

FILE NO. C1-98-589

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary  
Action against ERIC A. DERYCKE,  
an Attorney at Law of the  
State of Minnesota.  
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**PETITION FOR REVOCATION OF  
PROBATION AND FOR FURTHER  
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 pursuant to Rule 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 24, 1974. Respondent currently practices law in Lake Benton, Minnesota.

DISCIPLINARY HISTORY

a. On January 28, 1981, respondent was issued a warning for his conduct in representing a defendant in a criminal matter in Pipestone County while serving as a prosecutor for Murray County. That representation continued after a Pipestone County judge had issued an order prohibiting respondent from representing the defendant (Exhibit 1).

b. On April 21, 1998, by Supreme Court Order, respondent was suspended from the practice of law for 90 days for failing to timely file state and federal employer quarterly withholding returns; client neglect and non-communication in four different client matters and non-cooperation with the Director's investigation of these matters

(Exhibit 2). On August 26, 1998, respondent was reinstated to the practice of law and placed on two years supervised probation. Respondent remains on probation.

c. Respondent has committed the following unprofessional conduct warranting revocation of probation and further public discipline.

COUNT ONE

Probation Violations

1. On August 26, 1998, the Supreme Court issued an order placing respondent on probation subject to the following conditions:

a. Respondent shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation and promptly respond to the Director's correspondence by the due date. Respondent shall cooperate with the Director's investigation of any allegations of unprofessional conduct which may come to the Director's attention. Upon the Director's request, respondent shall provide authorization for release of information and documentation to verify compliance with the terms of this probation.

b. Respondent shall abide by the Minnesota Rules of Professional Conduct.

c. Respondent shall be supervised by a licensed Minnesota attorney, appointed by the Director to monitor compliance with the terms of this probation. Respondent shall provide to the Director the names of four attorneys who have agreed to be nominated as respondent's supervisor within two weeks from the date this stipulation is executed. If, after diligent effort, respondent is unable to locate a supervisor acceptable to the Director, the Director will seek to appoint a supervisor. Until a supervisor has signed a consent to supervise, the respondent shall on the first day of each month provide the Director with an

inventory of active client files described in paragraph d below. Respondent shall make active client files available to the Director upon request.

d. Respondent shall cooperate fully with the supervisor in his/her efforts to monitor compliance with this probation. Respondent shall contact the supervisor and schedule a minimum of one in-person meeting per calendar quarter. Respondent shall submit to the supervisor an inventory of all active client files by the first day of each month during the probation. With respect to each active file, the inventory shall disclose the client name, type of representation, date opened, most recent activity, next anticipated action, and anticipated closing date. Respondent's supervisor shall file written reports with the Director at least quarterly, or at such more frequent intervals as may reasonably be requested by the Director.

e. Respondent shall initiate and maintain office procedures which ensure that there are prompt responses to correspondence, telephone calls, and other important communications from clients, courts and other persons interested in matters which respondent is handling, and which will ensure that respondent regularly reviews each and every file and completes legal matters on a timely basis.

f. Within thirty days from the execution of this stipulation, respondent shall provide to the Director and to the probation supervisor, if any, a written plan outlining office procedures designed to ensure that respondent is in compliance with probation requirements. Respondent shall provide progress reports as requested.

g. Respondent shall timely file all required state and federal tax returns, including individual and employer withholding returns, and timely pay the taxes due thereon. Respondent shall affirmatively report to the Director, on

or before the due date of the required returns, his compliance with filing and payment requirements. Such reports shall include copies of the required returns. On or before the filing deadline, respondent shall provide the Director with copies of all applications for filing extension and proof of approval of such applications. Respondent shall provide all of the documents and information required herein without specific reminder or request.

h. Respondent shall employ a qualified tax preparer to assist him in preparing and filing required quarterly and annual tax returns. Respondent shall make timely quarterly estimated payments to the state and federal tax authorities. On or before the filing deadline, respondent shall provide proof of such filing and payment to the Director without specific reminder or request.

2. On September 4, 1998, attorney Craig D. Klausning, the probation attorney in the Director's Office, wrote to respondent advising him of his responsibilities under the probation and asking for:

- a. An inventory of active client files.
- b. A written plan to ensure regular review of client files.
- c. A written plan outlining office procedures to ensure compliance with the probation.
- d. Proof of filing and copies of his state and federal income and individual and employment withholding returns.
- e. A copy of his payment agreement with the Internal Revenue Service (IRS) and Minnesota Department of Revenue (DOR).
- f. The name, address and phone number of a qualified tax preparer who would assist respondent in preparing and filing his returns.

All of the requests were to be responded to within two weeks. Respondent did not respond to the September 4, 1998, letter.

3. On October 14, 1998, Mr. Klausing again wrote to respondent and asked for the inventory of client files within 10 days. Respondent did not respond.

4. On November 5, 1998, Mr. Klausing again wrote to respondent and asked for a response to the September 4, 1998, letter within two weeks. Respondent did not respond.

5. On December 15, 1998, Mr. Klausing wrote to respondent and asked for a report concerning respondent's progress in reaching an agreement with the IRS and DOR within two weeks. Respondent did not respond.

6. On January 14, 1999, Mr. Klausing wrote to respondent and reminded him of his responsibilities under the probation. Mr. Klausing asked for: 1) copies of agreements with the IRS and DOR, or a report concerning progress in reaching such agreements; 2) the name of a qualified tax preparer; 3) proof of filing and payment of his third and fourth quarter 1998 estimated withholding taxes; 4) proof of filing and payment of his third and fourth quarter 1998 employer withholding returns. Respondent was directed to respond within 10 days. On January 25, 1999, respondent faxed a letter to the Director's Office in response to 1 and 2 above. On January 26, respondent faxed his first and second 1998 quarterly estimated tax vouchers and on February 1, 1999, faxed his third quarter 1998 voucher. On March 24, 1999, Mr. Klausing asked for the fourth quarter returns within 10 days.

7. On April 19, 1999, Mr. Klausing again asked for a response to the March 24 letter and for copies of respondent's 1998 income tax returns, first quarter 1999 estimated return, and monthly report concerning reaching payment agreements with the taxing authorities, all within 10 days. Respondent did not respond.

8. On May 4, 1999, Mr. Klausing again asked for a response to the April 19 letter and that respondent appear for a meeting on May 27, 1999. On May 21, 1999,

respondent wrote asking for a continuance. The meeting was rescheduled for June 10, 1999. Respondent came to the meeting.

9. On June 22, 1999, Mr. Klausing reminded respondent of his obligations under the probation and requested documents not yet provided.

10. On August 9, 1999, Mr. Klausing asked respondent to sign authorizations to the DOR and IRS, and return them within 7 days. By fax on August 20, 1999, respondent promised to sign and return the authorizations. By fax on August 27, 1999, respondent said he had lost the authorizations. Respondent also faxed copies of trust account checks whereby he paid the IRS and DOR.

11. On September 1, 1999, Mr. Klausing wrote to respondent and asked for an explanation of the payments from the trust account, executed authorizations and trust account books and records for June through August 1999, within 10 days. Respondent did not respond.

12. On October 14, 1999, Mr. Klausing again asked for a response to his September 1, 1999, letter, within 7 days. Respondent did not respond. On November 8, 1999, Mr. Klausing again asked for a response to the September 1 letter within 7 days. Respondent finally responded on November 15 with the signed authorizations, but not the trust account records.

13. On November 23, 1999, Mr. Klausing again asked for the trust account records within 7 days. Respondent did not respond. Mr. Klausing renewed this request on December 3, 1999. On December 14, respondent responded that he had requested copies of the records from his bank.

14. On February 4, 2000, Mr. Klausing wrote to respondent asking for the trust account records for June through August 1999, which respondent had stated he was obtaining from his bank and other information, within 10 days. Respondent did not respond.

15. On May 4, 2000, the Director wrote to respondent and requested him to provide copies of his 1999 federal and state income tax returns and information concerning payment of any taxes due thereon, as required by his public probation. Respondent failed to respond.

16. On May 22, 2000, the Director wrote to respondent and requested him to provide copies of his 1999 federal and state individual income tax returns and copies of his 1999 state and federal employer withholding returns, pursuant to the August 26, 1998, Supreme Court order placing him on probation. The Director also requested respondent to respond within two weeks explaining his actions with regard to his 1999 taxes. Respondent failed to respond.

17. As set forth herein, respondent has failed to respond promptly to the Director's Office in its efforts to monitor his probation. He also failed to provide requested documents or to promptly sign authorizations that would allow the Director to obtain information from the taxing authorities.

18. As set forth below, respondent has failed to abide by the Minnesota Rules of Professional Conduct.

19. As set forth herein, respondent has failed to provide to the Director proof of tax filing or to respond to requests for information about his tax filing.

20. Respondent's conduct in failing to cooperate with the Director's Office in monitoring his probation violated the terms of his Court-ordered probation, and Rule 3.4(c), MRPC.

## COUNT TWO

### Non-Cooperation Regarding New Investigation

21. On January 13, 2000, the First Farmer and Merchant Bank notified the Lawyers Professional Responsibility Board (LPRB) that respondent had an overdraft on his trust account.

22. On January 21, 2000, the Director wrote to respondent requesting an explanation of the overdraft within ten days. Respondent failed to respond.

23. On February 18, 2000, the Director wrote to respondent and again requested a response within five days. Respondent failed to respond.

24. On March 9, 2000, the Director opened a disciplinary file and requested that respondent explain why he had failed to cooperate with the trust account overdraft investigation and with his public probation requirements. Respondent failed to respond.

25. On April 5, 2000, the Director wrote to respondent to schedule a meeting on April 13, 2000. The Director asked respondent to bring all previously requested information to the meeting.

26. Respondent called the Director to reschedule the meeting for April 19, 2000.

27. On April 19, 2000, the Director met with respondent. Respondent failed to provide all requested information and indicated that he was unable to provide trust account books and records because he had not been keeping these records. He did agree to promptly provide additional computer records that he believed would help sort out his trust account records.

28. On May 4, 2000, the Director wrote to respondent and requested him to provide the computer records he had agreed to provide at the April 19, 2000, meeting and in addition, to sign an authorization for the First Farmer and Merchant Bank to provide information to the Director's Office regarding his trust account. Respondent failed to respond or to provide any further records.

29. Respondent's conduct in failing to cooperate with the Director's investigation violated the terms of his probation, and Rules 3.4(c), 8.1(a)(3), 8.4(c) and (d), MRPC, and Rule 25, Rules on Lawyers Professional Responsibility (RLPR).

COUNT THREE

Trust Account Violations and Commingling

Inadequate Trust Account Books and Records and False Certification

30. On January 13, 2000, First Farmer and Merchant Bank notified the Director's Office of an overdraft in the IOLTA account of respondent.

31. The Director's Office reviewed the books and records provided by respondent. The books and records did not fully cover the time period requested. Respondent did not maintain subsidiary ledgers, did not perform and maintain evidence of monthly reconciliations of his trust account, checkbook balance, subsidiary ledger trial balance and adjusted bank statements. Respondent did not provide all requested bank statements, cancelled checks, duplicate deposit tickets or checkbook register.

32. For the period beginning at least July 1999, respondent left personal funds with client funds in the trust account, thereby commingling the funds and putting client funds at risk. Because respondent did not provide all of the requested trust account records, it is unknown whether respondent's trust account is in balance.

33. Respondent's conduct in commingling personal and client funds, failing to maintain required books and records and falsely certifying to the Court that he maintained such records violated the terms of his probation and Rules 1.15 and 8.4(c), MRPC, and LPRB Opinion 9.

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: June 27, 2000

  
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