

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary  
Action against RICHARD G. DAY,  
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 September 16, 1974. Respondent was placed on restricted status on April 6, 1999, for failure to comply with CLE requirements and was suspended from the practice of law on January 1, 2000, for non-payment of attorney registration fees.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's history of prior discipline is as follows:

- a. On April 16, 1991, respondent was issued an admonition for use of an advertisement falsely implying that lawyers in his firm were specialists when they were not then certified specialists by the State Board of Legal Certification, in violation of Rule 7.4(b), Minnesota Rules of Professional Conduct (MRPC).

b. On January 11, 1999, respondent was issued two admonitions for failing to pay professionally incurred indebtedness, in violation of Rule 8.4(d), MRPC.

FIRST COUNT

Hulegaard Matter

1. On October 8, 1999, Gordon Hulegaard retained respondent to represent him at a parole revocation hearing. Hulegaard paid respondent a \$500 retainer.

2. Respondent appeared in court on behalf of Hulegaard on October 11, 1999.

3. As noted above, respondent was on CLE restricted status on October 11, 1999. Respondent is not related to Hulegaard.

4. Respondent's representation of Hulegaard at the parole revocation hearing violated Rule 5.5, MRPC.

SECOND COUNT

Jackie Jackson Matter

5. On January 31, 2000, Jackie Jackson, through her new attorney, Robert Edwards, served a substitution of attorney upon respondent. In the cover letter forwarding the substitution of attorney, Edwards requested that respondent send him Jackson's file.

6. Despite follow-up telephone calls from Edwards, respondent failed to return Jackson's file.

7. Respondent's failure to return his client file to Jackson violated Rules 1.15(c)(4) and 1.16(d), MRPC.

THIRD COUNT

Dick Milner Matter

8. On August 13, 1998, Dick Milner retained respondent to represent him in post-decree marriage dissolution matters.

9. On October 6, 1999, respondent obtained an order to show cause setting November 29, 1999, as the date for hearing upon his motion for post-decree relief.

10. Respondent failed to serve the order to show cause and motion prior to the November 29 hearing.

11. On November 28, 1999, respondent told Milner that the November 29 hearing had been canceled. In fact, the hearing had not been canceled.

12. Neither respondent nor Milner appeared in court on November 29, 1999, and the matter was rescheduled for December 3, 1999. On December 3, 1999, there was no appearance by respondent or Milner.

13. As noted above, when respondent obtained the order to show cause on October 6, 1999, he was on CLE restricted status. Milner is not related to respondent.

14. Respondent's conduct in failing to timely serve the order to show cause, misrepresenting the status of the matter to Milner, and practicing law while on CLE restricted status violated Rules 1.3, 4.1, 8.4(c), and 5.5, MRPC.

FOURTH COUNT

Belinda Martin Matter

15. In March 1999, Belinda Martin retained respondent to represent her in a personal injury action arising out of an assault.

16. Respondent agreed to bring suit against the tortfeasor and attempt to have judgment entered against her.

17. Martin paid respondent a retainer of \$350 and respondent drafted a summons and complaint for service upon the tortfeasor.

18. Respondent was unable to locate the tortfeasor for service and, thereafter, did nothing further in the action.

19. Respondent's failure to act with reasonable diligence in Martin's personal injury claim violated Rule 1.3, MRPC.

#### FIFTH COUNT

##### Failure to Cooperate

20. On November 8, 1999, a notice of investigation in the matter of the complaint of Belinda Martin was mailed to respondent. That notice requested that respondent provide a complete written response to Ms. Martin's complaint within 14 days. Respondent failed to respond to the November 8 notice of investigation until December 5, 1999.

21. On February 7, 9, 11, 22, and 25, 2000, the district ethics committee investigator assigned to investigate the complaint of Belinda Martin left telephone messages for respondent requesting that he call her to discuss the complaint. Respondent failed to return those telephone calls.

22. On February 25, 2000, the district ethics committee investigator wrote to respondent regarding the Belinda Martin complaint. In that letter the investigator requested a response by March 13, 2000. Respondent failed to respond to that letter.

23. On December 28, 1999, a notice of investigation regarding the complaint of Dick Milner was mailed to respondent. The notice of investigation requested that respondent provide a written response to Milner's complaint within 14 days.

24. On January 28, February 10, and February 17, 2000, the district ethics committee investigator assigned to investigate the complaint of Dick Milner wrote to respondent requesting a response to Milner's complaint. Respondent failed to respond to any of these letters.

25. On March 23, 2000, the Director wrote to respondent requesting a response to the Milner complaint within ten days.

26. On April 10, 2000, having received no response from respondent, the Director again wrote to respondent requesting a response to the Milner complaint within one week.

27. Respondent failed to provide a written response to the Dick Milner complaint until May 4, 2000.

28. On March 3, 2000, the Director mailed a notice of investigation to respondent regarding the complaint of Gordon Hulegaard. The notice of investigation requested that respondent provide a written response to the Hulegaard complaint within 14 days.

29. On March 22, 2000, the Director wrote to respondent noting that no response had been received and requesting a response to the Hulegaard complaint within one week.

30. On April 10, 2000, the Director wrote to respondent noting that no response to the Hulegaard complaint had been received and requesting a response within one week.

31. Respondent failed to provide a written response to the Hulegaard complaint until May 4, 2000.

32. On March 27, 2000, the Director mailed a notice of investigation to respondent in the matter of the complaint of Robert Edwards. The notice of investigation requested that respondent provide a complete written response within 14 days of the date of the notice.

33. Respondent failed to respond to the Edwards' complaint until May 4, 2000.

34. Respondent's failure to timely respond to the various requests for information during the course of the disciplinary investigations violated Rule 8.1(a)(3), MRPC, and Rule 25, Rules on Lawyers Professional Responsibility.

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.

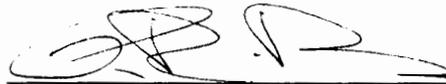
Dated: June 13, 2000.



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EDWARD J. CLEARY  
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and



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