FILE NO. A07-1614

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against LARRY MARTIN JENNINGS, a Minnesota Attorney, Registration No. 202630.	**AMENDED 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 (RLPR), and pursuant to this Court's January 14, 2005, order in the matter.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 27, 1989. Respondent is currently licensed to practice law in Minnesota.

INTRODUCTION

On January 14, 2005, this Court ordered respondent suspended from the practice of law for 90 days and ordered that upon his reinstatement, respondent be placed on probation for two years. *In re Jennings*, 690 N.W.2d 714 (Minn. 2005). Respondent's discipline was based upon his failure to pursue patent applications submitted on behalf of a client with reasonable diligence and promptness, failure to notify the client of all correspondence from the U.S. Patent and Trademark Office and abandonment of the patent applications, informing the client that the applications were pending when they had been abandoned, and failing to deposit $3,000 delivered to him by the client in his

trust account. Respondent's misconduct violated Rules 1.3, 1.4, 1.15, 4.1, and 8.4(c), Minnesota Rules of Professional Conduct (MRPC). Exhibit 1.

On May 23, 2005, the Court reinstated respondent to the practice of law. *In re Jennings, 696 N.W.2d 386.* (Minn. 2005). The order reinstating respondent to the practice of law placed Respondent on probation years for two years, subject to the terms and conditions set forth in the court's January 14, 2005, order. Exhibit 2.

FIRST COUNT

Failure to Comply With Terms of Probation

1. On May 31, 2005, the Director wrote to the attorney who had represented respondent in the disciplinary proceeding, providing him with a copy of the Court's order reinstating respondent the practice of law. In the Director's letter he reminded respondent of his responsibilities pursuant to the order. First among those was respondent's obligation to "cooperate fully with the Director's Office in its efforts to monitor compliance with this probation and promptly respond to the Director's correspondence by the due date."

2. On June 23, 2005, respondent wrote to the Director, acknowledging the Director's May 31, 2005, letter and providing some of the information required by the Court's reinstatement order. For example, respondent discussed office procedures he had established (the probation required that he "initiate and maintain office procedures"), verified that he was seeing a licensed psychologist (the probation required that he "continue current treatment by a licensed consulting psychologist or other mental health professional") and confirmed that he was attending Lawyers Concerned for Lawyers (LCL) meetings (also a condition of his probation).

3. In the Director's May 31, 2005, letter he had advised respondent that "without further reminder or specific request" respondent was to complete and submit by "the tenth day of each month during the term of the probation" verification forms

confirming that he had attended LCL meetings. However, respondent did not provide the required verification.

4. On August 15, 2005, the Director wrote to respondent reminding him of his obligation to provide the LCL verification forms. On August 25, 2005, the Director received from respondent verification forms indicating that he had attended LCL meetings in June, July and August of 2005. Respondent continued to provide the monthly attendance verification through March of 2006. However, after he provided the forms in March, respondent provided no further verification forms during the remainder of his probation. After the Director served respondent with the petition for discipline in this matter, respondent provided verification forms evidencing that he had attended the required LCL meetings during the balance of his probation.

5. By March of 2006, respondent still had not provided verification that he had successfully completed the professional responsibility portion of the state bar exam. In the Director's May 31, 2005, letter to respondent, the Director had instructed respondent to provide verification by January 14, 2006. On March 7, 2006, the Director wrote respondent, requesting he provide verification of his successful completion of the examination by the January 14, 2006, deadline. The Director reminded respondent that successful completion of this exam was required pursuant to Rule 18(e)(3), RLPR.

6. On March 10, 2006, the Director received a complaint from client of respondent's, Kevin Schminkey. Schminkey alleged that respondent had improperly handled a patent matter for him. The Director opened a disciplinary file and on March 22, 2006, issued a notice of investigation to respondent regarding the Schminkey complaint. The notice of investigation directed respondent to respond to the District Ethics Committee (DEC) investigator. Respondent prepared a response to that complaint, which he believed he mailed to the Director's Office. The Director's Office

has no record of receiving that response. Respondent did not send a response to the DEC investigator.

7. Respondent successfully took the professional responsibility portion of the state bar exam on April 4, 2006. Respondent subsequently received notice that the examination score had been provided to the duly authorized Minnesota entity. Respondent incorrectly assumed that that entity was the Director's Office. In actuality, the test score was reported to the Board of Law Examiners.

8. By May 23, 2006, the Director still had not received a response from respondent regarding verification that he had successfully completed the professional responsibility exam. In a letter dated May 23, 2006, the Director reminded respondent that pursuant to requirements of his probation, he was not engage in the practice of law except as an employee of a firm. Respondent was asked to identify the firm he was working for and the lawyer having direct supervision for his work. Respondent did not respond. However, respondent was not engaged in the practice of law at that time.

9. On June 8, 2006, the Director received the report of the DEC concerning the Schminkey complaint. The DEC reported that respondent had not responded to the complaint and had not cooperated with its investigation.

10. On June 29, 2006, the Director wrote to respondent advising him of the DEC's report and his alleged failure to cooperate with the investigation. Respondent was instructed to appear at the Director's Office on Monday, July 17, 2006, to discuss both the Schminkey complaint and as well as his probation. On Friday afternoon, July 14, 2006, respondent called the Director's office to say that he could not make Monday's meeting, but would call to reschedule. Respondent did not leave a number at which he could be reached.

11. On Saturday, July 15, 2006, respondent prepared a letter concerning the Schminkey complaint. In that letter, respondent explained that he had prepared the required documents for Schminkey. Respondent believes he mailed that letter to the Director's Office. The Director's Office has no record of receiving it.

12. Respondent did call on back at 4:55 p.m. on July 17, 2006, and when he was unable to reach the assistant director handing his case, said he would call back the next day between 9:30 and 2:30. Again respondent did not leave a phone number at which he could be reached. Respondent called back the next day, July 18, 2006, at 4:30 p.m. The receptionist who took respondent's call told respondent that the assistant director handling his case was not available, but that he had asked for a phone number at which respondent could be reached. Respondent stated that he did not have a phone number, but he would call the next day. Respondent did not contact the Director's Office again until respondent received the petition for further discipline.

13. On September 28, 2006, the Director wrote respondent again. The Director reminded respondent that in addition to his obligation to comply with the Rules of Professional Conduct regarding investigations by the Director, respondent had an obligation under the terms of his probation to cooperate with the Director's Office. Respondent was reminded that he not responded to the Schminkey complaint, that he was to provide verification of his attendance of meetings with LCL, but had not done so since March of 2006, that he still had not provided verification that he had successfully completed the professional responsibility exam, and that he had not identified the law firm or lawyer for whom he was working. Respondent was instructed to respond in ten days. Respondent did not respond until after the Director had served respondent with the petition for discipline.

14. On December 6, 2006, the Director wrote to respondent. In that letter the Director again reminded respondent of his responsibility to respond to the earlier correspondence. Respondent was also told that a failure to respond would result in the Director seeking revocation of his probation and further discipline. Respondent did not respond.

15. Respondent's failure to cooperate with the Director's efforts to monitor respondent's probation violated Rule 8.1(b), MRPC, and the terms of respondent's probation.

SECOND COUNT

Schminkey Matter

16. On April 8, 1995, Kevin Schminkey met with respondent to discuss the development of an invention of Schminkey's.

17. On or about May 8, 1996, respondent and Schminkey met again to discuss development of a second prototype. Schminkey paid respondent $750 for a patent search in connection with his invention.

18. On May 23, 1996, respondent wrote Schminkey. In his letter, respondent estimated his fee to represent Schminkey in the filing of a patent application for his invention would be $3,300. Respondent also enclosed a retainer agreement for the representation.

19. Between January and September of 1997, Schminkey paid respondent $5,125 including filing fees and disbursements toward the filing of his patent application.

20. On January 7, 1997, and July 9, 1997, respondent sent Schminkey drafts of the patent application.

21. On August 9, 1997, respondent filed Schminkey's patent application entitled "HUMAN DRIVEN POWER TAKEOFF SYSTEM AND CONVERTIBLE VEHICLE" with the U.S. Patent and Trademark Office (patent office).

22. On September 22, 1997, respondent sent Schminkey a copy of the return postcard showing the patent office had received Schminkey's patent application.

23. On December 15, 1997, respondent sent Schminkey a copy of the filing receipt showing the filing fee for his patent application had been received by the patent office.

24. On January 8, 1998, respondent advised Schminkey of a change in his business address and sent Schminkey a copy of respondent's notification of the address change sent to the patent office.

25. Respondent had previously told Schminkey it might be two years before he received anything from the patent office after the application was filed. After approximately four years elapsed with no contact from respondent, Schminkey attempted to reach respondent to obtain a status update. Schminkey left messages for respondent at his last known telephone number but respondent did not return his calls.

26. In 2004, after searching for respondent with no success, Schminkey obtained contact information for respondent through respondent's ex-wife. Schminkey ultimately reached respondent, who informed him that he had moved offices and changed his telephone number, despite the fact that Schminkey had not received notification of this change. Respondent stated he would contact the examiner at the patent office to determine the reason for the delay.

27. Shortly after speaking with respondent, Schminkey checked the patent office's website and discovered there was no record matching his patent application number. Schminkey confronted respondent about the patent application, who admitted

he received a letter from the patent office approximately five years ago regarding Schminkey's application but that he did not respond to the letter or inform Schminkey of the contents of the letter.

28. Based on respondent's previous neglect and non-communication, Schminkey understood that respondent would file a new patent application for Schminkey. Respondent understood that he was only to write another patent application for a separate invention that was based on Schminkey's original design.

29. In late January 2005, Schminkey sent by certified mail drawings of his new invention to respondent at his current employer's office. The secretary signed for the documents.

30. For several weeks after the secretary at respondent's workplace signed for Schminkey's documents, Schminkey called respondent's office. Schminkey then appeared in-person at respondent's workplace and left a message with respondent's employer asking respondent to contact him.

31. Respondent ultimately contacted Schminkey and stated the patent application would be done by April 1, 2005.

32. On April 14, 2005, respondent e-mailed Schminkey apologizing for the delay and stating the application would be completed by the following week.

33. On April 27, 2005, respondent e-mailed Schminkey stating he would contact him that same week.

34. On May 5, 2005, Schminkey e-mailed respondent requesting a status update. On May 6, 2005, respondent e-mailed Schminkey stating he would contact him the following Monday or Tuesday with a status report and follow-up questions. Respondent and Schminkey talked approximately one week later and respondent stated he was going to finish the application soon.

35. On May 22, 2005, Schminkey e-mailed respondent requesting a status update. Schminkey never received a response to that e-mail and did not, at that time, receive the application. After the Director filed the petition for discipline, respondent provided Schminkey with the completed application.

36. Respondent's neglect, non-communication and failure to notify his client of his change of address violated Rules 1.3 and 1.4(a) and (b), MRPC.

THIRD COUNT

Non-Cooperation with Disciplinary Investigation

37. On March 22, 2006, the Director sent respondent a notice of investigation in the complaint of Kevin Schminkey. The notice required respondent to respond completely to the complaint in a writing mailed to William Dooley, Jr., investigator for the Fourth District Ethics Committee (DEC), within 14 days. Respondent failed to respond to the investigator. Respondent prepared a response to the complaint which he believes he sent to the Director. The Director did not receive that response.

38. On April 14, 2006, Dooley wrote to respondent requesting a response to the complaint. Respondent failed to submit a response to Dooley.

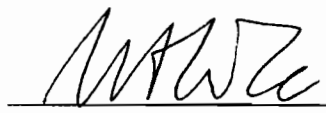
39. On May 17, 2006, Dooley wrote to respondent asking whether he intended to cooperate with the investigation of the Schminkey complaint. In his letter, Dooley indicated his intention to proceed with the investigation without respondent's input if Dooley did not hear from respondent by May 24, 2006. Dooley also sent his May 17, letter to respondent by e-mail. Respondent failed to respond to Dooley's May 17 letter or e-mail.

40. On June 8, 2006, the Director received the DEC's recommendation to refer the matter to a Lawyers Professional Responsibility Board Panel.

41. Respondent's non-cooperation violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

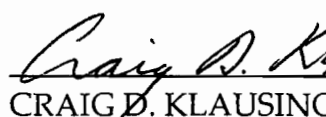
WHEREFORE, the Director respectfully prays for an order of this Court revoking respondent's probation, suspending respondent's license to practice law or imposing otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: April 4, 2008



MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and



CRAIG D. KLAUSING
SENIOR ASSISTANT DIRECTOR
Attorney No. 202873