

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against GEORGE E. HULSTRAND, JR.,
a Minnesota Attorney,
Registration No. 48033.

**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 1, 1976. Respondent currently practices law in Willmar, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent was issued an admonition on May 9, 2002, for failure to handle his clients' bankruptcy with adequate diligence and promptness, in violation of Rules 1.3 and 3.2, Minnesota Rules of Professional Conduct (MRPC); failure to communicate adequately with his clients, in violation of Rule 1.4, MRPC; failure to deposit cash retainers into his trust account, in violation of Rule 1.15(a), MRPC; and failure to maintain cash receipts journal, in violation of Rule 1.15(h), MRPC.

FIRST COUNT

Genevieve Jerke Matter

Violation of Rule 1.1, MRPC¹

1. In December 2003, complainant, Genevieve Jerke, retained respondent to represent her in a Chapter 7 bankruptcy. As of January 1, 2004, Jerke had an Individual Retirement Account (IRA) valued at \$112,895.06, she had \$25,000 equity in her home and held title to two motor vehicles with a combined value of \$8,700. Jerke had \$49,745.03 in credit card debt. Jerke's bankruptcy petition is dated February 23, 2004, and was filed by letter dated March 1, 2004.

2. On Schedule B of Jerke's bankruptcy petition, respondent indicated, by marking item number 10 with an "X" that Jerke had an annuity, he then identified the annuity at number 11 as "401(k) IRA – Fortis Variable Annuity." Respondent listed the value at \$110,000.

3. Although Jerke's funds had accrued in a 401(k) plan, when Jerke left her job she subsequently rolled the funds into an IRA. On the date the petition was filed, Jerke was not a participant in a 401(k) plan. Her funds were invested in an IRA.

4. Respondent chose to file the petition using State of Minnesota exemptions. On Schedule C, regarding exemptions, respondent again identified Jerke's retirement account as "401(k) IRA – Fortis Variable Annuity." He also listed Jerke's checking account and both of her vehicles as exemptions.

5. The Bankruptcy Court in Mankato, Minnesota, scheduled a meeting of creditors to take place on April 28, 2004. The court named Charles W. Ries as trustee.

6. Respondent made significant mistakes on Schedule C of Jerke's bankruptcy petition. Because Jerke no longer owned a 401(k) investment and her retirement funds were no longer being held by her employer in a fund qualified by the

¹ Rule violations refer to the Minnesota Rules of Professional Conduct prior to October 1, 2005.

Employee Retirement Income Security Act (ERISA), her funds were not exempt from her creditors. Whereas a 401(k) is fully exempt under ERISA, an IRA is only exempt (in 2004) for up to \$54,000. The ramifications of filing bankruptcy for Jerke were that only \$54,000 of her \$112,000 investment was exempt. Respondent did not discuss this with Jerke.

7. Respondent listed both of Jerke's motor vehicles as exempt, whereas bankruptcy law only allows exemption for one motor vehicle. Respondent did not advise Jerke that one of her cars was non-exempt. Lastly, respondent listed Jerke's bank account as an exemption, when it was not.

Violation of Rules 1.4, 1.16(c) and (d), and 3.4(c) MRPC

8. With the meeting of creditors scheduled to take place on April 28, 2004, the trustee wrote to respondent on April 19, 2004, and requested respondent to provide him with specific documentation. The trustee advised respondent of his intent to file an objection to the exemptions listed on Schedule C. Specifically, Jerke's "401(k) – IRA," checking account and her 1999 Chevrolet and 1993 Oldsmobile.

9. Regardless of the trustee's intention to file an objection, respondent believed his representation of Jerke was completed at the end of the meeting of creditors. Therefore, respondent did not provide the trustee with the requested documents, did not inquire into the trustee's objections and did not tell Jerke about the trustee's intent to object.

10. A notice of hearing and motion objecting to claimed exemptions was served on respondent by mail on May 14, 2004. Respondent did not provide the requested materials and did not inform Jerke of the trustee's motion to file an objection. Respondent claimed that after the meeting of creditors he no longer represented Jerke.

11. The trustee's notice scheduled the motion to be heard on June 1, 2004, before Judge Gregory Kishel. The notice advised that any response to the motion must

be filed and delivered no later than May 27, 2004, and that if a response opposing the motion was not timely filed, the court could grant the motion without a hearing.

12. Respondent did not file a response to the trustee's motion nor did he request an extension. Respondent did not inform Jerke of the motion, the substance of the objections being filed or the hearing date. Neither respondent nor Jerke appeared at the hearing.

13. On June 3, 2004, Judge Kishel sustained the trustee's objections. Respondent did not appeal the decision or in any way address the issues raised.

14. Local Rules of Bankruptcy Court for the District of Minnesota require attorneys to make a motion to withdraw or file the proper substitution papers. *See* Minn. R. Bankr. P. 9010-3(e). Until an attorney complies with this requirement, he remains the attorney of record.

15. On June 7, 2004, respondent contacted the trustee and offered to pay a total of \$10,000 to the bankruptcy estate. There is no indication that respondent received Jerke's permission to offer a settlement and no indication that he told Jerke of the offer.

16. On June 16, 2004, the trustee made a second request for specific documents. Each item had been requested by the trustee in April. The June 16 request included that the funds held in the Jerke's accounts be turned over and that an offer be made on the two vehicles. The trustee recognized that there were likely enough funds in the accounts to pay the creditors, leaving a balance for Jerke. Respondent did not provide the requested materials, did not object to the trustee's request and did not inform Jerke of the ongoing demands.

17. On June 29, 2004, Judge Kishel discharged Jerke's bankruptcy.

18. On July 12, 2004, the trustee made a third request for documentation and also advised respondent that Jerke was not authorized to drive either of the vehicles.

Respondent did not provide the requested materials, did not object to the requests and did not inform Jerke not to drive the vehicles.

19. By letter dated October 20, 2004, and sent to both respondent and Jerke, the trustee served a notice of hearing and motion for turnover of property and trustee's memorandum. The trustee's notice scheduled the motion to be heard on November 15, 2004, and stated that any response to the motion must be filed and delivered no later than November 10, 2004. The notice further stated that unless a response opposing the motion was timely filed, the court may grant the motion without a hearing.

20. Respondent did not file a response to the trustee's October motion, nor did he ask for an extension or appear at the hearing.

21. On November 15, 2004, Judge Kishel signed an order sustaining the trustee's objections to the exemptions. The order required Jerke to turn over documentation regarding her IRA; bank statements; non-exempt wages; cash on hand; 2003 tax returns; and both motor vehicles. The order further awarded the trustee \$250 in costs to be paid by Jerke. Respondent did not inform Jerke of the judge's order or the sanction.

22. On November 24, 2004, respondent provided the trustee with some documentation. However, the documentation was deficient for multiple reasons. Mainly, respondent provided materials that were for timeframes irrelevant to the date of the filing of the bankruptcy petition. In addition, respondent failed to pay the \$250 award for attorney fees and costs. The trustee asked respondent to produce relevant documentation and to pay the \$250.

23. On January 6, 2005, respondent provided a printout of Jerke's wages from October 2003 through November 2004. He also provided two pay stubs for April 2004.

24. In July 2006 the trustee learned that Jerke had moved her IRA to a different account. During the month of July 2006, respondent and the trustee communicated regarding the turnover of property. On August 2, 2006, respondent

wrote to the trustee stating that it was respondent's understanding that "after two years from the date of filing the bankruptcy petition, the bankruptcy trustee cannot collect the debtor's assets." The trustee responded that there is no such provision in the bankruptcy code.

25. Respondent thereafter provided the trustee with the completed redemption forms. On August 28, 2006, the trustee applied to the court to withdraw \$83,000 of Jerke's IRA funds.

26. On September 8, 2006, respondent amended Jerke's petition to claim her exemptions under federal law. In doing so, respondent placed Jerke's homestead in jeopardy of becoming part of the bankruptcy estate. With regard to federal exemptions, only \$17,875 of equity is exempt for a homestead. By September 2006, Jerke had \$29,575 equity in her home.

27. On September 21, 2006, the trustee filed a notice of hearing and motion to object to claimed exemptions and memorandum as to why the bankruptcy estate had a right to Jerke's homestead, IRA, bank account and two motor vehicles. The hearing was scheduled for October 16, 2006.

28. On or about October 13, 2006, respondent referred Jerke to attorney Barbara May who was retained and requested an extension to reply to the trustee's notice.

29. On October 30, 2006, May amended and filed a revised Schedule C, again claiming State exemptions and thus resolving the trustee's objection to the homestead exemption. The matter was thereafter settled in December 2006.

30. The trustee removed \$85,000 from Jerke's IRA. The trustee paid off creditors and filed his final report on July 31, 2007. The funds were disbursed as follows:

Trustee compensation	\$7,504.07
Attorney for trustee	\$3,263.50
Other professionals	\$262.50
Expenses (tax ramifications, bond, etc.)	\$21,670.81
Unsecured creditors	\$52,380.59
TOTAL DISBURSEMENTS	\$85,081.47

31. Respondent's actions caused Jerke to lose approximately \$20,000 more of her IRA than she would have had he properly completed Schedule C, together with the additional tax penalties. Jerke also had to pay more in fees to the trustee than necessary. Finally, creditors were allowed 6 percent interest on their debt. By failing to promptly resolve the bankruptcy issue and allowing it to linger for two and one-half years, Jerke had to pay additional interest on the debts.

32. Respondent's failure to competently evaluate Jerke's holdings versus her debt, the tax and penalty ramifications of putting her \$112,000 IRA into a bankruptcy and his listing items as exempt when they were not exempt violated Rule 1.1, MRPC.

33. Respondent's failure to make a motion to withdraw from the bankruptcy court proceedings as required by the Local Rules of the Bankruptcy Court for the District of Minnesota and respondent's failure to protect his client's ongoing interests in the bankruptcy matter violated Rules 1.16(c) and (d), MRPC. In addition, respondent's failure to withdraw under the bankruptcy court rules, not replying to the trustee's requests for information, not responding to the trustee's motion, and failing to make an appearance at the bankruptcy court motion hearing or failing to ask for an extension constitutes knowingly disobeying an obligation of the bankruptcy court in violation of Rule 3.4(c), MRPC.

34. Respondent's failure to keep his client reasonably informed (1) that the trustee had requested additional documents; (2) that respondent's representation had terminated; (3) that a motion to object to Jerke's exemption had been scheduled and

terminated; (3) that a motion to object to Jerke's exemption had been scheduled and heard; and (4) that the judge had sustained the trustee's exemptions violated Rule 1.4(a), MRPC.

35. Respondent's failure to explain the matter to the extent reasonably necessary for his client to make an informed decision regarding the representation violated Rule 1.4(b), MRPC.

36. 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: October 17, 2008.



PATRICK R. BURNS
FIRST ASSISTANT DIRECTOR
OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 134004
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and



MEGAN PREBELICH
ASSISTANT DIRECTOR
Attorney No. 329642