

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against LARRY MARTIN JENNINGS,
a Minnesota Attorney,
Registration No. 202630.

**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. The Director alleges:

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

Respondent has committed the following unprofessional conduct warranting public discipline:

Allan Robinson and Promethean Medical Technologies, Inc. Matter

1. In October 1997 Alan Robinson retained respondent to prepare a patent application for a device known as a disposable surgical drainage platform. Robinson later formed a corporation called Promethean Medical Technologies, Inc. (Promethean) and respondent was retained to provide intellectual property legal services to Promethean.

2. On February 9, 1998, on behalf of Allan Robinson and Dennis Ristvedt, respondent filed patent application no. 09/020,708 (708), entitled "Disposable Fluid Control Island" with the United States Patent and Trademark Office (USPTO).

3. On September 27, 1999, the USPTO mailed to respondent an Office Action regarding patent application 708. An Office Action is a document containing the patent examiner's conclusions about the patentability of an invention. The September 27 Office Action stated that claims 1 - 28 of patent application 708 were rejected. The Office Action set a shortened statutory period for response to the Office Action that expired three months from the date of mailing. The Office Action specifically stated, "Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133)."

4. On October 3, 1999, respondent sent a copy of the Office Action to Robinson. Robinson promptly instructed respondent to respond to the Office Action and take appropriate action to continue with the prosecution of the patent application. Respondent failed to respond to the USPTO Office Action within the period of response set by the USPTO and failed to timely request an extension of the time to respond.

5. 35 U.S.C. §133 regulating the time for prosecuting patent applications provides:

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Director that such delay was unavoidable.

6. On January 3, 2000, respondent, on behalf of Robinson and Promethean, sent the USPTO a new provisional patent application no. 60/174,617 (617).

7. On February 3, 2000, the USPTO mailed a notice to respondent, stating the filing fee sent for provisional patent application 617 was insufficient and requiring that the fee be paid within two months from the date of the notice. Respondent did not notify Robinson of this notice.

8. Respondent failed to pay the filing fee for provisional application 617 and that application became abandoned on April 3, 2000.

9. On April 11, 2000, respondent wrote to Robinson stating, "Today, two patent applications are pending for products that you have invented either solely or with Dennis Ristvedt." In fact, as noted above, the only two patent applications filed by respondent on behalf of Robinson/Promethean had become abandoned due to respondent's neglect.

10. On April 24, 2000, the USPTO mailed to respondent a Notice of Abandonment of patent application 708 due to respondent's failure to timely file a proper response to the Office Action of September 27, 1999. Respondent did not tell Robinson that patent 708 had become abandoned.

11. On May 1, 2000, on behalf of Robinson and Promethean, respondent filed patent application no. 09/562,064 (064), entitled "Disposable Fluid Control Island" with the USPTO.

12. On September 20, 2000, and again on February 15, 2001, respondent sent Robinson status reports on the patent applications, stating in reference to patent 708, "Prosecution of the application in the Patent and Trademark Office is underway" In fact, that application had become abandoned and respondent had been informed of the abandonment on April 24, 2000.

13. On March 1, 2001, the USPTO mailed to respondent an Office Action requiring a reply regarding patent application 064. The Office Action stated that claims 1 - 20 of the application were rejected. The Office Action set a shortened statutory period for response that expired three months from the date of mailing. The Office Action specifically stated, "Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133)." Respondent did not notify Robinson of the Office Action.

14. Respondent failed to respond to the USPTO Office Action within the period of response set by the USPTO and failed to timely request an extension of the time to respond.

15. On April 30, 2001, Robinson, on behalf of Promethean, delivered to respondent a check for \$3,000 intended, at least in part, to be used to pay the filing fee for an international patent application under the Patent Cooperation Treaty (PCT), based on patent application 064. The memo section of the check read, "Filing Fee European Patent." The PCT application deadline was May 1, 2001. Respondent deposited the \$3,000 into his business account rather than his trust account and failed to file the PCT application. Respondent was not then entitled to the full \$3,000.

16. On October 1, 2001, the USPTO mailed respondent a Notice of Abandonment of application 064. Respondent did not notify Robinson of the abandonment of the application.

17. On January 16, 2002, on behalf of Robinson and Promethean, respondent filed patent application no. 10/053,141 (141), entitled "Disposable Surgical and Diagnostic Fluid Control Island" with the USPTO.

18. On March 29, 2002, respondent wrote Robinson at Promethean with a status update on the intellectual property matters he was handling for Promethean. In his March 29 letter respondent stated, "Promethean now has three patent applications pending, two of which have been examined and are likely to issue as patents. The other application was filed in January and will not be examined for several months." In fact, patent applications 708 and 064 were considered abandoned by the USPTO at the time of respondent's letter and respondent had received notices of the abandonments.

19. On April 24, 2002, respondent filed a petition for the revival of patent application 708. In respondent's petition he stated that his failure to respond to the Office Action was unintentional.

20. On May 15, 2002, the USPTO wrote respondent granting the petition to revive patent application 708.

21. On May 28, 2002, the USPTO sent respondent an Office Communication/Notice of Non-Compliant Amendment requesting amendments to patent application 708. The Notice established a deadline of 30 days to respond in order to avoid abandonment of the application. Respondent did not tell Robinson of the Notice. Respondent did not respond within the 30-day deadline.

22. On July 18, 2002, the USPTO published an abstract of patent application 141. In that publication it was noted that applications 708 and 064 were abandoned.

23. On July 22, 2002, respondent wrote Robinson with another status update on patent and trademark matters. In the July 22 letter respondent stated, "Based on the results of the U.S. Patent and Trademark Office examination, it appears likely that patents will issue covering your inventions." In fact, at this time patent applications 708 and 064 were abandoned. .

24. On August 28, 2002, respondent wrote the USPTO to petition for a two-month extension to amend patent application 708 and paid the \$200 petition fee. The amendment was originally due June 28, 2002.

25. On October 5, 2002, Susanne Engler, the legal/administrative coordinator for Promethean, went to the USPTO's website in an attempt to gain information regarding the status of patent applications 708, 064 and 141. While searching on the USPTO's website, Engler discovered that patent applications 708 and 064 had been abandoned. Robinson confronted respondent with this information and he promised to take prompt action to revive the applications.

26. On October 21, 2002, respondent filed with the USPTO a petition for revival of patent application 064. That petition for revival was granted on July 23, 2003.

27. In October 2002 Robinson discharged respondent from representation and substituted attorney Charles Steffey, from the law firm of Schwegman, Lundberg,

Woessner & Kluth. Respondent cooperated with substitute counsel in prosecution of the patent applications, including the payment of \$640 in petition filing fees. Patents have since issued on applications 708 and 141.

28. Respondent's conduct violated Rules 1.3, 1.4, 1.15, 4.1, and 8.4(c), Minnesota Rules of Professional Conduct.

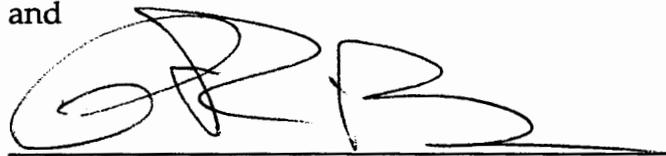
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: December 13, 2004.



KENNETH L. JORGENSEN
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 159463
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and



PATRICK R. BURNS
SENIOR ASSISTANT DIRECTOR
Attorney No. 134004