

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against LOUIS B. OBERHAUSER, JR.,
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 May 16, 1961. Respondent currently practices law in Wayzata, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

1. Respondent's history of prior discipline is as follows:
 - a. Respondent received an admonition on June 22, 1988, for failing to promptly transfer his clients' file to their new attorney, in violation of Rules 1.15(b)(4) and 1.16(d), Minnesota Rules of Professional Conduct (MRPC), and Opinion 11 of the Lawyers Professional Responsibility Board.
 - b. Respondent was placed on a two-year private probation on August 11, 1988, for neglecting client matters and failing to keep his clients informed of the status of those matters, in violation of Rules 1.3 and 1.4, MRPC.

c. Respondent received a public reprimand from the Minnesota Supreme Court on December 2, 1993, for obtaining payment for release of an invalid lien that respondent had placed on his client's homestead. *In re Oberhauser*, 508 N.W.2d 521 (Minn. 1993).

d. Respondent received an admonition on March 2, 1995, for failing to respond to multiple discovery requests in a title registration proceeding, failing to communicate with the client, and failing to return an abstract to the client for six months, in violation of Rules 1.1, 1.3, 1.4(a) and 1.15(b)(4), MRPC.

FIRST COUNT

A. Misrepresentation

2. Respondent timely filed his 1991 state tax return on October 15, 1992, pursuant to a valid extension. Based on respondent's statement in his return that he paid estimated taxes during 1991 of \$4,213 and had no taxable income, respondent received a refund of the money from the Minnesota Department of Revenue (MDR).

3. MDR audited respondent's 1991 tax return in 1994 and determined that, although respondent's 1990 refund of \$213 was properly applied toward respondent's 1991 tax liability, respondent did not make any estimated tax payments for 1991. Therefore, respondent was not entitled to \$4,000 of the refund he received.

4. MDR made numerous requests for respondent to repay his improperly received refund. Respondent claimed he had submitted the payments but failed to provide copies of the canceled checks to support his claims. MDR sent respondent a written request on September 15, 1994, for proof of the tax payments and a final bill and demand for payment on December 27, 1994. Respondent failed to supply the information or payment. In April 1995, MDR placed a lien on respondent's bank account and MDR obtained part of the funds directly from respondent's bank in May 1995 and the remainder from respondent in July 1995.

5. Respondent's conduct in misrepresenting his 1991 estimated tax payments to the State of Minnesota violated Rule 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

B. Failure to Timely File State Tax Returns

6. Respondent did not timely file state tax returns for tax years 1992, 1993 and 1994, although required by law to do so.

a. Respondent did not file his 1992 tax returns, due on April 15, 1993, until September 7, 1995. Respondent did not receive a valid extension of the time to file his return.

b. Respondent did not file his 1993 tax return, due April 15, 1994, until November 22, 1994. Respondent did not receive a valid extension of the time to file his return.

c. Respondent did not file his 1994 tax return, due April 17, 1995, until October 15, 1995. Respondent did not receive a valid extension of the time to file his return.

7. MDR informed respondent by letter dated May 20, 1995, that he had not filed tax returns for 1992 and 1994. MDR sent an additional demand letter on June 27, 1995. The letter noted that respondent had also failed to pay the taxes still outstanding on his 1991 and 1993 returns.

8. Respondent paid the remaining tax due of \$7,672.05 from his 1991 and 1993 returns on July 5, 1995.

9. In response to MDR's requests for respondent's 1992 tax return, respondent asserted that he had filed the return and paid the tax but that MDR had lost both items. In early August 1995, MDR renewed its request for copies of respondent's 1992 and 1994 returns.

10. By letter dated August 25, 1995, MDR confirmed receipt of a copy of respondent's 1992 return on August 21, 1995. Respondent failed to include with his return either payment of the taxes, interest and penalty due or proof that he had previously paid the taxes. Respondent also failed to include his 1994 return, although respondent's cover letter stated he had enclosed it.

11. MDR sent a letter of complaint to the Director on September 6, 1995, and formally filed the copy of respondent's 1992 tax return on September 7, 1995, in lieu of proof that respondent had previously filed the return..

12. Respondent filed his 1994 tax return on October 15, 1995, without payment of the taxes due.

13. On or about November 15, 1995, MDR filed a tax lien against respondent for the amount owed for 1992 and 1994 taxes. In late November 1995, respondent paid the remaining taxes owed.

14. Respondent's conduct in failing to timely file his state tax returns violated Rule 8.4(d), MRPC, and the holding in *In re Bunker*, 199 N.W.2d 628 (Minn. 1972).

THIRD COUNT

C. Non-Cooperation

15. The Director sent respondent a Federal Tax Information Authorization form on July 2, 1996, regarding respondent's 1991-1995 federal tax returns and asked respondent to sign and return it. In response, respondent asked for justification for the form.

16. By letter dated July 11, 1996, the Director explained that her request for the federal authorization was based on respondent's failure to file his state tax returns on time and on the lack of any dates or signatures on the copies of his federal returns that respondent previously submitted to the Director. The Director also asked respondent to explain the alleged misrepresentations of estimated tax payments on

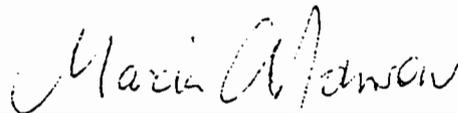
respondent's 1991 tax return. Exhibit 2. Respondent submitted a letter again refusing to provide the authorization and failed to provide any information regarding the alleged 1991 misrepresentations. Exhibit 3.

17. The Director again provided the rationale for her requests in her letter of August 2, 1996. Exhibit 4. Respondent failed to submit any response at all to this third request for an authorization and other information.

18. Respondent's conduct in failing to cooperate with the Director's reasonable request for a signed Federal Tax Information Authorization and other information violated Rules 8.1(a)(3) and 8.4(d), MRPC.

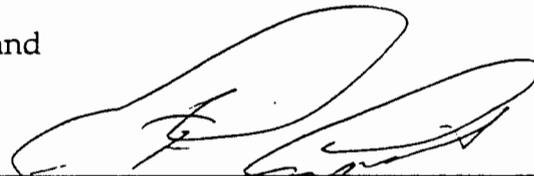
WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent from the practice of law and imposing otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: February 26, 1997.



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