FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against GEORGE M. KADINGER, an Attorney at Law of the State of Minnesota.

PETITION FOR DISCIPLINARY ACTION

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 18, 1985. Respondent currently practices law in St. Paul, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's history of prior discipline is as follows:

a. On April 29, 1992, respondent was placed on a two-year private probation for making inaccurate statements in response to an ethics complaint in violation of Rule 8.4(d), Minnesota Rules of Professional Conduct (MRPC). The probation conditions required respondent to obtain a chemical dependency evaluation and recommendation.

b. On May 19, 1992, respondent received a private admonition for his failure to change or amend a probable cause statement to accurately reflect recorded testimony in violation of Rule 8.4(d), MRPC, in his capacity as an Assistant County Attorney.

FIRST COUNT

Nathaniel Wilson Matter

1. Respondent represented Nathaniel Wilson for approximately eight months against Hennepin County criminal charges including: second degree assault, first degree attempted murder, kidnapping, and assault with a deadly weapon. Respondent also represented Wilson regarding a first degree burglary charge in Moorhead, Minnesota. Wilson grew frustrated during the representation and on April 20, 1999, filed an ethics complaint against respondent alleging neglect and excessive legal fees.

2. In his response to the Wilson complaint, respondent claimed to have had discussions relating to a potential deal with the Minneapolis police in exchange for information. The purported deal fell through approximately three months into the representation, and respondent claims that because the deal fell through, it appears that he did not do much work on Wilson's behalf.

3. Respondent claims he spent "well over 150 hours" on the two Hennepin County cases. However, there is no documentation in the file evidencing respondent's work nor were there any handwritten notes by respondent showing his progress. There was no discovery demand by respondent on behalf of Wilson, there was no omnibus motion, no documentation of court appearances, no written notes of plea offers, and no other requests to the court. Respondent failed to diligently pursue Wilson's criminal matters.

4. Respondent failed to keep Wilson adequately informed as to the status of his criminal matter. Respondent failed to send any correspondence to Wilson during the representation. Respondent sent Wilson only one letter, dated April 16, 1999, in which he stated his intention to withdraw from representation and returned Wilson's file.

5. Respondent received $2,500 from Wilson. Respondent claimed that the money was paid pursuant to a nonrefundable retainer agreement, but there was no written retainer agreement. Upon information and belief, the $2,500 was not deposited

in a trust account. Respondent has not provided Wilson with an accounting for the $2,500 paid. Respondent later indicated to the investigator that Wilson would have been entitled to a refund if he had not put so much time into the case.

6. Respondent's conduct in the Nathaniel Wilson matter violated Rules 1.3, 1.4, 1.5(a), and 1.15(a) and (c)(3), MRPC, and Lawyers Professional Responsibility Board (LPRB) Opinion 15.

SECOND COUNT

Francis and Elizabeth Bradac Matter

7. The Bradacs retained respondent to represent them in three legal matters: a real estate matter in Wisconsin, a potential federal civil rights claim, and a custody dispute that their son, Joseph Bradac, was having with his ex-wife. There was no written retainer agreement.

8. The Bradacs understood that they were required to pay respondent $300 per month up to a maximum amount of $7,000 for respondent's representation in the real estate and civil rights matters. The representation of their son was supposed to be done on a *pro bono* basis. Despite this initial understanding, however, and Francis and Elizabeth Bradac paid respondent a total of $3,585 and Joe Bradac paid respondent a total of $2,250. The money was not deposited in a trust account.

9. Respondent failed to adequately prepare or edit a summons and complaint served by the Bradacs in the Wisconsin real estate matter. The law in Wisconsin, at the time the service was made, provided for a 45-day answer period. The summons prepared or edited by respondent inaccurately stated that the defendant had only 20 days in which to answer. This inaccuracy in the summons and complaint led to the Wisconsin Circuit Court's order dismissing the case for lack of jurisdiction.

10. Respondent failed to keep the Bradacs adequately advised regarding the status of their legal matters. Respondent also failed to appear at several hearings and meetings on their behalf.

11. The Bradacs became frustrated and asked respondent to transfer their files regarding the real estate matter to another attorney. Respondent has failed to facilitate the transfer of the real estate file to another attorney as requested.

12. Respondent's conduct in the Francis and Elizabeth Bradac matter violated Rules 1.1, 1.3, 1.4, 1.5(b), 1.15(a) and (c)(3), and 1.16(d), MRPC, and LPRB Opinion 15.

THIRD COUNT

Larry Kiefat, Jr., Matter

13. Respondent represented Larry Kiefat, Jr., with respect to two criminal cases in Washington County. The cases were scheduled to be heard as jury trials on October 9, 2000. The cases earlier had been scheduled for trial in September but respondent had requested and obtained a continuance.

14. Despite the continuance granted at respondent's request, respondent failed to appear on behalf of Kiefat for trial and failed to otherwise contact the court regarding the matter.

15. Respondent also failed to keep Kiefat adequately informed regarding the matter. Kiefat told the presiding judge that he did not know where respondent was except that they had spoken on the phone that Friday and respondent had told him something about getting a continuance. The presiding judge, however, had no information of any kind indicating that respondent had asked the court's permission not to be present at the time of Kiefat's two jury trials.

16. Respondent's conduct in the Larry Kiefat, Jr., matter violated Rules 1.3, 1.4 and 1.16(c) and (d), MRPC.

FOURTH COUNT

Billy Daher Matter

17. Billy Daher retained respondent to represent him in a domestic abuse order for protection matter. Daher paid respondent $400 to represent him. There was no written retainer agreement.

18. During the representation, respondent failed to keep Daher adequately informed as to the status of his legal matter. The matter was settled and read into the court record at a hearing on or about June 5, 2000. Respondent received a copy of a proposed order for protection by opposing counsel on or about June 14, 2000, but failed to provide a copy of the proposed order to Daher. Respondent later told Daher that he first received a copy of the proposed order from opposing counsel on June 30, 2000. This statement was false. Respondent had received the documents approximately two weeks before June 30, 2000.

19. Daher told respondent his concerns about and objections to the proposed order. Respondent, however, did not object or otherwise respond to the proposed order sent to him by opposing counsel. Because he heard no response or objections to the proposed order, opposing counsel forwarded the order to the court. The court order was signed on July 5, 2000, without any input regarding the draft of the order from respondent or Daher.

20. Respondent's conduct in the Billy Daher matter violated Rules 1.3 and 1.4, MRPC.

FIFTH COUNT

Scott Heimermann Matter

21. On July 10, 2000, respondent was retained by Scott Heimermann to represent him in a Habeas Corpus matter in the Washington County District Court. Heimermann paid respondent $500 for the representation. There is no written retainer agreement. Upon information and belief, the money was not deposited into a trust account.

22. Heimermann had earlier filed a *pro se* Petition for Writ of Habeas Corpus with the court and requested that respondent arrange for an evidentiary or pretrial hearing. Respondent failed to diligently pursue Heimermann's matter. The Writ of Habeas Corpus was dismissed without a pretrial or evidentiary hearing on July 28,

2000. At the time of the dismissal, the court had no record of respondent filing a notice of appearance or otherwise appearing in the case.

23. In response to the notice of investigation of the Heimermann complaint, respondent provided a cover letter and certificate of representation that he claims was sent to the presiding judge on July 8, 2000, - twenty days before she issued the order dismissing the petition. Neither the judge nor the court administrator have records of receiving respondent's letter or the certificate of representation.

24. Respondent failed to send Heimermann any correspondence and has failed to account to Heimermann for the money paid to him or bill him for services performed.

25. Respondent's conduct in the Scott Heimermann matter violated Rules 1.5(b), 1.15(a) and (c)(3), 1.3 and 1.4, MRPC, and LPRB Opinion 15.

SIXTH COUNT

Tim and Lori Martin Matter

26. Respondent represented a family-law client in a custody dispute over two minor children. On January 4, 2000, respondent had motion papers personally served on his client's ex-wife, Lori Martin. The papers served were captioned "Notice of Motion and Motion for Change of Custody Between the Parties and Request for Order of Protection."

27. Lori Martin's attorney, Lisa Watson Cyr, contacted respondent the following day and informed him of her representation. During the conversation, attorney Cyr sought clarification of the motion respondent intended to bring, and specifically directed that respondent not directly contact her client but instead that all future communications should be directed to Cyr.

28. Despite his January 5, 2000, conversation with Cyr, respondent again had Lori Martin personally served with motion papers and other legal pleadings on January 21, 2000. This service was in violation of Rule 5.02, Minnesota Rules of Civil Procedure, which states that, "Wherever under these rules service is required or permitted to be

made upon a party represented by an attorney, the service **shall** be made upon the attorney unless service upon the party is ordered by the court." (Emphasis added.) Cyr then sent respondent another letter objecting to the improper contact.

29. Respondent's conduct in the Tim and Lori Martin matter violated Rules 3.4(c) and 4.2, MRPC.

SEVENTH COUNT

Non-Cooperation

30. Respondent has failed to respond to letters and notices of investigations in the investigations of the complaints against him as follows:

Nathaniel Wilson Matter

31. On August 23, 1999, the Director's Office sent respondent a letter requesting information. Respondent failed to respond. The Director's Office sent a certified letter on September 27, 1999, again requesting information from respondent, which was returned to the Director as unclaimed.

32. On December 3, 1999, the Director's Office sent respondent yet another letter requesting information. Respondent failed to respond.

33. The Director's Office again sent a letter by certified mail on December 23, 1999, to respondent requesting information from him. Respondent signed for the certified letter but failed to respond.

Francis and Elizabeth Bradac Matter

34. On August 7, 2000, the Director sent a notice of investigation to respondent by certified and regular mail. Respondent's response to the complaint was due not later than August 21, 2000. Because no response was received, the Director wrote to respondent on August 25, 2000, requesting a response to the complaint within ten days, or not later than September 6, 2000. Respondent failed to respond until September 18, 2000.

Larry Kiefat, Jr., Matter

35. On October 17, 2000, the Director sent a notice of investigation to respondent by certified and regular mail. Respondent's response was due not later than October 31, 2000. No response was received. The Director wrote to respondent again on November 7, 2000, and requested a response not later than November 14, 2000. To date, no response has been received.

Billy Daher Matter

36. On July 27, 2000, the Director sent a notice of investigation to respondent by regular mail. Respondent's response to the complaint was due not later than August 10, 2000. Because no response was received to the complaint, the Director wrote to respondent on August 15, 2000, requesting a response to the complaint within seven days, or not later than August 22, 2000. Respondent's response was not received until August 24, 2000.

Tim and Lori Martin Matter

37. On March 8, 2000, the Director sent a notice of investigation to respondent by certified mail. Respondent's response to the complaint was due within 14 days, or not later than March 22, 2000. Respondent signed for the certified letter on March 9, 2000, but failed to respond. On April 27, 2000, the Director again requested a response to the complaint and sought the response not later than May 4, 2000. Because no response was received, the Director sent a third request for a response on August 25, 2000, which requested a response not later than September 6, 2000. Respondent failed to respond until September 18, 2000.

38. Respondent's failure to respond to requests for information in the Wilson matter, and failure to timely respond to requests for information in the Martin, Bradac, Daher and Kiefat matters constitutes a pattern of misconduct in violation of Rule 8.1(a)(3), MRPC, and Rules 25, Rules on Lawyers Professional Responsibility.

EXHIBITS

Nathaniel Wilson Matter

1. April 16, 1999, letter from respondent to complainant regarding termination of representation and return of file.

2. April 20, 1999, ethics complaint.

3. Respondent's May 18, 1999, response to the complaint.

4. Copies of canceled check and receipt for $1,750 paid to respondent on behalf of Nathaniel Wilson.

Francis and Elizabeth Bradac Matter

5. December 20, 1999, letter and Order of Dismissal from Judge Erickson to Francis and Elizabeth Bradac.

6. May 8, 2000, letter from Francis and Elizabeth Bradac to respondent.

7. July 31, 2000, ethics complaint and accompanying materials.

8. September 18, 2000, response to the complaint.

9. Canceled checks to respondent from Francis and Elizabeth Bradac.

Larry Kiefat, Jr., Matter

10. October 10, 2000, ethics complaint from Judge Muehlberg and accompanying materials.

Billy Daher Matter

11. July 14, 2000, ethics complaint and accompanying materials.

12. August 12, 2000, attachment to complaint by Daher with accompanying materials.

Scott Heimermann Matter

13. Copy of July 10, 2000, check register showing $500 payment to respondent.

14. Copy of bank statement indicating that $500 check to respondent was cashed.

15. July 21, 2000, letter from Heimermann to respondent.

16. July 26, 2000, letter from Heimermann to respondent with attachments.

17. July 28, 2000, Washington County District Court Order and Memorandum dismissing Heimermann's Petition for Habeas Corpus.

17A. Respondent's response to Heimermann complaint together with accompanying materials received September 18, 2000.

Tim and Lori Martin Matter

18. October 17, 1994, Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree.

19. January 20, 2000, Notice of Motion and Motion signed by respondent and accompanying affidavits of Joseph Bradac, Emily Jo Bradac and Molly Jo Bradac.

20. January 26, 2000, letter from attorney Cyr to respondent.

21. January 28, 2000, Notice of Responsive Motion and Responsive Motion by attorney Cyr to, *inter alia*, obtain sole legal custody of the parties' children, affect the visitation schedule, and obtain a visitation evaluation.

22. February 1, 2000, affidavit of attorney Lisa Watson Cyr, with attached exhibits.

23. February 22, 2000, Findings of Fact and Order by Judge Clark, Ramsey County Family Court Judge.

24. February 28, 2000, ethics complaint and accompanying materials.

Non-Cooperation

Nathaniel Wilson Matter

25. August 23, 1999, letter from the Director's Office to respondent.

26. September 27, 1999, certified letter from the Director's Office to respondent.

27. December 3, 1999, letter from the Director's Office to respondent.

28. December 23, 1999, certified letter from the Director's Office to respondent.

Francis and Elizabeth Bradac Matter

29. August 7, 2000, notice of investigation.

30. August 25, 2000, letter from the Director's Office to respondent.

31. September 18, 2000, response to the complaint.

Larry Kiefat, Jr., Matter

32. October 17, 2000, notice of investigation.

33. November 7, 2000, letter from the Director's Office to respondent.

Billy Daher Matter

34. July 27, 2000, notice of investigation.

35. August 15, 2000, letter from the Director's Office to respondent.

36. August 24, 2000, letter from respondent to the Director's Office.

Tim and Lori Martin Matter

37. March 8, 2000, notice of investigation.

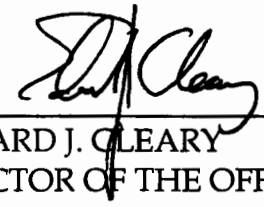
38. April 27, 2000, letter from the Director's Office to respondent.

39. August 25, 2000, letter from the Director's Office to respondent.

40. September 18, 2000, response to the complaint.

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 2, 2001.



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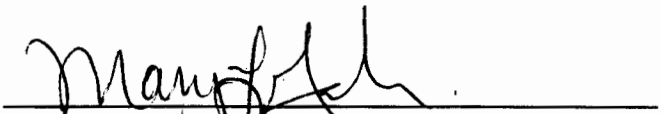

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