

FILE NO. C4-86-1715

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against CHESTER C. GRAHAM,
an Attorney at Law of the
State of Minnesota.

**PETITION FOR REVOCATION OF
PROBATION AND FOR FURTHER
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rule 12(a), Rules on Lawyers Professional Responsibility (RLPR), and pursuant to this Court's October 26, 1993, order in the matter.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 21, 1983. Respondent currently practices law in Minneapolis, Minnesota.

DISCIPLINARY HISTORY

Respondent's history of prior discipline is as follows:

a. On February 6, 1985, respondent received an admonition for incompetence, neglect of a real estate matter and misrepresentation regarding the status of the matter (Exhibit 1).

b. By order dated October 22, 1986, the Supreme Court publicly reprimanded respondent and placed him on two years supervised probation. Respondent's discipline was based upon neglect of a real estate matter, failure to communicate, and falsely informing the parties that he had sent their deed to the county recorder. Respondent also failed to cooperate with the investigation of the complaint (Exhibit 2). *In re Graham*, 395 N.W.2d 80 (Minn. 1986).

c. While on public probation, respondent received a March 20, 1987, admonition for failing to cooperate with an investigation of an ethics complaint (Exhibit 3).

d. By order dated March 10, 1989, the Supreme Court indefinitely suspended respondent for a minimum of 18 months for repeatedly neglecting client matters, ignoring court orders, retaining unauthorized fees, and failing to cooperate with the Director's Office (Exhibit 4).

e. By order dated October 26, 1993, respondent was reinstated to the practice of law and placed on indefinite supervised probation (Exhibit 5).

f. While on public probation, respondent received a December 18, 1997, admonition for improper notarization of a client's verification on the amended answer in violation of Rules 8.4(c) and (d), MRPC (Exhibit 6).

Respondent has committed the following unprofessional conduct warranting revocation of probation and further public discipline:

FIRST COUNT

Misappropriation and Unreasonable Fee

1. In February 1994 Roger and Marylou Kielmeyer were involved in an alcohol-related motor vehicle accident which resulted in the death of a minor child. Roger Kielmeyer is respondent's cousin.

2. Roger Kielmeyer was convicted of criminal vehicular homicide and sentenced to prison. The survivors of the minor child brought a wrongful death action against the Kielmeyers and others. The Kielmeyers' liability carrier retained Gerald M. Linnihan to represent them in the civil matter. Stephen Torvik represented the plaintiffs.

3. On April 4, 1996, Linnihan's office wrote to Marylou Kielmeyer informing her that the court had set June 17, 1996, as the trial date in the wrongful death matter.

4. On April 8, 1996, respondent wrote to Roger Kielmeyer at the Minnesota Correctional Facility at Faribault stating he had interviewed Marylou regarding a possible Chapter 7 bankruptcy petition to protect as many assets as possible in case the wrongful death judgment exceeded their insurance liability limits.

5. Neither respondent nor the Kielmeyers had spoken with Linnihan about the status of the case or about the possibility of a verdict or settlement in excess of the policy limits.

6. On April 15, 1996, Roger Kielmeyer, Marylou Kielmeyer and respondent executed a retainer agreement providing for a \$9,000 nonrefundable fee (Exhibit 7). Kielmeyer paid the fee by signing over to respondent 750 shares of Otter Tail Power Company common stock (Otter Tail stock).

7. On April 15, 1996, respondent cashed in 750 shares of Otter Tail stock with U.S. Clearing Corp. On April 19, 1996, U.S. Clearing Corp. issued a check payable to respondent in the amount of \$28,119.49. Respondent deposited these funds into his trust account.

8. On the evening of April 15, 1996, Marylou Kielmeyer committed suicide.

9. On April 22, 1996, respondent withdrew his \$9,000 fee from his trust account via a money order withdrawal.

10. On April 24, 1996, respondent disbursed \$4,674 of Kielmeyer's funds via a money order withdrawal to pay Marylou Kielmeyer's funeral expenses.

11. On April 24, 1996, respondent wrote to Roger Kielmeyer stating, "I am handling these financial things for you without charging a fee because you are my cousin. The Marylou thing is another matter as my name is on legal papers as attorney. Also, if a bankruptcy is necessary I will need to charge you the regular rate."

12. Respondent did no bankruptcy work for the Kielmeyers. He did not even open an office file for them.

13. Respondent took no action on behalf of the Kielemeyers in the wrongful death action other than writing to Linnihan on April 25, 1996, advising him that the Kielemeyers had retained him for representation in the civil matter to the extent the Kielemeyers' liability exceeded their policy limits (Exhibit 8). Shortly thereafter, Mr. Linnihan told respondent by telephone that the matter had been settled for the insurance policy limits (Exhibit 9).

14. On May 14, 1996, respondent wrote to Roger Kielemeyer requesting, among other things, his signature on an agency agreement. Mr. Kielemeyer signed the agency agreement on May 15, 1996.

15. On May 17, 1996, respondent deposited \$12,458.28 from his trust account into National City Bank account no. 4811771, entitled Chester C. Graham Agent for Roger F. Kielemeyer (agency account). On June 4, 1996, respondent deposited \$1,343.41 from Kielemeyer's Edward Jones account into the agency account. On June 11, 1996, respondent deposited an additional \$7 received from the Internal Revenue Service. See Exhibit 11.

16. On June 5, 1996, respondent wrote to Kielemeyer's mortgage company, First Nationwide Mortgage, signing the letter as an attorney at law, enclosing a copy of the agency agreement and asking them to change the address on the loan to respondent's address (Exhibit 10).

17. On June 5, 1996, respondent disbursed from the agency account check no. 103 in the amount of \$472.32 payable to First Nationwide Mortgage. Respondent made similar disbursements from the agency account to First Nationwide Mortgage on June 24, 1996, July 5, 1996, July 12, 1996, July 29, 1996, August 8, 1996, August 11, 1996, and September 9, 1996, for a total of \$3,500.24.

18. Between June 14, 1996, and August 15, 1996, respondent misappropriated \$7,700 from Roger Kielemeyer by issuing ten checks from the agency account payable to himself as follows:

<u>Withdrawal Date</u>	<u>Agency Check No.</u>	<u>Payee</u>	<u>Amount</u>
6/14/96	105	Chester Graham	\$100
7/12/96	109	Chester Graham	500
7/26/96	112	Chester Graham	500
7/29/96	114	Chester Graham	1,000
7/31/96	115	Chester Graham	1,000
8/2/96	116	Chester Graham	500
8/6/96	117	Chester Graham	1,000
8/9/96	111	Chester Graham	100
8/13/96	121	Chester Graham	2,000
8/15/96	123	Chester Graham	<u>1,000</u>
		TOTAL:	\$7,700

19. After withdrawing the above items from the agency account, respondent deposited certain agency account funds into his business account no. 1105337 at National City Bank, Minneapolis, entitled Chester C. Graham, attorney at law. The deposits to respondent's business account are as follows:

<u>Deposit Date</u>	<u>Agency Check No.</u>	<u>Payee</u>	<u>Amount</u>
7/12/96	109	Chester Graham	\$500
7/26/96	112	Chester Graham	500
7/29/96	114	Chester Graham	1,000
7/31/96	115	Chester Graham	1,000
8/2/96	116	Chester Graham	500
8/6/96	117	Chester Graham	1,000
8/13/96	121	Chester Graham	2,000
8/15/96	123	Chester Graham	<u>1,000</u>
		TOTAL:	\$7,500

20. As a result of respondent's misappropriations, there were insufficient funds to cover check no. 119 disbursed August 19, 1996, payable to First Nationwide Mortgage for \$451.26. The check was returned by the bank for non-sufficient funds (NSF). On August 20, 1996, the National City Bank charged the agency account \$21 as a service charge on the NSF check.

21. On August 21, 1996, respondent reimbursed the agency account \$600 to restore the account to an end of the month balance of \$8.47. On September 9, 1996,

respondent reimbursed the agency account \$250 to cover a \$250 disbursement to First Nationwide Mortgage. On October 16, 1996, respondent reimbursed the agency account \$500 in order to cover a \$500 disbursement to Roger Kielmeyer dated October 10, 1996, and deposited by Kielmeyer on October 21, 1996.

22. By November 30, 1996, the agency account had a \$1.38 negative balance. Respondent paid the \$1.38 and closed the account on December 3, 1996.

23. The closed agency account remained short \$6,371 (\$7,700 misappropriation, plus \$21 NSF check charge, less \$1,350 reimbursement) until Kielmeyer demanded an accounting. On or about May 7, 1997, Kielmeyer revoked what he thought was respondent's power of attorney and respondent reimbursed Kielmeyer by depositing \$7,800 into Kielmeyer's Edward Jones investment account.

24. On May 9, 1997, Kielmeyer's new attorney, Brian Huling, sent respondent a letter formally discharging him, requesting an accounting and return of all Kielmeyer's funds. When respondent did not reply, Huling wrote to respondent again on June 2, 1997. On June 4, 1997, respondent provided a sketchy accounting but no supporting documentation.

25. On June 19, 1997, Huling wrote respondent asserting that the \$9,000 fee paid by the Kiemeyers in 1996 was unreasonable and asking respondent to justify the fee. Respondent did not respond, nor did he provide documentation to support his June 4 accounting.

26. On August 14, 1997, Huling brought a civil suit against respondent on behalf of Roger Kielmeyer to obtain a full accounting.

27. Respondent failed to respond to discovery requests relating to the accounting. On December 17, 1997, the district court issued an order compelling respondent to reply completely to discovery requests and awarding Kielmeyer \$480 in attorney fees.

28. Respondent's conduct violated the Court's October 1993 probation order, Rules 1.5(a), 1.15(a) and (c), 3.4(c), and 8.4(c) and (d), MRPC, and Lawyers Professional Responsibility Board (LPRB) Amended Opinion 9.

SECOND COUNT

Neglect and Failure to Obey Court Orders

29. Patrice M. Lachecki, personal representative for the estate of Delores Kathryn Lachecki, retained respondent to probate the estate on June 9, 1994.

30. On May 18, 1995, Houston County District Court wrote to respondent stating that the inventory and appraisal for the Lachecki estate were overdue. Respondent did not respond. The court wrote again on July 18, 1995.

31. On August 22, 1995, respondent forwarded to Patrice Lachecki two copies of the inventory for her review and signature.

32. On August 28, 1995, respondent filed the Lachecki estate inventory.

33. On January 18, 1996, respondent submitted to Patrice Lachecki his statement of services for \$1,875.

34. On July 1, 1996, Houston County District Court wrote to respondent inquiring about the status of the Lachecki estate and when respondent anticipated filing the necessary documents to close the estate. Respondent replied on July 16, 1996, stating the estate was due to close and he would submit the necessary documents to close it within a month. Respondent did not do so.

35. On September 9, 1996, the court wrote to respondent inquiring if there was a problem delaying closure. Respondent did not reply.

36. On November 27, 1996, the court wrote to respondent asking him to file the necessary closing documents within three weeks or an order to show cause would be issued.

37. On December 23, 1996, respondent wrote to the court stating the only thing remaining to be done was to file a final accounting for which he needed

information from the personal representative. Between December 22, 1996, and March 16, 1997, respondent wrote four letters to Patrice Lachecki requesting the closing statement for the sale of the homestead.

38. On March 14, 1997, the court wrote to respondent asking him to file the necessary documents to close the estate and informing him that if these documents were not received by April 15, 1997, the court would issue an order to show cause.

39. On May 4, 1997, respondent wrote to the court that he had the information and would file the final account after May 16 when he returned from vacation.

40. When respondent had not filed the final account by June 20, 1997, the Houston County District Court issued an order to show cause why respondent should not be adjudged in contempt of court for failure to provide the documentation to close the Lachecki estate and ordering him to appear personally before the court on July 17, 1997. The hearing was later reset to October 9, 1997. Respondent did not appear (Exhibits 12-14).

41. On October 10, 1997, the court issued an order finding respondent in contempt of court for his failure to complete the information required by the court. The order sentenced respondent to 90 days in the Houston County jail, payment of a \$5,000 fine, and set another order to show cause hearing concerning why respondent should not be required to immediately serve that jail time or pay the fine as indicated (Exhibit 14).

42. On October 13, 1997, the court issued another order to show cause requiring respondent's appearance on November 20, 1997.

43. On November 16, 1997, respondent submitted to the court his proposed final account for the Lachecki estate.

44. Respondent appeared for the November 20, 1997, order to show cause hearing. By order dated November 26, 1997, the court ordered respondent to complete the estate by January 1, 1998 (Exhibit 15).

45. During December 1997 respondent prepared the final accounting and the appropriate consents of the heirs. Respondent failed to mail the consents to the heirs for their signature and did not file the final account.

46. On January 23, 1998, respondent learned that a warrant for his arrest had been issued to Hennepin County by Houston County District Court. Respondent retained Donald Lamm to represent him regarding the warrant and asked Lamm to assume representation of the personal representative of the Lachecki estate.

47. Donald Lamm signed a substitution of attorney. The court then issued an order to quash the January 7, 1998, warrant.

48. On February 2, 1998, the court issued an order requiring respondent to report his conduct to the Director. Respondent did not self-report until March 27, 1998 (Exhibit 16).

49. Respondent's conduct in failing to diligently pursue the Lachecki estate and failing to promptly obey the court's orders violated the Court's October 1993 probation order and Rules 1.3, 3.2, 3.4(c), and 8.4(d), MRPC.

THIRD COUNT

Probation Violations

50. The October 26, 1993, reinstatement order placed respondent on indefinite supervised probation subject to the following conditions:

a. Respondent shall not engage in the solo practice of law until such time as a system for supervising his practice has been established and has been approved by the Director's Office. Respondent shall be supervised by one or more attorneys experienced in the areas in which respondent proposes to practice. Each supervising attorney shall report to the Director at least monthly during the first two years of respondent's probation. After two years, the Director shall evaluate the system for supervising respondent's practice and shall modify the system, as appropriate.

b. Respondent shall abstain from alcohol and mood-altering chemicals and shall continue to attend weekly meetings of Alcoholics Anonymous and Lawyers Concerned for Lawyers. Any instance of lack of abstinence shall constitute a sufficient basis for the immediate revocation of respondent's probation and his suspension from the practice of law.

c. Respondent shall timely file his federal and state tax returns.

d. Respondent shall comply with the terms of his agreement with the Director to repay the costs and disbursements previously ordered by this Court pursuant to Rule 24, RLPR. Respondent shall not be discharged from probation prior to his full payment of these costs.

e. Respondent shall cooperate with the supervising attorneys and with the Director's Office in the investigation of any complaints of misconduct made against him. In addition, respondent shall provide any authorizations which are needed to verify his compliance with the conditions of this probation.

51. During October 1993, Lynn Castner, Vance Bushay, John Holahan, Donald Lamm, and Charles R. Lloyd consented to supervise respondent in various areas of practice. Tim Grathwol served as respondent's overall supervisor. During October 1994, Grathwol resigned as respondent's overall supervisor and Lloyd became respondent's overall supervisor.

52. During October 1995, Lynn Castner hired respondent as an associate. Respondent's probation appeared to be proceeding successfully through December 1996. At the recommendation of respondent's supervisors, respondent's supervision was decreased and Castner became respondent's sole supervisor (Exhibit 17).

53. Respondent did not advise Castner of the letters he had received from the court or the delays he was experiencing in completing work on the Lachecki estate. Castner first learned about problems in the Lachecki estate when sheriff's deputies appeared in his office in January 1998 with a warrant for respondent's arrest.

Respondent did not tell Castner that he had been placed on restricted status by Court order for failing to comply with CLE requirements.

54. On April 27, 1998, John M. Koneck signed a consent to supervise respondent's probation.

55. Respondent did not regularly and timely provide case inventories to Koneck. When respondent did provide case inventories, it was only after reminder letters and phone calls from Koneck.

56. In his July 13, 1998, supervisor's report, Koneck identified potential problems with respondent's representation of the Foss and Swanson estates. Respondent's work on the Foss and Swanson estate matters had been intermittent at best. Respondent told Koneck that he undertook activity on these files because of client complaints about delays and Koneck's request for updated file summaries. In September 1998, Koneck recommended that respondent take no new probate matters.

57. Despite persistent encouragement by his supervisor, respondent had not completed work on the Foss or Swanson estates by April 1999 and had not provided case summaries for January, February or March 1999.

58. On April 5, 1999, Koneck wrote to respondent requesting the overdue case summaries. Koneck requested the summaries by the end of the week. Respondent forwarded incomplete and sloppily prepared case summaries to Koneck on or about April 9, 1999. The case summaries did not include the Foss and Swanson probate matters.

59. In his May 5, 1999, supervisor report's, Koneck noted numerous practice problems including: (1) respondent was using a cordless analog telephone for client communication in violation of LPRB Opinion No. 19; (2) respondent was representing a clients in contingent fee matters without written fee agreements in violation of Rule 1.5, MRPC; (3) respondent held approximately \$18,000 in his trust account, without discussing the use of a separate interest bearing account with his client and without a

written agreement in violation of Rule 1.15, MRPC; and (4) that respondent did not provide case summaries regarding the Foss and Swanson estate matters because respondent had not done any work on those files since their last meeting and did not want to report this to Koneck (Exhibit 18).

60. On August 18, 1998, the Director requested respondent provide, among other things, his complete trust account records for the period of January 1996 through December 1997 in connection with the investigation of the Kielmeyer matter (paragraphs 1-28 infra).

61. Respondent did not provide these trust account records or other requested documents until April 8, 1999, despite the urging of his supervisor and numerous letters and phone calls to respondent's counsel repeating the request for information.

62. Respondent's conduct in (1) failing to be candid with his supervisor about the status of his cases or to cooperate with his supervisor by regularly and timely providing case summaries; (2) failing to comply with the Rules of Professional Conduct in the operation of his practice; and (3) failing to cooperate with the Director's investigation of a complaint by timely providing requested trust account books and records violated the Court's October 26, 1993, order, and Rules 3.4(c), 8.1(a)(3), 8.4(c) and (d), MRPC, and Rule 25, RLPR.

FOURTH COUNT

Inadequate Trust Account Books and Records and False Certification

63. The Director's Office reviewed respondent's books and records for the period January 1996 through December 1997. During that period respondent did not maintain subsidiary ledgers, did not perform and maintain evidence of monthly reconciliations of his trust account, checkbook balance, subsidiary ledger trial balance and adjusted bank statements. Respondent did not use numbered trust account checks or fully annotate his trust account check register with client name, payee and purpose of all transactions.

64. During 1996 and 1997 respondent did not maintain his trust account check register and subsidiary ledgers contemporaneously with the occurrence of trust account transactions. The trust account records respondent produced for the Director on April 8, 1999, were, at least in part, prepared after the Director requested those records on August 18, 1998.

65. For the period from at least August 12, 1997, through December 1997, respondent commingled personal and client funds in the trust account.

66. In 1997 and 1998 respondent falsely certified on his attorney registration cards that he maintained the appropriate trust account books and records.

67. Respondent's conduct in failing to maintain appropriate books and records and in falsely certifying to the Court that he maintained such records violated the Court's October 26, 1993, order, Rules 1.15 and 8.4(c), MRPC, and LPRB Amended Opinion 9.

FIFTH COUNT

Unauthorized Practice

68. By order dated February 5, 1998, the Minnesota Supreme Court placed respondent on CLE restricted status for failure to provide proof of attendance at 45 hours of approved continuing legal education prior to June 30, 1997.

69. While on CLE restricted status respondent represented clients and/or provided legal services on February 5, 6, 10, 12, 13, 16, 23, 24, 26 and 27, 1998, and March 2, 3, 6, 18, 20, 23, 24, and 26, 1998.

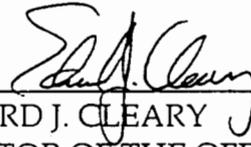
70. By order dated March 27, 1998, the Court restored respondent's license to unrestricted status.

71. Respondent's unauthorized practice between February 5, 1998, and March 27, 1998, violated Rule 5.5, MRPC, and the Court's October 1993 probation order.

WHEREFORE, the Director respectfully prays for an order of this Court revoking respondent's probation and disbaring or suspending respondent or imposing

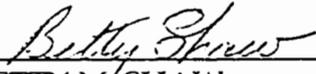
otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: July 15, 1999.



EDWARD J. CLEARY
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 17267
25 Constitution Avenue, Suite 105
St. Paul, MN 55155-1500
(651) 296-3952

and



BETTY M. SHAW
SENIOR ASSISTANT DIRECTOR
Attorney No. 130904