 respondent refunded \$1,562.50 of Ms. Shin's retainer.

28. Respondent's conduct violated Rules 1.3, 1.4, and 3.2, MRPC.

D. Nicole C. Dick Matter

29. Dick first contacted respondent on July 8, 1998, concerning two different legal matters. On August 5, 1998, she signed a contingent fee agreement retaining respondent.

30. Respondent commenced litigation on Dick's behalf. On July 29, 1999, the defendant served discovery requests on respondent. On August 27, 1999, the defendant informed respondent that an independent medical exam (IME) had been scheduled for Dick on September 8, 1999. Respondent did not notify Dick of the IME and therefore, she did not attend. Respondent also failed to reply to the defendant's discovery demands.

31. On September 10, 1999, the defendant informed respondent that a motion to compel responses to discovery requests would occur on October 11, 1999. Respondent did not prepare or submit the discovery responses and on September 24, 1999, he was served with a motion to compel discovery.

32. The motion to compel discovery was continued to October 21, 1999. On that date, respondent agreed to served the responses by October 25, 1999, pay \$250 for attorney fees and \$550 for the missed IME. Respondent failed to complete the discovery responses by October 25, 1999.

33. Respondent did not complete the discovery responses by October 25, 1999. The defendant then moved for summary dismissal based upon the failure to comply with the court's order. On November 23, 1999, the court granted the motion and the case was dismissed without prejudice.

34. Respondent told Dick about the court's action and discussed her options. Respondent and Dick agreed that he would schedule a motion to be heard on April 12, 2000. However, because respondent still had not completed the discovery responses, he did not file the motion. Respondent also failed to respond to Dick's telephone messages after April 12, 2000, concerning the matter.

35. Respondent subsequently completed the discovery responses. On May 12, 2000, he spoke to Dick at which time he informed her that he had scheduled a hearing on June 13, 2000, seeking that the court reinstate the action.

36. On June 13, 2000, respondent argued the motion to have Dick's case reinstated. The court denied the motion.

37. Respondent's conduct violated Rules 1.3, 1.4, and 3.2, MRPC.

E. Simpson Matter

38. On June 12, 1993, Travis Simpson was injured when a dog ran in the path of his motorcycle. Leland Simpson, Travis' father, retained respondent shortly thereafter to represent him in litigation arising out of the accident.

39. Respondent worked up the file including obtaining medical records by late 1996. At that time, respondent told Simpson that he would make a settlement demand. Respondent failed to do so.

40. Respondent has done no further work on this matter and as of the date of this petition, Simpson's case remains unresolved.

41. Respondent's conduct violated Rules 1.3, 1.4, and 3.2, 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.

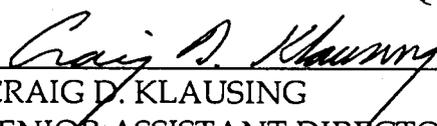
Dated: February 28, 2001.



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and



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