

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

STATE OF MINNESOTA

IN SUPREME COURT

-----  
In Re Petition for Disciplinary Action  
against MARK R. HELLERUD,  
a Minnesota Attorney,  
Registration No. 146341.  
-----

**PETITION FOR  
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 upon the parties' agreement pursuant to Rules 10(a) 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 May 6, 1983. Respondent currently practices law in Ada, Minnesota, and Fargo, North Dakota.

Respondent has committed the following unprofessional conduct warranting public discipline:

**Introduction and Overview**

1. Respondent, Joan Kroshus ("Joan") and Larry Hellerud ("Larry") are siblings. Their parents, Lester ("Lester") and Isabel ("Isabel") Hellerud, were farmers in Norman County, Minnesota.

2. Over time, respondent was a debtor of his parents, a lessee on farmland owned by his parents, a contract for deed vendee on farmland owned by his parents, a debtor of the Lester Hellerud Family Trust ("Family Trust") which was created from Lester's estate, both a lessee and a contract for deed vendee on property owned by Lester's estate and the Family Trust, a debtor of Isabel's estate, a lessee on farmland

owned by Isabel's estate, and a contract for deed vendee on property owned by Isabel's estate, and a beneficiary of Lester's estate, the Family Trust and Isabel's estate.

3. Respondent also held a number of fiduciary positions over time, including attorney for the personal representative of Lester's estate, sole trustee of the Family Trust, power of attorney for Isabel, personal representative of Isabel's estate and attorney for the personal representative of Isabel's estate.

4. As more fully set forth below, while respondent held one or more of these fiduciary positions, he engaged in multiple transactions where respondent was acting in more than one capacity and engaged in multiple transactions in which he had a conflict of interest. Among other things, respondent signed a contract for deed as both vendor and vendee and issued checks from Isabel's personal account to fund undocumented loans to himself. In addition, respondent leased property and borrowed funds from the Family Trust, of which he was the sole trustee.

#### **Nature of Family and Fiduciary Relationships**

5. Beginning on April 7, 1980, as further detailed in paragraphs 16-19, below, respondent entered into contracts for deed with Lester and Isabel to purchase certain farm property.

6. Beginning in 1990, as further detailed in paragraphs 20-29, below, respondent entered into a series of leases regarding farm property that was owned by Lester, Isabel, and, after their deaths, their estates and the Family Trust. These leases spanned the period 1990 to 2005.

7. Beginning in 1992, Isabel granted to respondent a series of powers of attorney, as follows:

a. On July 17, 1992, Isabel signed a power of attorney that respondent had drafted. The power of attorney granted to respondent authority to, among other things, (i) exercise general control over her assets, (ii) collect monies on her behalf, (iii) sell her interest in real estate, (iv) lease real estate, (v) pay her debts and

obligations with funds withdrawn from her bank accounts and other holdings, (vi) sign her name to checks issued on her bank accounts, and (vii) endorse her name to checks made payable to her. The power of attorney further provided that it was not affected by "disability of the principal."

b. On April 15, 1994, Isabel signed a power of attorney that respondent had drafted. The power of attorney granted to respondent the same authorities as had been granted in the July 17, 1992, power of attorney. The April 15, 1994, power of attorney further provided, however, that it was not affected by Isabel's "incapacity or incompetence," and that if Isabel became subject to a guardianship, respondent was to serve as Isabel's guardian.

c. On January 23, 1997, Isabel signed a statutory short form power of attorney that respondent had drafted. The power of attorney granted respondent authority to act on Isabel's behalf with respect to any and all matters. The power of attorney specifically authorized respondent to transfer property to himself, provided that the power of attorney was effective even if Isabel became incapacitated or incompetent and provided that respondent was not required to render any accountings unless Isabel so requested or required by Minn. Stat. § 523.21.

8. Lester and Isabel executed Last Wills and Testaments ("Wills") on December 26, 1992. Respondent states that these Wills were prepared in respondent's law office by a retired attorney whose practice respondent had purchased in 1985. The sister of respondent's legal assistant and the retired attorney were the witnesses to the execution of the Wills. Respondent's legal assistant, Bonnie Jensen, notarized the Wills. Respondent was a beneficiary under the Wills. Lester died on September 8, 1993. Before Lester's death, respondent had borrowed funds totaling at least \$100,000 from his parents. Respondent's loans were not documented and no record was kept of respondent's payments or the balance due on the loans. Respondent states that he believes

there were no balances due on any of his loans at the time of Lester's death.

9. On July 23, 1996, the Family Trust was created from Lester's estate.

10. Isabel died in 2002. In the period between Lester's death in 1993 and Isabel's death, Isabel maintained a checkbook for her personal checking account and wrote checks on that account for her own personal purposes. Respondent maintained a separate checkbook for Isabel's personal checking account and wrote checks on the account for farm-related expenses, signing Isabel's name to the checks pursuant to a power of attorney. Jensen reconciled the account. Respondent and Jensen collected all of the information necessary to prepare Isabel's personal, Lester's estate's and the Family Trust's income and other tax returns and worked with the accountant with regard to those returns.

11. On March 19, 2003, Joan and Larry petitioned the court to remove respondent as trustee of the Family Trust and personal representative of Isabel's estate. The petition alleged conflicts of interest, self-dealing and other misconduct. The parties ultimately stipulated that respondent, Joan and Larry would serve as co-personal representatives and co-trustees and that the farm land owned by the Family Trust and/or Isabel's estate would be distributed as of December 1, 2003.

12. On January 24, 2004, following continuing disputes among the parties, Joan and Larry filed a new petition to distribute the farm land. On February 16, 2004, the court ordered the immediate distribution of all farm land.

13. In or about December 2004, Joan and Larry, in their capacities as co-trustees of the Family Trust and co-personal representatives of Isabel's estate, commenced a lawsuit alleging that respondent had committed fraud, breached his fiduciary duties and engaged in conflicts of interest in his handling of estate and Family Trust matters. Joan and Larry sought monetary damages, an accounting and the appointment of a special master "to report upon the claims presented hereunder."

14. On July 20, 2005, the court appointed a referee to examine the books and

records of the Family Trust, Isabel's estate and respondent's farming operation and related entities for the period 1996 to the present and to prepare a report for the court. The referee forwarded his report to the court on September 29, 2006.

15. In April 2007, the parties settled their lawsuit. Among the terms of settlement were the following:

- a. Respondent agreed to pay Larry, Joan, Isabel's estate and the Family Trust the total sum of \$243,168.84.
- b. Respondent waived any and all additional claims, including claims for attorney and other fees, to Isabel's estate and the Family Trust.
- c. The July 13, 1999, amended contract for deed between respondent, Isabel and the Family Trust remained in full force and effect.
- d. Respondent agreed to, and did, resign as co-personal representative of Isabel's estate and co-trustee of the Family Trust.

### **Contracts for Deed**

16. On April 7, 1980, respondent entered into a contract for deed with Lester and Isabel to purchase certain farm property for \$250,000. The contract for deed provided that respondent was required to make annual payments of \$6,000, plus 6 percent interest on the unpaid principal, until January 1, 2001, at which time, "the entire remaining principal balance shall be fully paid." All three parties to the contract for deed signed it in their individual capacities.

17. On July 13, 1999, respondent entered into an amended contract for deed with Isabel and the Family Trust regarding the farm property that was the subject of the April 7, 1980, contract for deed. The amended contract for deed provided that the total purchase price of the property was \$250,000 and credited respondent for all of the \$6,000 annual payments he had made to that point. In addition, the amended contract for deed provided that respondent was required to make annual payments of \$6,000, plus 6 percent interest on the unpaid principal, beginning January 1, 2000, "and on January 1

of each and every year thereafter until the entire amount with interest has been paid.” The balloon payment required by the April 7, 1980, contract for deed was eliminated. Respondent drafted the amended contract for deed and signed it both in his individual capacity as vendee and in his capacity as trustee of the Family Trust. Isabel signed the amended contract for deed in her individual capacity.

18. Respondent’s drafting and execution of the amended contract for deed, at a time when he was a vendee on the contract for deed, constituted a conflict of interest.

19. Respondent’s conflicts of interest with regard to the contract for deed as described above left the appearance of giving respondent preference to his own interests to the potential financial detriment of Isabel and/or the Family Trust. Most notably, the elimination of the balloon payment requirement in the amended contract for deed appeared to provide a financial benefit to respondent, and a potential financial detriment of Isabel and/or the Family Trust.

### **Leases**

20. Beginning in 1990, respondent entered into a series of leases regarding farm property owned by Lester, Isabel, Lester’s estate and/or the Family Trust. Respondent drafted each of these leases and was the lessee thereon.

21. In 1990, respondent entered into two leases with Lester, under which respondent was required to furnish three-fourths of all farming expenses and would receive three-fourths of the crops raised.

22. Beginning on December 9, 1993, after Lester’s death, respondent entered into a series of leases with Isabel (individually) and Lester’s estate. Respondent drafted the leases and was the lessee thereon. At the time, respondent was also the attorney for Isabel in her capacity as personal representative of Lester’s estate. Isabel signed the leases in both her individual capacity and as personal representative of Lester’s estate. Respondent did not sign the leases. Under the leases, Isabel and Lester’s estate were required to furnish a designated percentage of all farming expenses (specifically

excepting expenses related to sugar beet crops). Isabel and Lester's estate were also required to lease to respondent "all farm equipment, machinery and trucks owned to [respondent] for farm use." Respondent was required to furnish a designated percentage of the non-sugar beet farming expenses and was entitled to receive that same percentage of the non-sugar beet crops raised on the land. The leases made respondent entirely responsible for all expenses associated with sugar beet crops and entitled him to receive all sugar beet crops.

23. Beginning on November 15, 1996, respondent entered into a series of leases with Isabel (individually) and the Family Trust. Respondent drafted the leases and was the lessee thereon. Respondent also signed the leases as the trustee of the Family Trust, which was a lessor. Isabel signed the leases in her individual capacity as a lessor. Under these leases, Isabel and the Family Trust were required to furnish one-half of all farming expenses (specifically excepting expenses related to sugar beet crops). Respondent was required to furnish one-half of the non-sugar beet farming expenses and was entitled to receive one-half of the non-sugar beet crops raised on the land. The leases made respondent entirely responsible for all expenses associated with sugar beet crops and entitled him to receive all sugar beet crops. (Leases entered into in and after November 1999 provided that if respondent raised sugar beets on the property and retained the entire crop for himself, "he shall substitute a crop of a similar nature as is planted on the remaining acres of the premises from other of his farmland that will be in the same amount of acreage as that used for the sugar beet crop on the premises.") The leases also provided respondent with the right of first refusal and to match any offers to purchase the land covered by the lease.

24. During the period 1993 to 1996, respondent's representation of the personal representative of Lester's estate in (a) drafting of leases on which respondent was the vendee, and (b) entry into leases with Lester's estate while at the same time representing Lester's estate, constituted conflicts of interest.

25. During the period 1996 to 2001, respondent's (a) drafting of leases on which respondent was a vendee, and (b) entry of leases with the Family Trust, while at the same time serving as trustee, constituted conflicts of interest.

26. Respondent failed to diligently disclose in writing said conflicts of interest with regard to the lease agreements and obtain written waivers of such conflicts, which thereby left the appearance that respondent gave preference to his own interests over the interests of Isabel, Lester's estate and/or the Family Trust.

27. In addition, respondent's lease agreements with Isabel and the Family Trust (paragraph 23, above) required Isabel and the Family Trust to collectively furnish one-half of the fertilizer, chemical and seed expenses related to the land covered by the lease, and required respondent to furnish the other one-half of those expenses. Isabel and the Family Trust were to bear their one-half of the expenses equally. In fact, however, during the period 1996 to 2003, Isabel (or her estate) paid approximately \$73,000 more in those expenses than the Family Trust. Respondent authorized and effected the disbursements from Isabel (or her estate's) personal checking account and from the Family Trust account for these payments. This, too, occurred at a time when respondent had a conflict of interest as described in paragraph 26, above.

28. During the years 1996 to 2002, Isabel, based on the advice of respondent and the farm accountant, periodically "pre-paid" fertilizer, chemical and seed expenses, apparently as a means of relieving her tax burden. Specifically, Isabel, or respondent on her behalf, would issue a check from her personal checking account that was earmarked for the purchase of fertilizer, chemical or seed supplies for the coming crop year and be allowed to enjoy the tax benefits of that "pre-payment" for the current tax year. It was anticipated that, once the total expenses for the crop year were known, respondent would make any adjustments necessary to ensure that respondent, Isabel (or her estate) and the Family Trust paid expenses in percentages consistent with the lease terms. In fact, however, Isabel paid a greater percentage of the expenses than required. For example, on

December 20, 2000, respondent issued an \$85,000 check from Isabel's account. An annotation on the check indicates that it was a "Pre-pay" for 2001 crop expenses. In fact, however, Isabel's ultimate share for the 2001 crop expenses was only approximately \$15,000. Respondent did not make adjustments to ensure that Isabel paid only the percentage the lease required her to pay. Respondent now claims that Isabel forgave the excessive prepayment. There are no documents to support respondent's claim.

29. During the years 1997 to 2001, respondent received a single check when grain was sold for all of the grain revenues from the leased farm land, deposited the check into his personal bank account and then disbursed the revenues to respondent, Isabel and the Family Trust based on his calculations under the lease. Respondent was not required to, and did not account directly to Isabel or the Family Trust for, or otherwise report to Isabel or the Family Trust beneficiaries, regarding the calculations leading to the division of grain revenues, but did track such division internally. For the years 2002 to 2004, Joan and Larry insisted that the grain elevator issue separate checks to respondent, Isabel's estate and the Family Trust in amounts consistent with the lease percentages.

### **Loans from Isabel**

30. Beginning on May 1, 1994, respondent entered into a series of loan transactions with Isabel. The loans totaled \$615,000. Some of the loans were funded by checks drawn on Isabel's personal account to which respondent signed his name or Isabel's name.

31. Eighteen (18) of the loans from Isabel to respondent were documented by a promissory note, which respondent drafted and signed as borrower.

32. Eight (8) of the loans from Isabel to respondent were not documented by a promissory note or other similar writing.

33. During the period in and after 1996, respondent made payments totaling approximately \$306,000 on his various loans from Isabel. Respondent alleges that on an unknown date in 2001, Isabel forgave approximately \$180,000 of his then-indebtedness on

loans to her. Although the promissory notes contain a handwritten notation "paid" and a signature of "Isabel Hellerud" immediately below such notation, respondent did not otherwise document, or see to the filing of a gift tax return, regarding this purported forgiveness.

34. Respondent's drafting of promissory notes to which he was a party constituted a conflict of interest.

35. During the period 1994 to July 1996, respondent's entry into loan transactions with Isabel, while at the same time representing Isabel in her capacity as personal representative for Lester's estate, constituted a conflict of interest.

#### **Loans From Family Trust**

36. On September 30, 2002, respondent executed a promissory note evidencing a \$50,000 loan from the Family Trust. Respondent drafted the promissory note and signed the note as borrower. The note charged interest at the rate of 5 percent, but did not require annual interest payments, and required repayment of all the interest and the entire principal balance "on demand." Respondent has repaid this note.

37. On October 15, 2002, respondent executed a promissory note evidencing a \$10,000 loan from the Family Trust. Respondent drafted the promissory note and signed the note as borrower. The note charged interest at the rate of 5 percent, but did not require annual interest payments, and required repayment of all the interest and the entire principal balance "on demand." Respondent has repaid this note.

38. In addition to the loan transactions between respondent and the Family Trust described in the two preceding paragraphs, seven (7) of respondent's loan transactions with Isabel were actually funded by funds from the Lester Hellerud Estate or Family Trust.

39. Respondent's (a) drafting of promissory notes to which he was a party, and (b) entry into loan transactions with the Family Trust, while at the same time acting as trustee of the Family Trust, constituted conflicts of interest.

40. Respondent's entry into loan transactions with the Family Trust, while serving as the trustee of the Family Trust, constituted a conflict of interest and breach of respondent's fiduciary duty to the Family Trust.

### **Premature Transfer of Homestead and Related False Statement**

41. Isabel's will provided that respondent could purchase her home and the lots adjacent thereto for the tax assessed value of those properties at the time of her death. The tax assessed value of those properties at the time of Isabel's death was \$79,200.

42. On January 3, 2003, before he had deposited any portion of the purchase price into Isabel's estate's account, respondent recorded the documents to transfer Isabel's homestead and adjacent properties to himself.

43. On January 6, 2003, respondent paid \$52,800 into Isabel's estate's account toward the purchase of Isabel's homestead and adjacent properties. This amount represented approximately two-thirds of the purchase price required by Isabel's will.

44. In a February 24, 2003, letter to Larry's attorney, respondent stated, "I did purchase the home from the estate pursuant to the terms of the will and an agreement with my siblings. The purchase price was a sum in the amount of \$79,200.00 that was paid on or about January 2, 2003." This statement was not accurate, and respondent failed to exercise due diligence in determining the accurate information available in his own files regarding the timing of his payments for the house. Respondent did not deposit any portion of the funds toward the purchase of Isabel's homestead and adjacent properties until January 6, 2003. On that date, respondent deposited only two-thirds of the required purchase price. Respondent had not yet paid the remainder of the purchase price.

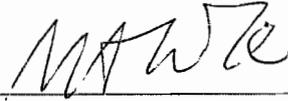
45. On March 27, 2003, following at least one additional inquiry from Larry's attorney, respondent paid the remaining \$26,400 due on the purchase price.

### **Rules Violations**

46. Respondent's conduct as set forth above violated Rules 1.7(b) and 4.3(b), Minnesota Rules of Professional Conduct.

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: November 10, 2008.



---

MARTIN A. COLE  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY  
Attorney No. 148416  
1500 Landmark Towers  
345 St. Peter Street  
St. Paul, MN 55102-1218  
(651) 296-3952

and



---

TIMOTHY M. BURKE  
SENIOR ASSISTANT DIRECTOR  
Attorney No. 19248x