

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against CHARLES NORMAN EK,  
an Attorney at Law of the  
State of Minnesota.  
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**AMENDED AND 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 amended and 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 15, 2000, petition for disciplinary action. 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:

FIRST COUNT

McMillan Matter

1. On September 2, 1998, Harold McMillan signed a retainer agreement with respondent under which respondent agreed to represent McMillan in an appeal to the Eighth Circuit Court of Appeals from the trial court's denial of complainant's "Section 2255 motion." Title 28, U.S.C. § 2255 permits a prisoner to move the court that imposed his sentence to vacate, set aside or correct the sentence based upon a claim that the sentence was improper. The trial court had denied McMillan's earlier section 2255 motion and McMillan's subsequent requests for the court to reconsider.

2. A federal prisoner is not permitted to appeal a final order in a proceeding under section 2255 without first securing a certificate of appealability (COA). On September 10, 1998, respondent filed with the district court a proposed COA regarding McMillan's 2255 motion. On September 14, 1998, respondent filed with the Eighth Circuit Court of Appeals a notice of appeal on McMillan's behalf. Respondent apparently did this prior to the trial court's ruling on the COA to avoid missing the appeal deadline.

3. On October 19, 1998, the district court denied the application for a COA. On October 21, 1998, respondent wrote to McMillan informing him of the court's decision. On February 19, 1999, the Eighth Circuit Court of Appeals denied the application for a COA and dismissed McMillan's appeal. The Court of Appeals mailed a copy of its decision directly to McMillan. Respondent did not contact McMillan about the Court of Appeals' decision. McMillan subsequently contacted respondent at which time respondent told McMillan that he would appeal the Court of Appeals' decision.

4. Respondent never filed the appeal and had no further contact with McMillan.

5. Respondent's conduct in failing to file an appeal on his client's behalf violated Rules 1.2 and 1.3, Minnesota Rules of Professional Conduct (MRPC).

6. Respondent's conduct in failing to communicate with his client violated Rule 1.4, MRPC.

## SECOND COUNT

### Kightlinger Matter

7. In January of 1998, Dale Kightlinger retained respondent to represent him in litigation against his former employer. Respondent investigated complainant's case and in April of 1998 prepared and filed a complaint in federal district court.

8. Respondent proceeded with the case through the remainder of 1998. In February of 1999, the defendant brought a motion for summary judgment. On May 19,

1999, the court granted the defendant's motion. Respondent's subsequently filed an appeal of a portion of the district court's judgment. On August 17, 1999, respondent filed Kightlinger's appellate brief with the Eighth Circuit Court of Appeals.

9. For the remainder of 1999 and into early 2000, respondent failed to reply to numerous requests for information from Kightlinger. Finally, in early May 2000, Kightlinger called respondent's office and received a message that respondent's telephone numbers were no longer in use.

10. Kightlinger then went personally to respondent's office. Kightlinger spoke to the receptionist respondent shared with several other attorneys. The receptionist told Kightlinger that respondent had moved to Alaska. Kightlinger left his name and telephone number with the request that respondent call him.

11. On May 30, 2000, when Kightlinger had not heard from respondent, he again returned to respondent's former office. At that time, the receptionist provided Kightlinger with an e-mail address and post office box that she had for respondent.

12. On May 31, 2000, Kightlinger wrote to respondent informing him that he had learned oral arguments on his appeal had been scheduled for June 16, 2000. Kightlinger asked respondent if he would be representing him. When he did not hear back from respondent, Kightlinger retained another attorney who was able to obtain a continuance of the oral argument.

13. Respondent's conduct in failing to pursue his client's representation violated Rule 1.2 and 1.3, MRPC.

14. Respondent's conduct in failing to communicate with his client violated Rule 1.4, MRPC.

### THIRD COUNT

#### Non-Cooperation

15. On September 7, 1999, McMillan filed an ethics complainant with the Director's Office. On October 1, 1999, after requesting additional information from

McMillan, the Director sent respondent a notice of investigation concerning McMillan's complaint. The notice informed respondent that he should respond to the complaint in writing within 14 days. Respondent failed to reply within the required time.

16. On October 26, 1999, when he still had not received respondent's reply, the district ethics committee (DEC) investigator wrote to respondent. In his letter, the investigator informed respondent that if he did not have respondent's reply by November 1, 1999, he would be concluding his investigation based upon the information he had so far been supplied with. On November 1, 1999, respondent sent his reply to the notice of investigation.

17. In his reply, respondent acknowledged that he did not maintain communication with McMillan and that he had told McMillan that he would file an appeal, which he had not done. On January 12, 2000, the DEC referred the matter back to the Director with a recommended finding that there was an admitted violation of Rule 1.4, MRPC.

18. On February 8, 2000, the Director wrote to respondent requesting additional information about his handling of the McMillan representation. Respondent was instructed to reply within 14 days. Respondent failed to reply.

19. On March 1, 2000, the Director sent respondent a follow-up letter (Exhibit 1). Respondent was reminded of the Director's previous letter and was instructed to submit his reply at that time. Respondent failed to reply.

20. On March 17, 2000, the Director wrote to respondent again (Exhibit 2). In that letter, the Director reminded respondent that he had an obligation to comply with the Director's investigation and that a failure to cooperate could form a separate basis for discipline. Respondent failed to reply.

21. On March 31, 2000, the Director wrote to respondent by certified mail and first class mail (Exhibit 3). In his letter, the Director requested respondent's appearance at a meeting in the Director's Office on Tuesday, April 11, 2000, at 1:00 p.m.

Respondent was advised that if he was unable to attend at that date and time, he should contact the Director's Office to reschedule.

22. Respondent failed to appear for the April 11, 2000, meeting and failed to contact the Director's Office.

23. The letter sent by first class mail was not returned to the Director's Office. The letter sent by certified mail was delivered and signed for on April 26, 2000 (Exhibit 4). Respondent did not contact the Director.

24. On June 9, 2000, the Director issued a notice of investigation to respondent concerning the Kightlinger complaint. The Director sent the notice to respondent's Minneapolis address as well as the post office box in Alaska provided by Kightlinger (Exhibit 5). Respondent failed to reply to the notice of investigation.

25. On June 28, 2000, the Director sent a follow-up request to respondent (Exhibit 6). The Director sent a second follow-up request to respondent on July 19, 2000 (Exhibit 7). Respondent has not provided the Director with a response.

26. Respondent's failure to cooperate with the Director's investigations violates Rules 8.1(a)(3) and 8.4(d), MRPC.

#### FOURTH COUNT

##### Failure to Attend Pre-Hearing Meeting

27. On May 8, 2000, respondent was mailed charges of unprofessional conduct and a notice of pre-hearing meeting requiring his attendance at the pre-hearing meeting on May 31, 2000. Respondent did not attend the pre-hearing meeting, nor did he contact the Director's Office concerning his inability to attend.

28. Respondent's conduct in failing to attend the pre-hearing meeting violated Rules 8.1(a)(3) and 8.4(d), MRPC, and Rule 25, RLPR.

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: September 20, 2000.



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

and



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CRAIG D. KLAUSUNG  
SENIOR ASSISTANT DIRECTOR  
Attorney No. 202873

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

Dated: September 27, 2000.



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SHARON L. REICH  
PANEL CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD