

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against JOHN R. JESPERSON,
a Minnesota Attorney,
Registration No. 176096.

**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 3, 1986. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT
Freier Matter

1. Respondent represented David Freier in a contested marital dissolution. Following a trial, a divorce decree was entered in September 2003. The decree required respondent to prepare a Qualified Domestic Relations Order (QDRO) to divide Freier's retirement plan. One half of the value of the retirement plan would be transferred to Freier's ex-spouse. Respondent did not take action on the matter.

2. By March 2004, respondent had not prepared the QDRO. Freier's spouse brought a motion to enforce the directive of the decree. On March 23, 2004, the court

ordered respondent to complete the QDRO and directed Freier to transfer the funds within 20 days. Respondent did not inform Freier of the order or the obligations imposed. Respondent did not complete the QDRO as ordered.

3. In July 2004 Freier's spouse filed a motion for contempt against Freier, seeking that he be jailed. The hearing on this motion was scheduled for August 26, 2004.

4. On August 25, 2004, respondent submitted the QDRO to the court; the funds were transferred on August 23, 2004.

5. The court declined to hold Freier in contempt, but ordered him to pay \$900 to his ex-spouse in attorney fees for the motion. Freier paid the \$900 himself.

6. After Freier filed a complaint with the Director in November 2004, respondent credited Freier \$900 against the outstanding balance due to respondent in unpaid fees.

SECOND COUNT
Montgomery Matter

7. In or about April 2000, Charles Montgomery retained respondent to prepare an estate plan. Pursuant to the estate plan, Mr. Montgomery's life insurance beneficiary designation needed to be changed. Upon information and belief, in April 2000, respondent completed a change in beneficiary designation form to the State of Minnesota (Montgomery's employer) and Minnesota Life Insurance Company (MLIC). The designation form was not fully accepted by MLIC. Mr. Montgomery died on March 3, 2001.

8. Beginning in April 2001, respondent represented Jodi Montgomery (Montgomery) as personal representative of the Estate of Charles Montgomery (Montgomery's father). Respondent was on probation at the time the representation began.

9. On or about May 1, 2001, respondent, on behalf of the Estate of Charles Montgomery (Estate), requested MLIC to distribute insurance proceeds totaling \$330,000 pursuant to the April 2000 beneficiary designation change request.

10. On June 27, 2001, MLIC informed Montgomery that the April 2000 beneficiary designation change form was never received and/or accepted by the State of Minnesota, Charles Montgomery's employer or MLIC and advising Montgomery that the benefits may need to be paid under the original beneficiary designation. MLIC requested a certified copy of the death certificate, completion of the Beneficiary Statements and a copy of the Last Will and Testament. Montgomery sent a copy of the letter to respondent.

11. On June 28, 2001, respondent wrote to MLIC enclosing copies of the documents requested. Respondent also requested that benefits be paid according to the terms of the April 2000 beneficiary designation.

12. On July 18, 2001, MLIC wrote to Montgomery enclosing a copy of the April 2000 beneficiary designation form in question and requested clarification of the claim submitted on behalf of the estate. On July 24, 2001, respondent wrote to MLIC advising that the estate now requested the benefits to be paid pursuant to the designation dated July 1996. Montgomery signed the July 24, 2001, letter before a notary public. Respondent failed to advise Montgomery that distributing the proceeds under the 1996 designation would in effect undo portions of her father's estate planning.

13. On August 6, 2001, MLIC requested respondent provide a certified Letter of Administration for the Estate, appointing Montgomery as personal representative. MLIC also requested that Montgomery re-execute other documents in her capacity as Personal Representative and Trustee of the Trust. On August 7, 2001, respondent sent to MLIC certified Letters Testamentary and the re-executed documents. Shortly thereafter, MLIC distributed 3/5th of the insurance proceeds.

14. Respondent filed Letters Testamentary, Order of Formal Probate of Will and Formal Appointment of Personal Representative with the probate court. On July 27, 2001, the court issued an order of Formal Probate of Will and Formal Appointment of Personal Representative and Letters Testamentary. In September 2005, respondent provided a copy of the Estate's file to the Director. Respondent's file indicates that respondent took no further action to proceed with the closing of the Estate after July 2001.

15. In July 2002 Montgomery advised respondent that she was maintaining a log of the estates debts and payments made to creditors. Respondent requested Montgomery to fax a copy of the log to him, which she did. Montgomery believes that was the last time she spoke with respondent.

16. Thereafter, Montgomery made numerous telephone calls to respondent's office over the next year leaving messages for respondent regarding the status of the estate. Often when Montgomery called, respondent's voicemail would be full and she was unable to leave a message for respondent.

17. On July 7, 2003, after not hearing from respondent for a year, Montgomery sent respondent a certified letter expressing her dissatisfaction with his progress on the probate matter. Montgomery further advised respondent that she would retain new counsel if he did not finalize the estate immediately. Montgomery also requested respondent provide her with an invoice of services rendered as she had yet to receive one. Respondent failed to respond to the letter, forward the file or an invoice for services to Montgomery.

18. From July 2003 to January 2005, Montgomery again made numerous telephone calls to respondent's office most, if not all, remained unanswered. In January 2005, Montgomery discharged respondent and retained attorney Matthew Shea (Shea) to handle the probate matter. On January 25, 2005, Shea telephoned respondent and requested the legal file. Respondent advised Shea that he would not release the file

without written authorization from Montgomery. Thereafter, Shea drafted a letter to respondent on behalf of Montgomery requesting that the file be forwarded to him. Respondent failed to forward the file.

19. On February 9, 2005, Shea telephoned respondent and left a message for respondent. Respondent failed to return the call to Shea. On February 17, 2005, Shea again called and spoke with respondent. Respondent advised Shea that he would forward the file by the end of February. Respondent failed to forward the file. On March 8, 2005, Shea again called respondent and again requested the file. Respondent assured Shea that he would send the file shortly. Respondent failed to send the file to Shea. Shea left additional telephone messages for respondent in late March, mid-April and May 2005.

20. Respondent's conduct in the Freier and Montgomery matters violated Rules 1.3, 1.4, 1.16(d) and 8.4(d), Minnesota Rules of Professional Conduct (MRPC), and, combined with his prior discipline, constitutes a pattern of misconduct warranting public discipline.

DISCIPLINARY HISTORY

21. Respondent has the following disciplinary history, which may be considered in determining whether a pattern of misconduct warranting public discipline exists:

a. In April 1994 respondent was issued an admonition for failing to deposit an advance fee into his trust account and for failing to explain to his client the basis or rate for his fee.

b. In November 1995 respondent was issued an admonition for a conflict of interest and for distributing settlement proceeds without client consent.

c. In May 1998 respondent was issued an admonition for neglect and failing to communicate with his client.

d. In April 2000 respondent was issued an admonition for neglect, failure to communicate and failing to timely return a client's file.

e. In August 2000 respondent stipulated to a two-year supervised private probation for failing to communicate with a client.

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: May 12, 2006.



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