

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against MITCHELL ROSS ORNSTEIN,  
an Attorney at Law of the  
State of Minnesota.  
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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. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 25, 1996. Respondent is currently suspended from the practice of law for non-payment of his attorney registration fee.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

A. Pattern of Neglect, Misrepresentation, and Non-Cooperation.

1. Respondent, as more fully set forth below, has engaged in a pattern of neglect of client matters, misrepresentation to clients regarding the status of their matters, and failure to cooperate with the disciplinary proceedings.

Teri Ross Matter

2. On September 23, 1999, Teri Ross retained respondent to represent her in an action against the American Arbitration Association.

3. The Contingency Fee Legal Services Agreement executed by respondent and Ross specifically provided, "The lawyer agrees to file the case with the court system no later than October 15, 1999. The lawyer will perform the legal services called for under this agreement in a prompt and timely manner, keep the client informed of progress and developments, and respond promptly to the client's inquiries and communications."

4. Respondent failed to make any filings with the court until October 26, 1999. On October 26, 1999, respondent filed a summons and complaint. Respondent did not serve the summons and complaint prior to filing with the court and failed to serve the summons and complaint upon any of the named defendants.

5. Between October 1999 and February 2000, respondent repeatedly misrepresented the status of the case to Ross. Respondent falsely stated and implied that the summons and complaint had been served and that he had granted the defendants an extension of time in which to submit an answer, that he had scheduled a settlement conference, and that he had filed an informational statement.

#### Daniel Rohricht Matters

6. In the spring of 1999, Daniel Rohricht retained respondent for representation in various matters. Rohricht paid respondent \$2,500 to be applied to attorneys' fees.

7. In the matter of *Daniel Rohricht v. Keith and Mary Clow*, respondent served and filed a summons and complaint upon the defendants. The summons and complaint venued the action in Washington County. Venue was subsequently changed to Hubbard County.

8. During the course of the litigation in the Clow matter, discovery requests were served upon Rohricht by mailing them to respondent. Respondent failed to forward all of the requests to Rohricht and failed to submit any response to the requests.

9. The defendants in the Clow matter, based upon respondent's failure to respond to discovery, brought a motion for summary judgment. An attorney in respondent's former firm who took over the case after respondent left the firm defended the motion. On August 30, 2000, the court denied the motion for summary judgment and ordered the matter set for trial.

10. Rohricht also retained respondent to bring suit against Jim's Auto Sales and Scott Ferrozzo for wrongful repossession of vehicles purchased by Rohricht.

11. Respondent never instituted the suit for wrongful repossession.

12. In March 1999, Rohricht was served with a summons and complaint in an action commenced by Ford Motor Credit Company (Ford). Rohricht asked respondent to represent him in the defense of this matter. At the time respondent was retained, the matter was already in default due to Rohricht's failure to file an answer to the complaint.

13. After Ford sought entry of a default judgment, respondent served an answer to the complaint. The answer was accepted and a default judgment was not then entered.

14. On October 21, 1999, Ford served discovery requests on Rohricht by mailing them to respondent. Respondent failed to forward these requests to Rohricht and failed to submit a response to the requests.

15. On March 1, 2000, Ford brought a motion to compel discovery or, alternatively, to strike defendant's answer and enter judgment by default. Respondent failed to appear at the hearing on this motion.

16. On March 24, 2000, the court entered an order directing a response to the discovery requests within 14 days and providing that default judgment could be entered against Rohricht if a response to the discovery was not submitted within that time. Respondent was served with a copy of this order.

17. Respondent failed to submit any response to the discovery requests and a default judgment was entered against Rohricht on April 13, 2000.

### Qadiid Matter

18. In March 1999, Mahad Qadiid retained respondent to represent him in a claim against a former landlord.

19. Despite repeated requests, respondent failed to pursue Qadiid's claim.

20. Respondent repeatedly misrepresented the status of the matter to Qadiid, telling him that a decision on his claim was pending.

### Non-Cooperation

21. On January 13, 2000, the Director mailed to respondent a notice of investigation in the matter of the complaint of Daniel Rohricht. That notice requested that respondent provide a written response within 14 days.

22. On February 8, 2000, the district ethics committee investigator assigned to investigate the Rohricht complaint against respondent left a voice mail message for respondent requesting a response to the complaint.

23. On February 16, 2000, the district ethics committee investigator wrote to respondent again requesting a response to the Rohricht complaint.

24. On March 20, 2000, the Director wrote to respondent requesting a response to the complaint of Daniel Rohricht. Respondent has failed to provide any response to the Rohricht complaint.

25. On May 26, 2000, the Director mailed a notice of investigation to respondent in the matter of the complaint of Mahad Qadiid. That notice requested that respondent provide a written response within 14 days.

26. On June 20, 2000, the Director wrote to respondent's then counsel, Edward Kautzer, requesting a response to the notice of investigation and complaint of Mahad Qadiid.

27. Respondent has failed to provide any response to the Qadiid complaint.

28. On July 13, 2000, charges of unprofessional conduct, notice of pre-hearing and notice of panel assignment were mailed to respondent at his last known address, 5504 Irving Avenue South, Minneapolis, MN 55419.

29. The notice of pre-hearing meeting informed respondent that a pre-hearing meeting concerning the charges of unprofessional conduct would be held at 1:00 p.m. on August 17, 2000, at the Office of Lawyers Professional Responsibility, 25 Constitution Avenue, Suite 105, St. Paul, MN 55155.

30. Respondent failed to appear for the pre-hearing meeting or otherwise respond to the charges of unprofessional conduct and notice of pre-hearing meeting.

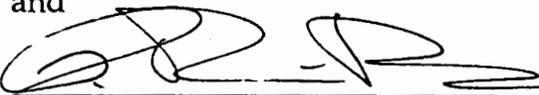
31. Respondent's conduct in failing to act with reasonable diligence and promptness in representing his clients, misrepresenting the status of matters to his clients, and failing to cooperate in the disciplinary proceedings violated Rules 1.3, 4.1, 8.1(a)(3), 8.4(c) and 8.4(d), Minnesota Rules of Professional Conduct (MRPC), and Rule 25, Rules on Lawyers Professional Responsibility.

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.

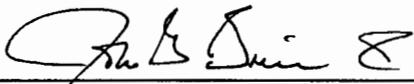
Dated: January 2, 2000.

  
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

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

Dated: December 22, 2000.   
JOHN G. BRIAN III  
PANEL CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD