FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against STANLEY J. LEINO, an Attorney at Law of the State of Minnesota.

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 December 17, 1996. Respondent currently practices law in Brooklyn Park, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

DeLong and Esaw Matters

A. Misappropriation.

1. Joanne DeLong and Gloria Esaw retained respondent to represent them in claims jointly asserted against their employer, the Holmberg Co., Inc.

2. On June 11, 1998, respondent and DeLong executed a Retainer Agreement, Contingency Agreement, and Agreement for Legal Representation. The Retainer Agreement provided, in part:

> 1. Client will pay to Stanley Leino the sum of $2,000 as a retainer for Stanley Leino's legal services and said sum will be

immediately deposited into the trust account of Leino and Associates as required by the Minnesota Rules of Professional Conduct.

* * *

3. Any bills beyond the aforementioned retainer will be billed at the standard rate for Leino and Associates of $85 per hour plus expenses **unless the client and Stanley Leino have executed a Contingency Agreement.**

(Emphasis supplied).

The Contingency Agreement provided, in part:

> I, Joanne DeLong, (hereinafter "Client") hereby agree as of the date below indicated, to pay to my attorney, Stanley Leino, one-third (33.33%) of all awards, settlements, claims, and/or damages that I collect as a result of my claims against Holmberg Co., Inc., as services for Stanley Leino's legal representation of me in these matters regardless of venue or jurisdiction of the claims.

3. On June 18, 1998, Gloria Esaw and respondent entered into a Retainer Agreement, Contingency Agreement, and Agreement for Legal Representation, all containing the same terms as the June 11, 1998, agreements entered into by respondent and DeLong.

4. Respondent told DeLong and Esaw that the retainers would be used exclusively for payment of the costs and expenses of litigation, that no attorneys' fees would be owed or payable unless and until there was a payment made on their claims against Holmberg Co., and that his fees would be paid from the proceeds of any recovery in accordance with the Contingency Agreement.

5. On June 11, 1998, DeLong delivered to Leino the $2,000 called for in the Retainer Agreement. On June 15, 1998, respondent deposited these funds into his personal account at Firstar Bank of Minnesota rather than depositing the funds into a client trust account as required by the Minnesota Rules of Professional Conduct (MRPC) and the terms of the Retainer Agreement.

6. On June 18, 1998, Esaw delivered to respondent the $2,000 retainer called for in the Retainer Agreement. That same day, respondent deposited the funds into his

personal account at Firstar Bank of Minnesota rather than depositing the funds into a client trust account as required by the MRPC and the terms of the Retainer Agreement.

7. By June 22, 1998, the balance in respondent's Firstar account fell below $4,000. Between June 22, 1998, and December 31, 1998, the balance in respondent's Firstar account was continuously below $4,000 and, at one point, fell to - $62.50.

8. Between June 22 and December 31, 1998, respondent paid out only $385.45 in costs associated with the DeLong and Esaw claims.

9. Respondent's deposit of the DeLong and Esaw retainers to his personal account and his failure to preserve those funds constitutes misappropriation.

10. Respondent's conduct in failing to deposit the DeLong and Esaw retainers in a trust account and in misappropriating those funds violated Rules 1.15(a) and (b)(4) and 8.4(c), MRPC.

SECOND COUNT

B. False Statements, Forgery and Submission of False Evidence.

11. DeLong and Esaw discharged respondent as their attorney and, on December 30, 1998, respondent received a Substitution of Attorney form notifying him that they had retained John Murrin as new counsel.

12. On January 8, 1999, Murrin wrote to respondent stating, in part:

> I understand that my clients have paid towards costs a certain amount of money. They have advised me that sum is $4,000. Would you please forward the balance of their trust account, $3,614.55 (according to your letter to them of September 9, 1998), directly to our trust account as soon as possible. If there is any problem with this, please advise me immediately.

13. On January 12, 1999, Murrin sent respondent a second letter stating, in part:

> On Friday, January 8, 1999, I sent a letter via facsimile regarding the trust account money you have for my clients. Enclosed please find authorizations from Joanne DeLong and Gloria Esaw giving you

permission to transfer $3,614.55 or the balance in their trust account money to our firm.

14. On January 12, 1999, respondent sent a letter to Murrin stating, in part:

> I received a puzzling facsimile from you on January 8, 1999. In your facsimile, you assert that your clients have a trust account with me and have a balance remaining in that alleged account. You seem to base this assertion on an accounting that I provided to your clients on September 9, 1998, but yet you make no mention of my agreements executed with your clients on June 23, 1998, nor my accountings provided to them on October 9, 1998, November 9, 1998, and December 9, 1998.
>
> Firstly, your clients never had a trust account established with me. While your clients did pay me $4,000 and we originally intended to establish a trust account for those sums, pursuant to my agreement executed with them on June 23, 1998, those sums were paid to me pursuant to a non-refundable retainer agreement as required by Opinion 15 of the Minnesota Lawyers Professional Responsibility Board.

15. On January 14, 1999, Murrin wrote to respondent stating, in part:

> I have had an opportunity to discuss this matter with my clients and they are both adamant about their recollection that the money paid was to be used for costs and was not to be used for your fees. You have given an accounting showing that as well, dated September 9, 1998. You do refer to some executed agreements on June 23, 1998 and accountings on October 9, November 9 and December 9, 1998. We have not received copies of these and we would appreciate your supplying copies of these along with the other documents you have for us to be picked up.

16. On January 15, 1999, a representative of Murrin's office picked up from respondent what respondent purported to be all documents from the DeLong and Esaw files. Included in the documents was a photocopy of the purported June 23, 1998, Availability or Nonrefundable Retainer Agreement, and the statements dated October 9, 1998, November 9, 1998, and December 9, 1998, which respondent stated he had sent to DeLong and Esaw.

17. On February 5, 1999, respondent mailed his written response to DeLong's complaint against him to the DEC investigator, Thomas Malone. Included with the response, identified by the respondent as "Exhibit G," was a second version of the

purported Availability or Nonrefundable Retainer Agreement. This version differed from Exhibit 12 in that it contained what purported to be the signatures of DeLong, Esaw, and respondent written in blue ink.

18. DeLong and Esaw never signed any version of the purported June 23, 1998, Availability or Nonrefundable Retainer Agreement. Instead, respondent created the purported agreements after the fact, backdated them, forged the signatures of DeLong and Esaw, and submitted them as evidence in the disciplinary investigation.

19. Attached to his February 5 response, identified by respondent as "Exhibits H - K," were copies of monthly statements he alleged had been sent to DeLong and Esaw on or about September 9, October 9, November 9, and December 9, 1998.

20. DeLong and Esaw both received from respondent a copy of the September 9, 1998, statement on or about September 9, 1998.

21. Neither DeLong nor Esaw ever received from respondent the statements dated October 9, November 9, and December 9, 1998. Instead, respondent created the purported statements after the fact, backdated them, and submitted them as evidence in the disciplinary investigation.

22. Respondent, in his responses to the complaints of Gloria Esaw and Joanne DeLong and in a sworn statement taken on May 12, 1999, made numerous false statements regarding the nature of the retainer agreements, his handling of the retainers delivered to him, the circumstances surrounding the execution of the purported Availability or Nonrefundable Retainer Agreement, and the circumstances surrounding the preparation and sending of the monthly statements.

23. Respondent's false statements include, but are not limited to, the following:

i. In the response to the complaint of Gloria Esaw respondent stated:

> From the moment that I received the check from Ms. DeLong until June 15, 1998, when Ms. DeLong agreed to convert our agreements into a Non-Refundable Retainer Agreement, I never touched these funds and the full amount would have been available for return to Ms. DeLong until July 21, 1998, in the unlikely event the Non-Refundable Retainer Agreement had been determined to be nonbinding.
>
> On June 19, 1998, I deposited the check issued by Ms. Esaw for $2,000 into my account. I did this based on the same reasons that I deposited Ms. DeLong's check. However, I also based my depositing of Ms. Esaw's check on the fact that in our telephone conversation of June 16, 1998, and meeting on June 18, 1998, Ms. Esaw agreed to proceed with a Non-Refundable Retainer Agreement. From the moment that I received Ms. Esaw's check on June 18, 1998, until June 23, 1998, when she signed the Non-Refundable Retainer Agreement, I never touched Ms. Esaw's funds and the full amount would have been available for return to Ms. Esaw until September 17, 1998.

In fact, as noted above, there never was an agreement to convert the retainers into nonrefundable retainers and respondent did not have sufficient funds in his account to refund the retainers at any time after June 22, 1998.

ii. In respondent's response to the DeLong complaint respondent falsely stated:

> During that same afternoon [June 15, 1998], I contacted Complainant at work by telephone . . . I then gave Complainant the option of (1) having her money returned and finding a new attorney or (2) paying the money to me as a Non-Refundable Fee Agreement with the understanding that I provide monthly reports to her on how much money was being spent on her case. Complainant said that she felt confident in my representation of her and had no desire to terminate our attorney-client relationship.
>
> On June 18, 1998, Co-Plaintiffs met in my office. Prior to tendering her check to me for $2,000.00, I informed Co-Plaintiff and Complainant that the ethical rules regarding Advance Fee Payments were extremely precise, so I asked them for more time to

> prepare the exact Non-Refundable Retainer Agreement. Co-Plaintiffs consented to my request.
>
> I called both Co-Plaintiffs on June 20, 1998 and requested that they meet with me on June 23, 1998 to execute the Non-Refundable Retainer Agreement . . . . Complainant and Co-Plaintiff signed the document on June 23, 1998.
>
> On September 9, October 9, November 9 and December 9, 1998, I provided expense reports to both Co-Plaintiffs to show how much money as well as time was being spent on their claims. I delivered the first report at a joint meeting with Co-Plaintiffs and the subsequent reports were mailed to Co-Plaintiffs.

In fact, respondent did not have a telephone discussion with DeLong on June 15, 1998, there was no agreement to convert the retainers to nonrefundable retainers, Esaw and DeLong did not execute the June 23, 1998, Availability or Nonrefundable Retainer Agreement, respondent forged Esaw and DeLong's signatures on the agreement, and respondent never provided DeLong and Esaw with copies of the October 9 through December 9, 1998, statements.

iii. At his May 12, 1999, sworn statement respondent falsely stated:

> Q. Okay. Did you yourself put the signatures of Joanne DeLong and Gloria Esaw on this document [June 23, 1998, Availability or Nonrefundable Retainer Agreement]?
>
> A. No.
>
> Q. Did you direct anyone other than Joanne DeLong and Gloria Esaw to put their signatures, or what purports to be their signatures, on this document?
>
> A. No.
>
> Q. Okay. Now, you realized that on June 15, since you couldn't open a trust account, that you had to change the nature of the retainer that Ms. DeLong had paid, is that right?
>
> A. Yes.

Q. Okay. Did you discuss that with Ms. DeLong?

A. Yes.

Q. When?

A. I believe it was that same day. Um, I had two conversations with her during that same period. One was on June 15th and one was on June 18th. Without looking at my notes I believe - - I believe it was on the 15th that I called her at work and told her of the difficulty in opening the trust account.

Q. Are you absolutely certain of that?

A. Of what part?

Q. That you called her at work and told her of the difficulty in opening a trust account?

A. Yes.

In fact, respondent either forged or directed someone else to forge the DeLong and Esaw signatures and respondent did not have any telephone discussion with DeLong on June 15 in which they agreed to change the nature of the retainer.

24. Respondent's conduct in making false statements regarding the nature of the DeLong and Esaw retainers, in fabricating documents and forging signatures on those documents, and in submitting the fabricated documents as evidence in the disciplinary investigation violated Rules 3.3(a)(4), 3.3(b), 4.1, 8.1(a)(1), and 8.4(c) and (d), MRPC.

THIRD COUNT

C. Improper Disclosure of Client Confidences and Secrets.

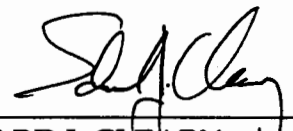
25. On January 4, 1999, respondent forwarded to the attorney for the Holmberg Co. an affidavit for her use in a motion to compel discovery scheduled for January 7, 1999.

26. The affidavit submitted by respondent improperly revealed client confidences and secrets and worked to the disadvantage of DeLong and Esaw. The affidavit set forth conversations between respondent and Esaw, legal advice given to Esaw and DeLong, and stated respondent's opinion that Esaw had lied to him regarding the need to reschedule the depositions.

27. Respondent's conduct in improperly disclosing client confidences and secrets to the disadvantage of his former clients violated Rule 1.6(a) and 1.8(b), 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: October 4, 1999.



EDWARD J. CLEARY
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 17267
25 Constitution Avenue, Suite 105
St. Paul, MN 55155-1500
(651) 296-3952

and

PATRICK R. BURNS
SENIOR ASSISTANT DIRECTOR
Attorney No. 134004