

FILE NO. C1-87-1357

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against DAVID T. ERICKSON,
an Attorney at Law of the
State of Minnesota.

**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 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 March 8, 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 unprofessional conduct warranting public discipline:

BACKGROUND AND DISCIPLINARY HISTORY

1. David T. Erickson, hereinafter respondent, was admitted to practice law in Minnesota on October 17, 1969. Respondent has the following disciplinary history:

a. On June 25, 1982, respondent received a warning for failing to appear at an appellate pre-hearing conference, failing to inform the court that he would not appear, and failing to file a notice of withdrawal, in violation of DR 1-102(A)(1), DR 1-102(A)(5), DR 1-102(A)(6) and DR 2-110(A)(1) and (2), Minnesota Code of Professional Responsibility (Exhibit 1).

b. On November 17, 1987, the Minnesota Supreme Court suspended respondent for 30 days for failing to file his state tax returns for the years 1981 through 1985 and his federal tax returns for the years 1982 through 1984. *In re Erickson*, 415 N.W.2d 670 (Minn. 1987) (Exhibit 2).

c. On October 15, 1993, the Minnesota Supreme Court suspended respondent for 60 days for neglecting client matters, failing to maintain proper trust account books and records, using his trust account as a personal business account, and failing to cooperate with the disciplinary investigation for four months. *In re Erickson*, 506 N.W.2d 628 (Minn. 1993) (Exhibit 3). On February 4, 1994, the Supreme Court reinstated respondent and placed him on probation for two years (Exhibit 4).

d. On June 29, 1994, respondent received an admonition for bringing a motion in bad faith, failing to respond to multiple requests for payment of a sanction, and failing to timely pay the sanction, in violation of Rule 8.4(d), Minnesota Rules of Professional Conduct (MRPC) (Exhibit 5).

e. On February 12, 1996, respondent received an admonition for improperly depositing nonrefundable flat fees in his business account, failing to cooperate with the conditions of his probation, and failing to respond to the Director's requests for information, in violation of Rules 1.15(a)(2), 1.15(e), and 8.1(a)(3), MRPC, Lawyers Professional Responsibility Board Opinion No. 15, Rule 25, RLPR, and the Supreme Court's October 15, 1993, and February 4, 1994, orders (Exhibit 6).

COUNT ONE

Forgery

On December 10, 1994, respondent filled out an application for an AT&T Universal Gold MasterCard in the name of his daughter, Shelli Ann Erickson (Exhibit 7). Respondent filled in the application in his own handwriting and signed the application "Shelli A. Erickson." Respondent's daughter did not authorize respondent to obtain a card in her name. Respondent knew that his daughter had changed her surname to Koehnen when she married in 1982. Respondent also noted on the application in handwriting that a second card should be issued in his name at the same address.

Respondent used the credit card from 1995 through April 1998. In April 1998, respondent exceeded his credit limit on the card and failed to make payments on the outstanding balance. At that time, respondent's total outstanding balance was \$8,237.81, of which \$988 was past due.

Shelli Koehnen received a telephone call at her workplace in July 1998 from Nationwide Credit, a collection agency designated by AT&T credit to collect the outstanding credit card balance. Koehnen completed an affidavit of forgery on August 28, 1998, which she forwarded to the collection agency (Exhibit 8).

The collection agency continued to dun Koehnen for the bill. Koehnen investigated the matter further. Upon receiving a copy of the credit card application, Koehnen recognized respondent's handwriting. Koehnen confronted respondent regarding the credit card. Respondent did not deny obtaining the credit card and informed Koehnen that "it's your problem now."

The outstanding debt interfered with Koehnen's attempts to sell or refinance her home. Koehnen was eventually forced to refinance her house at a higher interest rate and used some of the proceeds of the mortgage to pay off the credit card. Koehnen submitted her complaint to the Director in October 1999 (Exhibit 9).

Koehnen continued to contest the debt. The credit card company investigated the matter further, reconsidered its position, and returned Koehnen's money to her in late 1999.

The credit card company is currently pursuing respondent for the debt, which he has not paid.

Respondent's conduct in fraudulently obtaining and using a credit card in his daughter's name violated Rules 8.4(b) and (c), MRPC.

COUNT TWO

Failure to Cooperate

On October 27, 1999, the Director mailed to respondent notice of investigation of Koehnen's complaint (Exhibit 10). The notice was mailed to 19101 Highway 7,

Minnetonka, Minnesota 55345 ("respondent's Minnetonka address"). The notice requested respondent to provide his complete written response within 14 days. Respondent failed to respond.

By letter dated November 18, 1999, and sent by certified mail, the Director requested respondent to provide his response to the complaint (Exhibit 11). Respondent did not pick up the certified mail but contacted the Director's Office by telephone on December 3, 1999. The Director's assistant spoke with respondent on December 7, 1999, at which time respondent stated he had not received a copy of the complaint because his address had changed. That same day, the Director mailed a second copy of the complaint and notice of investigation to respondent at the post office box address respondent provided ("respondent's Excelsior address") (Exhibit 12).

On December 17, 1999, Shelli Koehnen contacted the Director's Office to ask to withdraw her complaint. Koehnen stated that respondent had contacted her and apologized for improperly obtaining the credit card and would take care of the bill. Shortly thereafter, the Director received a letter from respondent dated December 17, 1999 (Exhibit 13). Respondent did not respond to Koehnen's allegations but merely stated, "I reviewed your letter and complaint. I understand that Shelli Ann Koehnen [sic] did not complain to your office. This is a family matter where things were said in the heat of anger."

The Director decided that the complaint should not be dismissed because the underlying allegation of forgery had not been resolved. By letters dated December 29, 1999, the Director informed both Koehnen and respondent that the file would remain open and requested respondent to provide his written response to the substantive allegations of the complaint within an additional ten days (Exhibit 14). Respondent failed to respond.

By letter dated January 14, 2000, the Director again requested respondent to request his response to the complaint (Exhibit 15). Respondent failed to respond.

2. On February 17, 2000, the Director served respondent by mail with charges of unprofessional conduct and a notice of pre-hearing meeting to be held March 7, 2000, at 9:30 a.m. at the Director's Office (Exhibit 16). The notice and the accompanying cover letter both stated that Rule 9(b), RLPR, required respondent to serve on the Director an answer to the charges of unprofessional conduct at least seven days before the pre-hearing meeting. Respondent did not serve an answer to the charges and failed to appear at the pre-hearing meeting.

3. On March 20, 2000, the Director issued a notice and petition for disciplinary action in the above-captioned matter. The Director made multiple attempts to effect personal service. Each attempt was made at respondent's Minnetonka address. Attempts were made on March 20, 21, 23, 28 and 30 and May 18 and 19, 2000. Each was unsuccessful.

4. On July 5, 2000, the Director sent to respondent's Minnetonka address by first class mail a copy of the notice and petition. Respondent failed to answer the petition or to respond to the July 5 letter.

5. By order filed August 22, 2000, the Supreme Court suspended respondent from the practice of law pursuant to Rule 12(c), RLPR.

6. Respondent claims that he did not learn of his suspension until September 19, 2000, when a judge informed respondent during a hearing in which respondent was representing a party.

7. On September 19, 2000, respondent telephoned the Director's Office and spoke with an Assistant Director.

8. On or about September 20, 2000, respondent filed a petition to vacate his suspension.

9. By order filed November 13, 2000, the Supreme Court stated that respondent's suspension would be lifted if within ten days respondent filed a valid address for personal service and a signed acknowledgement of service of the petition.

10. By letter dated December 1, 2000, the United States Postal Service informed the Director that respondent's Minnetonka is a valid address for respondent (Exhibit 17). Enclosed with that December 1 letter was a handwritten note dated November 27, 2000, from respondent to the Postmaster. In that note respondent stated, "Please deliver mail to David Erickson 19101 Hwy 7 Mtka MN 55345."

11. On December 5, 2000, respondent filed and served by mail on the Director his answer to the petition for disciplinary action. Respondent did not list an address on his December 5 cover letter. The return envelope and the answer listed respondent's address as his Excelsior address.

12. On December 20, 2000, respondent's deposition was taken. Respondent stated that his Minnetonka address was his residence, he also resided at 4892 Rutledge, Prior Lake, MN ("respondent's Prior Lake address") and that respondent officed at 600 West 78th Street without identifying the city.

13. By letter dated January 4, 2001, to respondent and sent first class mail, the Director requested respondent to provide no later than January 18, 2001, the information and documents requested in that letter (Exhibit 18). The letter was sent to respondent's Minnetonka, Excelsior and Prior Lake addresses and to 600 West 78th St., Richfield, MN. Only the letter to the Richfield address was returned. Respondent failed to respond.

14. By letter to respondent dated January 29, 2001, the Director informed respondent that the Director had received no response to the Director's January 4 letter and requested respondent to provide within two weeks of the January 29 letter the information and documents requested in the January 4 letter (Exhibit 19). The letter was sent by certified mail, return receipt requested, to respondent's Minnetonka, Excelsior and Prior Lake addresses. On February 6, 2001, receipt of the letter was signed for at respondent's Prior Lake address (Exhibit 20).

15. By letter dated March 1, 2001, the Director informed respondent that the Director had received none of the information or documents requested in the Director's January 4 letter (Exhibit 21). Enclosed and served upon respondent with that March 1

letter were requests for production of documents. The March 1 letter was sent by certified mail, return receipt requested, to respondent's Minnetonka, Excelsior and Prior Lake addresses. On March 16, 2001, receipt of the letter was signed for at respondent's Excelsior address (Exhibit 22).

16. By letter dated February 13, 2001, but received by the Director on March 15, 2001, respondent provided some, but not all, of the documents requested in the March 1, 2001, requests for production of documents. Respondent's letter identified his address as Box 580, Excelsior, Minnesota, his Excelsior address.

17. By letter dated April 18, 2001, the Director requested respondent to provide the information and documents requested in the Director's January 4 letter which respondent had not yet provided (Exhibit 23). The letter was sent by both first class mail and certified mail, return receipt requested, to respondent's Minnetonka, Excelsior and Prior Lake addresses. The letters sent by first class mail were not returned. Respondent failed to respond.

18. By letter dated April 25, 2001, the Director requested respondent to sign and return an authorization for credit card records enclosed with that April 25 letter no later than May 7, 2001 (Exhibit 24). The letter was sent by both first class mail and certified mail, return receipt requested, to respondent's Minnetonka, Excelsior and Prior Lake addresses. The letters sent by first class mail were not returned. Respondent failed to respond.

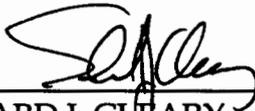
19. By letter dated May 3, 2001, the Director informed respondent that the Director had received no response to the Director's April 18 letter and requested respondent to provide at that time the information and documents requested in the Director's January 4 letter which respondent had not yet provided (Exhibit 25). The letter was sent to respondent by both first class mail and certified mail, return receipt requested, to respondent's Minnetonka, Excelsior and Prior Lake addresses. The letters sent by first class mail to respondent's Minnetonka and Excelsior addresses were not returned. Respondent failed to respond.

20. By letter dated May 8, 2001, the Director informed respondent that the Director had received no response to the Director's April 25 letter and requested respondent to provide at that time the executed authorization requested in that April 25 letter (Exhibit 26). The letter was sent by both first class mail and certified mail, return receipt requested, to respondent's Minnetonka, Excelsior and Prior Lake addresses. The letters sent by first class mail were not returned. Respondent failed to respond.

21. Respondent's conduct in failing to cooperate and coercing Koehnen to withdraw her complaint violated Rule 8.1(a)(3) and 8.4(d), MRPC, and Rule 25, RLPR.

WHEREFORE, the Director respectfully prays for an order of this Court disbarring or 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: August 29, 2001.


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

Dated: Sept. 4, 2001.


JOHN C. LERVICK
VICE CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD