

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against HUGH D. JAEGER,
a Minnesota Attorney,
Registration No. 49529.

**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 (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on April 15, 1977. Respondent currently practices law in Wayzata, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

A. Pattern of Neglect of Patent Matters

1. As set forth more fully below, respondent has failed to respond to multiple requests from the Director for information and documents about matters set forth in this petition. This petition is therefore based on the information and documents available to the Director as of the date hereof.

2. Respondent practices primarily in the area of intellectual property (patents, trademarks and the like) law. As set forth more fully in Sections B and C,

below, in multiple matters on behalf of multiple clients respondent failed to act with adequate diligence and promptness.

B. Failure to Timely Renew Patents in Foreign Countries

3. Some of the patents of respondent's clients were registered in foreign countries. For some of these matters, respondent retained Robin Browne, an attorney in the United Kingdom, to assist respondent.

European Patent No. 0932493 – Client IPS Balers

4. Respondent represented IPS Balers Manufacturing, Inc. ("IPS Balers") regarding this patent.

5. By letter to respondent dated July 31, 2007, Browne set forth the costs for renewal of the patent in Italy, the Netherlands, Germany and the United Kingdom and advised respondent that all payments were due October 31, 2007. Respondent did not respond.

6. On October 12, 2007, Browne re-sent that July 31 letter to respondent as a reminder. Respondent did not respond.

7. By letter dated October 24, 2007, Browne reminded respondent that the applicable costs were set forth in Browne's July 31 letter and advised respondent that Browne was still waiting for instructions from respondent regarding renewals of the patent. Respondent did not respond. As a result, the renewal fees were not paid.

8. By letter dated November 29, 2007, Browne advised respondent that the deadline for renewal of the national phases was April 30, 2008, and advised respondent that the power of attorney for the Italian patent was also due on that date.

9. By letter dated November 30, 2007, respondent claimed to Browne that Mr. Rosser, a principal of IPS Balers, was not being cooperative.

10. On March 18, 2008, respondent faxed to Browne the sale and assignment of patent and consulting agreement, for Browne to record.

11. By letter dated March 25, 2008, Browne reminded respondent that the national annuities were due by April 30, 2008. Respondent did not respond.
12. By letter dated April 7, 2008, Browne reminded respondent that the renewal due date was April 30, 2008. Respondent did not respond.
13. By letter dated April 9, 2008, Browne reminded respondent that the deadline for the German renewal was April 30, 2008, and advised respondent that Browne would take no action without instruction from respondent. Respondent did not respond.
14. On April 22, 2008, Browne re-sent that April 7 letter to respondent as a reminder.
15. By email on March 24, 2008, respondent inquired about Browne's invoices for services rendered. Browne replied that day, telling respondent that the account needed to be brought current for Browne to make the renewals.
16. By letter dated April 25, 2008, Browne reminded respondent that the due date was April 30, 2008. Respondent did not respond. As a result, the renewal fees were not paid.
17. By letter dated May 1, 2008, Browne stated that he had received no instructions or funds for the renewals from respondent, and that the April 30 due date had passed.
18. By letter dated June 10, 2008, Browne advised respondent that the patent had ceased in the United Kingdom because of the failure to pay the renewal fees.
European Patent Application No. 02736610.3 – Client IPS Balers
19. Respondent represented IPS Balers regarding this patent.
20. By letter dated January 9, 2008, Browne informed respondent that the annuity was due April 24, 2008. Respondent did not respond.
21. By letter dated April 7, 2008, Browne reminded respondent that the renewal payment was due April 24, 2008. Respondent did not respond.

22. On April 22, 2008, Browne re-sent that April 7 letter as a reminder.

23. By email dated April 24, 2008, respondent stated to Browne, "Please pay the seven year annuity fees (see attached). Checks will be forwarded."

24. By letter dated May 1, 2008, Browne advised respondent that he did not receive the check referenced in respondent's April 24 email and therefore the annuity was not paid. Browne advised respondent that the annuity could be paid, plus a 50 percent surcharge, within six months of April 30, 2008. Respondent did not respond.

25. By letter dated June 10, 2008, Browne reminded respondent that the renewal fee, plus the 50 percent surcharge, could be paid until October 30, 2008, and advised respondent that no action would be taken without instructions or payment of past due client bills. Respondent did not respond.

26. On August 6, 2008, Browne re-sent that June 10 letter as a reminder. Respondent did not respond.

27. Browne paid the annuity fee, plus a €500 surcharge, on instructions directly from the client.

European Patent No. 05770099.9 - Clients Thomas and Robert Hohaug

28. Respondent represented Thomas and Robert Hohaug, brothers, regarding this patent.

29. By letter dated July 3, 2008, Browne advised respondent that the deadline for the renewal of the patent was July 31, 2008. Respondent did not respond.

30. By letter dated September 11, 2008, Browne informed respondent that Browne had not received any instructions or communication from respondent regarding the annuity payment due July 31, 2008, and advised respondent that the annuity, plus a 50 percent surcharge, could be paid until January 31, 2009. Respondent did not respond.

31. On January 6, 2009, Browne re-sent that September 11 letter as a reminder. Respondent did not respond.

32. As a result, the renewal fees were not paid, and the patent lapsed.

European Patent Application No. 05843331.9 – Client Richard Lindstrom

33. Respondent represented Richard Lindstrom regarding this patent.

34. On or about September 11, 2008, Browne advised respondent of an official letter dated August 21, 2008, which set forth a two-month period to confirm that the client wished to continue with the patent application. Respondent failed to instruct Browne about whether Lindstrom wanted to continue the application. As a result, the two-month period lapsed.

35. By letter dated December 18, 2008, Browne advised respondent the client could take advantage of a two-month extension period expiring February 10, 2009, which would require payment of a surcharge.

36. Respondent thereafter provided instructions and a response was filed on or about January 7, 2009. The belated filing caused a €210 surcharge.

European Patent Application No. 05786041.3 – Client Louis Nichamin

37. Respondent represented Louis Nichamin regarding this patent.

38. By letter dated August 6, 2008, Browne advised respondent that the renewal payment was due August 31, 2008. Respondent did not respond.

39. By letter dated September 11, 2008, Browne advised respondent that Browne had received from respondent no response to that August 6 letter and that the payment, plus a 50 percent surcharge, was due by February 28, 2009. Respondent did not respond.

40. By letter dated March 10, 2009, Browne advised respondent that the application lapsed effective February 28, 2009, and that Browne had received no correspondence from respondent instructing Browne to abandon the matter.

Daktronics

41. Respondent also represented Daktronics, Inc. in multiple European patent matters in which he failed to act with adequate diligence and promptness in connection with renewals of the patents, as set forth below.

European Patent Application No. 05110211.9

42. Respondent represented Daktronics regarding this patent.

43. An annual annuity, required to maintain the patent, was due on July 28, 2008.

44. On multiple occasions, Browne sent reminders to respondent and requested instructions. Respondent failed to respond. As a result, the deadline was missed.

45. Browne subsequently contacted Daktronics directly, which instructed Browne to pay the annuity, together with a 50 percent surcharge of €550.

European Patent Application No. 04811819.4

46. Respondent represented Daktronics regarding this patent.

47. The annuity for the fifth year was due on November 30, 2008. On multiple occasions, Browne requested respondent to provide instructions. Respondent failed to respond.

48. Browne thereafter contacted Daktronics directly, which advised Browne that it was unaware of the overdue renewal. Daktronics instructed Browne to pay the overdue annuities and surcharges.

European Patent Application No. 02255867.0

49. Respondent represented Daktronics regarding this patent.

50. The sixth annual annuity was due on August 31, 2007.

51. By letters dated August 3, 21 and 28, 2007, Browne requested respondent to provide instructions regarding the matter. Respondent failed to respond. A late payment surcharge of €120 was incurred.

52. The annuity, plus surcharge, was due on February 28, 2008, and were paid by Browne pursuant to instructions directly from Daktronics.

European Patent Application No. 03809569.1

53. Respondent represented Daktronics regarding this patent.

54. By letter dated October 23, 2008, Browne advised respondent that the annuity was due October 31, 2008, and requested respondent to provide funds to cover the annuity payment. Respondent failed to do so.

55. The fee, plus surcharge, was subsequently paid.

European Patent Application No. 1305251

56. Respondent represented Daktronics regarding this patent.

57. This patent had national phase validations in France, Germany, Italy, Spain, Ireland and the United Kingdom.

58. The annuity payment was due on July 27, 2008. On multiple occasions before that date, Browne requested instructions from respondent. Respondent failed to respond. As a result, the deadline was missed. The fee, plus surcharges, was paid by the extended deadline of January 31, 2009.

C. Failure to Timely File Foreign Patent Applications

59. In or about 1995, Daktronics retained respondent for representation in various intellectual property matters. Among these matters were foreign patent applications set forth below.

60. In order to file an international patent application pursuant to the Patent Cooperation Treaty (PCT) or other non-United States application to be considered timely, the application must be filed within 12 months of the earliest patent application to which priority is claimed in a given patent family. If that 12-month deadline is missed, the benefit of claiming priority to an earlier application is forfeited.

61. By way of example, if a first patent application (such as a U.S. provisional application) in a given patent family is filed in the United States on January 1, 2005, it is

possible to file related second and/or third application(s) on or before January 1, 2006, and still gain the benefit of the January 1, 2005, filing date. On the other hand, if the first patent application in a given patent family was filed in the United States on January 1, 2005, and the second patent application in the given family was filed in the United States on or after January 1, 2006, it is not possible to file a third application on or after January 1, 2006, which still gains the benefit of either the January 1, 2005, or January 1, 2006, filing dates.

62. Respondent failed to make filings timely in at least 9 matters, as set forth below. As a result, Daktronics has lost its claims of priority for each of these inventions. Daktronics therefore had to abandon, or narrow, the claims in the patent applications for these inventions.

European Application Serial No. 6815038.2 (Related U.S. Provisional Application Serial No. 60/647, 268)

63. On or about January 25, 2005, respondent filed the application, and on or about November 10, 2005, respondent made the second filing, with the U.S. Patent and Trademark Office (PTO).

64. To obtain full protection, the international application had to be filed before January 25, 2006. Respondent did not file the international application until on or about September 21, 2006.

PCT Application Serial No. PCT/US2007/025456 (Related U.S. Provisional Application Serial No. 60/647, 268)

65. On or about January 25, 2005, respondent filed the application, and on or about December 20, 2006, respondent made the second filing, with the PTO.

66. Although the second filing was more than one year after the date of the first filing, this patent was a continuation (family member) of an application having a first filing date of January 25, 2005. The first filing date was therefore imputed, and thus the December 2006 filing was timely.

67. To obtain full protection, the international application had to be filed before January 25, 2006. Respondent did not file the international application until on or about December 13, 2007.

European Application Serial No. 8165443.6 (Related U.S. Provisional Application Serial No. 60/808, 213)

68. On or about May 24, 2006, respondent filed the application, and on or about May 23, 2007, respondent made the second filing, with the PTO.

69. To obtain full protection, the international application had to be filed before May 24, 2006. Respondent did not file the international application until on or about September 29, 2008.

European Application Serial No. 8165442.8 (Related U.S. Provisional Application Serial No. 60/808, 212)

70. On or about May 24, 2006, respondent filed the application, and on or about May 23, 2007, respondent made the second filing, with the PTO.

71. To obtain full protection, the international application had to be filed before May 24, 2007. Respondent did not file the international application until on or about September 29, 2008.

European Application Serial No. 8165441 (Related U.S. Provisional Application Serial No. 60/808, 200)

72. On or about May 24, 2006, respondent filed the application, and on or about May 23, 2007, respondent made the second filing, with the PTO.

73. To obtain full protection, the international application had to be filed before May 24, 2006. Respondent did not file the international application until on or about September 29, 2008.

European Application Serial No. 8795482.2 (Related U.S. Provisional Application Serial No. 60/926, 706)

74. On or about April 27, 2007, respondent filed the application, and on or about August 24, 2007, respondent made the second filing, with the PTO.

75. To obtain full protection, the international application had to be filed before April 27, 2008. Respondent did not file the international application until on or about August 21, 2008.

European Application Serial No. 8742865 (Related U.S. Provisional Application Serial No. 60/791, 808)

76. On or about April 13, 2006, respondent filed the application, and on or about April 12, 2007, respondent made the second filing, with the PTO.

77. To obtain full protection, the international application had to be filed before April 13, 2007. Respondent did not file the international application until on or about April 11, 2008.

European Application Serial No. 8165445

78. Respondent filed the application before May 31, 2007, and on or about May 31, 2007, made the second filing, with the PTO.

79. To obtain full protection, the international application had to be filed before May 31, 2008. Respondent did not file the international application until on or about September 29, 2008.

80. Respondent's conduct in the patent matters violated Rule 1.3, Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

False Signatures

81. In connection with one of Daktronics' patent applications, respondent filed a nonpublication request under 35 U.S.C. § 122(b)(2)(B)(i). The document appears to bear the signatures of five persons, all dated May 23, 2007. Respondent signed each of these names to the document without the knowledge of, or authority from, the named persons.

82. Respondent's signature of other persons' names without consent violated Rules 4.1 and 8.4(c), MRPC.

THIRD COUNT

Failure to Return File

83. Daktronics terminated respondent's representation by letter dated April 6, 2009. That letter requested respondent to transfer all the Daktronics' files on which respondent worked to Daktronics' successor counsel. Respondent failed to do so.

84. By letter dated April 17, 2009, and in other communications, Daktronics again requested respondent to transfer all the Daktronics' files on which respondent worked to successor counsel. Respondent failed to do so.

85. To date, respondent has not forwarded to successor counsel any of the Daktronics' files on which respondent worked.

86. While respondent represented Daktronics in approximately 18 matters respondent had signed and filed with a Daktronics patent application a non-disclosure request. The non-disclosure requests prevented the PTO from posting information about the applications on the PTO Web site and allowed the PTO to communicate about the application only with respondent. As a result, information about the applications was not publicly available, even to Daktronics or its successor counsel.

87. After respondent's representation of Daktronics ended and respondent failed to return the files, Daktronics was unable to access the PTO file or communicate with the PTO about the matters. Daktronics requested respondent to remove the non-publication requests. Respondent did not do so. Some patents (or applications) were abandoned, without Daktronics' knowledge, because respondent failed to respond to communications from the PTO.

88. To try to remove respondent's non-publication requests, Daktronics had to request special relief from the PTO. This cost Daktronics more than \$11,000 in fees and costs.

89. Respondent's failure to return or forward the Daktronics' files on which respondent worked violated Rules 1.15(c)(4) and 1.16(d), MRPC.

FOURTH COUNT

Non-Cooperation

90. On April 20, 2009, the Director mailed to respondent notice of investigation of a complaint against respondent by Daktronics, Inc. The notice requested respondent to provide to the assigned district ethics committee (DEC) investigator within 14 days of the date of the notice his complete written response to the complaint. Respondent failed to do so.

91. On June 5, 2009, respondent telephoned the DEC investigator and left a voicemail in which respondent stated that he would provide his response to the Daktronics complaint by June 8, 2009. Respondent failed to do so.

92. On June 6, 2009, respondent telephoned the DEC investigator and left a voicemail again stating that he would provide his response to the Daktronics complaint by June 8, 2009. Respondent failed to do so.

93. By letter dated June 9, 2009, respondent stated to the DEC investigator that his response to the Daktronics complaint would be "forthcoming." By letter dated June 23, 2009, respondent provided his response to the Daktronics complaint.

94. By letter dated August 14, 2009, the Director notified respondent and Daktronics that further handling of the matter would be conducted by the Director's Office.

95. By letter dated August 17, 2009, the Director requested respondent to provide no later than August 31, 2009, the information and documents requested in that August 17 letter. Respondent did not do so.

96. On August 18, 2009, respondent spoke by telephone with an Assistant Director. Respondent stated that earlier that day he had picked up the mail (including the Director's August 17 letter) but had then misplaced the August 17 letter, and requested the Director's Office to fax to respondent another copy of that letter. That same day, the Director did so.

97. On August 19, 2009, respondent spoke by telephone with an Assistant Director. The Assistant Director informed respondent that in responding to the Director's August 17 letter regarding the Daktronics matter, respondent need not provide to the Director any documents that respondent had provided previously to the DEC investigator.

98. On August 31, 2009, respondent spoke with an Assistant Director by telephone. Respondent stated that he recognized his response to the Director's August 17 letter regarding the Daktronics matter was due that day (August 31) but that respondent was running a couple of days behind. Respondent stated that his office's server had gone down and that his office was trying to reboot the server "as we speak." The Assistant Director asked respondent if he could mail all of the responsive documents by the end of that week (*i.e.*, by September 4, 2009). Respondent stated that he would try to do so. The Assistant Director offered, and respondent agreed, that on September 4 respondent would either (1) mail all responsive documents or (2) mail the documents respondent did have at that time and call the Assistant Director that day to let the Assistant Director know the status of respondent's production of the remaining documents. Respondent failed to do so.

99. On September 4, respondent did not send a letter, did not send any documents and did not telephone the Director's Office.

100. On September 9, 2009, respondent faxed a letter to the Director, the text of which reads in its entirety:

A letter with documents is forthcoming.

Please forgive the delay due to family matters.

We are working on this matter.

101. By letter dated September 14, 2009, the Director (1) advised respondent that the Director had received none of the information and documents requested in the Director's August 17 letter regarding the Daktronics matter, including the documents

that on August 31 respondent stated were ready to be provided, (2) advised respondent that the Director had received no further communication from respondent about the Daktronics matter, (3) requested respondent to provide in writing the information, and the documents, requested in that August 17 letter and (4) requested respondent, should he claim that he was unable to provide all requested information and documents, to provide at that time the information and documents respondent was in a position to provide and to state the date on which respondent anticipated he would provide the balance of the requested information and documents.

102. On September 15, 2009, respondent telephoned the Director and left a message stating that his father had passed away.

103. On September 17, 2009, respondent spoke with an Assistant Director. Respondent stated that his father had passed away, that he would be leaving the next day to go out of town and would return the following Tuesday evening. Respondent offered to either send requested documents regarding the Daktronics matter to the Director that day, with a letter to follow the next week, or to send all documents and a letter to the Director by Federal Express on Wednesday of the next week. The Assistant Director advised respondent that the second option was acceptable.

104. In a letter later that day, respondent provided a brief explanation of his relationship with Daktronics and stated, "I will forward a large document package and a detailed letter via FedEx on Wednesday, September 23." On September 23, 2009, respondent provided information and documents in response to the Director's August 17 letter.

105. By letter dated September 30, 2009, the Director (1) advised respondent that the documents enclosed with respondent's September 23 letter included some, but not all, of the documents requested in the Director's August 17 letter regarding the Daktronics matter, (2) requested respondent to provide the balance of the requested documents, (3) requested respondent to provide additional information requested in

that September 30 letter, and (4) requested respondent to provide the requested information and documents no later than October 20, 2009.

106. By letter dated October 20, 2009, respondent stated that the enclosures referenced in the Director's September 30 letter were not enclosed with the letter, provided some of the requested information, did not provide any of the requested documents, and requested an extension of three weeks from the date the Director provided the enclosures to that September 30 letter.

107. By letter dated October 21, 2009, respondent stated, "I will have definitive answers if you will give me an additional two-three weeks time."

108. By letter dated October 21, 2009, the Director again provided to respondent the enclosures to the Director's September 30 letter regarding the Daktronics matter, and stated that the Director expected to receive all of the information and documents requested in that September 30 letter on or before November 12, 2009.

109. On November 10, 2009, the Director mailed to respondent notice of investigation of a complaint filed by Robin Browne. The notice requested respondent to provide his complete written response to the complaint within 14 days of the notice. Respondent failed to do so.

110. On November 12, 2009, respondent provided some, but not all, of the information and documents requested in the Director's September 30 letter regarding the Daktronics matter.

111. By letter dated November 30, 2009, the Director advised respondent that the Director had received no response to the Browne complaint and requested respondent to provide at that time the complete written response requested in the notice of investigation.

112. By letter dated December 1, 2009, respondent advised the Director that respondent was out of town attending family matters and would respond to the Browne complaint "upon my return on December 2, 2009."

113. By letter dated December 7, 2009, the Director advised respondent that the Director had not received a response from respondent to the Browne complaint and requested respondent to provide at that time the complete written response requested in the notice of investigation.

114. By letter dated December 8, 2009, respondent stated to the Director, among other things, "You [the Director] will receive a response [to the Browne complaint] no later than December 21." Respondent failed to provide a response on or before December 21.

115. By letter dated December 18, 2009, respondent provided additional documents requested in the Director's August 17 letter regarding the Daktronics matter.

116. By letter dated December 21, 2009, respondent stated that he "need[ed] additional time in which to respond and review the papers, as well as the files" and stated, "I expect to have a response [to the Browne complaint] to you by Tuesday, January 5, 2010." Respondent failed to provide a response by January 5.

117. By letter dated January 6, 2010, respondent stated, among other things, "Detailed letter [in response to the Browne complaint] to follow in the next week." Respondent failed to provide a response within the week.

118. By letter dated January 14, 2010, the Director advised respondent that the Director had received no response to the Browne complaint, had received no other communication from respondent about the matter after respondent's January 6 letter and requested respondent to provide at that time his complete written response to the Browne complaint as requested in the notice of investigation. By letter dated January 26, 2010, respondent provided his response.

119. By letter dated January 21, 2010, the Director requested respondent to provide on or before February 10, 2010, the information requested in that January 21 letter regarding the Daktronics matter.

120. By letter dated February 4, 2010, respondent stated that he fractured his hip and requested an extension to February 15, 2010, to respond to the Director's January 21, 2010, letter regarding the Daktronics matter.

121. By letter sent on February 16, 2010, although dated February 3, 2010, respondent provided his response to the Director's January 21 letter regarding the Daktronics matter.

122. By letter dated March 24, 2010, the Director requested respondent to provide no later than April 14, 2010, the information and documents requested in that March 24 letter about the Browne matter. Respondent failed to respond.

123. By letter dated March 31, 2010, the Director requested respondent to provide no later than April 21, 2010, the information and documents requested in that April 21 letter regarding the Daktronics matter.

124. By letter dated April 15, 2010, the Director advised respondent that the Director had received no response to the Director's March 24 letter regarding the Browne matter and requested respondent to provide at that time in writing the information, and the documents, requested in that March 24 letter. Respondent did not do so.

125. By letter dated April 21, 2010, respondent replied to the Director's March 31, 2010, letter regarding the Daktronics matter. The text of that letter reads in its entirety, "Due to personal health reasons, I need another month to respond."

126. By letter dated April 20, 2010, respondent replied to the Director's April 15 letter about the Browne matter. That letter provided none of the information or documents requested in the Director's March 24 letter. Instead, respondent's April 20 letter claimed that respondent was unable to ascertain the matters identified in the Director's March 24 letter because respondent's files are organized by client name, and then by United States application numbers, and the Director's March 24 letter was organized by patent numbers.

127. Respondent had not previously claimed inability to respond on this basis. As noted in the Director's March 24 letter, much of the information set forth in that letter was based on documents included with the complaint and which were provided to respondent with the notice of investigation of the Browne complaint. Respondent responded to the notice of investigation and complaint by letter dated January 26, 2010. Respondent's January 26 response addressed matters raised in the complaint and made no claim that respondent was unable to do so because of the way the matters were identified.

128. Additionally, respondent's April 20 letter regarding the Browne matter stated that he would not respond to the Director's March 24 letter until respondent was "settled in our new office space and have had a chance to review and put away all the client files."

129. Respondent's April 20 letter regarding the Browne matter also requested the Director to provide to respondent a copy of the Director's file regarding the Browne matter. By letter dated April 27, 2010, the Director provided to respondent a copy of the Director's file, except for work product, regarding the Browne matter.

130. On April 22, 2010, the Director's Office received a telephone message from respondent in which respondent stated that he had sent responses, would call the assigned Assistant Director the following week (*i.e.*, by April 30, 2010) and was dealing with cancer.

131. By letter dated May 4, 2010, in order to ascertain the nature and extent of respondent's medical condition and its potential impact on respondent's ability to practice law and/or participate in the disciplinary investigation, the Director requested respondent to provide the specified information and documents related to his medical condition within two weeks of the date of that May 4 letter. Respondent did not do so.

132. Respondent sent a letter dated May 19, 2010, to the Director, the text of which states in its entirety:

I will be responding to all of your letters by the end of the month.

I am removing files from off-site storage, after my move. Please forgive the delay.

Thank you for your understanding.

133. By letter dated May 25, 2010, the Director noted that respondent had received multiple requests for information and/or documents to which he had not responded fully although the deadline to respond had passed. The Director requested respondent to meet at the Director's Office on June 3, 2010, beginning at 9:00 a.m., and to bring to that meeting in writing all of the information, and all of the documents, which the Director had requested but which respondent had not yet provided.

134. On May 27, 2010, respondent faxed a letter to the Director's Office. In that letter respondent stated:

I will be in Europe on a long planned trip on business from May 27 through June 7, 2010, and, therefore, cannot attend your suggested meeting date of June 3. I will telephone you upon my return to reschedule.

For your information, my professional liability insurance carrier, Minnesota Lawyers Mutual (MLM), now wants to be involved. MLM will be selecting an attorney to work with me on the complaint matters.

135. Later that day, an Assistant Director spoke by phone with respondent. Respondent agreed to meet with the Assistant Director on June 14, 2010. By letter dated May 28, 2010, the Assistant Director confirmed the agreement to reschedule the meeting to June 14.

136. On the afternoon of Friday, June 11, 2010, the final business day before Monday, June 14, respondent faxed a letter to the Director which stated in its entirety:

I have a doctor's appointment on Monday and another doctor's appointment on Tuesday.

I will call you to reschedule our meeting.

137. That same day, an Assistant Director telephoned respondent and left a message for respondent to return the call. Respondent did not do so.

138. Later on the afternoon of June 11, 2010, the Director faxed a letter to respondent. The Director's June 11 letter noted that respondent's June 11 letter did not state the time of his doctor's appointment on June 14, did not state whether that appointment conflicted with the scheduled meeting time, and did not identify any other day that respondent is available to meet.

139. As noted in the Director's June 11 letter, during respondent's telephone conversation with the assigned Assistant Director on May 27, 2010, respondent agreed to meet with the Assistant Director on June 14, 2010, at 9:00 a.m. It therefore appears that the doctor's appointment respondent said that he scheduled for June 14 was not scheduled as of May 27.

140. On June 14 the Director received a telephone message from respondent, in which respondent proposed meeting on the afternoon of June 18, 2010, or the afternoon of June 21, 2010, and stated that respondent preferred the afternoon of June 21 because that would give him more time to get the paperwork necessary.

141. Later on June 14, respondent faxed a letter to the Director requesting to meet on June 21, 2010, at 1:30 p.m. at the Director's Office. In that letter respondent stated, "This will give me a further chance to review papers and files."

142. By letter dated June 15, 2010, respondent requested to meet with the assigned Assistant Director on Monday, June 21, 2010, at 1:30 p.m. and requested to meet at respondent's office. In that letter, respondent stated, "The documents are so voluminous and some are still in storage" Respondent also stated that "the documents are so voluminous it is difficult to apprehend exactly what you desire unless you can give me specifics."

143. Respondent's June 15 letter said respondent was unable to respond because respondent claimed that he did not understand the requests. Respondent did not, however, specifically identify any request which respondent claimed was vague.

144. By letter dated June 16, 2010, the Director noted that the Director's outstanding requests are specific and understandable; gave examples of that specificity; stated that there was therefore no need to meet at respondent's office; requested respondent to meet with the assigned Assistant Director at the Director's Office on June 21, 2010, at 3:00 p.m.; requested respondent to bring with him to the meeting all of the information and documents the Director had requested but which respondent had not yet provided; advised respondent that no extension, postponement, continuance or rescheduling would be considered or granted; advised respondent that the failure to cooperate with a disciplinary investigation, including the failure to provide requested information, the failure to provide requested documents and/or the failure to attend a scheduled meeting, can constitute a separate ground for disciplinary action; and advised respondent that if he failed to attend the meeting, failed to provide at the meeting in writing all previously requested information and/or failed at the meeting to provide all previously requested documents, then the assigned Assistant Director intended to then recommend to the Director that charges of unprofessional conduct against respondent be issued alleging, at minimum, failure to cooperate.

145. Respondent met with an Assistant Director on June 21, 2010. Although during that meeting respondent provided four letters, one newspaper article and a compilation consisting of four pages of email messages, respondent provided virtually none of the previously requested information and documents.

146. During that meeting, respondent stated that he would send out of his office no later than the following Monday (*i.e.*, June 28, 2010), the information and documents requested in the Director's March 24 letter regarding the Browne complaint.

147. By letter dated June 22, 2010, the Director requested respondent to provide no later than June 28, 2010, the previously requested information and documents which respondent had not yet provided and advised respondent that, should respondent fail to do so, the Director intended to then issue charges of unprofessional conduct.

148. By letter dated June 23, 2010, respondent did not provide any requested information or documents. Instead, respondent requested the Director to identify the lawyer who represents the Lawyers Board. By letter dated June 24, 2010, the Director provided to respondent the requested information.

149. On June 25, 2010, respondent sent a letter to the Director which stated in its entirety, "Who does Martin Cole report to?" By letter dated June 28, 2010, the Director advised respondent that the Director reports directly to the Lawyers Professional Responsibility Board ("Board") and through the Board to the Minnesota Supreme Court.

150. On June 29, 2010, the Director received two letters from respondent dated June 28, 2010, and a letter from respondent dated June 29, 2010. On June 30, 2010, the Director received a letter from respondent dated June 30, 2010. Respondent's letters did not provide the previously requested information and documents.

151. One of respondent's June 28 letters stated in its entirety, "Who does Martin Cole report to? I want names and telephone numbers of each person for purposes of communication." By letter dated June 30, 2010, the Director provided the names and addresses of the Chair of the Lawyers Professional Responsibility Board and of the Chief Justice of the Supreme Court.

152. Respondent's other June 28 letter and his June 29 letter requested the Director to obtain for respondent from Daktronics documents related to approval of respondent's invoices to Daktronics. The Director's June 30 letter to respondent reminded respondent that it is not the role of the Director's Office to act on behalf of the

respondent lawyer to obtain documents from the complainant (nor is it the Director's responsibility to act on behalf of a complainant to obtain documents from the lawyer), and noted that the documents that respondent requested in his June 28 and 29 letters do not appear to be related to the outstanding requests for information and documents regarding the Daktronics matter in the Director's March 31, 2010, letter.

153. One of respondent's June 28 letters stated, "I am deferring any further responses until I have answers from John Hepworth and I have reviewed my Daktronics' files." According to that letter, Hepworth is a law partner of Browne, respondent had contacted Hepworth about Browne's complaint against respondent, and Hepworth told respondent that he has no knowledge of the complaint.

154. The Director's June 30 letter advised respondent that a desire to speak with someone who appears to have no knowledge of the complaint is not a basis to refuse to provide requested information or documents, and advised respondent that the Minnesota Rules of Professional Conduct (MRPC) and the Rules on Lawyers Professional Responsibility (RLPR) require respondent to provide requested information and documents. As to respondent's statement that he wanted to review his Daktronics' files, the Director's June 30 letter noted that respondent had had ample opportunity to review his Daktronics' files, given that the outstanding request for information and documents was made on March 31, 2010.

155. By letter dated July 13, 2010, respondent stated, "Please forward to me a concise detailed list of documents and questions for me to respond." In that letter respondent also stated, "Please bear with me as one of my staff members has taken the summer off to be with her children." By letter dated July 14, 2010, the Director again identified for respondent the outstanding requests for information and documents.

156. On July 26, 2010, respondent sent a fax to the Director, the text of which states in its entirety, "In response to your letter of July 14, 2010, a detailed letter will follow by the end of the week." Respondent failed to do so.

157. On July 28, 2010, respondent sent a fax to the Director dated July 27, 2010, the text of which reads in its entirety, "Again, please provide me with a precise list of questions to be answered and documents requested." By letter dated July 30, 2010, the Director again identified the outstanding requests.

158. On August 31, 2010, respondent sent a fax to the Director, the text of which reads in its entirety, "A detailed letter will follow. Please forgive me for the delay."

159. Respondent has not provided the information and documents requested in the Director's March 24, 2010, letter regarding the Browne complaint or in the Director's March 31, 2010, letter regarding the Daktronics complaint.

160. Respondent's failure to cooperate violated Rule 8.1(b), 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.

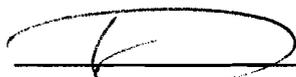
Dated: January 11, 2011.



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