FILE NO. C5-88-1968

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against HARLAN P. KLEIN, an Attorney at Law of the State of Minnesota.	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION FOR DISCIPLINE**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

On August 2 and 3, 1999, the above-entitled matter come on for hearing before the undersigned, appointed as referee in this matter by the Supreme Court, at the Minnesota Judicial Center, St. Paul, Minnesota.

The above-named attorney, hereinafter respondent, appeared *pro se*. The Director was represented by Candice M. Hojan, Esq., Senior Assistant Director, Office of Lawyers Professional Responsibility.

Based upon all of the files, records, and proceedings herein, the evidence adduced at the hearing, and the briefs and arguments of counsel and respondent, the undersigned makes the following:

FINDINGS OF FACT

Disciplinary History

1. On July 21, 1989, the Minnesota Supreme Court indefinitely suspended respondent for at least six months for misrepresenting facts to a court and opposing counsel and

fraudulently altering and notarizing court documents. In re Klein, 442 N.W.2d 317 (Minn. 1989) (Exhibit 1). Respondent had received two prior admonitions. Respondent was reinstated to the practice of law on March 4, 1991 (Exhibit 2).

2. On October 10, 1989, respondent was issued an admonition for failing to communicate with his client, failing to file an appeal and failing to cooperate with the Director's Office in violation of Rules 1.3, 1.4 and 8.1(a)(3), Minnesota Rules of Professional Conduct (MRPC), and Rule 25, Rules on Lawyers Professional Responsibility (RLPR) (Exhibit 3).

A. Misrepresentations to Continuing Legal Education and the Director's Office.

1. Respondent was admitted to practice law in the State of Minnesota during the years 1993 through 1996.

2. Rule 3 of the Rules of the Supreme Court for Continuing Legal Education of Members of the Bar requires:

> Each registered attorney duly admitted to practice in this state desiring active status must make a written report to the Board in such manner and form as the Board shall prescribe. The report shall be filed with the Board within 60 days after the close of the 3-year period within which the attorney is required to complete the continuing legal education requirements. The report shall be accompanied by proof satisfactory to the Board that the attorney has completed a minimum of 45 hours of course work either as a student or a lecturer in continuing legal education.

3. Respondent was to report his 45 hours of continuing legal education (CLE) within 60 days after June 30, 1996.

4. On or about September 3, 1996, respondent signed an affidavit regarding his CLE hours and submitted it to the State Board of Continuing Legal Education (Board).

5. In August 1997 the Director received a complaint from respondent's wife, Ruth Koebnick-Klein. In that complaint, Ms. Koebnick-Klein alleged that respondent had made misrepresentations concerning his compliance with the CLE requirements. The Director investigated this allegation and determined that in his affidavit to the Board, respondent falsely represented that he attended the following CLE classes:

a. Lawoffice.com - Bringing Your Law Firm onto the Internet;

b. Real Estate Developments;

c. Business Law 101;

d. Effective Marital Dissolution Practice; and

e. Seventeenth Annual Family Law Institute.

6. Each of these seminars was sponsored by Minnesota CLE (MCLE). MCLE records, maintained pursuant to Court directives, do not reflect that respondent registered for or attended any of these seminars. MCLE procedures do not allow attendance without registration, regardless of payment or pre-registration (Exhibit 16).

7. During a December 17, 1997, sworn statement at the Director's Office, respondent was asked about his 1996 CLE affidavit. Respondent falsely testified that MCLE had waived its registration fees for those seminars. Respondent falsely testified that he called MCLE or appeared at their classes and was allowed to

attend without registering or paying for the classes. MCLE records do not reflect that this occurred. Respondent did not apply for the MCLE scholarship program or attend the MCLE courses he claimed credit for (Exhibit 16).

8. Respondent continued to assert at the hearing in this matter that he had attended the above CLE courses, despite overwhelming evidence to the contrary. Respondent's testimony on this matter is not credible. Respondent does not recognize his misconduct and is not contrite.

B. <u>Failure to Deposit Client Funds in Trust Account</u>.

9. As part of the complaint filed by Ms. Koebnick-Klein (*see Paragraph 5*), it was alleged that respondent failed to deposit client funds in a trust account. The Director investigated this allegation and determined that respondent represented Jeff Trapp in a matter against North Star Transport, Inc. (North Star).

10. On or about September 18, 1996, respondent received a check from North Star for $2,000. Respondent deposited the $2,000 into his business account. Respondent distributed $1,450 of the $2,000 to his client. Respondent kept $550 as payment for his legal services (Exhibit 8). Respondent maintained a trust account in 1996 but did not use it for this transaction.

11. Respondent represented John Richardson in a matter against Wallace Westsider, Inc. (Westsider). On or about October 17, 1996, respondent received three checks from Capital Indemnity, Westsider's insurance company, for $452, $613 and $404 to pay Richardson's medical providers. Respondent delivered the $452

check to the City of St. Paul. The Ramsey Clinic endorsed the remaining two checks and made them payable to respondent. Respondent deposited the Ramsey Clinic checks into his business checking account and delivered a check for $850 to Ramsey Clinic. Respondent kept $167 as payment for his legal services (Exhibit 8). Respondent did not use the trust account for this transaction.

12. The checks involved herein represented client funds, which should have been deposited into respondent's trust account. Respondent's excuses for not doing so, that he did not have the trust account checkbook with him at the time and that he was acting for the convenience of the client, do not excuse the misconduct.

C. Neglect and Non-Communication.

13. David Jack (Jack) retained respondent in 1992 to represent him in a motion to stay implementation of a child support cost of living adjustment and a motion to reduce child support. On April 30, 1992, respondent wrote Delores J. Daggett of Dakota County Economic Assistance stating he would be commencing discovery in connection with the cost of living adjustment issue and would also be filing a motion to reduce Jack's child support obligation (Exhibit 9).

14. On July 9, 1992, the court denied Jack's cost of living adjustment. The court specifically crossed out a proposed finding that Jack's income had suffered a sizable reduction since the child support payment had been set (Exhibit 10). Respondent did not move to reduce Jack's support obligation.

15. In 1994 respondent defended another cost of living adjustment motion against Jack. Although respondent scheduled a July 12 hearing on the motion, he failed to attend the hearing (Exhibit 11). Also, respondent failed to inform Jack about the hearing. The court approved the cost of living adjustment thereby increasing Jack's child support payment. Respondent still did not move to reduce Jack's support obligation.

16. In March 1996, after Jack filed an ethics complaint against him, respondent finally moved to reduce Jack's support obligation (Exhibit 11).

17. Respondent's present assertion that he did not move to reduce Jack's child support because there was insufficient basis to do so is not credible in light of his statement in Exhibit 9, made at the time of representation, that he intended to do so, and the fact that he never advised Jack that he did not intend to make such a motion and, to the contrary, told Jack that he would make the motion soon.

D. Neglect.

18. On September 1, 1993, David Ritt (Ritt) retained respondent to reduce his child support obligations in Ramsey and Dakota Counties. Ritt paid respondent $300. Respondent performed some work on the matter, but never brought the requested motion.

19. On March 27, 1995, Ritt, acting *pro se*, prepared, served and filed a notice of motion and motion in Dakota County district court to reduce his support obligation (Exhibit 12). The court

scheduled Ritt's motion for June 2, 1995. Although Ritt prepared the March 27 motion, respondent agreed to represent Ritt at the June 2 motion hearing.

20. Following the hearing, the Dakota County district court decreased Ritt's child support obligation to $175.54 per month and scheduled a December 8, 1995, review hearing. The court specifically found that:

> [Ritt] has four separate child support obligations for six children. This order will temporarily reduce one obligation so that motions to reduce can be brought in the other actions. The temporary reduction set forth herein will be reviewed in six months to determine if any of the other obligations were reduced, thereby increasing [Ritt's] available income.

Prior to December 8, 1995, respondent failed to move to reduce any of Ritt's other support obligations.

21. In January 1996 the Dakota County district court reviewed Ritt's temporary child support reduction. On February 28, 1996, the court increased Ritt's support obligation to $212. The court found:

> Pursuant to an order dated August 30, 1995, upon [Ritt's] motion to modify the child support award, [Ritt] was ordered to pay child support in the amount of $175.54, effective April 1, 1995. The matter was continued for a review hearing to allow [Ritt] time to seek modification of his other child support obligations. At such time as his other obligations were modified, the child support for Krystal Ritt could be adjusted. Since the time of the prior order, [Ritt] has not sought a modification in his other child support obligations.

(Exhibit 13.)

22. In April 1996 respondent finally requested Ramsey County's Support and Collections Department modify Ritt's child support obligations (Exhibit 14).

23. Respondent's present assertion that he was not retained to bring motions to coordinate all of Ritt's child support orders, but rather was simply paid to "look into" the issue, is not credible. Respondent told Dakota County authorities that he would bring a motion in Ramsey County to coordinate the child support orders, and was given a six-month review date by which this was to be done. Respondent's assertions concerning his client's alleged misrepresentations are not born out by the exhibits.

Mitigation and Aggravation

24. Respondent presented no mitigation evidence to the referee. Respondent does not appreciate the wrongful nature of his conduct and is not contrite.

25. Respondent's misconduct in this case is aggravated by his prior discipline, set out above, and by his continued assertion at the hearing in this matter that he took the CLE courses reported by him on his 1996 CLE affidavit.

CONCLUSIONS OF LAW

26. Respondent's conduct in filing a false affidavit of his attendance at five CLE seminars and in testifying falsely during a sworn statement to the Director violated Rules 8.1(a)(1) and 8.4(c) and (d), MRPC.

27. Respondent's conduct of not depositing client funds into his trust account violated Rule 1.15(a), MRPC.

28. Respondent's conduct in failing to attend a July 12, 1994, hearing and to inform Jack about the July 12, 1994, hearing and failing to move for a reduction in Jack's child support obligation until March 1996 violated Rules 1.3, 1.4(a) and 3.2, MRPC.

29. Respondent's conduct in failing to request that Ramsey County Support and Collections Department reduce Ritt's child support obligations between September 1993 and March 1995, and between June 1995 and December 1995, violated Rule 1.3, MRPC.

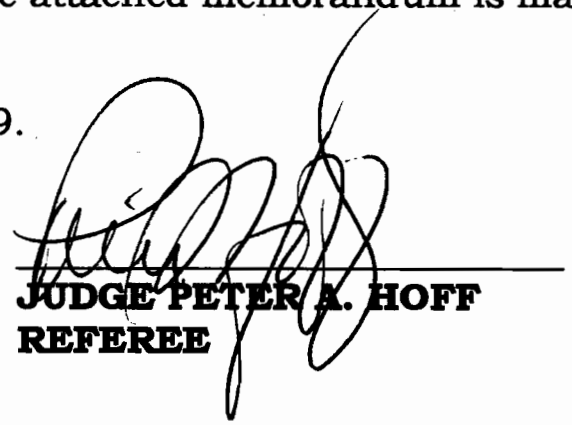
RECOMMENDATIONS

Based upon the Findings of Fact and Conclusions of Law set forth herein above, the referee makes the following recommendations:

1. That respondent be indefinitely suspended from the practice of law and be permitted to petition for reinstatement no sooner than two years after the date of suspension.

2. That respondent shall upon reinstatement, pursuant to a Rule 18(c), RLPR, panel proceeding, be conditioned on respondent first presenting proof from course sponsors of having taken at least 90 hours of CLE courses (for his 1996 and 1999 reporting requirements) and such additional credits to make him current to the time of his petition for reinstatement, as well as proof of fitness to practice in other respects. The attached memorandum is made a part hereof.

Dated: 8-19, 1999.



JUDGE PETER A. HOFF
REFEREE

MEMORANDUM

This Referee deems Respondent's testimony to be incredible and self-serving. The Referee was impressed with the fact that Respondent made numerous factual assertions in defense of each of the allegations of misconduct, but was completely unable to back up his claims with any documentation whatsoever. Thus, the Referee adopts the Director's factual findings.

FALSIFYING CLE CREDITS

The Referee is greatly concerned about Respondent's CLE claims. I find it simply unbelievable that Respondent attended 5 different CLE courses over an unknown span (but probably 3 years) without registering for them, without paying for them, and without receiving any course materials. Respondent's claims defy logic and reason. It would seem that an attorney who took his CLE obligation seriously, would make considerable effort to have adequate records of compliance, particularly since continued licensure hinges on compliance. The respondent has no documentation concerning dates, times, records, or personal notes that he attended or paid for the CLE courses. The respondent writes in his Proposed Findings of Fact that "There is no direct evidence to refute the respondent's contention that he did in fact attend each and every course as

reported by him" (Respondent's Proposed Findings of Fact, page 2, paragraph 5). The Referee notes that the respondent did not produce any direct evidence to support that he attended the CLE courses other than the affidavit that he sent to the State Board of CLE. There can be no conclusion other than that Respondent falsified his affidavit of compliance, and later testimony in these proceedings, violations of Rules 8.1(a)(1) and 8.4(c) and (d), MRPC.

CLIENT NEGLECT AND FAILIURE TO COMMUNICATE

Respondent's defenses to the accusations of client neglect and failure to communicate rest almost entirely upon his reporting of his recollection of conversations with his clients which allegedly occurred as many as 6 or 7 years ago. Both Mr. Jack and Mr. Ritt seemed to have clear recollections of what they believed to be Respondent's duties in their respective cases. Respondent claims his clients were mistaken as to the extent of his representation of them, but he did not produce retainer agreements which defined the scope of representation. Respondent claims that he had many conversations with his clients wherein he informed them they had no meritorious action, but produced no follow-up correspondence to his clients summarizing his advice. Moreover, the respondent admits in his Proposed Findings of Fact and an exhibit entered as

evidence, that due to his inadvertence, he did not attend a court hearing that he scheduled for Mr. Jack (Respondent's Proposed Findings of Fact, page 2, paragraph 12). Respondent further admits that Mr. Jack was unaware of the scheduled hearing that respondent had reserved Mr. Jack (Respondent's Proposed Findings of Fact, page 2, paragraph 12). Absent documentation, the Referee must find the claims of Mr. Jack and Mr. Ritt to be credible. The respondent's actions toward his clients support a finding that he violated Rules 1.3, 1.4(a) and 3.2 MRPC.

NOT DEPOSITING CLIENT FUNDS INTO A TRUST ACCOUNT

Respondent cited no defense to the failure to deposit client funds in his trust account except "convenience". We know of no such exception to the rule. The actions of the respondent concerning inappropriately depositing client funds constitutes a violation of Rule 1.15(a).

CONCLUSION

Respondent would have the Court believe that either, no misconduct existed, or that it was de minimus. The Referee disagrees. At the very least, Respondent has treated the rules cavalierly, or, worse, shown a lack of practical knowledge of them. This conduct alone places in serious question Respondent's ability

to discharge his duties as a faithful, diligent, trustworthy officer of the court. However, since the Referee has found that misconduct occurred to full extent of the allegations, no question of Respondent's lack of ethical fiber exists, and Respondent's continued practice of law is anathema. Thus, the Referee adopts the adopts the above recommendations, and submits them to the Court herewith.