FILE NO. C3-00-1681

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against RICHARD T. JELLINGER, an Attorney at Law of the State of Minnesota.	**PETITION FOR REVOCATION OF PROBATION AND FOR FURTHER 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 pursuant to Rule 12(a), Rules on Lawyers Professional Responsibility, and pursuant to this Court's May 3, 2001, order in this matter.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 13, 1982. Respondent currently practices law in Anoka, Minnesota.

INTRODUCTION

1. On May 3, 2001, this Court publicly reprimanded respondent and placed him on probation for two years. A copy of the Court's order is attached as Exhibit 1.

2. Respondent's discipline was based upon his trust account mismanagement, neglect of a client matter and failure to cooperate with the Director's investigation.

3. Among the terms of respondent's probation were the following:

   a. To nominate an attorney to supervise respondent's compliance with the terms of probation.

   b. To demonstrate to the Director that respondent has adopted office procedures to ensure compliance with the applicable rules and precedent regarding the handling of client funds and maintenance of a trust account.

c. To comply with the Director's instructions and inquiries regarding the monitoring of respondent's trust account.

d. To demonstrate to the Director that respondent has adopted office procedures to facilitate timely review and completion of legal matters on behalf of his clients.

e. To provide his supervisor a monthly inventory, status report of all open files and a monthly report of his billing and collection activities by the 10th day of each month.

f. To seek medical treatment from a mental health or medical professional approved by the Director, to abide by the course of treatment recommended and to complete the necessary authorizations for release of medical information to ensure that information regarding respondent's health status is shared with the Director on a regular basis.

g. To cooperate with the Director's office in its efforts to monitor respondent's compliance with probation, to comply with the Director's requests for information and documentation promptly, truthfully and completely and to provide authorization for release of information and documentation at the Director's request to verify compliance with the terms of the probation.

h. To cooperate with the Director's investigation of any further allegations of professional misconduct.

4. Respondent has committed the following unprofessional conduct warranting revocation of probation and further public discipline:

FIRST COUNT

Failure to Comply with Terms of Probation

5. On May 21, 2001, the Director wrote to respondent (Exhibit 2). The Director enclosed a copy of the Court's May 3, 2001, order and requested various documents and information. Specifically, the Director requested that:

a. Within two weeks, respondent provide the names of four attorneys who were willing to supervise his probation;

b. Within two weeks, respondent provide information regarding any trust account he might be maintaining;

c. By June 10, 2001, respondent submit his trust and business account books and records for the Director's review;

d. Within two weeks, respondent submit his written office procedures designed to facilitate timely review and completion of legal matters on behalf of clients;

e. Within two weeks, respondent identify the medical provider from whom he is receiving mental health care and sign authorization(s) enabling the Director to obtain information from that medical provider;

f. Within 30 days, respondent provide documents demonstrating that he has notified his mental health care provider of the obligation to submit quarterly status reports to the Director; and

g. Within two weeks, and by the 10th day of each month thereafter until a supervisor is appointed, respondent submit his inventory of active client files.

Respondent failed to respond to the Director's May 21 letter.

6. On June 11, 2001, the Director wrote again to respondent requesting his response to the May 21 letter (Exhibit 3). Respondent failed to respond.

7. Respondent has made no efforts to communicate with the Director regarding his probation.

8. Thus, to date, respondent has failed to (a) nominate a probation supervisor; (b) advise the Director whether he is maintaining a trust account; (c) provide the Director with copies of his trust and business account books and records; (d) submit his written office procedures to the Director; (e) identify or provide authorizations for his mental health care provider; and (f) provide the Director with an inventory of his active client files, all of which actions the Court's May 3, 2001, order require of respondent.

9. Respondent's conduct in failing to comply with the terms of his probation violated Rules 3.4(c) and 8.1(a)(3), Minnesota Rules of Professional Conduct (MRPC), Rule 25, Rules on Lawyers Professional Responsibility (RLPR), and the terms of the probation in the Court's May 3, 2001, order.

SECOND COUNT

Barbara Jedneak Complaint

10. On March 29, 2000, Barbara Jedneak and her daughter and son-in-law, Shelly and Jason Beck (hereinafter, the clients) hired respondent to handle Jason's adoption of Shelly's seven-year-old daughter. The clients paid respondent a $650 retainer.

11. Respondent stated that he would attempt to locate the child's biological father and, as required, publish notice of the adoption for three consecutive weeks. The clients told respondent that they hoped to complete the adoption before the child started school in the fall of 2000.

12. Thereafter, respondent initiated almost no communication with the clients.

13. Respondent told the clients that he spoke to the child's biological, paternal grandfather, who stated that the biological father last lived in Bloomington. Respondent stated that he had hired a private investigator to locate the father and that those efforts had been unsuccessful. Respondent also stated that the county had waived its investigation of the Becks.

14. Respondent notified the clients that the adoption hearing was scheduled for August 10, 2000. In fact, respondent had not scheduled a hearing and his statement was false.

15. Approximately two weeks before the purported hearing, the clients called respondent, who told them that he had failed to publish the required notice and had to reschedule the hearing. Respondent's implication that a hearing had been scheduled, but continued, was false.

16. When respondent did not notify the clients of the new hearing date, they called him. Respondent falsely stated that the hearing was scheduled for November 21, 2000. In fact, respondent had not scheduled a hearing.

17. Approximately two weeks before the purported hearing, respondent called the clients and stated that he would again need to reschedule the hearing because he had persuaded the judge to handle both the termination of parental rights and adoption in the same hearing. In fact, no hearing was ever scheduled and respondent's statements were false.

18. When respondent did not notify the clients of the new hearing date, they called him. Respondent stated that the hearing was scheduled for January 24, 2001. In fact, respondent had not scheduled a hearing and his statement was false.

19. Approximately one week before the purported hearing, respondent called the clients and stated that due to the retirement of a few judges, the hearing had again

been rescheduled for sometime in March 2001. In fact, no hearing was ever scheduled and respondent's statements were false.

20. In fact, as the clients thereafter discovered, respondent never filed any documents with the court and never scheduled any hearings.

21. Thereafter, the clients left several telephone messages for respondent, which respondent failed to return.

22. On February 2, 2001, Jedneak sent respondent an e-mail in which she asked him to advise what he had done on the adoption matter and/or refund the $650 retainer (Exhibit 4). Respondent failed to respond.

23. The clients retained a new lawyer, Joseph Marvin, who obtained respondent's file in the clients' adoption matter. The file contained nothing to indicate that respondent had performed any work on the matter.

24. On March 6, 2001, the clients wrote to respondent by certified mail, requesting a refund of their retainer (Exhibit 5). Respondent failed to refund the retainer or to respond to the letter.

25. Thereafter, Jedneak left two telephone messages for respondent, which he failed to return.

26. Respondent's conduct in neglecting the adoption matter, failing to adequately communicate with the clients and making false statements to the clients, violated Rules 1.3, 1.4(a) and (b), and 8.4(c), MRPC.

THIRD COUNT

Failure to Cooperate with Disciplinary Investigations

27. On February 27, 2001, the Director sent to respondent notice of investigation of a complaint filed against him by Stacy Wright (Exhibit 6). The notice requested respondent's response to the complaint within 14 days. Respondent failed to respond.

28. On April 4, 2001, the Director sent to respondent notice of investigation of the complaint filed against him by Mark Babler (Exhibit 7). The notice requested respondent's response to the complaint within 14 days. Respondent failed to respond.

29. On April 10, 2001, the Director wrote to respondent again requesting his response to the Wright complaint (Exhibit 8). Respondent failed to respond.

30. On April 23, 2001, the Director sent to respondent notice of investigation of the complaint filed against him by Barbara Jedneak (Exhibit 9). The notice requested respondent's response to the complaint within 14 days. Respondent failed to respond.

31. On April 26, 2001, the Director wrote separate letters to respondent requesting his responses to the Wright and Babler complaints (Exhibits 10 and 11). Respondent failed to respond.

32. On May 22, 2001, the Director wrote separate letters to respondent requesting his responses to the Wright, Babler and Jedneak complaints (Exhibits 12, 13 and 14). Respondent failed to respond.

33. Also on May 22, 2001, the Director sent to respondent a notice of investigation of a complaint filed against him by American Accounts & Advisers, Inc., on behalf of US Bank (Exhibit 15). The complaint concerned the numerous overdrafts on respondent's trust account and the $4,185 negative balance in the account when the bank closed it in August 2000. The notice requested respondent's response to the complaint within 14 days. Respondent failed to respond.

34. On June 8, 2001, the Director wrote to respondent requesting his response to the Wright, Babler, Jedneak and American Accounts & Advisers, Inc., complaints against him (Exhibit 16). Respondent failed to respond.

35. Respondent's conduct in failing to cooperate with the Director's investigation of complaints against him violated Rule 8.1(a)(3), MRPC, Rule 25, RLPR, and the terms of the probation in the Court's May 3, 2001, order.

WHEREFORE, the Director respectfully prays for an order of this Court revoking respondent's probation, suspending respondent's license to practice law or imposing otherwise 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 27, 2001.

EDWARD J. CLEARY
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