

FILE NO. C1-98-589

STATE OF MINNESOTA

IN SUPREME COURT

-----  
In Re Petition for Disciplinary  
Action against ERIC A. DERYCKE,  
an Attorney at Law of the  
State of Minnesota.  
-----

**SUPPLEMENTARY 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 supplementary petition for disciplinary action pursuant to Rules 10(e) and 12(a), Rules on Lawyers Professional Responsibility (RLPR).

Respondent is currently the subject of a June 27, 2000, petition for disciplinary action ("petition"). The Director has investigated further allegations of unprofessional conduct against respondent.

The Director alleges that respondent has committed the following additional unprofessional conduct warranting public discipline:

COUNT FOUR

Mishandling Trust Account Funds

34. For the period beginning at least June 1999 until October 1999, respondent withdrew funds, on 45 different occasions, from his trust account by using an automatic teller machine (ATM). ATM fees of \$33 were charged against his trust account balance. Respondent discontinued his use of ATMs in November 1999.

35. For the period beginning at least June 1999 until July 2000, funds from respondent's trust account were automatically transferred into his personal/business account, to cover overdrafts, on 18 occasions.

36. For the period beginning at least June 1999 until June 2000, respondent consistently failed to provide clients with an accounting of his attorney's fees before withdrawing those fees from the trust account. Once he believed fees had been earned, it has been respondent's practice to withdraw funds as needed. The withdrawals were in the form of transfers to a personal account (*see* ¶ 35), checks to office supply businesses, payment of secretarial salaries, or other office expenses. Clients were not provided with a bill to review or notice of the withdrawal of funds. The fees were generally flat fees or earned on receipt retainers, although respondent did not have written fee agreements with the clients.

37. For the period beginning at least June 1999 until July 2000, ten client retainer account checks were not deposited for more than two weeks from the date the checks were drafted. On four of those occasions, deposits were not made for more than a month from the dates on which the checks were drafted.

38. No client funds were misappropriated by the above practices, as all funds from the trust account used improperly appear to have been earned, and therefore belonged to respondent, at the time they were used.

39. Respondent's practice of withdrawing funds from his trust account by using an ATM and by automatic transfers to cover overdrafts in his business/personal account violates Lawyers Professional Responsibility Board (LPRB) Opinions 9 and 12.

40. Respondent's failure to provide his clients with an accounting of earned fees before withdrawing those fees violated Rule 1.15(b), Minnesota Rules of Professional Conduct (MRPC), and LPRB Opinion 15.

41. Respondent's commingling of law firm and client funds, by leaving earned fees in his trust account and withdrawing them to pay business expenses, violates Rule 1.15, MRPC.

42. Respondent's failure to promptly deposit trust account funds for safekeeping violated Rule 1.15(c)(2), MRPC.

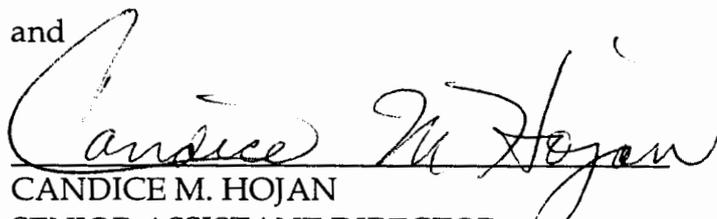
WHEREFORE, the Director respectfully prays for an order of this Court revoking respondent's probation, suspending respondent's license to practice law or imposing otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: November 22, 2000.



EDWARD J. CLEARY  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY  
Attorney No. 17267  
25 Constitution Avenue, Suite 105  
St. Paul, MN 55155-1500  
(651) 296-3952

and



CANDICE M. HOJAN  
SENIOR ASSISTANT DIRECTOR  
Attorney No. 125982

This supplementary petition is approved for filing pursuant to Rule 10(e), RLPR, by the undersigned.

Dated: Nov. 27, 2000.



CHARLES E. LUNDBERG  
CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD