

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against KENNETH B. HUBER,  
a Minnesota Attorney,  
Registration No. 164355.  
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**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 15, 1985. Respondent currently practices law in St. Paul, Minnesota. Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

1. Respondent represented the employer and insurer in B.F.S.'s claim for workers' compensation benefits. B.F.S was represented in the matter by attorney Charles M. Cochrane (Cochrane).
2. As a part of his investigation into the workers' compensation claim, respondent retained a private investigator to conduct surveillance of B.F.S.'s activities.
3. During the course of the surveillance, the investigator videotaped B.F.S.'s activities. One of the investigator's videotapes show B.F.S. meeting a woman in a

parking lot, entering the woman's vehicle, and leaving with the woman after several minutes.

4. The videotape later shows the woman's vehicle returning to the parking lot, B.F.S. exiting the vehicle, and B.F.S. entering his own vehicle. The woman in the videotape was not B.F.S.'s spouse.

5. A hearing was set concerning the nature and extent of B.F.S.'s injuries. Prior to the hearing, the parties engaged in settlement negotiations which became mired.

6. In an attempt to move settlement negotiations, respondent mentioned the videotape suggesting it would help with settlement negotiations. B.F.S.'s counsel asked to view the videotape.

7. After Cochrane indicated the videotape did not show anything which would contradict B.F.S.'s position, respondent indicated he had hoped the videotape would convince B.F.S. to settle. Cochrane indicated it had not.

8. Respondent inquired if B.F.S.'s wife would be testifying on behalf of B.F.S. Upon learning Cochrane had not intended to call B.F.S.'s wife, and with hopes of reaching settlement, respondent suggested he would subpoena B.F.S.'s wife, ask her to view the videotape and testify regarding B.F.S.'s activities on the videotape. Cochrane indicated this would be an impermissible use of the videotape.

9. Respondent's conduct in suggesting he would subpoena B.F.S.'s wife and ask her about the activity in the videotape violated Rules 4.4 and 8.4(d), Minnesota Rules of Professional Conduct.<sup>1</sup>

WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the

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<sup>1</sup> Respondent's conduct occurred prior to October 1, 2005, and therefore respondent's conduct is being charged under the Minnesota Rules of Professional Conduct as they existed prior to October 1, 2005.

Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: September 22, 2006.

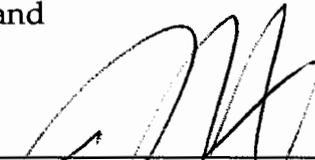


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