

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. On June 22, 1988, respondent was issued an admonition for failing to promptly transfer a client's file to the client's substitute counsel in violation of Rules 1.15(e)(4) and 1.16(d), Minnesota Rules of Professional Conduct (MRPC), and Opinion 11 of the Lawyers Professional Responsibility Board.

2. On August 8, 1988, respondent was placed on two years private probation for neglecting estate and inheritance tax matters and failing to keep his client informed of the status of those matters in violation of DR 6-101(A)(3) and DR 7-101(A)(2), Minnesota Code of Professional Conduct, and Rules 1.3 and 1.4, MRPC.

FIRST COUNT

1. In 1972 respondent represented Ms. Jeanette Hamlet in a marital dissolution action. The judgment and decree, which awarded Ms. Hamlet the marital homestead, was filed December 8, 1972.

2. On February 7, 1973, respondent billed Ms. Hamlet \$703.50 for his services and costs. On the same date, respondent filed an attorney's lien for \$703.50 against Ms. Hamlet's homestead (Ex. 1). Respondent did not give Ms. Hamlet notice of the lien filing. Respondent had not established the amount of his fees during the dissolution action nor had he been awarded a lien by the court.

3. Until at least February 19, 1974, Ms. Hamlet made payments on respondent's bill. On February 19, 1974, Ms. Hamlet's balance was \$503.50. Respondent did not reduce the lien to reflect the correct balance owed.

4. Ms. Hamlet was not at any time advised interest would be charged on the attorney's fees and did not at any time agree to the charging of interest on the unpaid balance. Respondent's billing statements to Ms. Hamlet from February 1973 to February 1974 do not reflect any additional interest charge. No billing statements after February 1974 could be located by Ms. Hamlet or respondent.

5. In August 1991, Ms. Hamlet refinanced her homestead. In examining the title, Ms. Hamlet's lender discovered respondent's lien for \$703.50. Ms. Hamlet called respondent about releasing the lien. Initially, respondent stated the lien would not be released for less than \$1,700. Respondent claimed that the \$1,700 figure represented the initial lien amount (\$703.50) plus

8 percent interest. Respondent did not have any basis to charge Ms. Hamlet 8 percent interest on the unpaid balance. See Gaughan v. Gaughan, 450 N.W.2d 338 (Minn. Ct. App. 1990) (attorney is not entitled to prejudgment interest on attorney's lien). Moreover, respondent failed to credit Ms. Hamlet for the \$200 in payments made between February 1973 and February 1974. Eventually, respondent agreed to release the lien upon payment of \$1,200.

6. On August 23, 1991, complainant's lender issued a cashier's check to respondent for \$1,200. Respondent released the lien by quit claim deed.

7. In 1991 respondent did not have a valid lien against Ms. Hamlet's homestead since: 1) respondent had not brought a lien enforcement action to establish the amount or validity of his lien (see Boline v. Doty, 345 N.W.2d 285 (Minn. Ct. App. 1984)); 2) respondent had not obtained a judgment against Ms. Hamlet for his fees; and 3) respondent had not obtained from Ms. Hamlet a valid waiver of her homestead exemption. In 1991 respondent had no recognizable interest in Ms. Hamlet's homestead and no basis to demand payment of the fees or interest in exchange for release of the lien.

8. On March 15, 1993, after the Director issued charges in this matter, respondent repaid \$1,200 to Ms. Hamlet.

9. Respondent's conduct in 1991 in obtaining payment of \$1,200 for release of the attorney's lien against Ms. Hamlet's homestead violated the MRPC, including but not necessarily limited to Rules 1.5 and 3.1, MRPC.

SECOND COUNT

10. On November 12, 1991, respondent was sent a notice of investigation of Ms. Hamlet's ethics complaint and directed to

respond in writing within 14 days. Respondent did not respond. On December 12, 1991, the District Ethics Committee (DEC) investigator requested a response from respondent. After seven weeks, on December 30, 1991, respondent sent a written response to the investigator.

11. On February 10, 1992, the investigator wrote to respondent asking that respondent return the investigator's call. After two weeks, on February 26, 1992, respondent called the investigator. On March 3, 1992, the investigator asked that respondent provide additional documents within seven days. Respondent did not respond.

12. The file was returned to the Director's Office. On June 12, 1992, the Director asked for a response to the investigator's March 3 letter within two weeks. On June 24, 1992, respondent advised the Director that he needed an extension, but would have a response on the Director's desk by July 13. On July 9, respondent's secretary requested an extension to July 15. On July 20, 1992, the Director received respondent's response dated July 17, 1992.

13. On October 1, 1992, the Director wrote to respondent asking for an explanation for charging \$1,200 to release the lien, in light of the Boline and Gaughan cases, cited earlier herein. Respondent did not respond. On January 6, 1993, the Director again requested a response to the October 1, 1992, letter within two weeks. Respondent did not respond.

14. Respondent's failure to promptly respond to the DEC investigator and the Director's Office violated the MRPC, including but not necessarily limited to Rules 8.1(a)(3), MRPC, and Rule 25, Rules on Lawyers Professional Responsibility.

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: June 9, 1993.

Marcia A. Johnson

MARCIA A. JOHNSON
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 182333
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and

Candice M. Hojan

CANDICE M. HOJAN
SENIOR ASSISTANT DIRECTOR
Attorney No. 125982

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notice is hereby given, That Grathwol, Floetz, Oberhauser & Nodland who are attorneys at law duly authorized to practice as such in the state of Minnesota claim and intend to hold a lien upon the real (real or personal) property of Jeanette D. Hamlet, formerly Jeanette D. Bennett

described as follows, to-wit:

The West 43 1/2 feet of Lots 5 and 6, Block 11, Remington's Second Addition to Minneapolis, according to the plat thereof on file and of record in the office of the Register of Deeds, in and for Hennepin County, Minnesota.

That said lien is claimed for certain services rendered by them to said Jeanette D. Hamlet, formerly Jeanette D. Bennett

of the nature and character as follows, to-wit: Contribution of legal services in the preservation of the interest of the said Jeanette D. Hamlet in the said property and the enhancement of the value thereof, and for contributions of money made for the preservation of Jeanette D. Hamlet's said interest in the property and for enhancement of the value thereof,

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which are of the reasonable value of Seven Hundred Fifty and No/100 (\$750.00) Dollars, plus cash contributions of \$3.50; \$50.00 of which has been paid, leaving a balance now due and owing in the amount of \$703.50.

Louis B. Oberhauser, Partner

State of Minnesota,

County of HENNEPIN LOUIS B. OBERHAUSER

being duly sworn, on oath says; that he is a partner of Grathwol, Floetz, Oberhauser & Nodland the attorneys at law above named; that during all the times in the foregoing instrument stated they were, and still are attorneys at law authorized to practice as such in the State of Minnesota; that he knows the contents of the foregoing instrument and that the same is true of his own knowledge.

Louis B. Oberhauser

Subscribed and sworn to before me this 7th day of February, 1973.

Beverly G. Richards

Notary Public, Hennepin County, Minnesota.

My commission expires May 5, 1977

