

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.

**SUPPLEMENTARY 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 supplementary petition for revocation of probation and for further disciplinary action pursuant to Rules 10(e) and 12(a), Rules on Lawyers Professional Responsibility (RLPR).

Respondent is currently the subject of a June 27, 2001, petition for revocation of probation and for further disciplinary action. On August 17, 2001, pursuant to the Director's petition for temporary suspension, this Court temporarily suspended respondent from the practice of law pursuant to Rule 16, RLPR. The Director has investigated further allegations of unprofessional conduct against respondent.

The Director alleges that respondent has committed the following additional unprofessional conduct warranting public discipline:

FOURTH COUNT

Misappropriation and Related Dishonesty

36. A.N.W. died on January 15, 1998. A.N.W.'s only surviving heirs were her elderly sister, M.S., and M.S.'s daughter, N.L., both California residents. A.N.W.'s assets at the time of her death consisted of bank account balances totaling approximately \$21,000 and a securities portfolio valued at approximately \$60,000. Respondent agreed to serve as personal representative of the A.N.W. estate.

37. Among A.N.W.'s bank accounts was a Norwest checking account with an approximately \$5,200 balance. On May 7, 1998, respondent received the proceeds of that checking account in the form of a check made payable to, "Jellinger Law Office Trust Account" (Exhibit 1). On information and belief, respondent deposited these funds to his trust account and misappropriated them to his own benefit.

38. In the final account he prepared and filed in the A.N.W. estate, respondent represented that he had paid \$5,280 in federal fiduciary taxes on behalf of the estate. *See* ¶ 72, below. In fact, however, respondent has not filed tax returns of any kind or paid any taxes on behalf of the estate; his representation to the contrary in the final account was false and was made for the purpose of concealing respondent's misappropriation.

39. In an October 8, 2001, meeting with representatives of the Director's Office, respondent stated that he filed tax returns on behalf of the A.N.W. estate and paid the taxes reflected on the A.N.W. final account from the "guardianship account," i.e., A.N.W.'s Norwest checking account. Respondent's statements were false.

40. On November 30, 1999, respondent opened an estate checking account ("estate account") and deposited the remaining \$16,207.89 in A.N.W. estate funds into that account.

41. On December 1, 1999, respondent wrote himself a \$10,000 check on the estate account and deposited the check into his trust account. (By December 1, 1999, respondent's business account had been involuntarily closed and he was using his trust account as a business/personal account. *See* Exhibit 2, *In re Jellinger*, 625 N.W.2d 143 (Minn. 2001).) Respondent was not entitled to any portion of these funds and his issuance of the \$10,000 check to himself constituted misappropriation.

42. By December 10, 1999, respondent had disbursed from his trust account the \$10,000 in A.N.W. estate funds in their entirety by checks payable to himself or his own personal and business creditors.

43. During the period December 28, 1999, to February 16, 2000, respondent issued to himself additional checks totaling \$4,050 from the A.N.W. estate account and deposited them into his trust account. Respondent was not entitled to these funds and his issuance of these checks to himself constituted misappropriation. Respondent disbursed these additional estate funds from his trust account in the form of checks to himself, his wife or in payment of personal and business expenses.

44. Respondent represented J.F. in a variety of matters, including a class action lawsuit in which J.F. assumed his deceased brother's position as a plaintiff, and a child support matter commenced by T.E., the mother of J.F.'s child.

45. A hearing in the J.F. child support matter was held on December 23, 1999. The court directed J.F. to sign an agreement authorizing the deposit of the class action lawsuit proceeds into respondent's trust account so that these funds would be available to pay J.F.'s child support arrearages.

46. Another hearing in the J.F. child support matter was held on January 26, 2000. The court issued an order requiring as follows:

[J.F.] is directed to sequester on a temporary basis, until further order of this Court, the amount of five thousand and no hundredths dollars (\$5,000.00) from any funds received due to a pending class action law suit [sic] by depositing such amount in the trust account of his attorney, Richard T. Jellinger, which funds shall be held until further order of this Court.

47. On approximately February 29, 2000, respondent received and deposited into his trust account the total sum of \$15,495.50 from the class action lawsuit, \$10,495.50 of which constituted earned fees to which respondent was entitled for representation of J.F. on this and other matters, and the \$5,000 that the court had ordered sequestered in respondent's trust account. On information and belief, respondent failed to affirmatively notify T.E. or the court of his receipt of the sequestered funds.

48. On March 2, 2000, respondent issued checks totaling approximately \$12,335 from his trust account to "Estate of [A.N.W.]," and deposited the checks into the A.N.W. estate account. In so doing, respondent misappropriated approximately \$2,180 of the J.F. funds he had been ordered to sequester in his trust account. The balance in respondent's trust account was never again legitimately restored to \$5,000.

49. On March 2, 2000, respondent was scheduled to appear before the court in the A.N.W. estate matter to consider the heirs' objections to respondent's appointment as personal representative. See ¶¶ 71-73, below.

50. During the period March 28, 2000, to July 5, 2000, respondent issued to himself checks on the A.N.W. estate account totaling \$8,600. Respondent deposited each of these checks into his trust account and used the proceeds to pay personal and business expenses.

51. A hearing in the J.F. child support matter was scheduled for June 21, 2000. The hearing was continued to July 11, 2000.

52. At the July 11, 2000, hearing, the court ordered, among other things, that respondent pay from the funds sequestered in his trust account \$4,440 to T.E. for past child support and daycare costs, and \$560 to T.E.'s former attorney.

53. On July 11, 2000, however, the balance in respondent's trust account was \$318.74. On that date, respondent issued a \$4,000 check from the A.N.W. estate account and deposited it into his trust account. Respondent then issued a \$3,440 trust account check to T.E. and a \$560 trust account check to T.E.'s former lawyer. (Respondent "withheld" the remaining \$1,000 due T.E. pending release of T.E.'s former lawyer's lien.)

54. On July 11, 2000, the balance in the A.N.W. estate account was only \$3,577 and thus insufficient to cover the \$4,000 check respondent issued against those funds. Accordingly, the bank ultimately refused payment on the \$4,000 check. By then, however, the trust account checks to T.E. and her former lawyer had cleared and a

\$3,681 negative balance resulted when the deposit was reversed. When respondent issued the \$4,000 A.N.W. estate account check, he knew the account did not contain funds sufficient to cover it and created a temporary "float" against which his trust account check to T.E. would clear. Respondent's conduct in this regard was fraudulent.

55. On July 12, 2000, after obtaining a release of attorney's lien, respondent issued a \$1,000 check on the A.N.W. estate account, deposited it into his trust account, and issued a \$1,000 trust account check to T.E.

56. By August 25, 2000, the balance in respondent's trust account had reached a negative \$4,184 and the bank closed the account. The bank referred the matter to American Accounts & Advisors, Inc. (the "collection agent") for collection. Respondent was not cooperative or responsive in the collection agent's efforts to collect. On October 22, 2001, however, respondent tendered a \$4,184 check to the bank in satisfaction of the debt.

57. Following closure of his trust account, respondent used the A.N.W. estate account as a personal/business account by depositing funds to the account and disbursing them directly to himself, his wife and personal and business creditors.

58. On August 21, 2000, respondent deposited personal funds into the A.N.W. estate account sufficient to pay the heir's share of the estate's cash assets as reflected in the final account. On August 29, 2000, respondent issued to the heir a \$13,221.39 A.N.W. estate account check.

59. By February 14, 2001, the balance in the A.N.W. estate account was a negative \$219.40. On March 14, 2001, the bank involuntarily closed the account. On information and belief, respondent has not reimbursed the bank for the negative balance in the account at the time of closing.

60. Respondent's conduct in misappropriating funds from the A.N.W. estate and J.F. matters and making misrepresentations in the A.N.W. final account and to the

Director's Office, violated Rules 1.15(a), 8.1(a)(1), and 8.4(b), (c) and (d), Minnesota Rules of Professional Conduct (MRPC).

FIFTH COUNT

A.N.W. Estate

61. Respondent failed to take any meaningful action on the A.N.W. estate during the period from January 1998 to February 1999.

62. On February 3, 1999, respondent filed with the Ramsey County Probate Court (the "court") a nomination of personal representative, an acceptance of appointment as personal representative and a petition for formal adjudication of intestacy, determination of heirs and appointment of personal representative.

63. On February 4, 1999, the court issued a notice and order of hearing on respondent's petition. The hearing was scheduled for March 2, 1999. Although respondent apparently arranged for publication of the notice and order, he failed to appear at the hearing.

64. On March 22, 1999, the court issued a second notice and order of hearing on respondent's petition. The hearing was scheduled for April 20, 1999.

65. Respondent arranged for service and publication of the notice and order and appeared at the April 20, 1999, hearing. On April 27, 1999, the court issued an order that, among other things, appointed respondent personal representative.

66. On June 29 and August 2, 1999, the court issued notices to respondent requesting that he file either a personal representative's bond or a bond waiver. Respondent failed to take any action in response to the court's notices.

67. On August 25, 1999, the court issued to respondent a citation requiring him to appear on September 29, 1999, to explain his failure to file the bond or waiver. Respondent failed to appear.

68. On September 29, 1999, the court issued to respondent a notice of continuance of respondent's appearance to November 4, 1999. The notice provided that

“this matter was continued because you failed to appear at the original citation hearing. A second failure to appear may result in a writ of attachment being issued for your arrest.”

69. On information and belief, respondent appeared before the court on November 4, 1999. On November 19, 1999, respondent filed his personal representative’s bond and the court issued to respondent letters of general administration.

70. On November 30, 1999, N.L. wrote to the court on behalf of her mother, M.S. N.L. objected to respondent’s appointment as personal representative because of his continuing failure to respond to N.L.’s and her attorney’s numerous telephone calls, faxes and letters, and his failure to timely process the estate, which had led to a significant delay in payment of A.N.W.’s bills and taxes.

71. On December 1, 1999, in response to N.L.’s letter, the court issued a notice of scheduling conference. The conference was scheduled for January 13, 2000. At N.L.’s request, the conference was rescheduled to March 2, 2000.

72. Respondent appeared at the March 2, 2000, conference and filed the inventory and final account (Exhibits 3 and 4). In light of his failure to diligently and timely process the estate, respondent agreed to waive his entitlement to any fees.

73. At the March 2, 2000, conference the court directed respondent to file a petition for complete settlement of the estate, the necessary consents to the petition and a proposed decree of distribution within 30 days. Respondent failed to do so.

74. On May 10, 2000, the court issued to respondent a citation directing him to appear on May 24, 2000, to explain his failure to file the required documents.

75. Respondent appeared on May 24, 2000, and, at that time, filed a petition to allow the final account and M.S.’s consent to the final account, which consent M.S. had actually signed on March 8, 2000.

76. On May 25, 2000, the court issued an order allowing respondent's final account.

77. After it received two more letters from M.S. and/or N.L., the court issued notices to respondent on July 18 and July 31, 2000, requesting that he file a petition for discharge and receipts for assets. Respondent failed to take any action in response to the court's notices.

78. On August 3, 2000, the court issued to respondent a citation directing him to appear before it on August 17, 2000, to explain his failure to file the petition and receipts. Respondent failed to appear.

79. On August 21, 2000, the court issued a writ of attachment commanding the sheriff to arrest respondent for his failure to comply with the citation.

80. On August 31, 2000, respondent filed with the court a receipt by which M.S. acknowledged that she had received estate funds in partial satisfaction of her distributive share. Also on August 31, based on respondent's filing, the court issued an order quashing the writ of attachment.

81. On September 5 and 11, 2000, the court reminded respondent of his remaining obligations as personal representative. Respondent failed to respond to the court's reminders or to file the documents necessary to close the estate.

82. On October 9 and November 13, 2000, the court issued to respondent notices requesting that he file a petition for discharge of personal representative and receipts. Respondent failed to take any action in response to the notices.

83. On January 24, 2001, the court issued to respondent a citation directing him to appear on February 28, 2001, to explain his failure to file the petition and receipts. Respondent failed to appear.

84. However, on March 1, 2001, respondent filed with the court a copy of an August 30, 2000, letter by which he had purported to request transfer of A.N.W.'s

securities portfolio to M.S. Since then, the securities portfolio has, in fact, been transferred to M.S.

85. On March 2, 2001, the court issued a writ of attachment commanding the sheriff to arrest respondent for his failure to comply with the citation.

86. To date, respondent has not made the filings necessary to close the A.N.W. estate.

87. Throughout the entire period during which he has served as personal representative, respondent has failed to communicate with M.S. and N.L. and has failed to respond to their numerous efforts to communicate with him.

88. Respondent's conduct in the A.N.W. estate violated Rules 1.3, 1.4(a) and (b), 3.3(a), and 8.4(c) and (d), MRPC.

SIXTH COUNT

Babler Matter

89. Mark Babler retained respondent on January 22, 2001, to represent him in a marriage dissolution matter that was scheduled for trial on January 24. Babler paid respondent a \$4,000 nonrefundable retainer.

90. Babler explained to respondent that neither he nor his two prior lawyers had been able to negotiate a settlement that was acceptable to him. Babler believed the matter would go to trial and hired respondent specifically to represent him at trial.

91. Respondent told Babler that he would work on his case to the exclusion of all other matters and assured Babler that he would be prepared for trial. Respondent asked Babler to make himself available to answer respondent's questions at all times of the day or night.

92. Respondent did not call Babler on January 22 or 23, 2001. On Wednesday, January 24, 2001, Babler went to the courthouse for trial. However, respondent had obtained a one-day continuance in the date of trial, to January 25, but had failed to so inform Babler.

93. Babler called respondent three times on January 24, leaving messages for him each time. Respondent finally called Babler on the evening of January 24, but only to arrange a time to meet the next morning for trial.

94. On the morning of trial, respondent conferred with opposing counsel, Suzanne Born, and then presented Babler with a settlement proposal. Babler did not agree with the proposed terms of settlement and stated that he wanted to present the matter to the judge. Respondent intimidated Babler by stating that the judge hated him and that if he refused to accept the proposal, the judge would order him to pay his wife's legal fees and spousal maintenance. When Babler asked to see the materials respondent had prepared for trial, respondent refused, leading Babler to believe he was not prepared for trial. These factors caused Babler to eventually accept the settlement proposal.

95. The parties and counsel went before the judge to read their agreement into the record. Respondent instructed Babler to communicate his questions about the agreement by written notes and stated that he would then address them to the judge. Respondent failed to bring any of Babler's many questions to the judge's attention.

96. Immediately after leaving court on January 25, 2001, Babler spoke with another lawyer. Babler's girlfriend, Cheryl Olson, then telephoned respondent and stated that Babler did not agree with the settlement and would not sign the written agreement. Respondent stated that he intended to sign the agreement. Olson told respondent that he was fired and that she and Babler intended to report him to the Director's Office.

97. Thereafter, Babler attempted to reach respondent by telephone on several occasions. Respondent failed to return any of Babler's messages.

98. On January 29, 2001, Born forwarded to respondent proposed findings of fact, conclusions of law, order for judgment and judgment and decree (hereinafter

judgment and decree) and related documents for his approval. Respondent failed to make any response to the documents and did not contact or provide copies to Babler.

99. On February 7, 2001, Born attempted to reach respondent by telephone, leaving him a message. Respondent did not return Born's call.

100. Born again called respondent on February 12, 2001. Respondent falsely told Born that he was waiting to hear from Babler. In fact, respondent had not sent Born's documents to Babler or responded to Babler's telephone messages.

101. On February 13, 2001, Born forwarded her proposed judgment and decree and other documents to the judge and asked him to enter them without respondent's approval.

102. After receiving Born's proposed judgment and decree, the judge's clerk tried to reach respondent by telephone on five or six occasions, leaving messages each time. Respondent failed to return any of the clerk's calls.

103. On March 22, 2001, the judge's clerk wrote to respondent stating, "I have tried to contact you by telephone. To date, we have not heard from you or your client Mark Babler. Unless we receive a response from you within 5 days the Judge will sign an order submitted by Suzanne Born based on failure to prosecute." Respondent did not contact Babler and did not respond to the clerk's letter.

104. On April 4, 2001, Born served both respondent and Babler with a motion that, among other things, asked that the proposed judgment and decree be entered or, if respondent contested entry, that the matter be rescheduled for trial. Babler received Born's motion papers on April 6.

105. Also on April 6, 2001, the judge signed Born's proposed judgment and decree. The judgment and decree was entered on April 12, 2001.

106. Respondent's conduct in failing to prepare the Babler matter for trial, failing to adequately communicate with Babler, coercing Babler into accepting a settlement with which he did not agree, failing to advise opposing counsel or the court

of his client's position opposing the settlement, and making false statements to opposing counsel, violated Rules 1.2(a), 1.3, 1.4(a) and (b), and 8.4(c), MRPC.

SEVENTH COUNT

Plante Matter

107. Respondent represented Dale Plante in a marriage dissolution matter. Attorney Stacy Wright represented Dale's wife, Laurie Plante, in that matter. The Plantes had no children and neither was seeking maintenance. The only issues were the division of bills and assets.

108. Respondent caused a summons and petition to be served on Laurie on March 23, 2000. Respondent and Wright thereafter had some preliminary settlement discussions and respondent did not file the summons and petition with the court. Respondent provided Wright an open-ended extension for the filing of an answer.

109. During the course of his representation of Dale, respondent failed to respond to most of Wright's numerous efforts to communicate with him.

110. On May 2, 2000, Wright spoke with respondent regarding settlement. By letter dated May 4, 2000, Wright forwarded a formal settlement offer to respondent. Respondent failed to respond.

111. On May 25, 2000, Wright called respondent, who assured her that he had forwarded her proposal to his client and would be responding. Respondent failed to respond.

112. On June 15, 2000, Wright wrote to respondent regarding the settlement proposal. Wright noted that respondent still had not responded to the settlement proposal and asked that he file the petition "so that the court can begin the calendaring process." Wright noted that she hoped a temporary hearing would not be necessary, but stated that her client could not afford to continue servicing all of the parties' debt. Respondent failed to respond.

113. On or about June 30, 2000, Wright called respondent. Respondent assured Wright that he would have a response to the settlement proposal the next week. Respondent failed to respond.

114. Wright called respondent again on or about July 13, 2000. Respondent again assured Wright that he would mail a response to the settlement proposal that day. Respondent failed to do so.

115. On July 20, 2000, Wright wrote to respondent and requested that he respond to her settlement proposal within one week. Wright noted that if respondent failed to respond, she would file an answer and counter-petition and schedule a temporary hearing, at which she would request attorney's fees. Respondent failed to respond.

116. In August 2000 Wright filed an answer and counter-petition and scheduled a September 13, 2000, hearing on a motion for temporary relief. On August 12, 2000, Wright tendered to respondent a stipulation for temporary relief. Wright stated, "[A]n executed agreement must be returned to my office before August 25, 2000 as I will begin drafting formal papers for the scheduled hearing on that date. If Ms. Plante will be incurring additional attorneys' fees, she has advised me that any agreement received after that date will not be recognized."

117. Respondent called Wright's office about the stipulation on August 24, 2000. On August 25, 2000, respondent faxed to Wright a counter-proposal.

118. By letter dated August 30, 2000, Wright notified respondent that his counter-proposal was unacceptable and that she intended to proceed with the temporary hearing. Wright stated, "Dale has significantly added to Ms. Plante's legal expenses due to his inaction in this matter. This matter dragged on for six months before the Petitioner made an initial settlement offer." Wright stated further, "Ms. Plante will also ask the court to award attorney's fees as this hearing is necessary only

due to Mr. Plante's unwillingness to share the marital expenses while this proceeding is pending."

119. On September 8, 2000, respondent served on Wright a motion and application for temporary relief and supporting affidavit.

120. At the September 13, 2000, temporary hearing, the parties' entered into a stipulation covering all temporary matters. The stipulation required respondent's client to pay Wright's client \$300.00 per month to be applied to the marital debt. Respondent's client made a payment on the date of the hearing, but made no payments thereafter.

121. On September 21, 2000, Wright tendered to respondent a proposed order for temporary relief. Wright asked respondent to review the order and forward it to the court. Respondent failed to promptly do so. Wright later received a telephone call from the court regarding the order. The court contacted respondent, who at that time forwarded the order for entry. The order for temporary relief was entered on October 24, 2000.

122. On November 13, 2000, Wright served respondent with discovery. Respondent failed to respond.

123. On December 26, 2000, Wright tendered a marital termination agreement to respondent. Respondent failed to respond.

124. On January 7, 2001, Wright filed and served a motion for contempt based on, among other things, respondent's failure to respond to discovery and Dale's failure to pay \$300 per month as required by the order for temporary relief. Wright requested an award of attorney's fees. The hearing on the motion for contempt was scheduled for January 18, 2001.

125. On January 13, 2001, Wright wrote to the judge assigned to the Plante matter. Wright expressed frustration in respondent's failure to communicate with her,

his failure to respond to discovery and his client's failure to pay toward the parties' debt as required by the order for temporary relief.

126. Respondent did not respond to Wright's motion and did not appear at the January 18, 2001, hearing. At the hearing, the court directed Wright to personally serve Dale. To that end, Wright telephoned Dale on January 22, who stated that on the afternoon of the contempt hearing, he had met with respondent and signed the marital termination agreement. Respondent had not mentioned the contempt hearing to Dale.

127. On January 23, 2001, the court issued its order that, among other things, reserved ruling on the motion for contempt, ordered Dale to respond to discovery and ordered Dale to pay \$2,325.50 to Laurie for her attorney's fees in "drafting Discovery documents, Pre Hearing Statement, Marital Termination Agreement, Order to Show Cause, Notice of Motion and Motion, supporting Affidavits, and letters to [respondent] in preparation for and representation at the January 18, 2001 hearing." The order also noted that a final hearing date had been scheduled for February 13, 2001.

128. Respondent appeared at the February 13, 2001, hearing and submitted the marital termination agreement that Wright had tendered on December 26, 2000. The agreement reflected that respondent and Dale had signed the agreement on January 18, 2001.

129. The court issued a judgment and decree based on the marital termination agreement on February 26, 2001.

130. Respondent's conduct in neglecting and failing to make reasonable efforts to expedite the Plante divorce matter violated Rules 1.3, 3.2, and 8.4(d), MRPC.

EIGHTH COUNT

Hillstrom Matter

131. On September 28, 2000, William Hillstrom retained respondent to represent him in connection with his former wife's motion to reopen their dissolution of marriage judgment and decree. At issue was an allegation that Mr. Hillstrom failed to

disclose certain significant assets to Mrs. Hillstrom, including approximately \$300,000 in certificates of deposit. Mr. Hillstrom also provided respondent with interrogatories and requests for production of documents with which he was served. Respondent failed to notify the court or opposing counsel that he was representing Mr. Hillstrom, respond to the discovery or take any other action on Mr. Hillstrom's behalf.

132. On November 3, 2000, Mr. Hillstrom was served with a motion to compel discovery and for attorney's fees. The hearing on the motion to compel, and the motion to reopen the judgment and decree, was scheduled for December 5, 2000. On information and belief, the hearing on these issues was continued to February 13, 2001, although Mr. Hillstrom was directed to escrow approximately \$300,000 in opposing counsel's trust account.

133. On February 13, 2001, the court issued an order reopening the judgment and decree. The order also directed Mr. Hillstrom to provide discovery responses by February 23, 2001, and reserved ruling on the motion for attorney's fees. On information and belief, respondent provided discovery responses on or about February 23.

134. By letter dated March 19, 2001, opposing counsel wrote to respondent requesting verification that Mr. Hillstrom had included the \$300,000 in certificates of deposit on his 2000 income tax return and paid taxes on those funds. Opposing counsel stated, "If in fact your client legitimately claimed the \$311,293.00 and had to pay tax on it, we are willing to consider that in the settlement." Respondent failed to respond.

135. On May 21, 2001, opposing counsel served respondent with a motion for amendment to the property division portion of the judgment and decree and for \$2,000 in attorney's fees. The hearing on the motion was scheduled for August 15, 2001.

136. Respondent failed to notify Mr. Hillstrom of the August 15 hearing, respond to opposing counsel's motion or appear at the hearing.

137. The court's August 15, 2001, order determined that Mr. Hillstrom had failed to disclose certain assets, including the \$300,000 in certificates of deposit, awarded Mrs. Hillstrom a portion of those assets and awarded Mrs. Hillstrom \$3,724 in attorney's fees. The order made no provision for any taxes Mr. Hillstrom may have paid on the \$300,000.

138. Respondent's conduct in neglecting the Hillstrom matter and failing to adequately communicate with Mr. Hillstrom, violated Rules 1.3 and 1.4, MRPC.

NINTH COUNT

Continued Non-Cooperation

139. Respondent failed to answer the Director's June 27, 2001, petitions for revocation of probation and for further discipline and for temporary suspension.

140. On July 24, 2001, the Director's Office wrote to respondent again requesting his responses to the Finn, Jedneak, Babler/Olson and Wright complaints. Respondent failed to respond.

141. On August 21, 2001, the Director's Office wrote to respondent asking him to explain the basis for his deposit of A.N.W. estate funds into his trust account and for his original A.N.W. estate file and related books and records. Respondent failed to respond.

142. On September 11, 2001, the Director's Office requested that respondent appear for a meeting on September 20, 2001, to discuss his improper disbursement of A.N.W. estate funds. Respondent failed to appear for the meeting or to otherwise respond to the Director's Office's letter.

143. On October 5, 2001, respondent's wife telephoned the Director's Office regarding the complaints and proceedings against respondent. The Assistant Director with whom respondent's wife spoke emphasized to respondent's wife the importance of respondent's cooperation in the investigation and proceedings. Respondent's wife

then scheduled a meeting between the Director's Office, respondent and his wife. Respondent later called to confirm the meeting.

144. On October 8, 2001, respondent and his wife appeared in the Director's Office to discuss the various complaints and proceedings against him. Since that meeting, respondent has been cooperative in the Director's Office's investigation and has filed written responses to the complaints against him.

145. Respondent's continuing failure to cooperate in the Director's investigation violates Rule 8.1(a)(3), 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: November 29, 2001.



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