

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against ROBERT CARL FRIDAY,
a Minnesota Attorney,
Registration No. 294172.

**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 29, 1999. Respondent currently resides in Duluth, Minnesota. Respondent was suspended on April 1, 2004, for nonpayment of attorney registration fees.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

A. Helland Matter

1. In the summer of 2002, Stephen H. Helland consulted with respondent concerning issues related to Helland's registration and use of the name "Minnesota State Archery Association, Inc." (MSAA). In October 2002 Helland retained respondent to represent him regarding a potential legal challenge to his use of the MSAA name. In November 2002, "Minnesota State Archery Association I, Inc." (MSAA-I) sued Helland and MSAA for trademark infringement.

2. Respondent did not file an answer to the complaint, but was in contact with Donald Brown, counsel for MSAA-I, requesting extensions of time within which to file the answer. On December 2, 2002, respondent requested a ten-day extension of time within which to file an answer while they continued to discuss settlement. On December 11, 2002, respondent sent an email to Brown in which he indicated that he would send a letter as soon as possible and request that the deadline be continued until December 16, 2002. During this time respondent was not in communication with Helland concerning the case.

3. Respondent did not file or serve an answer to the complaint by the December 16, 2002, deadline. On December 20, 2002, Brown sent an email to respondent asking him whether he was going to serve an answer to the complaint. On December 23, 2002, respondent replied, falsely telling Brown that he had served an answer by mail the previous week. On December 26, 2002, respondent sent another email to Brown stating that he would provide him with "another" copy of the answer as soon as possible.

4. On December 26, 2002, Brown served respondent with a motion for default judgment. On December 27, 2002, respondent sent Brown an email in which he indicated that he had attempted to serve Brown with a motion to dismiss, but the documents had been returned. Respondent had not sent Brown a motion to dismiss. On January 22, 2003, respondent did serve Brown with a motion to dismiss.

5. On January 27, 2003, a settlement conference was held, but the parties were unable to agree on a settlement. On February 12, 2003, Brown (or someone acting on his behalf) served respondent with MSAA-I's response to the motion to dismiss.

6. On February 13, 2002, the United States District Court held a status conference call to ascertain the state of the lawsuit and to explore the possibility of settlement. After the conference call, Brown wrote to respondent that subject to MSAA-I board approval, he was in agreement with the settlement suggestion made during the conference call. Shortly thereafter, respondent indicated that his client

would accept the settlement suggested at the hearing pending approval of an appropriate settlement agreement. However, respondent had never discussed this matter with his client.

7. On February 24, 2003, respondent wrote to the court stating that his clients had decided to proceed with the motion to dismiss and as soon as possible he would be scheduling a hearing date. Respondent never contacted the court to schedule a hearing for his clients' motion to be heard. Despite the court's May 6, 2003, order requiring the immediate filing of all motion papers, respondent never filed the original motion to dismiss or supporting memorandum, never filed the defendants' response to the motion to dismiss, and never filed the defendants' reply brief.

8. On May 30, 2003, the court granted the plaintiff's motion for default judgment and ordered respondent and Helland to appear on June 25, 2003, to show cause why they should not be found in violation of Rule 11 of the Federal Rules of Civil Procedure by misrepresenting to the court "(1) the status of the Defendants' Motion to Dismiss, and (2) the Defendants' intent to move to dismiss the verified complaint pursuant to the Federal Rules of Civil Procedure and the Local Rules of the District Court of Minnesota."

9. Despite the court's order that Helland also appear at the hearing, respondent did not tell Helland of the June 25, 2003, hearing. Helland learned of the default judgment when told by a friend that the judgment was posted on MSAA-I's website. After reading the order, Helland contacted respondent who told him not to worry, that he would take care of the matter, and that it was probably not necessary for Helland to attend the hearing.

10. Helland talked to respondent again before the scheduled hearing and respondent falsely told him that he was working on a motion to vacate, that the motion to dismiss would be heard, and that he was going to revise the pleadings. Helland and respondent made arrangements to meet the morning of the 25th at Helland's office and

go to the hearing from there. However, respondent failed to appear for the meeting or the hearing and Helland went to the hearing by himself.

11. On June 25, 2003, respondent admitted himself to chemical dependency treatment. Helland obtained other representation.

12. Respondent's failure to diligently file an answer, failure to communicate outcome of settlement negotiations to his client, failure to communicate to his client that his appearance at the show cause hearing was required, failure to comply with court orders to file pleadings and to appear at the show cause hearing, misrepresentations to the court regarding the status of the matter, misrepresentations to opposing counsel regarding service of the answer and motion to dismiss, and misrepresentations to his client about the status of his work in the Helland matter violated Rules 1.3, 1.4, 3.2, 3.3, and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

B. Jablonski Matter

13. During early 2003, Thomas Jablonski and Post Specialty Company and HP Enterprises, Inc. retained respondent to commence a lawsuit against a former employee for patent infringement.

14. Respondent discussed the matter with his client and his client's business partner, conducted some legal research, drafted the complaint and other correspondence, but did not complete service, mail letters drafted, speak to the opposing party or contact the court.

15. On May 5, 2003, respondent wrote to Jablonski enclosing a bill for legal services purportedly performed from January 31 to May 1, 2003, and copies of documents, letters and other work product from Jablonski's file. Respondent stated in the letter that Jablonski's matter was filed with the court, a judge was assigned and a hearing on their motion for default judgment would be scheduled by the end of that week.

16. In fact, respondent's May 5, 2003, bill included charges for certain services that respondent did not perform. Specifically, respondent falsely billed Jablonski for service of the complaint upon the opposing party on February 17, 2003; for letters dated March 3 and March 31, 2003, which were drafted but never mailed; for an April 24, 2003, conversation with opposing party that never occurred; for a May 1, 2003, telephone conversation with the court regarding judicial assignment that never occurred.

17. Respondent misrepresented the status of Jablonski's matter in the May 5, 2003, letter. Specifically, respondent never filed the lawsuit, a judge was never assigned and no hearing for default judgment was scheduled.

18. Respondent's conduct in failing to diligently pursue his client's matter, misrepresenting the status of the matter to his client and for falsely billing for services not performed in the Jablonski matter violated Rules 1.3, 1.4, and 8.4(d), MRPC.

THIRD COUNT

C. Unauthorized Practice of Law During Fee Suspension

19. Respondent failed to timely pay his attorney registration fee due on or before March 31, 2002, and was suspended from the practice of law on April 1, 2002, pursuant to Rule 3, Rules of the Supreme Court for Registration of Attorneys.

20. On July 28, 2003, the Director informed respondent that as of April 1, 2002, he was suspended from the practice of law due to his failure to pay his attorney registration fee.

21. On August 21, 2003, respondent provided the Director with his affidavit stating that respondent represented clients in five matters between April 1, 2002, and August 21, 2003.

22. On or about August 21, 2003, respondent paid his 2002 and 2003 attorney registration fees and the late penalty.

23. On March 31, 2004, respondent's attorney registration fee came due. Respondent did not pay the fee and on April 1, 2004, respondent was fee suspended.

The Director has no information as to whether respondent has engaged in the practice of law since that time.

24. Respondent's practice of law during the period of April 1, 2002, through August 21, 2003, while fee suspended violated Rule 5.5(a), MRPC.

FOURTH COUNT

D. Failure to Timely File State and Federal Income Tax Returns

25. Respondent had sufficient gross income in 1999, 2000, 2001 and 2002 to require him to file state and federal individual income tax returns.

26. Respondent filed his 2001 state income tax return late on July 16, 2003. As of November 13, 2003, respondent had not filed his 1999, 2000 and 2002 state income tax returns.

27. Respondent filed his 2001 federal individual income tax return late on July 17, 2002. As of November 3, 2003, respondent had not filed his 1999, 2000, and 2002 federal income tax returns.

28. As more fully set out below, respondent has not provided the Director with additional authorizations or responded to the Director's requests for information. As a result, the Director is unable to determine whether respondent is current in his tax return filing.

29. Respondent's late filing of his 2001 state and federal income tax returns and failure to file his 1999, 2000, and 2002 state and federal income tax returns violated Rules 8.4(b) and (d), MRPC. *See e.g., In re Tyler*, 495 N.W.2d 184 (Minn. 1992).

FIFTH COUNT

E. Failure to Cooperate with the Director's Office

30. On April 22, 2004, the Director wrote to respondent requesting additional information regarding the Helland and Jablonski matters. Respondent was asked to provide an update concerning his payments to Jablonski. In addition, respondent was requested to sign and return authorizations enabling the Director to obtain additional

information from the Internal Revenue Service and the Minnesota Department of Revenue. Respondent failed to reply.

31. On May 14, 2004, the Director again wrote to respondent. In that letter, the Director informed respondent that he should reply to the earlier correspondence immediately. In addition, respondent was advised that a failure to cooperate with an investigation of the Director's Office could constitute a separate basis for discipline. Respondent failed to reply.

32. On June 3, 2004, the Director again wrote to respondent. This letter was sent both certified mail, with a return receipt requested, and by regular mail. Respondent was instructed to appear at the Director's Office for a meeting on Thursday, June 17, 2004. Respondent did not appear for the meeting, nor did he contact the Director to indicate that he would be unable to attend. Respondent did not sign the return receipt for the certified letter. None of the follow-up letters sent by the Director (i.e., April 22, 2004, May 14, 2004, or June 3, 2004) was returned by the postal service.

33. Respondent's failure to cooperate with the investigation of the Director's Office violated Rule 8.1(a), MRPC.

SIXTH COUNT

F. Failure to Attend the Pre-Hearing Meeting

34. On June 24, 2004, the Director mailed respondent charges of unprofessional conduct and notice of pre-hearing meeting requiring his attendance at the pre-hearing meeting on July 8, 2004. Respondent did not attend the pre-hearing meeting nor did he contact the Director's Office concerning his inability to attend.

35. Respondent's conduct violates Rules 8.1(a)(3) and 8.4(d), MRPC.

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: July 19, 2004.



KENNETH L. JORGENSEN
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY

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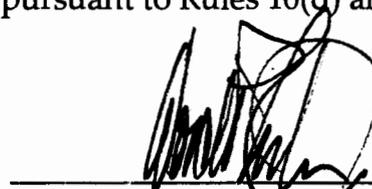
and



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: August 12, 2004.



WOOD R. FOSTER, JR.
PANEL CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD