

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against KENNETH M. HOLKER,
an Attorney at Law of the
State of Minnesota.

**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 October 21, 1977. Respondent currently practices law in Monticello, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

1. On October 15, 1982, respondent was issued an admonition for failing to return client files in violation of DR 7-102 (A)(2), Minnesota Code of Professional Responsibility (MCPR).

2. On January 31, 1990, respondent was issued an admonition for failing to timely pay interest accruing on his trust account to the Lawyers Trust Account Board in violation of DR 9-103, MCPR, and Rule 1.15(d), Minnesota Rules of Professional Conduct (MRPC). On December 28, 1990, the Minnesota Supreme Court affirmed the admonition after respondent had appealed.

3. On May 31, 1991, respondent stipulated to an admonition for charging interest on legal fees without making adequate disclosures in violation of Rule 1.5(a), MRPC.

4. On April 3, 1995, respondent was issued an admonition for failing to pay for advertisements that he had published in several newspapers, in violation of Rule 8.4(d), MRPC.

5. On January 6, 1998, respondent was issued an admonition for failing to adequately explain the basis of his fees and using an inappropriate fee agreement, in violation of Rule 1.4(b), MRPC, and Lawyers Professional Responsibility Board Opinion No. 15.

FIRST COUNT

Tax Non-Filing Matter

1. At all relevant times during the period 1990 through 1995, respondent knew that he was required to file state and federal income tax returns for each calendar year on or before April 15 of the next calendar year or before expiration of any extensions granted by the tax authorities.

2. The adjusted gross income of respondent for each year 1991 through 1995 was in excess of the minimum filing requirements.

3. Respondent filed his Minnesota income tax returns as follows:

<u>Year</u>	<u>Date Filed</u>	<u>Amount Owed</u>	<u>Timeliness</u>
1992	1/1/94	\$0.00	nine months late
1993	1/1/95	\$154.75	nine months late
1994	10/18/96	\$2,958.81	eighteen months late
1995	timely	\$651.44	timely

4. Respondent filed his federal income tax returns as follows:

<u>Year</u>	<u>Date Filed</u>	<u>Amount Owed</u>	<u>Timeliness</u>
1990	10/21/91	\$7,968.95	two months late
1991	10/16/92	\$11,477.22	timely
1992	12/28/93	\$3,514.00	two months late
1993	12/13/94	\$8,898.00	two months late
1994	10/18/96	\$6,109.00	one year late
1995	10/18/96	\$6,359.00	two months late

5. Respondent failed to timely file his federal employer's quarterly withholding tax returns or pay the withholding taxes due thereon for the quarters ended September 1990 through December 1995 as follows:

<u>Quarter Ended</u>	<u>Date Filed</u>	<u>Timely</u>	<u>Amount Alleged Owed</u>	<u>Paid</u>
September 1990	8/31/92	no	\$1,778 plus penalties	12/10/92
December 1990	8/31/92	no	\$1,650 plus penalties	10/25/93
March 1991	8/31/92	no	\$3,294 plus penalties	8/21/95
June 1991	8/31/92	no	\$2,883 plus penalties	11/21/95
September 1991	8/31/92	no	\$2,673 plus penalties	3/21/95
December 1991	8/31/92	no	\$3,140 plus penalties	6/24/96
March 1992	4/30/92	yes	\$1,956	8/31/92
June 1992	9/11/92	no	\$4,062 plus penalties	9/25/96
September 1992	10/31/92	yes	\$4,267 plus penalties	tax deposits
December 1992	1/31/93	yes	\$2,944 plus penalties	tax deposits
March 1993	5/3/93	yes	\$2,023 (on deposit)	tax deposits
June 1993	7/31/93	yes	\$1,859.96 (on deposit)	tax deposits
September 1993	10/31/93	yes	\$2,215 (on deposit)	tax deposits
December 1993	1/31/94	yes	\$2,317 plus penalties	unpaid
March 1994	4/30/94	yes	\$2,088 plus penalties	unpaid

June 1994	7/31/94	yes	\$2,130 plus penalties	unpaid
September 1994	10/31/94	yes	\$2,625 plus penalties	unpaid
December 1994	1/31/95	yes	\$2,574 plus penalties	unpaid
March 1995	4/30/95	yes	\$2,398 plus penalties	unpaid
June 1995	7/31/95	yes	\$2,185 plus penalties	unpaid
September 1995	11/9/95	no	\$3,657 plus penalties	unpaid
December 1995	1/31/96	yes	\$3,469 plus penalties	unpaid

6. Respondent failed to timely file his Minnesota employer's quarterly withholding tax returns or pay the withholding taxes due thereon for the quarters ended September 1990 through December 1995 as follows:

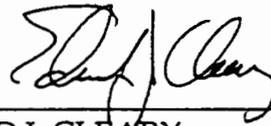
<u>Quarter Ended</u>	<u>Date Filed</u>	<u>Timely</u>	<u>Amount Alleged Owed</u>
September 1990	8/31/92	no	\$0
December 1990	8/31/92	no	\$0
March 1991	8/31/92	no	\$272 plus interest
June 1991	8/31/92	no	\$497 plus penalties
September 1991	8/31/92	no	\$474 plus penalties
December 1991	8/31/92	no	\$559 plus penalties
March 1992	Information purged		
June 1992	Information purged		
September 1992	10/31/93	no	\$809 plus penalties
December 1992	Information purged		
March 1993	4/30/93	yes	\$427 plus penalties
June 1993	7/31/93	yes	\$0
September 1993	11/12/93	no	\$0
December 1993	1/31/94	yes	\$481 plus penalties
March 1994	4/28/94	yes	\$435 plus penalties

June 1994	8/3/94	no	\$2,130 plus penalties
September 1994	11/2/94	no	\$0
December 1994	2/6/95	no	\$0
March 1995	4/30/95	yes	\$0
June 1995	7/17/95	yes	\$0
September 1995	10/31/95	yes	\$0
December 1995	1/31/96	yes	\$215 plus penalties

7. Respondent's conduct in failing to timely file his Minnesota and federal income and employer tax returns and pay the taxes due thereon violated Rules 8.4(b), MRPC, and the Minnesota Supreme Court's holding in *In re Bunker*, 199 N.W.2d 628 (Minn. 1972).

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: June 8, 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



CANDICE M. HOJAN
 SENIOR ASSISTANT DIRECTOR
 Attorney No. 125982