

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against GARY A. FLATTEN,
an Attorney at Law of the
State of Minnesota.

**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. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 23, 1964. Respondent is currently on CLE restricted status by order of the Minnesota Supreme Court.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's disciplinary history is as follows:

- a. On July 11, 1991, respondent received an admonition for failing to communicate with a client (Exhibit 1).
- b. On August 21, 1991, respondent also received a second admonition for failing to cooperate with the Director's investigation of the ethics complaint which resulted in the July 11, 1991, admonition (Exhibit 2).

FIRST COUNT

Failure to Cooperate with Trust Account Investigation

1. At all times relevant respondent has maintained US Bank Trust Account number 1-119-1001-6364. Respondent's trust account was overdrawn on June 4, 1999.
2. On June 10, 1999, pursuant to Rule 1.15(i) through (j), Minnesota Rules of Professional Conduct, the Director received notice of the overdraft of the account of respondent from US Bank (Exhibit 3).
3. On June 11, 1999, the Director wrote to respondent at the address he maintains with attorney registration, which is the same address on respondent's US Bank trust account (Exhibit 4). That letter requested an explanation for, and various documents related to, the overdraft. Respondent failed to respond.
4. On July 6, 1999, the Director wrote again to respondent requesting his response to the June 11, 1999, letter (Exhibit 5). Respondent failed to respond.
5. On July 20, 1999, the Director wrote to respondent by certified letter (Exhibit 6). Respondent failed to claim this letter.
6. On August 19, 1999, the Director sent a notice of investigation to respondent by regular mail. Respondent failed to respond (Exhibit 7).
7. On September 3, 1999, the Director wrote to respondent concerning his failure to respond to the notice of investigation (Exhibit 8). The Director sent that letter by both regular and certified mail. Respondent failed to claim the certified letter and failed to respond to the other letter. The letters sent to respondent by regular mail have not been returned by the post office.
8. Respondent's conduct in failing to cooperate with the Director's investigation of an overdraft of his trust account violated Rule 8.1(a)(3), Minnesota Rules of Professional Conduct (MRPC), and Rule 25, Rules on Lawyers Professional Responsibility.

SECOND COUNT

Failure to Attend Pre-Hearing Meeting

9. On November 1, 1999, respondent was mailed charges of unprofessional conduct and a notice of pre-hearing meeting requiring his attendance at a pre-hearing meeting on November 22, 1999. Respondent did not attend the pre-hearing meeting, nor did he contact the Director's Office concerning his inability to attend.

10. Respondent's conduct violated Rules 8.1(a)(3) and 8.4(d), MRPC, and Rule 25, Rules on Lawyers Professional Responsibility.

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: November 29, 1999.



EDWARD J. CLEARY
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
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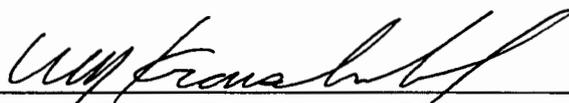
and



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: December 13, 1999



WILLIAM M. KRONSCHNABEL
PANEL CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD