

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against RICHARD N. INDRITZ,
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 following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

1. Richard N. Indritz, hereinafter respondent, was admitted to practice law in Minnesota on May 7, 1982. Respondent's history of prior discipline includes an admonition issued June 25, 1996, for failing to promptly deliver a client's file in violation of Rules 1.15(b)(4) and 1.16(d), Minnesota Rules of Professional Conduct (MRPC).

FIRST COUNT

Roth Matter - Neglect; False Statements

2. Dale Roth retained respondent in December 1994 regarding Roth's claims against Allstate Insurance Company for damages arising out of the theft of Roth's motorcycle and a subsequent accident involving the motorcycle. Allstate had previously denied coverage to Roth.

3. After his initial contacts with respondent in late 1994 and early 1995, Roth had little additional communication with respondent. Roth telephoned respondent several times to request information about the status of the case and to obtain copies of any letters respondent sent to the insurance company. Respondent did not promptly return the telephone calls. When respondent did call, he told Roth he was busy pursuing other cases and stated that he was waiting for a response to letters he had sent to the insurance company, but failed to send copies of the letters to Roth.

4. Roth sent respondent a request by certified mail on February 25, 1997, that respondent forward Roth's entire file to him within one week. Respondent did not send Roth a copy of his file until March 24, 1997, after respondent was contacted by another attorney on Roth's behalf. Roth reviewed the file and, after determining that respondent had only written three letters on Roth's behalf in over two years, filed his complaint with the Director's Office.

5. As part of his response to the complaint, respondent has stated that:

- (a) he sent a letter to the Allstate claim representative, Dan Brady, on May 16, 1995;
- (b) he received no reply and sent a follow-up letter on September 20, 1995;
- (c) he did not receive a reply to that letter either, and he wrote a third letter to the insurer on November 15, 1996. The letter stated that if no response was received within several days, respondent would commence a lawsuit; and
- (d) respondent subsequently prepared but did not file a conciliation court complaint.

6. When contacted by the Director's Office in December 1997, Brady stated that respondent's name did not appear anywhere in the claim file and that Brady had never received any letters from respondent. The Director confirmed that the letters in

respondent's file were properly addressed and correctly identified the claim and policy numbers. Respondent acknowledged to the Director that none of the letters were returned to him by the post office and that he never followed up with Brady by telephone regarding the letters. In fact, respondent did not send the letters to Brady on the dates alleged. Respondent created the letters in March 1997 to give the impression that he had worked on Roth's file.

7. Respondent's conduct in representing Roth violated Rules 1.3, 1.4, 1.15(b)(4), 4.1, 8.1(a)(1), and 8.4(c), MRPC.

SECOND COUNT
Cowley Matter - Neglect; False Statements

8. Doreen Cowley retained respondent on or about August 1, 1997, to represent her in a marriage dissolution initiated by her husband, Mark Johnson. The parties had been married less than a year. Respondent requested and Cowley completed a questionnaire regarding her financial status. The questionnaire indicated she received \$479 monthly in social security benefits. Cowley had received these benefits under the Social Security Disability Insurance (SSDI) program since July 1993, when the Social Security Administration found her eligible.

9. On Cowley's behalf, respondent prepared an Answer and Counter-Petition, a Motion for Temporary Relief, and a supporting affidavit from Cowley. The August 20, 1997, affidavit incorrectly identified the benefits Cowley had been receiving as "SSI" benefits. SSI (Supplemental Security Income) is a need-based disability program. Although Cowley received an SSI supplement of \$17 in the past, her eligibility ended before she married Johnson. The affidavit also stated that Cowley received no other income besides child support payments. Cowley notified respondent on three occasions that she did receive SSDI benefits and requested that respondent correct the affidavit. Respondent failed to correct the affidavit, which Cowley signed

without reviewing the portions she had asked respondent to change. Respondent then served the affidavit on opposing counsel and filed it with the court.

10. On August 22, 1997, respondent advised Johnson's counsel, Lee A. Bernet, that Cowley lost her eligibility to SSI benefits upon the marriage and was reapplying for the same. In connection with Cowley's affidavit, the letter implied that Cowley received no disability benefits. In fact, Cowley continued to receive SSDI benefits and was not in a position of financial hardship.

11. Cowley and her ex-husband stipulated to dissolve the marriage in September 1997, but deferred resolving the property and maintenance issues until a later date. The parties reached an agreement whereby Cowley would reapply for SSI and Johnson would permit her to continue to live in the marital home until payments were reinstated. Johnson paid Cowley's living expenses for the marital home based on the representation that Cowley was not receiving any disability income.

12. In November 1997 respondent again advised Bernet that Cowley was commencing reapplication for SSI and that she was also applying for subsidized housing. By letters dated December 2 and 16, 1997, Bernet asked respondent keep him advised of the status of the reapplication for SSI.

13. On December 28, 1997, respondent advised Bernet that Cowley was interested in purchasing a mobile home with her ex-husband's financial assistance. Respondent falsely indicated that he was waiting for information from Social Security regarding approval of the benefits.

14. Between December 29, 1997, and February 17, 1998, respondent and Bernet traded correspondence regarding Cowley's proposal to purchase a mobile home. The discussion stalled because respondent failed to provide specific details about the proposed transaction.

15. In February 1998 respondent interviewed for a position as a law clerk for a district court judge. Respondent accepted the law clerk position and began work on

March 1, 1998. Respondent began shutting down his law practice but continued to receive mail at his previous law office. On June 1, 1998, respondent moved out of his office and began using a post office box for mail for his practice. Respondent failed to notify Cowley of his new address or telephone number.

16. On March 19, 1998, Bernet again requested details regarding the amount of financial assistance Cowley was requesting in purchasing the mobile home. Bernet requested that the matter move forward expeditiously. Respondent sent a letter to Bernet in response on March 19, 1998, in which he discussed several pertinent issues. Respondent did not inform Bernet that he had begun a new job or that he had a new phone number. Bernet further advised respondent on March 24, 1998, that Johnson supported Cowley's interest in the mobile home, but had not moved forward due to a lack of specific information.

17. On March 30, 1998, Bernet sent a notice for taking Cowley's deposition on April 16, 1998. By letter dated April 8, 1998, Bernet again reminded respondent that Cowley's deposition had been scheduled for April 16, 1998.

18. Respondent failed to notify Cowley of Bernet's request to take her deposition. Neither respondent nor Cowley appeared on April 16, 1998, for the properly noticed deposition.

19. On April 20, 1998, Bernet asked respondent to contact him to reschedule Cowley's deposition. Respondent failed to respond to Bernet's April 20, 1998, letter.

20. On May 7, 1998, Bernet filed a notice of motion and motion with the court to compel Cowley's deposition. On May 14, 1998, Bernet again notified respondent by letter that the motion to compel was scheduled for May 26, 1998. Bernet also notified respondent that he was requesting that the court order Cowley to appear for the deposition. Bernet again asked respondent to cooperate in rescheduling Cowley's deposition, rather than proceed with the motion to compel. Respondent failed to respond to Bernet's May 14, 1998, letter.

21. Respondent and Cowley failed to appear at the May 26, 1998, motion to compel. The court ordered Cowley to appear for the deposition on June 8, 1998, and sanctioned Cowley \$850 in attorney's fees. Respondent failed to advise Cowley of the motion to compel hearing, the award of attorney's fees against her or that her deposition was scheduled for June 8, 1998.

22. Cowley attempted to call respondent on June 3, 1998. She received a forwarding number which she called and learned for the first time that respondent was serving as a law clerk. Cowley then called the Director's Office and learned that respondent was suspended for failing to pay his attorney registration fee. Cowley discharged respondent on June 9, 1998.

23. Respondent wrote to Cowley on June 23, 1998, to let her know that he would cooperate in transferring her file to her new counsel. Respondent acknowledged that he was responsible for the attorney's fee award against Cowley. Respondent stated that he would "take steps to eliminate that award or work with [Cowley's] new attorney to do so. Any costs will be covered by me." To date, respondent has failed to pay the attorney's fee award.

24. Respondent's conduct in representing Cowley violated Rules 1.1, 1.3, 1.4, 3.2, 3.3(a)(1), 3.4(d), 4.1, 8.4(c) and (d), MRPC.

THIRD COUNT
1998 Fee Suspension and False Statements

25. As of April 1, 1998, respondent was suspended from the practice of law for nonpayment of his attorney registration fee. Later in April, the attorney registration office sent respondent a reminder notice that his fee was not paid. The notice stated that nonpayment results in automatic license suspension.

26. Thereafter, respondent continued to represent and advise at least nine clients (including Cowley) while suspended from the practice of law.

27. In response to the Director's request for an explanation of his unpaid attorney registration fee, respondent submitted an affidavit dated July 24, 1998, in which respondent stated that he delayed renewing his attorney license because he was unsure of whether he would have a new address. Respondent also admitted that he had received a "pink reminder notice" regarding his unpaid fee but denied any knowledge that his license had been suspended. In fact, both the initial notice and the reminder state that the attorney's license will be suspended if the fee is not paid.

28. Respondent's affidavit further states that he paid his attorney registration fee on May 9, 1998, by check number 1809. Respondent stated that when he learned of the suspension in mid-June 1998, he contacted the attorney registration office, confirmed that his registration had not been received, requested another registration form and returned it with the registration and late fee.

29. When the Director asked for a copy of the second check respondent had issued for his fee, he indicated, through his counsel's August 23, 1998, letter, that the initial May 9 check for the fee had been returned because respondent's trust account number was omitted from the registration statement. Counsel indicated that the original check was resubmitted and had not been returned by the bank.

30. Respondent failed to pay his attorney registration fee until August 25, 1998.

1999 Fee Suspension and False Statements

31. Respondent again failed to pay his attorney registration fee by April 1, 1999. On April 9, 1999, the attorney registration office notified respondent that he was suspended from the practice of law.

32. Respondent acknowledged during a May 5, 1999, pre-hearing meeting on the Director's charges of unprofessional conduct that respondent was administratively suspended from the practice of law for failing to pay his attorney registration fee when due on April 1, 1999. Respondent stated that he had received both the initial attorney

registration statement prior to April 1 and received a pink suspension notice in mid-April. Respondent acknowledged that the reminder notice had been amended to include the words "LICENSE SUSPENDED" in larger type than the other words on the notice. Respondent stated that he had continued to represent two clients in social security appeals after his fee suspension. Respondent gave no explanation for his failure to pay the fee but stated that he had mailed the fee to the Office of Attorney Registration between April 28 and April 30, 1999.

33. The Director notified respondent's counsel by letters dated May 10 and June 2, 1999, that the Office of Attorney Registration had not received respondent's fee payment. *See infra* ¶¶ 43 and 45.

34. Attorney Registration records indicate respondent's fee was paid on June 11, 1999.

35. Respondent's conduct of advising and representing clients while suspended from the practice of law for failure to pay his attorney registration fee and false statements regarding payment of his fee violated Rules 5.5(a), 8.1(a), and 8.4(c), MRPC.

FOURTH COUNT
Non-cooperation

36. On August 6, 1998, the Director wrote to respondent's counsel, Fred Finch, to request that respondent produce various documents and information, including the bank statements corresponding to a previously produced checkbook register, a copy of cancelled check number 1809, and other information.

37. On August 23, 1998, Finch sent a partial response to the Director's request and proposed sending additional information, including the items described in paragraph 30, at a later date. The Director wrote to respondent's counsel on October 8, 1998, to renew the requests for this information and to request a supplemental affidavit from respondent explaining why his attorney registration fee was not paid between July

24 and August 25, 1998. The Director received no response and sent another request to Finch on November 9, 1998.

38. On November 10, 1998, Finch informed the Director that he was withdrawing as counsel for respondent.

39. On November 13, 1998, the Director wrote to respondent to renew the request for information from respondent. The Director asked respondent to respond and provide documentation within two weeks. Respondent failed to respond to the Director's request.

40. On December 3, 1998, the Director sent respondent a follow-up request by certified mail for the information. Respondent failed to pick up the certified letter at the post office and it was returned to the Director.

41. On December 17, 1998, the Director, by certified mail to a different address, again asked respondent to comply with the outstanding requests for information. The Director notified respondent that failure to cooperate with the disciplinary process may provide an independent ground for discipline. Respondent neither responded to the Director's request nor contacted the Director's office regarding the requests for information.

42. Respondent appeared at the Director's Office for a pre-hearing meeting on May 5, 1999, regarding the initial charges of unprofessional conduct. During the meeting, respondent acknowledged receiving letters from the Director in November and December 1998. Respondent stated that he assembled documents to send to the Director around that time and thought that they had been mailed. Respondent further stated that when respondent received the charges of unprofessional conduct, he discovered that the package of documents had been misplaced in his home by his wife. Respondent then stated that he had mailed the documents to the Director during the week of April 26, 1999.

43. Respondent agreed at the pre-hearing to provide documents the Director had previously requested and other documents that were discussed at the pre-hearing meeting. The Director wrote to respondent's new counsel, David Gronbeck, on May 10, 1999, to identify all the documents requested. The letter noted that no documents had been received in the mail from Mr. Indritz and that the Office of Attorney Registration had not received the fee payment that respondent had allegedly mailed between April 28 and April 30, 1999. The Director asked that respondent forward the requested documents by May 19, 1999.

44. On May 19, 1999, having received no documents from respondent, the Director served Gronbeck with a notice of deposition of a US Bank representative to obtain some of the requested bank account records. The records, produced by US Bank on June 1, 1999, revealed that check number 1809, which respondent had purportedly tendered to the Office of Attorney Registration on several occasions to pay his fee, never passed through respondent's business account.

45. The Director wrote to Gronbeck on June 2, 1999, to request again the outstanding information and documentation and to note that respondent's 1999 attorney registration fee remained unpaid. The Director received no response to this letter.

46. The Director sent a letter by certified mail to Gronbeck on June 22, 1999, to ask again for respondent's cooperation. Gronbeck wrote to the Director the following day noting the receipt of the Director's "recent letters," and stating that the information requested would be produced within the next seven days. None of the requested information was included with Gronbeck's letter.

47. The Director had no further communications from Gronbeck or respondent. The Director issued supplemental charges of unprofessional conduct on July 22, 1999.

48. Respondent's additional false statements to the Director and failure to communicate and cooperate with the disciplinary process violated Rules 8.1(a), 8.4(c), and 8.4(d), MRPC, and Rule 25, RLPR.

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: September 23, 1999.



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