

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against DENNIS R. LETOURNEAU,  
a Minnesota Attorney,  
Registration No. 62443.  
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**PETITION FOR  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

Upon the approval of a Lawyers Professional Responsibility Board Panel Chair, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rules 10(d) and 12(a), Rules on Lawyers Professional Responsibility (RLPR). 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 St. Louis Park, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

A. On February 20, 2001, respondent was issued an admonition for providing financial assistance to a client, failing to cooperate with the Director's investigation and practicing law while suspended for nonpayment of the attorney registration fee in violation of Rules 1.8(e) and 8.1(a)(3), Minnesota Rules of Professional Conduct (MRPC), and Rule 25, RLPR.

B. On April 21, 2003, respondent was placed on probation for making a loan to a client and failing to cooperate with the Director's investigation in violation of Rules 1.8 and 8.1(a)(3), MRPC, and Rule 25, RLPR.

C. On April 13, 2006, the Supreme Court publicly reprimanded respondent for neglect of a client matter and failing to keep his client informed about her matter in violation of Rules 1.3 and 1.4, MRPC, and placed respondent on one year of supervised probation.

#### FIRST COUNT

1. On December 28, 1998, Carol Ennenga picked up a prescription for her husband, Frederick Ennenga, from a pharmacy operated by Kmart Pharmacies of Minnesota, Inc. (Kmart Pharmacy). Unbeknownst to the Ennengas, Kmart Pharmacy had dispensed a blood thinner instead of the blood pressure medication prescribed by Frederick's doctor. Frederick consumed the blood thinner until February 6, 1999, when he was taken by ambulance after collapsing at home. It was determined that Frederick had suffered from an aneurysm as a result of the improperly-filled prescription.

2. In February 1999, the Ennengas retained respondent for representation in a malpractice claim arising out of the improper filling of Frederick's prescription.

3. On January 22, 2002, Kmart Corporation (Kmart) and certain affiliated debtors, including Kmart Pharmacy, filed for bankruptcy relief under Chapter 11 of the United States Bankruptcy Code. On March 26, 2002, the Bankruptcy Court entered an order establishing July 31, 2002, as the deadline by which all persons asserting claims against Kmart, must file proof of claims with the Bankruptcy Court.

4. On or about February 6, 2003, respondent served summonses and complaints on behalf of the Ennengas upon Kmart Pharmacy, Heidi Scheppmann, the Kmart Pharmacy technician who allegedly mis-filled Ennenga's prescription, and Mary Geronime, a pharmacy technician on duty at the Kmart Pharmacy.<sup>1</sup> Respondent did not serve a summons and complaint on Elizabeth Geer, a pharmacist employed at the Kmart Pharmacy and a named defendant in the suit, until February 9, 2005.

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<sup>1</sup> Respondent, in the summons and complaint, alleged that Mary Geronime was a licensed pharmacist rather than a pharmacy technician.

5. The action commenced by respondent by service of the summonses and complaints (the state court litigation) was venued in Hennepin County District Court.

6. In a February 14, 2003, letter acknowledging receipt of the Ennengas' summons and complaint in the state court litigation, a representative of Kmart advised respondent that since Kmart had filed a petition for bankruptcy on January 22, 2002, all attempts to collect a debt arising prior to the petition date were automatically stayed pursuant to the Bankruptcy Code; that Ennenga's commencement of the state court litigation violated the automatic stay; and that the bar date to submit a proof of claim was July 31, 2002. On that same date, Kmart informed the Hennepin County District Court that pursuant to Section 362 of the Bankruptcy Code, commencement of civil process was prohibited as a result of the January 22, 2002, bankruptcy filing.

7. On May 1, 2003, respondent filed a proof of claim with the Bankruptcy Court on behalf of the Ennengas in the Kmart bankruptcy proceeding. As noted above, proof of claims in the Kmart bankruptcy were to have been filed no later than July 31, 2002.

8. Respondent failed to explain to the Ennengas the implications and effect of the Kmart bankruptcy on their malpractice claim.

9. After commencement of the state court litigation, Steven J. Kirsch was retained to, at least initially, represent only Heidi Scheppmann and Mary Geronime in that litigation. Kirsch wrote to respondent on several occasions asking that the lawsuit be voluntarily dismissed. Kirsch told respondent that he based his request for dismissal on the following facts:

a. That the Kmart bankruptcy proceedings and the automatic stay barred respondent from seeking relief in state court proceedings;

b. That Elizabeth Geer had not yet been served with the summons and complaint and that the statute of limitations had expired as to any claim that might be asserted against her;

c. That Heidi Scheppmann could not be liable for any injury to Mr. Ennenga because she did not begin working for Kmart until after the prescription in question had been filled; and

d. That Mary Geronime was not a pharmacist and, thus, could not be liable for the improper filling of the prescription.

10. Respondent did not inform the Ennengas of Kirsch's request that the Ennengas dismiss their lawsuit or explain to them the reasons asserted by Kirsch that the suit should be dismissed.

11. On February 2, 2004, Kmart filed a twenty-first omnibus objection with the Bankruptcy Court seeking relief from claims made against it in the bankruptcy proceeding. The Ennengas' claim was specifically identified in the exhibits attached thereto. The Ennengas, along with all claimants wishing to respond to Kmart's twenty-first omnibus objection, were required to serve a response by March 8, 2004.

12. On March 5, 2004, respondent filed a written response to Kmart's twenty-first omnibus objection on behalf of the Ennengas with the Bankruptcy Court requesting:

- a. That the objection of Kmart to the Ennengas' claim be dismissed;
- b. That the court issue an order approving the filing of the Ennengas' claims; and
- c. That the court order Kmart to participate in alternative dispute resolution procedures previously established by the court for dealing with claims against Kmart.

Respondent also notified the court in his response that if alternative dispute resolution was not successful, the Ennengas would then request relief from the stay to permit the state court litigation to proceed.

13. Respondent did not tell the Ennengas about Kmart's objection to their claim in the bankruptcy proceeding or his response to that objection.

14. On April 1, 2004, the Bankruptcy Court granted Kmart's twenty-first omnibus objection. The Ennengas' claim was specifically identified in exhibits attached to the order as "disallowed," but consideration of Kmart's motion was continued with respect to such claim thereby placing the burden on respondent to submit a motion in the Bankruptcy Court to lift the stay.

15. Respondent did not inform the Ennengas of either Kmart's twenty-first omnibus objection or the Bankruptcy Court's April 1 order. Respondent did not explain to the Ennengas the effect of the bankruptcy proceedings on the state court action.

16. Respondent did not, during his representation of the Ennengas, submit the Ennengas' claim to alternative dispute resolution in the Kmart bankruptcy proceeding or request that the Bankruptcy Court lift the stay.

17. On September 14, 2004, the district court in the state court litigation referred the matter for mediation; set the matter for trial the week of July 18, 2005; and ordered that, among other things, the parties complete discovery in full on or before March 1, 2005.

18. On September 23, 2004, respondent was served with Kmart's interrogatories and requests for production of documents in the state court litigation. Respondent did not forward Kmart's discovery requests to the Ennengas to review and prepare their responses until October 27, 2004.

19. On October 11, 2004, the district court held a telephone conference in the state court litigation. At that conference respondent agreed to execute a stipulation of dismissal with regard to Elizabeth Geer and to amend the caption. Respondent did not, prior to or after that telephone conference, discuss dismissing Elizabeth Geer from the lawsuit with the Ennengas. Respondent did not execute the stipulation of dismissal.

20. On October 28, 2004, the district court in the state court litigation matter held a second telephone conference with the parties to discuss the status of respondent's efforts to lift the stay in the bankruptcy court matter. Respondent agreed to (1) contact the district court by December 1, 2004, with the date of respondent's

motion to the Bankruptcy Court to lift the stay and an indication of how long it would take the Bankruptcy Court to issue its decision on that motion and (2) to execute and file a stipulation of partial dismissal regarding Elizabeth Geer.

21. Respondent, again, did not inform the Ennengas of his agreement to execute the stipulation for partial dismissal regarding Elizabeth Geer.

22. On October 29, 2004, respondent was sent a stipulation for partial dismissal and to amend caption for his signature. Respondent did not, as he had previously agreed, execute the stipulation of partial dismissal and continued to fail to inform the Ennengas of Kmart's continuing request for an executed stipulation of partial dismissal.

23. In its September 14, 2004, scheduling order, the court in the state court litigation matter referred the parties to mediation, designating Creative Dispute Litigation (CDR) as the mediator should the parties fail to select a different mediator. The court ordered mediation to be completed by June 15, 2005.

24. On October 13, 2004, CDR sent the parties a strike list for their indication of proposed mediators to whom they might object.

25. On November 16, 2004, respondent agreed to provide his strike list and pay the administrative fee to CDR so they could proceed with selection of a neutral and scheduling a mediation hearing. Respondent did not do so.

26. By letter dated November 26, 2004, Cheryl Hanson, an attorney for the defendants in the state court litigation, wrote to respondent reminding him that the Ennengas' responses to Kmart's discovery requests were a month overdue and asking when he anticipated providing those responses.

27. On November 29, 2004, Hanson again wrote to respondent asking respondent for a status report concerning his execution and filing of the stipulation for dismissal.

28. On December 10, 2004, Hanson informed respondent that unless she received the Ennengas' responses to Kmart's September 23, 2004, interrogatories and

requests for production by December 31, 2004, she would bring a motion to compel. Hanson also asked respondent for a status update regarding his efforts to have the bankruptcy stay lifted and that respondent execute the stipulation for partial dismissal and to amend caption.

29. On December 22, 2004, Hanson wrote to respondent restating her December 10 requests, requesting respondent respond immediately and advising that if she did not receive a response, Hanson would seek relief from the district court.

30. In a December 23, 2004, voicemail left with Hanson, respondent agreed to provide by December 31, 2004, the executed stipulation for partial dismissal and to amend caption; the Ennengas' responses to discovery requests; and a status update regarding the bankruptcy proceeding and having the stay lifted. Hanson confirmed respondent's voicemail by letter dated December 28, 2004. Prior to leaving the voicemail, respondent had not yet discussed with the Ennengas the agreement to dismiss Elizabeth Geer from the lawsuit.

31. When respondent did not provide the requested documents and information by December 31, 2004, Hanson called respondent on January 5, 2005. Respondent told Hanson that he would provide the executed stipulation, the Ennengas' response to Kmart's discovery requests and a status report regarding lifting the bankruptcy stay by January 7, 2005.

32. By letter dated January 6, 2005, CDR reminded respondent of his November 16 agreement to provide the strike list and pay CDR's administrative fee to enable CDR to schedule the matter with an appropriate neutral.

33. In a January 19, 2005, letter to respondent, Hanson informed respondent that, despite his numerous confirmations, respondent had failed to provide the executed stipulation for partial dismissal, the Ennengas' discovery responses, and a status update on the bankruptcy proceeding and having the stay lifted as he agreed on October 28, 2004; therefore, Hanson would request a telephone conference with the district court.

34. On January 19, 2005, Hanson also wrote to the district court informing it of respondent's failure to execute the stipulation for dismissal and provide an update on the bankruptcy matter and that, due to prejudice from respondent's failure to provide the Ennengas' discovery responses, Kmart was unable to disclose their expert witnesses and opinions by February 15, 2005, as required by the September 14, 2004, scheduling order. Hanson asked the district court to schedule a telephone conference to discuss (1) amendment of the scheduling order regarding disclosure of expert witnesses and opinions by April 15; (2) respondent's update regarding the bankruptcy proceeding and having the stay lifted; and (3) respondent's failure to serve the Ennengas' responses to Kmart's discovery requests and to execute and file the executed stipulation for partial dismissal and to amend caption.

35. On January 19, 2005, respondent served on Hanson the Ennengas' answers to defendants' interrogatories and responses to defendants' request for production of documents.

36. On March 15, 2005, the district court held a status conference and issued an amended scheduling order which required, among other things, that discovery shall be completed in full on or before May 1, 2005, and scheduled the matter for trial the week of July 18, 2005.

37. On March 18, 2005, Hanson confirmed respondent's request to take the depositions of the Kmart employees, requested respondent propose some dates and formally requested respondent supplement prior discovery responses. On that same date, Hanson also served Kmart's second set of interrogatories and requests for production upon respondent.

38. On April 25, 2005, at approximately 7:00 p.m., respondent served upon Hanson by facsimile, the Ennengas' interrogatories and demand for production of documents. Also served were notices of taking deposition of the three Kmart employees and a Kmart corporate designee, all scheduled for April 27, 2005.

39. On April 26, 2005, Hanson wrote to respondent noting that the Ennengas' responses to Kmart's March 18 discovery requests were overdue and asking respondent to provide responses immediately. In a second letter sent April 26, Hanson informed respondent that the depositions of her clients would not go forward on April 27 due to lack of reasonable notice. Further, Hanson noted that respondent's April 25, 2005, service of interrogatories and requests for production on Kmart was untimely since pursuant to the district court's amended scheduling order requiring discovery be completed on or before May 1, 2005, and, in light of the provisions of Minnesota Rules of Civil Procedure (MRCP), Rules 33.01 and 34.02, giving parties 30 days after service of discovery requests to serve responses, respondent's discovery requests needed to have been served by April 1, 2005.

40. On April 26, 2005, Hanson requested the district court schedule another telephone conference to determine that one day's notice for depositions of the defendant employees' and the Kmart corporate designee was unreasonable.

41. In separate letters dated April 27, 2005, to Hanson and the district court, respondent replied to Hanson's April 26 letter and explained that he when he called Hanson on Friday, April 22, 2005, to arrange convenient times for her clients' depositions, he was told she was available any day the following week, but when respondent did not hear back from Hanson by Monday, April 25, he faxed the notices of taking deposition on Monday evening. In the absence of any information from Hanson regarding her clients' availability, respondent rescheduled the depositions for Friday, April 29, 2005.

42. On April 29, 2005, the district court held a telephone conference and issued an order on discovery issues which required, among other things, that the depositions of defendants Elizabeth Geer, Heidi Scheppmann and Mary Geronime be taken May 18-20, 2005, that the Ennengas' outstanding discovery was due by 4:00 p.m. on May 2, 2005, and scheduled a hearing on Kmart's motions to dismiss and for summary judgment on June 9, 2005.

43. Respondent did not inform the Ennengas of or discuss with them the terms of the April 29, 2005, order.

44. By letter dated May 3, 2005, Hanson informed respondent that she had not received the Ennengas' responses to Kmart's supplemental discovery requests which under the district court's April 29 order, were due by 4:00 p.m. on May 2, 2005. Hanson also confirmed the rescheduling of depositions of the Kmart Pharmacy employees on May 18 and 19, 2005.

45. Hanson received the Ennengas' discovery responses on May 4, 2005.

46. On May 12, 2005, Hanson filed a notice of motion and motion for summary judgment on behalf of the Kmart pharmacy employees based on the facts that Mary Geronime could not be held liable because she was not a pharmacist; that Heidi Scheppmann was not liable because she was not employed by Kmart on December 28, 1998; and that Elizabeth Geer could not be held liable because respondent failed to timely serve Elizabeth Geer with the summons and complaint.

47. On May 12, 2005, Hanson also filed on behalf of Kmart and Kmart Pharmacy, a notice of motion and motion to dismiss based on the facts that Kmart's January 22, 2002, bankruptcy filing stayed all judicial proceedings unless leave of the bankruptcy court was obtained; that the stay operated to preclude respondent from going forward with the district court case against Kmart; that Kmart's bankruptcy case remained pending in the Northern District of Illinois; and that respondent had not sought relief from the Bankruptcy Court to be relieved of the stay. The date of the hearing on Kmart's motions was June 9, 2005.

48. Respondent did not inform the Ennengas of Kmart's motions for dismissal and summary judgment, provide the Ennengas with copies of the motion paperwork or invite the Ennengas to attend the June 9 hearing.

49. On June 1, 2005, respondent obtained Carol Ennenga's signature on an affidavit later used to support the Ennengas' memorandum in opposition to Kmart's motions to dismiss and for summary judgment. In meeting with Carol Ennenga to

review and sign her affidavit, respondent did not inform her of Kmart's upcoming motions for summary judgment and dismissal or explain to her the meaning and effect of the motions.

50. By agreement of the parties, respondent had until June 2, 2005, to file the Ennengas' response to the motions, but respondent did not fax-file the Ennengas' memorandum in opposition to Kmart's motions to dismiss and for summary judgment with the district court until after 5:00 p.m. on June 8, 2005. Respondent did not include with his fax-filing the exhibits supporting the Ennengas' response to the motions and did not file his original exhibits with the court prior to the June 9 hearing.

51. On June 9, 2005, the district court held a hearing on Kmart's motions, but declined to hear oral argument from respondent due to respondent's noncompliance with Rule 56.06, MRCP, and Rule 115.03, Minnesota Rules of General Practice (as modified by the agreement between the parties), and respondent's noncompliance with the court's prior orders. The court took Kmart's motions under advisement and did not rule on them that day.

52. On June 15, 2005, respondent informed the Ennengas that Kmart would take their depositions on June 27, 2005, and he would meet with them the week prior to review the facts and prepare. Respondent met with the Ennengas on one occasion at his office to prepare for their depositions.

53. On June 27, 2005, counsel for Kmart took deposition testimony from Frederick and Carol Ennenga. Respondent did not, either before or after the taking of the Ennengas' depositions, inform the Ennengas of Kmart's motions for dismissal and summary judgment or explain the significance of Kmart's motions.

54. On June 28, 2005, the district court granted Kmart's motions and dismissed the Ennengas' claims against Kmart and the Kmart Pharmacy employees. In its order the court noted that, in addition to the late filing of the response to the motions for summary judgment, "Plaintiffs' counsel has not abided by other scheduling order deadlines in this case, and has served discovery late and has not completed discovery

by the discovery cut-off deadline.” The court also granted the defendants’ motion for attorneys’ fees and gave defendants until July 11, 2005, to file an affidavit regarding fees incurred.

55. Respondent did not notify the Ennengas of the court’s June 28, 2005, order dismissing their state court litigation and awarding attorneys’ fees or explain the effect of that order on their claim against Kmart in a manner reasonably necessary to permit them to make informed decisions regarding the representation.

56. On August 22, 2005, the district court awarded the defendants in the state court litigation \$600 in attorney fees based on the additional work by the defendants’ attorneys due to respondent’s untimely filing of the Ennengas’ opposition papers.

57. Without consulting the Ennengas, respondent agreed to waive the Ennengas’ right to appeal the June 28, 2005, order if Kmart declined to collect the \$600 in attorney fees awarded.

58. Thereafter, respondent did no further work on the Ennengas’ matter.

59. Respondent’s failure to timely serve Elizabeth Geer with the summons and complaint in the state court litigation within the statute of limitations violated Rules 1.1 and 1.3, MRPC.

60. Respondent’s failure to adequately explain to his clients the effect of Kmart’s bankruptcy on the state court litigation, the defendants’ motions for dismissal and summary judgment, the district court’s dismissal of their lawsuit, and his clients’ appeal rights violated Rule 1.4(b), MRPC, as that rule read prior to October 1, 2005.

61. Respondent’s failure to consult with his clients prior to agreeing to dismiss Elizabeth Geer from the state court litigation and agreeing to waive their right to appeal the June 8, 2005, order in exchange for forgiveness of the attorneys’ fees awarded violated Rules 1.2(a) and 1.4(a) and (b), MRPC, as those rules read prior to October 1, 2005.

62. Respondent’s failure in the state court litigation to timely respond to discovery requests, complete arrangements for mediation, either abide by or repudiate

his agreement to dismiss Elizabeth Geer as a defendant, and to timely file responsive pleadings to the motions for summary judgment and dismissal violated Rules 1.1, 3.2, 3.4(c), and 8.4(d), MRPC.

63. Respondent's failure in the state court litigation to inform his clients of the defendants' motions for dismissal and for summary judgment, the hearing on those motions, the district court's dismissal of their lawsuit, the award of attorneys' fees against them, and respondent's agreement to waive their appeal rights in exchange for forgiving the \$600 attorneys' fees award violated Rule 1.4(a) and (b), MRPC, as that rule read prior to October 1, 2005, and Rule 1.4(a)(3) and (b), MRPC, as that rule read after October 1, 2005.

64. Respondent's failure to either pursue alternative dispute resolution proceedings in the Kmart bankruptcy matter or to move the bankruptcy court for relief of the automatic stay violated Rules 1.1, 1.3, and 3.2, MRPC.

#### SECOND COUNT

65. On September 10, 2008, the Director mailed a notice of investigation regarding the Ennenga matter to respondent and requested respondent provide his written response within 14 days. Respondent failed to timely respond.

66. By letter dated September 29, 2008, the Director noted that respondent had not responded to the notice of investigation, reminded respondent of his obligation under Rule 8.1(b), MRPC, and Rule 25, RLPR, to respond and requested that respondent provide his complete response within one week.

67. On October 9, 2008, respondent explained that his legal assistant, who had been ill and out of the office, would be back the next day, that the Ennengas had sued him, and that he was concerned that information he provided to the Director could be used against him by the Ennengas in that lawsuit. The Director informed respondent that he would, for the present, not provide the Ennengas with any information which respondent identified as privileged. Respondent agreed to provide his response and a copy of the Ennenga file by October 13, 2008.

68. On October 13, 2008, respondent called and left a message that he would drop off his response the next day, but instead respondent called the Director on October 14, 2008, inquiring if he could meet with the Director to review the Ennenga file in person. The Director agreed to meet, but only after having a chance to review respondent's written response. Respondent agreed to provide his response to the Director on October 15 and the copy of the file on October 16, 2008. Respondent did not provide either his written response or the copy of the Ennenga file as agreed.

69. By letter sent by U.S. mail and facsimile on October 20, 2008, the Director reminded respondent that his failure to cooperate may constitute a separate violation pursuant to Rule 8.1(b), MRPC, and Rule 25, RLPR, and requested respondent provide his response to the Ennenga complaint and a copy of his entire file regarding the Ennenga matter no later than October 24, 2008.

70. On October 23, 2008, respondent informed the Director that he would like until October 27 to provide his response and a copy of the Ennenga file because he had been in trial all week, his aunt died and his father was in the hospital.

71. On October 27, 2008, respondent told the Director that his response was prepared, but he was unable to deliver it that day. The Director asked respondent to mail his response. The Director received respondent's response along with a copy of his Ennenga client file on October 29, 2008.

72. On October 30, 2008, the Director wrote to respondent asking respondent provide some additional documents and to further explain several issues regarding the Ennenga matter within two weeks. Respondent did not provide the additional documents and information as requested.

73. On November 25, 2008, the Director wrote to respondent noting that his response to the October 30 letter was overdue, reminding him that his failure to respond to the Director may constitute a separate violation pursuant to Rule 8.1(b), MRPC, and Rule 25, RLPR, and requesting respondent to provide his complete response within one week or by December 2, 2008.

74. On December 2, 2008, respondent called concerned that information produced to the Director in his discipline matter might later be used in the Ennengas' pending civil litigation. The Director informed respondent that he would not share information respondent identified as privileged with the Ennengas, but did need respondent's response to the October 30 letter. Respondent agreed to provide his response by the end of the week (December 5).

75. On December 5, 2008, respondent informed the Director that his legal assistant had been out all week and he was unable to get his response out until Monday, December 8.

76. On December 11, 2008, respondent called the Director's Office and stated that his mother had been seriously ill, but he would provide his response to the Director's October 30 letter by fax and U.S. mail on December 15. Respondent failed to provide a response by that date.

77. On December 30, 2008, the Director wrote to respondent reminding him of his responsibilities under Rule 8.1(b), MRPC, and Rule 25, RLPR, and requesting his immediate response to the Director's October 30 letter.

78. On January 7, 2009, respondent informed the Director that the Ennengas' civil action against him had been dismissed and he would have his response to the October 30 letter to the Director by January 14. The Director informed respondent that if he failed to mail his response by January 14, the Director would charge respondent with non-cooperation. Respondent faxed his response to the Director's October 30 letter on January 16, 2009.

79. During a February 25, 2009, meeting with the Director, respondent agreed to provide within three weeks (by March 18) copies of his retainer agreement with the Ennengas, his 2005 calendar, his telephone records for June 2005 through December 2008 and any other documents or information evidencing his communications with the Ennengas regarding the summary judgment motion, the June 9, 2005, hearing, the

June 28, 2005, order dismissing the Ennengas' state court action and his efforts on the Ennengas' behalf after June 28, 2005.

80. On March 25, 2009, respondent called the Director stating he was still gathering information which he would mail to the Director by Friday, March 27. Respondent did not mail anything to the Director on that date.

81. By letter dated April 6, 2009, the Director noted that respondent had not produced the information which respondent agreed to locate and provide during the February 25 meeting; provided respondent with a copy of the Director's March 2, 2009, letter confirming the information requested; reminded respondent that his failure to provide the requested information may, itself, constitute a separate disciplinary violation pursuant to Rule 8.1, MRPC, and Rule 25, RLPR; and requested that respondent provide the requested information within one week.

82. On April 13, 2009, respondent called the Director stating he would mail his response on April 14. Respondent failed to do so.

83. On May 14, 2009, respondent called the Director stating he was currently in trial in federal court through Monday, May 18, that his computer had "crashed," and that he would call the Director the next Tuesday about when he could respond to the Director's March 2 letter.

84. On May 20, 2009, respondent stated he would provide the documents and information requested during the February 25 meeting by May 29. Respondent did not do so.

85. Despite the Director's repeated reminders and requests, respondent has, to date, failed to provide any of the documents and information he agreed to provide during his February 25, 2009, meeting with the Director.

86. Respondent's failure to cooperate with the Director's investigation of the Ennenga complaint violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent or imposing otherwise 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: September 22, 2009.

  
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MARTIN A. COLE  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY  
Attorney No. 148416  
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and

  
\_\_\_\_\_  
PATRICK R. BURNS  
FIRST ASSISTANT DIRECTOR  
Attorney No. 134004

This petition is approved for filing pursuant to Rules 10(d) and 12(a), RLPR, by the undersigned Panel Chair.

Dated: September 17, 2009.

  
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LYNN J. HUMMEL  
PANEL CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD