

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against RICHARD G. DAY,
a Minnesota Attorney,
Registration No. 21659.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

Upon the approval of a Lawyers Professional Responsibility Board Panel Chair, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rules 10(d) 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 initially suspended from the practice of law on July 27, 2000. On October 1, 2001, the Court extended respondent's suspension for an indefinite period. Respondent has not applied for reinstatement since the July 27, 2000, suspension.

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 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 separate admonitions for failing to pay professionally-incurred indebtedness, in violation of Rule 8.4(d), MRPC.
- c. Respondent was suspended from the practice of law on July 27, 2000, for 90 days for engaging in the practice of law while suspended for nonpayment of his attorney registration fee and while on CLE restricted status, failing to return a client's file, failing to diligently pursue claims on behalf of two clients and misrepresenting the status of the matter to one of those clients and failing to cooperate in the disciplinary proceedings in violation of Rules 1.3, 1.15(c)(4), 1.16(d), 4.1, 5.5, 8.1(a)(3) and 8.4(c), MRPC, and Rule 25, Rules on Lawyers Professional Responsibility (RLPR). *See In re Day*, 615 N.W.2d 275 (Minn. 2000).
- d. On October 1, 2001, respondent was indefinitely suspended from the practice of law for practicing law after suspension, failing to return client property and failing to cooperate with the disciplinary proceeding in violation of Rules 1.16(d), 5.5, and 8.1(a)(3), MRPC, and Rule 25, RLPR. *See In re Day*, 634 N.W.2d 173 (Minn. 2001). Respondent has not applied for reinstatement.

FIRST COUNT

Gregory Geer Matter

1. On December 15, 2002, Gregory Geer met with respondent regarding a work-related injury Geer had sustained on November 18, 2002. Geer gave \$100 cash to respondent as a retainer for respondent to represent him in a workers' compensation matter. Geer also gave respondent some documents he had received from his employer.
2. At the time respondent met with Geer and accepted his case, respondent was suspended from the practice of law and was not authorized to represent Geer or

any other client in legal matters. Respondent failed to tell Geer that he was not authorized to practice law and could not represent Geer in the workers' compensation case.

3. Geer attempted to contact respondent approximately 12 times. Respondent did not return Geer's calls. Geer then met with and retained Mark Fellman to represent him in the workers' compensation matter.

4. Respondent has not refunded the \$100 retainer paid by Geer.

5. Minn. Stat. § 481.02, subd. 1, provides, in part, "It shall be unlawful for any person . . . except members of the bar of Minnesota admitted and licensed to practice as attorneys at law . . . by work, sign, letter, or advertisement, to hold [himself] out as competent or qualified to give legal advice or counsel . . . or, for a fee or any consideration, to give legal advice or counsel . . ." Minn. Stat. § 481.02, subd. 8, provides that a violation of these provisions is a misdemeanor.

6. Respondent accepted a fee from Geer for legal advice or services when he was suspended from practice, a criminal act in violation of Minn. Stat. § 481.02.

7. Respondent's conduct in representing Geer after respondent's July 27, 2000, suspension, accepting the \$100 retainer when he was unable to represent Geer, and failing to return Geer's telephone calls and client documents violated Rules 1.4, 1.16(d), 5.5 and 8.4(b), (c) and (d), MRPC.

SECOND COUNT

Gloria Reese-Taylor and Clarence Taylor Matter

8. Respondent has represented Gloria Reese-Taylor and Clarence Taylor since August 1998, in a matter involving Northside Redevelopment Council.

9. The Taylors attempted to contact respondent in the fall of 2002. Respondent failed to return their calls. The Taylors were not informed by respondent that he was suspended from the practice of law, as required by Rule 26(a), RLPR, and the terms of the Court's October 1, 2001, suspension order.

10. The Taylors paid respondent \$200 in May 2002 and \$200 in July 2002. At the time respondent accepted the payments from the Taylors, respondent was suspended from the practice of law and was not authorized to represent the Taylors. Respondent failed to advise the Taylors that he could not practice, or to obtain other counsel.

11. On December 16, 2002, the Taylors sent respondent a letter asking for a status report. The letter, sent by certified mail, was refused.

12. Respondent has not refunded the \$400 received from the Taylors.

13. Respondent accepted a fee from the Taylors for legal advice or services when he was suspended from practice, a criminal act in violation of Minn. Stat. § 481.02.

14. Respondent's conduct in continuing to represent the Taylors after his July 27, 2000, suspension, failing to notify them of his suspension, accepting \$400 when he was unable to represent them, failing to return their telephone calls or respond to their correspondence, and failing to return their client file violated Rules 1.4, 1.16(d), 3.4(c), 5.5, and 8.4(b), (c) and (d), MRPC, and Rule 26(a), RLPR.

THIRD COUNT

Failure to Cooperate

15. The Director sent respondent a notice of investigation of the complaint in the Geer matter on March 25, 2003. The notice requested respondent's written response within 14 days. Respondent failed to respond.

16. On April 11, 2003, the Director sent respondent a letter requesting respondent's response within 14 days. The letter was returned on April 22, 2003, marked "Moved - Forwarding Expired- Return to Sender."

17. On May 15, 2003, the Director's Office contacted respondent by telephone. Respondent provided a new address in Florida.

18. On May 22, 2003, the Director sent the notice of investigation in the Geer matter to respondent's Florida address requesting a response within 14 days. Respondent failed to respond.

19. On May 22, 2003, the Director also sent to respondent's Florida address the notice of investigation with regard to the Taylor matter. The notice requested a written response within 14 days. Respondent failed to respond.

20. On July 23, 2003, the Director wrote to respondent again requesting written responses to the Geer and Taylor notices of investigation. Respondent failed to respond.

21. On November 20, 2003, the Director served by U.S. mail charges of unprofessional conduct and notice of pre-hearing meeting. The charges and notice were mailed to the last known address for respondent. The U.S. postal service returned the documents to the Director's Office on December 1, 2003, marked "return to sender: attempted not known."

22. On December 3, 2003, a paralegal from the Director's Office telephoned respondent. The automated answering machine identified the telephone number as belonging to respondent. The paralegal left a message regarding the date and time of the pre-hearing meeting and asked respondent to return the telephone call. Respondent failed to respond.

23. Also on December 3, 2003, the Director's Office again mailed to respondent the charges and notice of pre-hearing. The Director modified respondent's address to include a "north" street designation. A cover letter enclosed with the documents asked respondent to telephone the Director's Office as soon as he received the documents. The documents were not returned to the Director as undeliverable. Respondent failed to telephone the Director's Office or respond to the charges.

24. Respondent did not attend the December 10, 2003, prehearing meeting or contact the Director's Office to reschedule.

25. Respondent's conduct in failing to cooperate with the Director's investigation in the Geer and Taylor matters violated Rules 8.1(a)(3) and 8.4(d), MRPC, and Rule 25, RLPR.

26. Respondent's failure to appear at the pre-hearing meeting or to contact the Director to reschedule violated Rule 25, RLPR.

WHEREFORE, the Director respectfully prays for an order of this Court disbarring respondent 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: January 8, 2004.

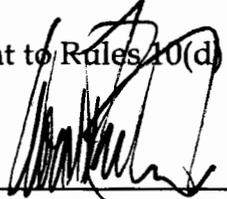

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and


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This petition is approved for filing pursuant to Rules 10(d) and 12(a), RLPR, by the undersigned Panel Chair.

Dated: January 15, 2004.


WOOD R. FOSTER, JR.
PANEL CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD