

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against ERIC A. L. DE RYCKE,
a Minnesota Attorney,
Registration No. 22299.

**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 (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on April 22, 1974. Respondent is currently suspended from the practice of law in Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

a. On May 23, 2002, respondent was indefinitely suspended from the practice of law for failing to comply with the terms of his disciplinary probation. *In re De Rycke*, 644 N.W.2d 797 (Minn. 2002).

b. On June 6, 2001, respondent was publicly reprimanded and received a two-year extension of a previous probation. The discipline resulted from his failure to cooperate with an earlier court-ordered probation, failing to cooperate with an investigation of a trust account overdraft, commingling personal and client funds, failing to maintain required trust account books and records, falsely certifying that he maintained such records and making ATM trust account withdrawals and other

automated withdrawals to cover business/ personal account overdrafts. *In re De Rycke*, 627 N.W.2d 331 (Minn. 2001).

c. On April 21, 1998, respondent was suspended from the practice of law for 90 days and subsequently placed on disciplinary probation for failing to timely file state and federal withholding tax returns; client neglect and non-communication in four different matters; and non-cooperation with the Director's investigation of those matters. *In re De Rycke*, 577 N.W.2d 922 (Minn. 1998).

FIRST COUNT

Kluckman Matter

1. On October 9, 2001, Richard Kluckman retained respondent to represent him in a DWI matter. Kluckman paid respondent \$650.

2. Respondent stated he would reschedule Kluckman's October 15, 2001, hearing. However, respondent was late in rescheduling the hearing and Kluckman was charged with failure to appear. The charge was subsequently dropped and respondent was able to have the matter rescheduled for November 5, 2001.

3. On the morning of November 5, 2001, Kluckman tried repeatedly to reach respondent by telephone. When Kluckman was unable to reach respondent he went to the courthouse by himself. Respondent failed to appear at the hearing and Kluckman, acting on his own behalf, was able to have the matter continued until November 19, 2001.

4. The next day Kluckman continued his efforts to contact respondent. When he finally reached respondent and asked him about his failure to appear for the hearing, respondent stated he had been unable to attend due to car problems. However, when Kluckman asked respondent why he had at least not called him or the court to let them know that he could not attend, respondent did not reply.

5. Respondent did call Kluckman the weekend before the November 19, 2001, hearing and left a voicemail message reminding him of the upcoming hearing. However, Kluckman discharged respondent and continued *pro se*.

6. Respondent's failure to attend a hearing on behalf of his client, his failure to communicate with his client, and his failure to diligently pursue the representation in the Kluckman matter violated Rules 1.1, 1.3 and 1.4, Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Kruger Matter

7. In June 1999 Harvey Kruger retained respondent to defend him against a DWI charge. Kruger paid respondent \$700. Kruger understood this to be a nonrefundable flat fee. However, respondent did not provide Kruger with a retainer agreement informing him that the funds would not be placed in trust and respondent did not place the funds in his trust account.

8. Respondent appeared with Kruger for the entry of the initial plea and at a subsequent hearing. Respondent telephoned Kruger on several occasions to inform him of hearing dates and to then tell him that the trial had been continued. Respondent never told complainant why the trial had been continued. Later respondent told Kruger that there had been an offer that would have resulted in Kruger receiving no jail time. However, respondent did not tell Kruger of this alleged offer until after it was no longer available.

9. On June 13, 2001, Kruger paid respondent \$2,000 to hire an expert witness. Respondent told Kruger that the expert would testify that Kruger's blood test was not accurate. Kruger never received an expert report from respondent and no expert ever testified on Kruger's behalf. Despite the Director's demand that he do so, respondent never provided evidence that he had hired an expert.

10. In May of 2002, Kruger spoke to respondent about his case. Respondent did not tell Kruger that there was a petition for discipline pending against respondent with the Minnesota Supreme Court and did not notify Kruger when the Court suspended him on May 23, 2002. Kruger never heard from respondent again.

11. Kruger subsequently learned from family members of respondent's suspension from the practice of law. Kruger tried, unsuccessfully, to reach respondent. Respondent never refunded any of Kruger's \$2,000.

12. Kruger subsequently retained new counsel.

13. Respondent's failure to communicate with his client and his failure to properly withdraw from the representation in the Kruger matter violated Rules 1.4 and 1.16, MRPC.

14. Respondent's conduct in obtaining \$2,000 from his client for the purposes of hiring an expert and then failing to hire an expert or refund any of the money violated Rule 8.4(c) and (d), MRPC.

THIRD COUNT

C. Failure to Comply with Supreme Court Order

15. As indicated above, on May 23, 2002, respondent was indefinitely suspended from the practice of law. Rule 26(b), RLPR, provides that unless the Minnesota Supreme Court orders otherwise, a suspended lawyer shall notify each client, opposing counsel (or opposing party acting *pro se*), and the tribunal involved in pending litigation of the lawyer's suspension.

16. Prior to his suspension, respondent was representing Todd Barker in a criminal proceeding. Respondent never informed Barker that he was suspended from the practice of law. Respondent also failed to notify Barker of a jury trial that had been scheduled for September of 2002.

17. On September 13, 2002, the Director received correspondence from Judge David E. Christensen of the Fifth Judicial District, informing the Director that respondent had failed to notify Barker and defendant Leonard Gorter (in a Pipestone County criminal matter) of his suspension. Respondent had also failed to notify the court of his suspension.

18. As indicated above, respondent never notified his client Harvey Kruger that he had been suspended from the practice of law.

19. Rule 26(e), RLPR, requires that within 15 days after the effective date of the Court's order suspending a lawyer, the suspended lawyer shall file an affidavit with the Director setting forth that the suspended lawyer has fully complied with the provisions of the order and the Rule. Respondent never filed proof of compliance with the Director's Office.

20. Respondent's failure to notify his clients or the tribunal of his suspension violated Rule 26, RLPR, and Rules 1.4, 3.4(c), and 8.4(d), MRPC.

FOURTH COUNT

Trust Account Overdraft

21. On January 11, 2002, First Farmers & Merchants National Bank (the bank) honored a check drawn on respondent's trust account in the amount of \$275.00. Respondent had insufficient funds in his account to cover the check. The payment of this check plus the NSF charge of \$18.00 resulted in respondent's trust account being overdrawn in the amount of \$54.37.

22. On January 18, 2002, the bank honored a second check drawn on respondent's trust account, this one in the amount of \$200.00. Respondent had not deposited any funds in his trust account and the payment of this check plus an additional NSF charge of \$18.00 resulted in his trust account being overdrawn by \$326.37.

23. On January 18, 2002, and January 24, 2002, respectively, the Director received notice from the bank of the first and second overdrafts of respondent's trust account.

24. The Director has not received any additional notices of overdrafts although, as of the date of this petition, respondent's trust account remains open.

25. Respondent's failure to properly maintain his trust account violated Rule 1.15, MRPC.

FIFTH COUNT

Non-Cooperation

26. Respondent failed to respond to letters and notices of investigation sent in connection with the complaints against him as follows:

Kluckman Matter

a. On January 23, 2002, the Director sent respondent a notice of investigation in the complaint of Richard Kluckman. The notice required respondent to submit a response to the complaint within 14 days. Respondent failed to respond.

b. On February 12, 2002, the Director wrote respondent again requesting a response. The Director informed respondent that a failure to cooperate with an investigation of the Director's Office could provide a separate basis for discipline. Respondent did not respond.

c. The Director sent follow-up letters on March 21, 2002, and April 12, 2002. Respondent failed to respond to either letter.

d. On February 5, 2003, the Director again wrote to respondent requesting a reply to the Kluckman complaint. As of the date of this petition, respondent has not responded to the Kluckman complaint.

Kruger Matter

e. On August 28, 2002, the Director sent respondent a notice of investigation in the complaint of Harvey Kruger. The notice required respondent submit a response to the complaint within 14 days. Respondent failed to respond.

f. On November 15, 2002, the Director wrote respondent again requesting a response to the Kruger complaint. The Director informed respondent that failure to cooperate with an investigation of the Director's Office could provide a separate basis for discipline. Respondent failed to respond to the Director's November 15, 2002, letter.

g. As of the date of this petition, respondent has not submitted a response to the Kruger complaint.

Trust Account Overdraft

h. On January 23, 2002, the Director wrote respondent requesting a written explanation for the overdraft on his trust account and trust account records relating to the overdraft. Pursuant to the Director's policy regarding overdraft notices, the matter was handled as an inquiry, not a disciplinary proceeding. The Director requested a response within ten days. Respondent failed to respond.

i. On February 8, 2002, the Director wrote respondent again requesting an explanation of the overdraft and his trust account records. In the letter, the Director told respondent that a disciplinary file could be opened if he did not respond within five days. Respondent failed to respond and the Director opened a disciplinary file.

j. On February 28, 2002, the Director sent respondent a notice of investigation regarding the trust account overdraft. The notice requested a written response along with trust account books and records. Respondent failed to respond to the notice of investigation and failed to provide trust account books and records to the Director.

k. On March 18, 2002, the Director wrote respondent again requesting a response and his trust account books and records. Respondent has never responded to the Director's requests for information regarding his overdraft.

Failure to Comply With Court Order

l. On October 2, 2002, the Director sent respondent a notice of investigation regarding his failure to notify his clients of his May 23, 2002, suspension from the practice of law. Respondent failed to respond to the Director.

m. On November 15, 2002, the Director wrote respondent again requesting a response to the October 2 notice of investigation. Respondent failed to respond.

27. Respondent's failure to cooperate with the investigations of the Director's Office violated Rule 8.1, MRPC, and 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: February 2, 2004.



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and



CRAIG D. KLAUSUNG
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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: 2/9/04, 2004.



KENNETH R. WHITE
PANEL CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD