FILE NO. _____

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 DISCIPLINARY ACTION

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

Upon the approval of a Lawyers Professional Responsibility Board Panel Chair, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rules 10(d) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges: respondent has committed the following unprofessional conduct warranting public discipline:

1. Richard T. Jellinger, hereinafter respondent, was admitted to practice law in Minnesota on May 13, 1982. Respondent currently practices law in Anoka, Minnesota. Respondent's history of prior discipline consists of an admonition issued July 17, 1998, for failing to work diligently on a client matter and communicate with the client, in violation of Rules 1.3 and 1.4, Minnesota Rules of Professional Conduct (MRPC).

FIRST COUNT

Misuse of Trust Account and Failure to Cooperate

2. The Director received on March 24, 2000, notice of an overdraft on respondent's trust account at US Bank, account number 1-385-0002-3583. The Director wrote to respondent on April 4, 2000, and asked for an explanation for the overdraft and for related trust account information (Exhibit 1). The Director received no response and sent a second letter to respondent on April 28, 2000 (Exhibit 2).

3. Respondent provided a written response to the overdraft on May 11, 2000, in which he stated that the overdraft was caused by an unexpected debit on the account by a credit card company (Exhibit 3). Respondent's letter stated,

> This trust account contains no client funds. I have been using the account for operations to use up the checks purchased. The deposits have been law firm funds and no client funds have been involved since the first of the year.

The bank statements respondent submitted for the period from January 3 through March 31, 2000, reflected a high volume of trust account activity, with over 150 transactions during the period.

4. Based on respondent's use of his trust account as an operating account, the Director initiated a disciplinary investigation and requested trust and business account records for the previous year (Exhibit 4). Respondent provided records that showed that his business account had been closed in December 1999 and that there had been numerous overdrafts on the business account during the prior three months. Between April and November 1999, respondent had no trust account activity. Respondent began using the trust account as an operating account when his business account closed in December 1999. The records also showed that respondent ordered new trust account checks in December 1999 and April 2000. Additionally, client funds temporarily passed through respondent's trust account between February 28 and March 2, 2000. *See* Exhibit 5.

5. Respondent falsely certified on his 2000 attorney registration statement that he was properly maintaining his trust account books and records (Exhibit 6). Respondent's attorney registration fee was due April 1, 2000. Respondent dated the attorney registration statement May 1, 2000, and submitted it, with his trust account check number 4262, on or after May 9, 2000.

6. The Director wrote to respondent on June 23, 2000, to request additional information regarding his misuse of his trust account (Exhibit 7). The letter also

directed respondent to immediately cease using his trust account for business or personal expenses, to remove all of his law firm funds from the account, to stop depositing earned client fees to the account, and to open a savings account if respondent was unable to open a business checking account.

7. The Director received an additional notice of an overdraft on respondent's trust account on July 3, 2000. The Director forwarded a copy of the notice to respondent on July 5, 2000, and asked respondent to provide an explanation for the overdraft along with his response to the Director's June 23, 2000, letter (Exhibit 8).

8. The Director received additional notices of overdrafts on respondent's trust account on July 6 and July 20, 2000. Having received no response from respondent regarding the prior letters, the Director again wrote to respondent on July 20, 2000. The letter requested a response within five days (Exhibit 9).

9. The Director received several additional notices of overdrafts on respondent's trust account on July 21 and July 28, 2000. The Director sent respondent a letter by facsimile and certified mail on July 31, 2000, forwarding the overdraft notices and noting that respondent's responses were overdue (Exhibit 10).

10. On August 3, 2000, the Director served respondent by mail with charges of unprofessional conduct and a notice of pre-hearing meeting to be held August 23, 2000, at 10:00 a.m. at the Director's Office. The notice and the accompanying cover letter both stated that Rule 9(b), RLPR, required respondent to serve on the Director an answer to the charges of unprofessional conduct at least seven days before the pre-hearing meeting. Respondent has not served an answer to the charges. Respondent did not appear for the pre-hearing meeting.

11. Respondent's conduct violated Rules 1.15(a), 1.15(c), 1.15(h), 1.15(i), 8.1(a)(1), 8.1(a)(3) and 8.4(d), MRPC, and Lawyers Professional Responsibility Board Opinion No. 9.

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent 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: September 1, 2000.

EDWARD J. CLEARY
DIRECTOR OF THE OFFICE OF LAWYERS PROFESSIONAL RESPONSIBILITY
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and

ERIC T. COOPERSTEIN
SENIOR ASSISTANT DIRECTOR
Attorney No. 210201

This petition is approved for filing pursuant to Rules 10(d) and 12(a), RLPR, by the undersigned Panel Chair.

Dated: September 18, 2000.

SHARON E. REICH
PANEL CHAIR, LAWYERS PROFESSIONAL RESPONSIBILITY BOARD