FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against GARRETT T. GEIGER, 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 August 20, 1992. Respondent is currently residing in Arlington Heights, Illinois. Respondent has been fee suspended since April 1, 1998.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

1. On January 26, 1995, respondent was issued an admonition for failing to promptly serve an amended complaint pursuant to a court order in violation of Rules 1.3 and 3.2, Minnesota Rules of Professional Conduct (MRPC).

2. On December 20, 1996, respondent was issued an admonition for failing to adequately clarify the basis and rate of his fee and failing to have a written contingent fee agreement in violation of Rules 1.5(b) and (c), MRPC.

FIRST COUNT

A. Palmer Matter

1. On April 4, 1995, Nancy L. Palmer retained the law firm of Robert Brenner & Associates to represent her in an employment dispute with First Bank Systems. Palmer's representation was handled by several different attorneys within the firm before it was assigned to respondent on March 5, 1996.

2. On June 3, 1997, the court granted First Bank Systems' motion for summary judgment. On June 11, 1997, respondent wrote to Palmer informing her of the court's decision.

3. In his June 11, 1997, letter, respondent discussed Palmer's options. Those options were to appeal the court's decision, attempt to negotiate a settlement with First Bank Systems, or do nothing. Respondent also explained that complainant's right to appeal expired on July 3, 1997.

4. After she received the June 11, 1997, letter, Palmer spoke to respondent regarding her case. Palmer told respondent to attempt to negotiate a settlement with the attorney for First Bank Systems. Respondent agreed that he would pursue a negotiated settlement.

5. On June 16, 1997, James C. Selmer, the attorney for First Bank Systems, telephoned respondent. Selmer's call was in response to an earlier message from respondent. Selmer was told respondent was unavailable. Selmer left a message for respondent indicating that he was returning respondent's call.

6. On June 26, 1997, respondent called Selmer's office. At that time he spoke to Selmer's paralegal, Kristine Wilker. Respondent informed Wilker that his client, Palmer, was considering appealing the summary judgment order and that he intended to do so on her behalf. He asked if Selmer would be willing to speak with First Bank about settlement of the matter in order to avoid having to file the appeal.

7. After Wilker reported this information to Selmer, he instructed her to call respondent back to find out what specific settlement amount he was proposing. Wilker

telephoned respondent that same day, June 26, 1997, but respondent was unavailable. Wilker left a voicemail message informing respondent that he should contact them about the settlement amount he was contemplating. Respondent did not call Wilker back.

8. On June 30, 1997, respondent responded to the earlier telephone message. Respondent spoke with Selmer at which time he confirmed that Palmer would be filing an appeal, but asked whether First Bank would be willing to consider settlement. Respondent told Selmer that he thought the case could settle for something in the neighborhood of $10,000 and he would strongly recommend settlement to his client.

9. Selmer told respondent that he would relay the settlement demand to his client. Selmer indicated that he would not necessarily suggest that his client settle the case. He also indicated that he would contact respondent as soon as he received word from his client.

10. On July 3, 1997, the time for filing an appeal from the order for summary judgment passed. Respondent failed to contact Selmer again concerning his settlement demand, failed to advise Palmer that the time for appealing had passed, and failed to file an appeal.

11. On July 9, 1997, respondent brought a motion requesting an extension of time for filing an appeal from the court's earlier order for summary judgment. In his motion, respondent told the court that his failure to file the appeal by the deadline was the result of an illness that since mid-May of 1997, had made him unable to concentrate. In addition, he represented that from June 12 to the date of his motion the side effects of a new medication had frequently incapacitated him. Respondent did not identify either the illness or the medication. Respondent did not consult with, or inform, Palmer of his motion.

12. On July 31, 1997, Judge David S. Doty, issued an order denying respondent's motion to extend the time for filing an appeal. The court found that respondent's illness did not amount to an extraordinary circumstance of excusable

neglect. The court pointed out that respondent was able to draft other legal documents on the 30th day for appeal, notwithstanding his illness and concluded there was no excusable neglect.

13. On August 20, 1997, respondent first wrote to Palmer concerning the missed appeal and his motion for an extension of time in which to file the appeal.

14. Respondent's conduct in failing to diligently pursue the Palmer matter and his conduct in failing to keep Palmer informed of the status of her case violated Rules 1.3 and 1.4, MRPC.

15. Respondent's conduct in failing to withdraw from the Palmer representation when he was allegedly impaired to the point that he could not represent her violated Rule 1.16, MRPC.

SECOND COUNT

B. Mahazu Matter

16. In May of 1993, Ibrahim Mahazu's employer terminated his employment. In August of 1993, Mahazu met with attorney Karla Wahl to discuss any possible claims he may have against his employer. Wahl was a member of the National Employment Lawyers Association. Mahazu signed a retainer agreement with Wahl indicating she would be paid one-third of any settlement plus her costs.

17. Wahl obtained a copy of Mahazu's personnel file from his former employer. She also wrote to the employer, the Minnesota Department of Human Rights and the Equal Employment Opportunity Commission (EEOC). On or about February 18, 1995, Mahazu, with assistance from Wahl, filed a charge with the EEOC. Within the next month, the attorney-client relationship between Wahl and Mahazu ended.

18. On March 20, 1996, the EEOC provided Mahazu with a right to sue letter. The EEOC determined that there was insufficient evidence to justify further involvement on its part.

19. On April 10, 1996, Mahazu signed a document provided to him by respondent's law firm. The document was entitled "STANDARD JOINT ATTORNEY FEE AGREEMENT (Contingency Non-Personal Injury)." The retainer agreement obligated Mahazu to pay a $2,500 nonrefundable retainer fee to secure the availability of respondent's firm. None of the retainer was to be applied toward costs.

20. The retainer agreement called for a division of fees between lawyers who were not in the same firm, but did not require each lawyer to assume joint responsibility for the representation.

21. On June 18, 1996, respondent filed a summons and complaint in the Mahazu civil action.

22. On November 15, 1996, respondent received an offer of $1,500 to settle Mahazu's case. On January 17, 1997, respondent made a demand of $20,000. On January 24, 1997, the defendant rejected the $20,000 demand and again offered $1,500.

23. On January 29, 1997, a settlement conference was held before Magistrate John Lebedoff where the case was settled for $5,500.

24. On February 18, 1997, Mahazu signed a "Settlement Sheet" concerning the distribution of the settlement proceeds. From the $5,500 settlement, respondent withheld $1,833.70 as a one-third contingent fee. In addition, because $700 remained unpaid from the original $2,500 retainer, respondent subtracted an additional $700 from complainant's recovery. Respondent's total fee was slightly more than 78 percent of Mahazu's recovery.

25. Respondent's fee and his fee agreement in the Mahazu matter was unreasonable and violated Rule 1.5, MRPC.

THIRD COUNT

C. Thomas Haken Matters

26. Carol Thomas Haken (Thomas) was involved in a dispute with the Minnesota Department of Human Services (DHS) and Joseph Vogel. The Hennepin County District Court had appointed Joseph Vogel as a special guardian for Thomas

Haken's incompetent son. Thomas and her husband also ran a small company, Sincerely, Inc., which was involved in a dispute with DHS concerning its decision to deny reimbursement for payment of services provided by Sincerely, Inc.

27. On March 5, 1996, Thomas and Ronald Haken (Haken), her husband, retained respondent to represent them and Sincerely, Inc. in a lawsuit against Vogel (Vogel matter). On April 21, 1996, Thomas, on behalf of Sincerely, Inc., retained respondent to represent it in the dispute with the Department of Human Services (DHS matter).

28. During the summer of 1996, respondent prepared and eventually served a summons and complaint in the Vogel matter. On August 30, 1996, respondent received discovery demands from Vogel's attorney. Respondent did not forward those materials to Thomas for response until September 25, 1996. Because the responses were due on October 3, 1996, Thomas did not have sufficient time to prepare a reply.

29. Respondent called Vogel's attorney, Jacqueline Sparks, and requested an extension of time within which to respond to Vogel's discovery demands. Sparks gave respondent until October 17, 1996, to reply. On September 30, 1996, respondent wrote Sparks confirming the extension of time. On October 11, 1996, Thomas faxed to respondent information to respond to discovery demands.

30. Contrary to his promise to Sparks, respondent did not provide the discovery responses by October 17, 1996. On October 29, 1996, Sparks wrote to respondent reminding him of this fact and demanding a response by November 1, 1996. Respondent did not reply.

31. On December 2, 1996, Sparks again wrote to respondent concerning the overdue responses. Sparks informed respondent that if the responses were not received by December 16, 1996, she would be forced to file a motion to compel. On December 15, 1996, respondent sent Sparks unsigned, partial responses to the discovery demands.

32. On December 23, 1996, Sparks wrote to respondent acknowledging receipt of the discovery responses. In her letter, Sparks noted that many of the responses were

insufficient. Sparks asked respondent to contact her so that they could discuss the problems with the response. Respondent did not reply to this letter. Therefore, on December 30, 1996, Sparks served and filed notice of motion and motion to compel discovery.

33. On January 15, 1997, Sparks again wrote to respondent more fully setting out her objections to the discovery responses. On January 17, 1997, after receiving no response from respondent, Sparks served notice of a January 31, 1997, hearing date.

34. On January 29, 1997, respondent wrote to Sparks concerning her objections, but did not provide any additional information. However, Sparks agreed to continue the motion hearing.

35. On January 30, 1997, Sparks wrote to respondent concerning the ongoing discovery. Respondent did not reply to Sparks' letter. On February 11, 1997, Sparks wrote again to respondent. Respondent contacted Sparks asking if the hearing scheduled for the next day could be rescheduled to March 5, 1997. Sparks agreed.

36. On February 27, 1997, respondent wrote to Sparks indicating that he expected to receive the documents from his clients the next day (Friday) and forward them to her. However, in order to respond respondent needed additional materials from Thomas, which he was only requesting that day. In addition, respondent used the wrong zip code resulting in further delay in Thomas receiving the materials.

37. On March 4, 1997, respondent wrote to Sparks explaining that Thomas did not receive the materials until Friday (February 28, 1997). Sparks agreed to reschedule her motion hearing to compel discovery to March 26, 1997. Respondent failed to produce responsive discovery documents by March 26, 1997.

38. On March 26, 1997, the parties appeared in court on Vogel's motion to compel discovery and amend the scheduling order. On that date, the court ordered the production of various tax documents. The court also issued an amended scheduling order.

39. On April 3, 1997, respondent produced some, but not all of the documents which the court had ordered be produced. Respondent did not provide any explanation to the court or Sparks for his inability to fully comply with the court's order.

40. On April 30, 1997, Thomas Ring, who was now handling Vogel's representation, served respondent with a request for supplementation of discovery. As a result of an ongoing inability to obtain Thomas' and Haken's depositions, Ring brought a second motion to compel discovery.

41. On June 12, 1997, the district court held a hearing on Vogel's motion to compel discovery. The court subsequently ordered Thomas to produce certain documents and awarded $2,000 for expenses in obtaining the order.

42. On August 6, 1997, Ring brought a motion on behalf of Vogel to compel discovery, amend the scheduling order and to seek sanctions, based upon respondent's and his client's continued failure to comply with the June 12, 1997, order.

43. During this period, a mediation session had been scheduled for August 14, 1997. On August 13, 1997, Thomas faxed respondent a letter requesting that he cancel the mediation session. Also on August 13, 1997, in response to Thomas' request, respondent wrote to her. Respondent informed Thomas that he was withdrawing. On that same date, respondent informed the court that he was withdrawing effective immediately.

44. Thomas, Haken, and Sincerely, Inc., subsequently retained Kurt D. Glaser to represent them. Glaser represented them at a September 8, 1997, hearing on Vogel's motion for discovery sanction. On October 15, 1997, the court ordered the plaintiffs' case dismissed with prejudice.

45. As indicated above, in April of 1996 Thomas retained respondent to represent Sincerely, Inc. in the DHS matter. This representation concerned Sincerely, Inc.'s claim for payment against the Department of Human Services. On November 7,

1996, Thomas wrote to respondent questioning respondent's failure to reply to her telephone calls and asking for information about her case.

46. On January 28, 1997, Thomas wrote to respondent concerning the DHS matter. Thomas demanded a date by which the summons and complaint would be ready in the DHS matter. Thomas wrote again on January 31, 1997, stating that she had recently received a notice from DHS.

47. On February 3, 1997, respondent wrote to Thomas indicating that he was forwarding a copy of the complaint in the DHS matter. Respondent subsequently served representatives of DHS.

48. DHS served respondent with interrogatories and requests for production of documents. Respondent failed to provide proper responses to those discovery demands.

49. On June 12, 1997, Assistant Attorney General Mark Traynor prepared a notice of motion and motion in the DHS matter. The motion was based upon Sincerely, Inc.'s failure to provide full and complete answers to DHS's interrogatories and requests for production of documents.

50. On June 20, 1997, respondent wrote to Traynor apologizing for not having readied the discovery responses that he had promised for that date. Respondent attributed the failure, in part, to health problems that he was experiencing. Also on June 20, 1997, respondent wrote Thomas concerning his mishandling of the case. Respondent acknowledged that Thomas' concerns were legitimate and offered to withdraw. Respondent noted that his withdrawal could result in some delay, but it could give her more time since he had not given her enough time.

51. On July 17, 1997, Traynor wrote to respondent concerning a possible resolution of the DHS matter. Traynor indicated that he expected to hear from respondent by the next week concerning the status of Thomas' document organization.

52. On August 19, 1997, Thomas retained Curtis B. Glaser & Associates to represent her in both the Vogel and DHS matters. On September 17, 1997, respondent

filed notice of withdrawal with the Office of Administrative Hearings concerning the DHS matter.

53. Respondent's failure to diligently pursue the Thomas Haken matters and his failure to reasonably communicate with his clients about the representation violated Rules 1.3 and 1.4, MRPC.

FOURTH COUNT

D. Merlon Smith Matter

54. On December 12, 1993, Merlon Smith retained Garrett Geiger and Jesse Gant, III, to represent him in a claim against the Social Security Administration and Dr. Leonard Goldman.

55. Under the terms of respondent's contingent fee agreement, Smith paid $2,500 in the form of a non-refundable retainer. Respondent's retainer agreement did not include a final paragraph immediately above Smith's signature informing him that the funds would not be held in a trust account and that Smith might not receive a refund of the fees if he later chose to terminate respondent.

56. Under the terms of the contingent fee agreement, respondent could withdraw from further representation of Smith if he determined that representation was not warranted.

57. Respondent's contingent fee agreement did not explain whether the expenses were to be deducted before or after the contingent fee was calculated.

58. Respondent subsequently prepared a complaint in the case of *Smith v. Goldman*. In the complaint, respondent alleged that Goldman engaged in medical malpractice. More specifically, respondent alleges that Goldman negligently failed to exercise the degree of skill and learning required of him in the practice and profession of medicine.

59. Goldman subsequently brought a motion for summary judgment alleging that Smith's claim of medical malpractice was barred because Smith was never Dr. Goldman's patient.

60. On September 14, 1994, respondent wrote to Smith concerning Dr. Goldman's motion for summary judgment. In that letter, respondent acknowledged that after researching the matter, he learned that a doctor-patient relationship was a prerequisite to a medical malpractice claim.

61. On September 23, 1994, Hennepin County District Court Judge Delila F. Pierce granted Dr. Goldman's motion for summary judgment. In her accompanying memorandum, Judge Pierce noted that it was clear Goldman was not Smith's doctor and there was no legal cause of action for medical malpractice.

62. Respondent's fee agreement in the Smith matter was a violation of Rule 1.5, MRPC, and Lawyers Professional Responsibility Board Opinion No. 15.

63. Respondent's conduct in pursuing the Smith litigation was a violation of Rules 1.1 and 3.1, MRPC.

FIFTH COUNT

E. Nicholas Matter

64. In 1994 Robert J. Nicholas retained the law firm of Robert Brenner & Associates (RBA) to represent him in a lawsuit against John Clay. Brenner assigned Nicholas' representation to George Veith, a newly admitted attorney who had associated with RBA.

65. In February of 1995, Nicholas filed a charge of discrimination against Northwest Racquet Swim & Health Clubs (Northwest) arising out of the same incident involving Clay. The Department of Human Rights then cross-filed the charge with the Equal Employment Opportunity Commission (EEOC).

66. On November 14, 1995, Brenner was placed on a disciplinary suspension by the Minnesota Supreme Court. At this time, RBA became the Sharp Law Firm, operated by respondent.

67. By the spring of 1996, although he had had the case for nearly two years, Veith still had not commenced a lawsuit against Clay. In May of 1996, Veith ended his association with the Sharp Law Firm. At that time Brenner, who was now working for

respondent in a non-attorney position, assigned the matter to another new attorney, Trent Jonas. Jonas had been a lawyer for less than a year.

68. On June 18, 1996, the Minnesota Department of Human Rights mailed notice of its dismissal of Nicholas' charge of discrimination against Northwest. At that time, Nicholas retained the Sharp law firm to represent him in an action against Northwest.

69. Pursuant to Minnesota statute, Nicholas had 40 days after the Department of Human Rights' dismissal to file a civil action against Northwest in state court. Providing time for mailing, Nicholas had until August 5, 1996, to serve Northwest.

70. With a cover letter dated August 3, 1996, Jonas mailed a summons and complaint to Northwest's corporate office. Jonas simply addressed the letter to Northwest Racquet Swim & Health Clubs, Inc., did not identify anyone who was authorized to accept service on behalf of the corporation, and did not include an acknowledgement of receipt of summons and complaint. The letter was not received by Northwest until August 7, 1996.

71. On August 20, 1996, Jonas again attempted to serve Northwest by mail. This time, Jonas directed the summons and complaint to two individuals who he believed were authorized to accept service and he included an acknowledgement of receipt of summons and complaint. No one signed or returned the acknowledgement of receipt.

72. On September 25, 1996, the EEOC issued a right to sue in Nicholas' dispute with Northwest. The EEOC notice gave Nicholas 90 days within which to commence an action in federal court. On October 8, 1996, Jonas made a third attempt to serve Northwest in the state action by having his brother personally serve a copy of the summons and complaint.

73. On October 23, 1996, Northwest answered the summons and complaint asserting that they had never been properly served and that the statute of limitations

barred Nicholas' case. In its answer, Northwest served Jonas with interrogatories and requests for production of documents.

74. Around this time, Jonas ended his association with the Sharp law firm.

75. On December 17, 1996, respondent wrote to Jonas concerning his failure to properly serve Northwest and his failure to prepare discovery responses to Northwest's discovery demands. Respondent stated that since Jonas had abandoned Nicholas' case, Jonas should prepare a substitution of attorney.

76. On December 20, 1996, respondent had Northwest served with a summons and complaint in a federal action. On May 7, 1997, Northwest sought to have the state action removed to federal court as part of the federal lawsuit. The matter was subsequently removed.

77. In the spring of 1997, respondent then assigned Nicholas' representation in the Clay matter to Stephen Hance. Hance had been admitted as an attorney for less than a year at the time respondent assigned the Nicholas case to him.

78. Through the spring and the summer of 1997, respondent continued his representation of Nicholas in the Northwest litigation. In early August of 1997, Nicholas contacted respondent to express his concern about the handling of his case. On August 12, 1997, respondent replied that he had serious doubts about Nicholas' chances of success and that he was leaving the practice soon and Nicholas' case would have to be transferred anyway.

79. On October 3, 1997, respondent again wrote to Nicholas. In that letter, respondent outlined his belief that Nicholas' case represented "too much risk for the Sharp Law Firm" in order for the firm to continue representing Nicholas on a contingent basis. Respondent contended that pursuant to his retainer agreement, the firm was therefore authorized to withdraw from the representation.

80. On November 3, 1997, respondent filed a petition of withdrawal with the federal district court. The court subsequently granted respondent's request to withdraw.

81. Respondent's conduct in the Nicholas matter was a violation of Rules 1.3 and 5.2, MRPC.

82. Respondent's conduct in the matters outlined above constitutes a pattern of misconduct in violation of Rule 8.4(d), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent's license to practice law 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: May 4, 2000.

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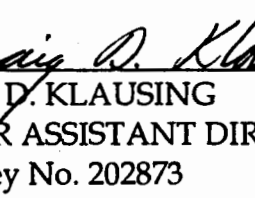
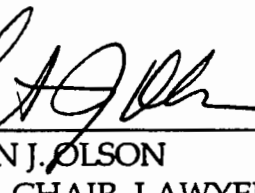
and



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: May 9, 2000.



STEVEN J. OLSON
PANEL CHAIR, LAWYERS PROFESSIONAL RESPONSIBILITY BOARD