**FILE NO. _____**

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action
against DAVID L. KRAKER,
a Minnesota Attorney,
Registration No. 57988.

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**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 contained in the attached August 2, 2006, stipulation for probation (Exhibit l) 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 16, 1970. Respondent currently practices law in Minneapolis, Minnesota.

## INTRODUCTION

On August 2, 2006, respondent and the Director entered into a stipulation for private probation. Respondent's probation was based upon an admission that respondent failed to communicate with and diligently and promptly represent clients in a will contest.

Among the conditions of respondent's probation was that respondent would abide by the Minnesota Rules of Professional Conduct (MRPC) and commit no further unprofessional conduct, and that if, after giving respondent an opportunity to be heard, the Director concluded that respondent had not complied with the conditions of the probation, then the Director could file this petition without the necessity of Panel proceedings.

The Director, after giving respondent an opportunity to be heard, has concluded that respondent has not complied with the conditions of the probation.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's record of prior discipline, including warnings and admonitions, is as follows:

a. On February 8, 2002, the Director issued respondent an admonition for failing to diligently pursue, and keep the client adequately informed regarding, a workers' compensation matter in violation of Rules 1.3 and 1.4, MRPC.

b. On July 2, 1996, the Director issued respondent an admonition for failing to diligently pursue a client matter and communicate with the client for a period of five years in violation of Rules 1.3, 1.4 and 3.2, MRPC.

c. On July 27, 1994, the Director issued respondent an admonition for failing to diligently pursue a client's personal injury matter for a period greater than one year in violation of Rules 1.3 and 1.4, MRPC.

d. On October 21, 1992, the Director issued respondent an admonition for failing to reduce to writing an agreement for a nonrefundable fee in violation of Rule 1.15(a)(2) and (e), MRPC, Lawyers Professional Responsibility Board Opinion No. 15 and *In re Lochow*, 469 N.W.2d 91 (Minn. 1991).

FIRST COUNT

Charles Ashman Matter

1. In or about May 2006, respondent began representing Charles Ashman through the Hennepin County Commitment Defense Project (HCCDP). The HCCDP's rules do not allow its court-appointed members to represent clients in habeas corpus proceedings; therefore, in December 2006, Ashman paid respondent a $2,500 fixed fee to

find and hire a contract lawyer to help respondent bring a writ of habeas corpus petition on Ashman's behalf.

2. The parties did not execute a written retainer agreement and the fee was not deposited into respondent's trust account.

3. Although respondent contends he contacted six lawyers from December 2006 through March 2007 and was unable to find someone willing to assist Ashman for $2,500, respondent did not communicate this information to Ashman until May 29, 2007.

4. From February 11, 2007, to May 22, 2007, Ashman attempted to contact respondent 33 times by telephone. After December 2006, respondent spoke with Ashman less than three times despite receiving numerous messages from Ashman seeking a return telephone call.

5. Ashman's complaint was filed with the Director's Office on May 11, 2007. On May 29, 2007, respondent refunded the entire $2,500 to Ashman and informed Ashman of his inability to find a lawyer willing to pursue the writ for $2,500.

6. Respondent's neglect and non-communication violated Rules 1.3 and 1.4, MRPC. Respondent's failure to reduce the fee agreement to a writing signed by the client upon collecting an advance fee payment violated Rule 1.5(b), MRPC. Respondent's failure to deposit an advance fee payment into a client trust account violated Rule 1.15(c)(5), MRPC.

SECOND COUNT

Craig Nordling Matter

7. On or about August 30, 2007, Craig Nordling and his wife discussed filing bankruptcy with respondent. On December 5, 2007, Nordling paid $600 of respondent's requested $2,000 retainer. The parties did not enter into a written retainer agreement and respondent did not deposit the fees into his trust account.

8. On December 21, 2007, Nordling delivered documents and a check for $1,700 (the balance of respondent's retainer fee plus a filing fee of $300) to respondent.

9. On February 15, 2008, Nordling met with Peter Kraker (respondent's son and associate). At this meeting, Nordling provided Peter with additional documents necessary to complete the bankruptcy petition. Peter indicated the petition would be filed the following week. By February 29, 2008, however, the petition had not been filed.

10. Nordling ultimately decided not to proceed with his bankruptcy due to his wife's pending personal injury lawsuit. Nordling, via certified letter on March 17, 2008, asked respondent to refund the filing fee and a portion of the retainer fee.

11. Nordling attempted to contact respondent from February 29, 2008, through April 1, 2008, to no avail. Nordling was also unable to reach Peter. Respondent was ill during February and March. Although respondent was ill, he was in the office periodically and admits that he neglected to respond to Nordling in a timely manner.

12. On April 23, 2008, in response to Nordling's complaint filed with the Director's Office on April 1, 2008, respondent refunded the filing fee and one-half of the retainer fee.

13. Respondent's neglect and non-communication violated Rules 1.3 and 1.4, MRPC. Respondent's failure to reduce the fee agreement to a writing signed by the client upon collecting an advance fee payment violated Rule 1.5(b), MRPC. Respondent's failure to deposit an advance fee payment into a client trust account violated Rule 1.15(c)(5), MRPC. Respondent's failure to promptly pay to the client as requested the funds in respondent's possession to which the client was entitled violated Rule 1.15(c)(4), MRPC.

THIRD COUNT

David Navarro Matter

14. In September or October 2006, David Navarro and his wife retained respondent for representation in a bankruptcy. Pursuant to a written retainer agreement, Navarro paid respondent's $1,800 retainer and $300 filing fee in advance.

15. Throughout the course of the representation, Navarro had extreme difficulty communicating with and getting information from respondent. On average, respondent took anywhere from several days to several weeks to respond to repeated voicemail messages from Navarro.

16. Respondent's delayed communication caused Navarro to have to go through credit counseling and certification twice at his own expense. Respondent promised to reimburse Navarro's costs for the additional expenses incurred due to respondent's delay, a total of $125. Navarro repeatedly asked respondent to make good on his promise and each time respondent indicated "the check is in the mail." However, it was not until July 18, 2008, in response to Navarro's complaint filed with the Director's Office on July 7, 2008, that respondent tendered a check for $125 to Navarro.

17. Respondent did not file Navarro's bankruptcy petition with the court until January 10, 2008, approximately 15 months (or more) after his retention.

18. On April 16, 2008, Navarro was granted a discharge from the bankruptcy court. In the weeks surrounding, and subsequent to, this period, Navarro called respondent repeatedly for status updates. Respondent did not respond until on or about May 9, 2008, several weeks after the court's discharge order.

19. Respondent had no further contact with Navarro after their telephone conversation on or about May 9, 2008, despite Navarro's attempts to contact him regarding the status of the bankruptcy and the $125 respondent promised.

20. Respondent's neglect and non-communication violated Rules 1.3 and 1.4, MRPC.

FOURTH COUNT

George Chamberlain Matter

21. Since September 2005, George Chamberlain has been a patient in the Minnesota Sex Offender Program.

22. On January 15, 2006, while residing in the St. Peter facility, Chamberlain wrote the judge in his case requesting that his current attorney, appointed by the HCCDP, be removed from the case.

23. On January 30, 2006, at the direction of the HCCDP, respondent met with Chamberlain. Shortly thereafter, respondent was appointed to represent Chamberlain by the HCCDP.

24. Chamberlain sent respondent letters on or about April 4, April 19, May 11, June 4 and August 20, 2006. Respondent did not respond to any of these letters.

25. On September 17, 18, and 19, 2006, a hearing was held to determine whether Chamberlain should be committed as a sexual psychopathic personality and as a sexually dangerous person for an indeterminate period of time. On December 18, 2006, the court issued an order committing Chamberlain as a sexual psychopathic personality and as a sexually dangerous person for an indeterminate period of time.

26. Shortly after the September 2006 hearing, Chamberlain was transferred from St. Peter to a facility in Moose Lake and placed in protective isolation. Between late September 2006 and January 2007, Chamberlain was not permitted to personally place telephone calls or send or receive mail.

27. On September 27, 2006, at Chamberlain's request, respondent received a telephone call from staff at Moose Lake advising respondent that Chamberlain was in protective isolation.

28. On October 4, 26 and 31, 2006, pursuant to Chamberlain's request, Moose Lake staff called respondent to inform him that Chamberlain was in protective isolation and that respondent should call or write to Chamberlain.

29. In December 2006, respondent received a letter from an inmate at the Lino Lakes facility negatively describing Chamberlain's living conditions while in protective isolation and asking respondent to get Chamberlain some help.

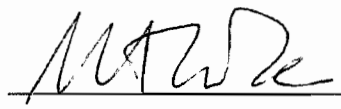
30. In mid-January 2007, Chamberlain remained in protective isolation, but the restrictions against making telephone calls and sending and receiving mail were lifted.

31. Respondent did not respond to any requests from staff at Moose Lake, the inmate who wrote to respondent in December 2006, or Chamberlain himself. Chamberlain gave up trying to contact respondent after January 2007.

32. Respondent's pattern of non-communication violated Rule 1.4, MRPC.

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: July 31, 2008.



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