

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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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 October 28, 1994. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

A. 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

### B. Non-Cooperation

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. On March 31, 2000, the Director wrote to respondent by certified mail and first class mail (Exhibits 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.

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

15. 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 has not contacted the Director.

16. Respondent's failure to cooperate with the Director's investigation violated Rules 8.1(a)(3) and 8.4(d), MRPC.

THIRD COUNT

C. Failure to Attend Pre-Hearing Meeting

17. 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.

18. 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 suspending 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: June 2, 2000.

  
EDWARD J. CLEARY  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY  
Attorney No. 17267  
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and

  
CRAIG D. KLAUSING  
SENIOR ASSISTANT DIRECTOR  
Attorney No. 202873

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

Dated: June 15, 2000.

  
SHARON L. REICH  
PANEL CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD