

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary  
Action against JESSE GANT, III,  
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. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on January 15, 1991. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

*Krueger v. St. Cloud Hospital Matter*

1. Respondent represented Henry Krueger in a medical malpractice action against St. Cloud Hospital and Dr. Michael Amaral, in a case tried in Stearns County on July 21-25, 1997. The Honorable Vicki Landwehr presided.

2. During closing arguments, respondent made many improper statements and arguments, to which objection was made and sustained by the court. These include:

a. At the outset of the argument, respondent alluded to the fact that he, opposing counsel, and the judge probably made mistakes during the trial,

and indicated that the court reporter was there making a record and that the losing party has a right to appeal.

b. Respondent started to say, "And I have known Mr. Krueger . . ." when an objection was made and sustained.

c. Respondent appealed to the jury's personal knowledge of the medical procedure in question in the case.

d. In reviewing the medical records in the case, respondent stated that he had his law clerk, a pharmacist, interpret them.

e. Respondent began to tell a story about when he could not catch his breath, and an objection was sustained. Respondent replied that he had been able to tell stories to other juries. Opposing counsel moved to strike. The motion was granted. Respondent then reminded the jury that the most important people in the trial were the jurors and the court reporter.

f. Opposing counsel objected to a "demonstration" by respondent of trying to catch one's breath. The objection was sustained and the jury was instructed to disregard.

g. In speaking of defendant's expert, respondent referred to having a doctor "cornered" in relation to getting a defense expert to admit negligence.

3. After the objection to respondent's demonstration was sustained, respondent argued that he was just showing what the evidence was, and the parties asked to approach the bench. At the bench there was a colloquy about keeping one's voice down. Opposing counsel and the judge said keep your voice down, and respondent said, "you, too." Respondent then complained that he had never had a judge say he could not give a closing argument or to temper his tone of voice, and twice told the judge that she was making a "grave error." Respondent then told the judge that she had been unfair to him throughout the whole trial. The judge called a recess and excused the jury. The judge then told respondent that she had never had a trial in which she had repeatedly found an attorney's conduct unprofessional until this trial.

Respondent stated directly that he felt the rulings were going against him because of his race. Respondent engaged in further argument with the court and opposing counsel about prior rulings, especially regarding references to the court reporter. He finally told the judge to not discriminate against him. The judge responded to him and accused respondent of trying to intimidate her by threatening to appeal from the beginning of the trial.

4. Respondent's conduct in the *Krueger* case in making inappropriate statements in closing argument and in attempting to intimidate the judge by threatening appeal violated Rules 1.1, 3.4(e), 3.5(h) and 8.4(d), MRPC.

## SECOND COUNT

### Lorenzo Munoz Appeal

5. Lorenzo Munoz sued the City of Minneapolis because of an erroneous drug raid on his apartment. On June 3, 1997, Judge LaJune Lange granted summary judgment to the city. Judgment was entered June 27, 1997.

6. On June 17, 1997, Mr. Munoz met with respondent and hired him to appeal the summary judgment. Mr. Munoz paid respondent \$500 as a retainer, with an agreement that the total cost would be \$3,000. Respondent did not give Mr. Munoz a receipt for the cash. On July 14, 1997, Mr. Munoz paid another \$2,000, and the final \$500 on October 1. Again, Mr. Munoz was not given receipts.

7. On September 26, 1997, respondent served a notice of appeal and statement of the case, Petition for Waiver of Cost Bond and Filing Fee, and Proposed Findings and Order allowing appellant to proceed *informa pauperis*, which were filed on September 29, 1997, with an affidavit of service by mail. Respondent did not obtain an order waiving the cost bond or filing fee.

8. The September 29, 1997, Notice of Case Filing notified respondent that a \$250 filing fee was required, which respondent paid on October 2, 1997.

9. On October 8, 1997, the Court of Appeals entered an order requiring the parties to serve and file informal memorandum on the timeliness of the appeal by October 20.

10. On October 28, 1997, respondent filed a memorandum, which the attached affidavit of service stated was served by mail on October 20, 1997. In the memorandum, respondent conceded that the appeal was served late because respondent forgot that some months have 31 days.

11. On October 28, 1997, the court entered an order dismissing the appeal for lack of jurisdiction due to the untimely appeal.

12. On or about October 20, 1997, respondent contacted Mr. Munoz and told him that he did not have a case because there was not enough evidence. Respondent did not advise Mr. Munoz that respondent had filed the appeal too late. Mr. Munoz later went to the office of the Appellate Courts to get a copy of the appeal, which ultimately showed that respondent had filed the appeal late.

13. On November 21, 1997, Mr. Munoz filed a complaint with the Director's Office, which was sent to the Fourth District Ethics Committee (DEC) for investigation. Respondent was sent a November 26, 1997, Notice of Investigation and given 14 days to make a written response to the investigator. Despite telephone messages from the DEC investigator, respondent did not make a written response until January 15, 1998.

14. Respondent's January 15, 1998, response to the DEC investigator admitted that he had filed the appeal too late. Respondent indicated that he would be returning the file and refunding a portion of the retainer to Mr. Munoz.

15. Respondent did not return the file to Mr. Munoz until April 8, 1998, by mail. Respondent did not refund any portion of the retainer.

16. Respondent's conduct in filing the Munoz appeal too late, without the filing fee or cost bond, and without an *informa pauperis* order, failing to advise his client that the appeal was filed late, failing to provide receipts, failing to promptly return the

client's file or any portion of the retainer, and failing to timely respond to the ethics complaint violated Rules 1.1, 1.3, 1.4, 1.15, 1.16(d), 8.1 and 8.4(d), MRPC.

### THIRD COUNT

#### Xiong Court of Appeals Matter

17. Respondent represented Shoua Lee Xiong, an employee of Golden Valley Microwave Foods (GVMF), in a Hennepin County District Court action for damages alleged to have arisen from GVMF's actions in the course of Xiong's employment, including the locking of the employee in a freezer. John E. Murray represented GVMF. In the amended complaint signed by respondent and dated December 17, 1996, respondent alleged that the practice of locking employees in the freezer had been discontinued by GVMF.

18. The district court dismissed the lawsuit finding that the exclusivity provisions of the Workers' Compensation Act (WCA) and the Minnesota Human Rights Act precluded the tort claims. Respondent appealed.

19. Oral argument was held before the court of appeals on December 11, 1997. During his rebuttal, respondent stated that GVMF had current practices of: (1) locking its Asian employees in the freezer; and (2) preventing OSHA inspectors from entering the plant. GVMF denied these allegations, and made a motion in the court of appeals to strike those portions of respondent's oral argument.

20. Respondent's first statement conflicts with the allegation in the amended complaint that GVMF had discontinued that practice. Respondent cannot produce any evidence of the second statement. The issue of OSHA inspectors was not even before the court. Neither statement is supported in the record of the case.

21. The court of appeals denied Mr. Murray's motion to strike. The court of appeals affirmed dismissal of the lawsuit, on the basis that the WCA was the exclusive remedy.

22. Respondent's conduct in arguing matters outside the record in the Xiong case before the Court of Appeals violated Rules 1.1, 3.1, 3.4 and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

#### FOURTH COUNT

##### Cole Litigation

23. Respondent represented Harvey J. Cole in three lawsuits, beginning in 1997. In 1989 Harvey Cole pleaded guilty to the May 24, 1989, murder of his wife, Margaret Cole. He served seven years of a 13-year sentence before the presiding judge amended his sentence to release Mr. Cole from custody and place him on supervised probation until 2002.

24. In 1997 Mr. Cole filed the first lawsuit, *Cole v. The Star Tribune, et al.*, No. C9-97-3029 (Ramsey District Ct. 1997). Plaintiff, represented by counsel other than respondent, sued various media organizations and three nieces alleging that they defamed him in connection with his petition to the Board of Pardons. Judge Paulette Flynn granted the defendants' motions for summary judgment and assessed over \$12,000 in fees and costs against Mr. Cole and his attorneys.

25. Respondent was then retained by Mr. Cole to appeal Judge Flynn's ruling. On July 14, 1998, the Court of Appeals affirmed, and granted the defendants' motion for sanctions against respondent on appeal. The court issued an order requiring appellants to address the issue of sanctions in either a reply brief or by written response. Respondent did not file a written response. The court concluded that this demonstrated bad faith in bringing the appeal, and awarded \$4,500 to defendants, payable by respondent and his client.

26. The court of appeals found that respondent, in his filing, demonstrated either a willful disregard for or ignorance of the appellate rules by making misstatements of fact and failing to support statements of fact by reference to the record. The court granted a motion to strike portions of the appellant Cole's brief.

27. Mr. Cole's second lawsuit was filed in federal court in May of 1997, *Cole v. The Upjohn Company*, 97-1200, U.S. District Court, District of Minnesota. Respondent and co-counsel, David Brehmer and Rachel Rosen, represented Mr. Cole in this lawsuit. Plaintiff sued Upjohn Company in the name of Harvey Cole, individually, and as Margaret Cole's personal representative, alleging product liability. Plaintiff alleged that Upjohn's pharmaceutical products caused him to suffer delusions, which led him to kill his wife.

28. Respondent and his co-counsel failed to timely respond to defendant's requests for admission, even after the U.S. Magistrate Judge ordered a response within 20 days. The response finally made consisted in large part of copying excerpts from a letter from plaintiff's expert witness, resulting in non-responsive answers and sometimes answering requests with questions. As a result, the U.S. Magistrate Judge deemed the requests admitted.

29. The defendant's motion for summary judgment was granted, and the complaint dismissed, on the basis that the admissions showed plaintiff could not prove causation, an element to every count brought against defendant, and could not, in fact, sustain his burden of proof on any of the alleged causes of action. Mr. Cole's attorneys were sanctioned, jointly and severally, \$3,000 for asserting eight causes of action which were legally baseless, refusing to cooperate in preparing the Rule 26(f) report, filing numerous frivolous motions, misrepresenting to the court that Mr. Cole was the personal representative of his deceased wife, and thwarting efforts to obtain Mr. Cole's deposition. Respondent has appealed the dismissal to the Eighth Circuit Court of Appeals.

30. In the federal case, respondent and Mr. Cole filed affidavits that acknowledged that Mr. Cole had not been appointed trustee. Respondent's affidavit, notarized September 19, 1997, stated that he learned in late July or early August of 1997 that a trusteeship had not been started. On August 18, 1997, respondent's affidavit states, he sent a Petition for Appointment of Trustee to his client, to be signed and

hand-carried to the Steele County District Court. Mr. Cole's affidavit states that the Steele County district judge refused to appoint him trustee on August 20, 1997.

31. On September 3, 1997, respondent signed the complaint and acknowledgement in the third lawsuit, *Harvey James Cole Individually and as Trustee for Decedent, Margaret Cole, v. Dr. Stephen Butzer*, Court File No. 62-C3-97-009036, Ramsey County, Second Judicial District Court. Despite knowledge that his client had not been appointed as trustee, respondent signed the complaint averring that his client was trustee.

32. The lawsuit against Dr. Butzer alleged that defendant committed malpractice when he prescribed Halcion and Xanax to Mr. Cole without warning him about the potential side-effects of these drugs, which plaintiff alleged led to plaintiff killing his wife and being defamed.

33. The defendant, represented by attorney John McBride, made a motion for summary judgment and for sanctions under Rule 11, Minnesota Rules of Civil Procedure. Respondent then made a motion to appoint Mr. Cole as the trustee for his deceased spouse, and for a stay of proceedings so he could challenge the validity of the criminal conviction. Respondent also contested whether the statute of limitations barred the claims.

34. The court found that respondent had failed to comply with Rule 144 of the Minnesota General Rules of Practice for appointment of a trustee in a wrongful death case, and denied the motion for appointment as trustee.

35. The court next found that the statute of limitations barred the claims, and that the claims were impermissible collateral attacks upon the criminal conviction. The court denied the motion for a stay as untimely. Summary judgment in favor of defendant was granted.

36. Finally the court found that sanctions under Rule 11, MRCP, were warranted. The court stated:

Plaintiff's complaint is simply not founded upon any plausible interpretation of the law. The applicable statutes of limitation clearly bar plaintiff from pursuing these claims. In addition, plaintiff's counsel first neglected to file a timely petition for the appointment of a trustee, and when he did, he did not adhere to proper procedure. Finally, Minnesota law plainly states that a plaintiff may not challenge the factual basis of a guilty plea in civil proceedings. The Court therefore must conclude that an attorney acting reasonably would not have initiated this litigation, or would at least have followed proper procedure in doing so.

The court imposed a sanction of \$4,500 against respondent.

37. Respondent's conduct in pursuing frivolous claims in the three Harvey Cole matters, failing to follow the Rules of Appellate Procedure, failing to follow proper procedure for appointment of a trustee, failing to properly respond to the request for admissions in the federal case, resulting in admissions against his client's interests, representing his client incompetently, failing to timely provide all required initial mandatory disclosures in the Rule 26(f) report in the federal litigation, misrepresenting to the court that Mr. Cole was the personal representative for his deceased wife, and falsely asserting trustee status knowing it had been denied violated Rules 1.1, 1.3, 3.1, 3.3(a)(1), 3.4(c), 8.4(c) and 8.4(d), MRPC.

#### FIFTH COUNT

#### Schwartz Litigation

38. K.M. retained respondent to pursue a sexual harassment case against her former employer, Schwartz, Wandling & Bergeson, P.A., Michael D. Schwartz, P.A., and Michael D. Schwartz personally. Respondent represented K.M. incompetently in that he failed to draft an adequate complaint. The complaint he had served on defendants and filed with the court consisted, for the most part, of a retyping of K.M.'s notes of what happened.

39. Respondent then pursued discovery, but failed to depose the primary defendant, whom plaintiff alleged had instigated an inappropriate sexual relationship with her.

40. Respondent at that time had several young attorneys he associated with on cases, one of whom was Heidi Pliam, a 1997 admittee. Respondent called Ms. Pliam the day before the deposition of K.M. and contracted with her to attend the deposition with the client. Ms. Pliam had never before defended a deposition, and respondent gave her only five minutes of instructions about what to do. Respondent did not appear for the deposition.

41. A pretrial was scheduled for January 13, 1998, before Judge Porter, Hennepin County District Court. Respondent left a message for Ms. Pliam that a pretrial was scheduled, and that she should notify the client. Respondent did not send Ms. Pliam or the client a copy of the order setting the pretrial.

42. Ms. Pliam attempted to contact respondent about whether she was expected to attend the pretrial, but respondent did not return her calls. Respondent was attorney of record in the case, and had not filed anything with the court indicating he had associated with Ms. Pliam.

43. On January 13, 1998, the defendants' attorneys appeared for the pretrial, but were excused by Judge Porter after an hour, when no one appeared on behalf of the plaintiff. On January 21, 1998, Judge Porter entered an order sanctioning respondent \$600, payable one-half to each defense counsel, and rescheduling the pretrial for February 12, 1998. The attorney fees were ordered paid by February 2, or the judge would consider further sanctions, including dismissal of the case. Respondent did not send a copy of this order to his client or Ms. Pliam, or advise them of its contents. Respondent did not pay the sanction by February 2.

44. On February 11 respondent, his client, and Ms. Pliam appeared for the rescheduled pretrial. Defense counsel made a motion for dismissal, on the basis that the sanction had not been paid. Judge Porter granted the motion and dismissed the case.

45. Respondent made a motion to reinstate the case, which was set for hearing on February 25, 1998. Respondent filed a memorandum of law, which grossly misstated what had occurred between him and Ms. Pliam, and what had occurred in

court on February 11, 1998. Respondent blamed the dismissal on the actions of Ms. Pliam and on alleged misconduct of Judge Porter, including alleged *ex parte* contacts with defense counsel. Respondent did not advise his client what had happened, and did not send her copies of the February 12, 1998, order or of his motion papers.

46. On February 24, 1998, K.M. terminated respondent's representation and retained attorney Jill Clark. Ms. Clark learned from defense counsel that the matter was scheduled for hearing the next day. K.M. filed an affidavit requesting the court to reinstate the lawsuit, on the basis that she was not aware of the misconduct of respondent, and should not be punished by dismissal of the lawsuit.

47. Ms. Clark appeared for plaintiff at the February 25, 1998, hearing, and succeeded in having the case reinstated. In its February 25, 1998, order reinstating the case, the court found that the misconduct leading to the dismissal of the case "rested solely on the shoulders of plaintiff's former counsel Mr. Gant," and assessed \$1,400.00 in costs against respondent, payable to defense counsel.

48. On February 25, 1997, respondent appeared at the courtroom for the scheduled hearing, but left when he discovered Ms. Clark had taken over representation of K.M. Ms. Clark's messenger picked up the client file from respondent's office that afternoon. However, respondent failed to turn over the entire client file. On February 27, 1998, Ms. Clark requested additional documents from respondent. Respondent did not deliver the rest of the file. On March 10, 1998, Ms. Clark sent another letter to respondent requesting the rest of the client file. Respondent did not deliver the rest of the file.

49. On March 26, 1998, Ms. Clark filed an order to show cause in the Hennepin County case, demanding that respondent produce the rest of the file. Respondent then faxed additional documents to Ms. Clark. By letter dated April 7, 1998, respondent falsely represented to the court and Ms. Clark that he had turned over the entire file to Ms. Clark in the first instance (on February 25). At the April 21, 1998,

hearing, respondent falsely testified that he had given everything in the file to Ms. Clark before the motion was filed.

50. Ms. Clark redrafted the complaint, and obtained an order allowing amendment and enlargement of time for discovery. Ms. Clark deposed the main defendant. The case settled by stipulation in August 1998.

51. On February 25, 1998, respondent filed an attorney's lien against K.M.'s recovery in the case, at a rate of 40 percent, plus costs. By letter of February 25, 1998, respondent demanded payment of "costs owed my office" of \$1,627.21, which included typing service and costs that had not yet been paid by respondent.

52. Pursuant to Judge Porter's order of August 21, 1998, \$10,000 in attorney fees were deposited with the clerk of court. Respondent was required to make a motion for a *Boline* hearing to determine the validity and amount of his lien within 30 days. On August 31, 1998, respondent filed his motion, seeking to recover the entire fees in escrow, and \$1,627.21 in costs, even though he had not paid most of those costs. Respondent did not provide the court or his former client with a copy of the fee agreement. On September 14, 1998, Judge Porter held a *Boline* hearing on respondent's lien.

53. After hearing, by order dated December 23, 1998, Judge Porter ordered that the attorney fees be split, \$1,000 to respondent and \$9,000 to Ms. Clark. Respondent has stated his intention to appeal this order.

54. Respondent's conduct in representing K.M. incompetently in the Schwartz matter, failing to adequately supervise Ms. Pliam, failing to communicate with his client, failing to make required court appearances, making false statements in the motions and affidavits filed with the Court, failing to timely pay court-ordered sanctions and failing to timely turn over the client file violated Rules 1.1, 1.3, 1.4, 1.16, 3.3(a)(1), 5.1(b) and (c), and 8.4(c), MRPC.

## SIXTH COUNT

### Hunt Complaint

55. Beginning in April 1997, respondent represented John Hunt in several pieces of litigation. They did not have a written fee agreement.

56. Hunt and his wife, Bonnie Howland, were involved in a rear-end collision on December 30, 1994. Hunt was then injured in a second accident on July 27, 1995. Hunt sued the two drivers, Eggert and Cordes, in a single lawsuit. In April 1997 respondent took over this litigation. Trial was bifurcated in the two cases, but to be tried back-to-back in September 1997, then rescheduled for November 24, 1997. Respondent did not propound interrogatories to the defendants or depose the defendants, respondent's medical care providers, or third party witnesses.

57. In June 1997 an arbitration hearing was scheduled in front of Judge Lindsey Arthur. Respondent called Hunt the day before and told Hunt to meet respondent at his office the next day. Hunt went to respondent's office, but respondent did not appear. Hunt then walked to the courthouse, found out where the hearing was, and attended himself. Respondent appeared one-and-one-half hours late, inappropriately attired, because he was running personal errands.

58. Hunt arranged to meet with respondent on November 1, to prepare for trial. Respondent did not return Hunt's call on November 1, or many calls the next three weeks. On November 21 Hunt finally arranged a meeting with respondent on Sunday, November 23, 1997, at 3:00 p.m. Hunt and his wife appeared for the meeting. Respondent never appeared. Later that evening respondent called Hunt and said he had car problems, so he couldn't make the meeting. Respondent said they didn't have to meet, and respondent was having another attorney review the medical file. Respondent did not prepare Hunt for his trial testimony.

59. Respondent did not give Hunt's medical records to Dr. Trobiani, Hunt's testifying medical care provider, until after the trial started and the night before the

doctor's testimony when respondent paid the doctor's expert witness fee. Respondent did not review the doctor's testimony with him before trial.

60. Respondent did not send any letters or other written communications to Hunt from April to November 1997. Respondent did not obtain all of the medical information before trial, such as an IME report and letters from Hunt's doctors.

61. The jury returned a defendant's verdict. Respondent then refused to go forward with the second trial against Cordes, or to sue out Howland's claim against Eggert. Respondent failed to appeal despite telling Hunt that he would.

62. In June 1997 attorney Scott Johnson was representing Hunt on a separate matter, involving an injury sustained by Hunt at the Tropix bar. Johnson had been offered the policy limits, \$50,000, by the defendant's insurance company. Respondent advised Hunt that respondent would take over the case.

63. Respondent agreed with Hunt that Johnson would receive payment for the work he had done, but did not enter into a written fee-splitting agreement. Respondent settled the case for \$51,000. On June 5, 1997, Hunt paid respondent \$16,998.30 for his fees and expenses.

64. Johnson sued respondent and Hunt for a share of the attorney fees. Johnson claimed the entire contingent fee. Judge Nord entered judgment for Johnson for all but \$1,000 of the fee. Respondent appealed, and the judgment was affirmed on appeal. On March 19, 1998, respondent paid Johnson \$7,000 and on April 16, 1998, paid Johnson an additional \$10,000, satisfying the judgment against Hunt.

65. Respondent's conduct in the Hunt litigation in failing to do discovery, failing to depose the other drivers, failing to prepare witnesses for trial, withdrawing from representation without litigating the second case or appealing the first case, failing to enter into an attorney fee-splitting agreement and failing to pay the attorney's fees in the Tropix bar case until after appeal, arriving late for the scheduled arbitration hearing, and failing to communicate with his client violated Rules 1.1, 1.3, 1.4, 1.5(e) and 8.4(d), MRPC.

## SEVENTH COUNT

### Dunn Complaint - Non-Cooperation

66. On February 19, 1998, a former client of the Sharp Law Firm, Cheryl Dunn, filed a complaint against respondent and the former owners of the firm. The complaint was assigned to Fourth DEC investigator Debra Yerigan. Respondent was sent a March 6, 1998, Notice of Investigation which instructed him to respond in writing to Ms. Yerigan within 14 days.

67. Respondent did not respond to the complaint. On March 26, 1998, Ms. Yerigan wrote to respondent, requesting a response within 14 days. On April 7, 1998, respondent left a voicemail message for Ms. Yerigan indicating that he had been ill, and in and out of the office, and that he thought he only had to respond to a fee arbitration request that he had received from the Hennepin County Bar Association.

68. On April 8, 1998, Ms. Yerigan left a message for respondent advising that the fee arbitration matter was separate from the ethics investigation, and that she needed his response.

69. On April 13, 1998, Ms. Yerigan wrote to respondent confirming the messages that had been left, and advising that she needed a response no later than April 22.

70. On April 26, 1998, Ms. Yerigan received by fax a response from respondent, dated April 22. The original of the response was received by mail on April 29.

71. On April 27, 1998, after further investigation, Ms. Yerigan left a message for respondent asking him to call her. Respondent did not return the call, so on May 1, 1998, Ms. Yerigan wrote to respondent and gave him three different dates that she was available to meet with him. Respondent did not contact Ms. Yerigan in response to her letter until Memorial Day, May 25, 1998, when he left a message on her voicemail. Ms. Yerigan returned the call on May 26, and left a message for respondent to call her.

72. On June 4, 1998, Ms. Yerigan wrote to respondent confirming the voicemail message and again asked him to contact her to arrange a time to meet.

73. On August 12, 1998, Ms. Yerigan again wrote to respondent, since she had not heard from him. On August 13, 1998, respondent called and scheduled a meeting with Ms. Yerigan at respondent's office on August 20.

74. On August 18, 1998, respondent left a message for Ms. Yerigan requesting to reschedule the meeting. The same day, Ms. Yerigan left a message with respondent's secretary asking him to give her available times for the next week. Respondent did not call back.

75. On August 31, 1998, Ms. Yerigan wrote to respondent to reschedule the meeting. Respondent did not respond until September 28, 1998, when he called and then faxed some documents to Ms. Yerigan. These documents indicated that Ms. Dunn was not a client of Sharp Law Firm when respondent took over, and the complaint against him was without merit.

76. Respondent's conduct in failing to promptly respond to the Dunn complaint and failing to cooperate in a timely manner with investigation of the complaint violated Rule 8.1, MRPC, and Rule 25, RLPR.

#### EIGHTH COUNT

##### Trust Account Overdraft Matter

77. On March 5, 1998, respondent's trust account was overdrawn. Upon receiving notice, the Director's Office on March 10, 1998, wrote to respondent requesting an explanation for the overdraft and certain book and records within ten days. On March 23, 1998, respondent provided a short response, but no books and records.

78. On March 24, 1998, the Director's Office renewed the request for books and records. Respondent did not respond. On April 16 the Director's Office asked for the books and records a third time. Respondent did not provide the requested books and records.

79. On April 23, 1998, the same day that the Director's Office opened a disciplinary investigation file concerning the trust account overdraft, respondent responded to the April 16 letter. The response indicated the need for an audit of respondent's trust account. On May 5, 1998, the Director's Office notified respondent that a disciplinary investigation was being initiated. On May 26, 1998, respondent was asked to provide additional books and records within 14 days. Respondent provided most of the records.

80. The Director's Office audited the Sharp Law Firm trust account for the period of December 1, 1996, through April 8, 1998, from the books and records provided by respondent. Sharp Law Firm was owned by a succession of attorneys prior to respondent's ownership commencing October 1, 1997.

81. Respondent failed to maintain cash receipts and disbursements journals, did not perform monthly client subsidiary ledger trial balances, and did not maintain client subsidiary ledgers for all clients after October 1, 1997, until the end of the audit period.

82. Respondent did not maintain his trust account in compliance with Rule 1.15, MRPC, and LPRB Amended Opinion 9, in that respondent caused negative balances to occur in his client trust account on two occasions during the audit period and after respondent took over ownership of Sharp Law Firm, as follows:

a. On September 29, 1997, check no. 3038, payable to Adams Court Reporting and attributable to client Haug, cleared the bank in the amount of \$552.50. On that date, Sharp Law Firm did not hold any funds for client Haug. On October 20, 1997, Sharp Law Firm deposited \$552.50 for client Haug, curing the negative balance. From September 29 to October 29, 1997, the law firm temporarily misappropriated other clients' funds.

b. On February 6, 1998, check no. 3046 cleared the bank in the amount of \$200 payable to respondent and attributed to client Goodmanson. On that date, respondent did not hold any funds for client Goodmanson.

c. On February 13, 1998, check no. 3047, payable to Ramsey County District Court and attributable to client Cassandra Crawford, cleared the bank in the amount of \$500. On February 17 check no. 3048, payable to the Minnesota Court of Appeals in the amount of \$250 and attributable to client Crawford, cleared the bank. Respondent did not hold any funds for client Crawford on those dates.

d. On March 5, 1998, check no 3050 in the amount of \$300 cleared the bank, attribution unknown, creating an overdraft, as the March 5, 1998, beginning bank balance was \$58.03. On March 6, 1998, the bank returned check no. 3050 unpaid, curing the overdraft. On March 12, 1998, respondent deposited \$550 from his business account to partially correct the negative balances in the Crawford and Goodmanson subsidiary ledgers. On April 8, 1998, respondent deposited \$450 to the trust account to cure the remaining negative balance in the Crawford subsidiary ledger. From February 6 to April 8, 1998, respondent temporarily misappropriated other clients' funds.

e. At the end of the audit period, all funds were accounted for in the trust account.

83. Respondent's failure to maintain the required books and records for his trust account, temporary misappropriation of client funds and failure to promptly respond to the Director's inquiries regarding the overdraft violated Rules 1.15(a) and (e), 8.1(a) and 8.4(c) and LPRB Amended Opinion 9.

#### NINTH COUNT

##### Patterns of Related Misconduct

84. The Director realleges paragraphs 1 through 83 as if fully set forth herein.

85. Respondent's conduct in the Krueger, Munoz, Xiong, Cole, Schwartz and Hunt cases constitutes a pattern of related misconduct, the cumulative effect of which violates Rules 1.1, 1.3, 1.4 and 8.4(d), MRPC.

86. Respondent's conduct in the complaints by Munoz and Dunn and in the trust account overdraft matter of failing to promptly respond to requests for information constitutes a pattern of related misconduct, the cumulative effect of which violates Rule 8.1, 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: November 4, 1999.



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