

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against WILLIAM D. PAUL,
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 May 15, 1985. Respondent currently practices law in Duluth, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On October 1, 1991, respondent received an admonition for failing to instruct his investigators not to question a represented party and then attempting to use the party's admissions at trial, in violation of Rules 4.2, 5.3 and 8.4(a), Minnesota Rules of Professional Conduct (MRPC).

B. On June 4, 1997, respondent received an admonition for neglecting a marriage dissolution matter and failing to adequately communicate with the client, in violation of Rules 1.3 and 1.4, MRPC.

C. On November 26, 1997, respondent received an admonition for failing to pay a valid, law-related judgment, in violation of Rule 8.4(d), MRPC.

FIRST COUNT

Neglect, Non-Communication, Misrepresentation and Failure to
Return Client Property

Corwin Matter

1. Marcus W. Corwin is a lawyer practicing in Boca Raton, Florida. Corwin represents Entertainment By J&J, Inc. (EBJJ), Kingvision Pay Per View, Ltd. (KV) and National Satellite Sports, Inc. (NSSI).

2. In May 1997 it became necessary for EBJJ and KV to retain Minnesota counsel to commence litigation against various commercial establishments for their alleged unlawful interception and transmission of its cable and/or satellite signals.

3. On May 16, 1997, at Corwin's request, respondent agreed to undertake representation of EBJJ and KV on a contingent fee basis. The retainer agreements required EBJJ and KV to advance to respondent \$200 for each matter referred to him "to cover the initial filing fee and other costs that are incidental to the initial phase of litigation." Corwin clearly expressed to respondent that time was of the essence in the handling of the EBJJ and KV matters referred to him. The retainer agreements provided:

It is [client]'s philosophy to aggressively pursue all available remedies against infringers and its litigation philosophy to closely monitor all filing and response deadlines. You [respondent] agree to provide to [client] on a regular basis status reports on all ongoing litigation.

Respondent returned the signed retainer agreements to Corwin on May 16, 1997.

4. On June 13, 1997, Corwin's assistant forwarded to respondent, in two packages, six KV litigation matters. Corwin's assistant also included a computer disk on which a form complaint and discovery requests were saved and stated that she had requested a check for the required cost advances. Corwin's assistant stated Corwin's expectation that all complaints be filed within 30 days of receipt.

5. On June 23, 1997, respondent confirmed receipt of five files, stated that he expected to meet the 30-day deadline, and requested payment of the \$200 per file cost advance.

6. On July 9, 1999, respondent confirmed receipt of the sixth file and again requested payment of the cost advances. Corwin's assistant remitted a \$1,000 check to respondent on July 15. A \$200 check was remitted to respondent on July 17.

7. On October 1, 1997, Corwin's assistant forwarded to respondent six additional KV files, together with a \$1,200 check constituting the required cost advances. Corwin's assistant again stated Corwin's expectation that the matters be filed within 30 days of receipt.

8. In October 1997 it became necessary for NSSI to retain Minnesota counsel to commence litigation against various commercial establishments for their alleged unlawful interception and transmission of its cable and/or satellite signals. On October 1, 1997, Corwin's assistant forwarded to respondent for signature a retainer agreement regarding his representation of NSSI, one NSSI file, and a \$200 check constituting the required cost advance. Corwin's assistant again stated Corwin's expectation that the matters be filed within 30 days of receipt.

9. On October 9, 1997, Corwin's assistant requested written confirmation of his receipt of the six KV files and one NSSI file. On information and belief, respondent failed to provide the requested written confirmation.

10. On November 6, 1997, respondent represented to a member of Corwin's staff that he had prepared complaints for each of the matters referred to him and would be filing the complaints the next day. In fact, respondent had not prepared the complaints, and falsely represented that he had to buy some time in which to prepare the complaints. Respondent did not file the complaints the next day.

11. On November 7, 1997, following requests by Corwin's staff, respondent returned to Corwin the NSSI retainer agreement and thus agreed to undertake

representation of NSSI on a contingent fee basis. The NSSI retainer agreement required the same \$200 per file cost advance and was identical to the EBJJ and KV retainer agreements.

12. Also on November 7, 1997, Corwin's assistant forwarded to respondent five additional KV matters and a \$1,000 check constituting the required cost advances. Corwin's assistant requested that the complaints be filed within 30 days of receipt.

13. During November and December 1997, respondent did very little work on the matters and failed to return several telephone calls left for him by Corwin and his staff.

14. On November 17, 1997, Corwin's assistant sent a fax to respondent requesting a status report and copies of all complaints. Respondent failed to respond.

15. On December 10, 1997, Corwin wrote to respondent by fax requesting a December 12 telephone conference. When Corwin called respondent on December 12, he was told that respondent was unavailable. Corwin left a message directing respondent to call him over the weekend and to send copies of the complaints to him by overnight delivery. Respondent failed to either call Corwin or send the complaints.

16. Corwin wrote again to respondent on December 16, 1997, stating his understanding that respondent would be calling Corwin on December 18. Respondent failed to call Corwin.

17. On December 19, 1997, respondent wrote to Corwin. Respondent stated that he had delayed in the filing of the complaints "because of my uncertainty about whether or not they are correct." Respondent enclosed a copy of one complaint and stated, "I do not know the private owners or the establishments where the fight was illegally broadcast. Is that a prerequisite to a proper Complaint?" Corwin's associate returned the edited complaint to respondent on January 20, 1998, and asked respondent to call Corwin regarding them. Respondent failed to call Corwin.

18. On January 23, 1998, Corwin's associate again wrote to respondent asking respondent to call him. Respondent failed to call Corwin.

19. On February 6, 1998, Corwin's associate spoke with respondent by telephone. At that time, respondent disclosed that he had not yet filed any of the complaints and had failed to even identify all of the proper defendants. Respondent agreed to identify the proper defendants, complete the complaints, and send the complaints to Corwin for review no later than February 13. Corwin's associate confirmed respondent's agreement in a February 10, 1998, letter. Respondent failed to meet the February 13 deadline.

20. On February 24, 1998, Corwin notified respondent that his representation was terminated effective immediately. Corwin requested that by March 4, 1998, respondent return each of the 18 client files that had been referred to him and either the related cost advances or an accounting. Respondent failed to return the files or cost advances and failed to provide an accounting.

21. Corwin wrote additional letters to respondent on March 5, 1998, March 20, 1998, and June 9, 1998. Respondent failed to respond.

22. On June 24, 1998, Corwin wrote to respondent advising of his intent to file a lawsuit against respondent and filed his complaint with the Director's Office.

23. Finally, on June 29, 1998, respondent returned to Corwin the client files, the October 1 and November 7, 1997, uncashed cost advance checks and a \$1,200 check drawn on his non-fiduciary business account.

Wolfe Matter

24. Respondent represented Cynthia Wolfe in a marriage dissolution proceeding. The judgment and decree in that proceeding was entered on February 23, 1998.

25. The judgment and decree provided that Wolfe's husband's pension plan would be divided equally between the parties by way of a Qualified Domestic Relations

Order (QDRO). Respondent agreed to prepare and process the QDRO and Wolfe paid respondent for those services.

26. Respondent thereafter failed to complete the QDRO. During the period February 23, 1998, to November 16, 1999, Wolfe telephoned respondent on four occasions regarding the QDRO, leaving messages with respondent's secretary. Respondent failed to return Wolfe's calls.

27. In addition, Wolfe wrote to respondent on August 12, 1999, requesting that respondent complete the QDRO within 30 days. Respondent failed to complete the QDRO or to otherwise respond to Wolfe's letter.

28. Respondent did not complete the QDRO until after Wolfe filed a complaint with the Director on November 22, 1999.

29. Respondent's pattern of neglect in the Corwin and Wolfe matters, pattern of failing to keep Corwin and Wolfe advised of the status of their matters, misrepresentation to Corwin that the complaints had been prepared, failure to promptly return client funds or an accounting to Corwin, and failure to return client materials to Corwin after termination of representation, violated Rules 1.3, 1.4(a), 1.15(b), 1.16(d), 4.1 and 8.4(c) and (d), MRPC.

SECOND COUNT

Failure to Deposit Client Funds Into a Trust Account

30. Respondent states it has been his routine practice, during the entire period in which he has practiced law, to deposit client cost advances into his non-fiduciary business account. Further, respondent typically requires his family law clients to pay him an initial advance fee retainer, which he also deposits to his non-fiduciary business account. Respondent does not enter into written retainer agreements with his family law clients.

31. The business account books and records respondent has produced verify respondent's statements of his routine practice. The Director has been able to identify at least the following such instances of inappropriate deposits into the business account.

Cost Advances

32. As described above, Corwin forwarded to respondent checks totaling \$3,600 for the \$200 per file cost advances required by his retainer agreements with EBJJ, KV and NSSI, as follows:

July 15, 1997	\$1,000.00
July 17, 1997	\$200.00
October 1, 1997	\$200.00
October 1, 1997	\$1,200.00
November 7, 1997	\$1,000.00

33. Respondent failed to deposit any of these cost advances into a trust account.

34. Respondent failed to deposit the October 1 and November 7, 1997, cost advances into any account.

35. Respondent deposited the July 15 and 17, 1997, cost advances into his non-fiduciary business account.

36. Respondent's business account books and records reflect the following additional deposits of client cost advances before payment of the costs by respondent:

CLIENT	DEPOSITS		DISBURSEMENTS		
	DATE	AMOUNT	DATE	NO.	AMOUNT
Schramm	5/21/97	\$132.00	6/11/97	2012	\$132.00
Vatalaro	6/13/97	\$132.00	7/10/98	2502	\$132.00
Bonawetz	9/16/97	\$132.00	2/11/98	2334	\$132.00
Holt	11/10/97	\$132.00	7/10/98	2518	\$132.00
Ziebert	5/29/98	\$132.00	7/24/98	2479	\$132.00
Manning	6/25/98	\$132.00	12/9/98	2718	\$132.00

Unearned Fee Retainers

37. On information and belief, based on respondent's admissions and review of respondent's business account, the following deposits to respondent's non-fiduciary business account represented fee advances that respondent had not fully earned at the time of deposit:

<u>CLIENT</u>	<u>DATE</u>	<u>AMOUNT</u>
Schramm	5/21/97	\$500.00
McCough	8/20/97	\$500.00
Bonawetz	9/16/97	\$500.00
Ranthum	9/16/97	\$900.00
Holt	11/10/97	\$750.00
Pfuhl	11/24/97	\$600.00

38. On information and belief, respondent did not enter into written fee agreements with any of these clients. The fee retainers were therefore advances which remained client property until earned and should have been deposited in respondent's trust account.

Failure to Safeguard

39. As of May 1, 1998, respondent had deposited to his non-fiduciary business account, but not disbursed, cost advances totaling at least \$1,464, including those paid by his clients Vatalaro (\$132), KV (\$1,200), and Holt (\$132).

40. During the periods May 1-4, 1998, May 11-15, 1998, May 18-27, 1998, and May 28-29, 1998, the balance in respondent's business account was less than \$1,464, and thus not sufficient to cover the Vatalaro, KV, and Holt cost advances. Respondent failed to safeguard these funds.

41. On May 29, 1998, respondent received and deposited into his non-fiduciary business account an additional \$132 cost advance from his client Ziebert. At that time, respondent's operating account thus should have contained cost advances totaling at least \$1,596.

42. During the periods June 3-8, 1998, and June 22-23, 1998, the balance in respondent's business account was less than \$1,596, and thus not sufficient to cover the Vatalaro, KV, Holt, and Ziebert cost advances.

43. On June 25, 1998, respondent received and deposited to his non-fiduciary business account an additional \$132 cost advance from his client Manning. At that time, respondent's business account thus should have contained cost advances totaling at least \$1,728.

44. During the period July 6-8, 1998, the balance in respondent's business account was less than \$1,728, and thus not sufficient to cover the Vatalaro, KV, Holt, Ziebert, and Manning cost advances.

45. On July 10, 1998, after receiving notice of the Corwin complaint, respondent disbursed from his business account the Holt and Vatalaro cost advances, and refunded the KV cost advance to Corwin. At that time, respondent's business account thus should have contained cost advances totaling at least \$264 for Ziebert and Manning.

46. During the period July 13-21, 1998, the balance in respondent's business account was less than \$264, and thus not sufficient to cover the Ziebert and Manning cost advances.

47. On July 25, 1998, respondent disbursed the Ziebert cost advance from his business account. At that time, respondent's business account thus should have still contained the \$132 Manning cost advance.

48. During the period October 23 to at least October 30, 1998, the balance in respondent's operating account was less than \$132, and thus not sufficient to cover the Manning cost advance. By allowing the business account balance to fall below the amount respondent was holding for clients, as set forth in paragraphs 39-48, respondent failed to safeguard the cost advances.

49. On December 9, 1998, respondent disbursed the Manning cost advance from his business account.

50. Respondent's pattern of failure to deposit the Corwin cost advances, other cost advances and unearned fee advances into a trust account and deposit of these funds into his non-fiduciary business account violated Rule 1.15(a), MRPC.

THIRD COUNT

Non-Cooperation

51. On October 9, 1998, the Director's Office wrote to respondent and requested, among other things, various operating account books and records. Respondent failed to respond.

52. On November 12, 1998, the Director's Office wrote again to respondent requesting the operating account books and records. On November 20, 1998, respondent provided the requested books and records.

53. On March 30, 1999, the Director's Office advised respondent that it had completed a preliminary review of the books and records he provided and requested, within two weeks, a copy of his computer-maintained check register and information regarding his handling of retainers and cost advances. Respondent failed to respond.

54. On April 20, May 11, and June 14, 1999, the Director's Office repeated its request for a copy of respondent's check register and other information. Respondent failed to respond to any of these requests.

55. On August 5, 1999, the Director's Office wrote to respondent by certified mail requesting the check register and other information. A representative of respondent's office signed the return receipt.

56. On August 16, 1999, the Director's Office received from respondent the requested materials and information.

57. On August 30, 1999, the Director's Office wrote to respondent requesting that he provide within three weeks additional information and materials related to his

admitted practice of depositing cost advances and fee retainers to his non-fiduciary business account. Respondent failed to respond.

58. On September 24, 1999, the Director's Office wrote again to respondent requesting the information and materials detailed in the August 30 letter.

59. On September 27, 1999, respondent telephoned the Director's Office. Respondent stated, among other things, that he expected to be traveling to St. Paul within the coming couple of weeks to attend a deposition in an unrelated matter. Respondent stated that when he knew the date of the deposition, he would call the Director's Office and schedule a meeting to occur while he is in St. Paul and would, at that time, deliver the materials requested in the August 30 letter.

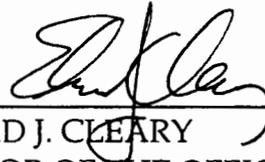
60. On or about October 11, 1999, respondent telephoned the Director's Office and requested return of his 1998 operating account books and records in order to prepare his 1998 income tax returns. Respondent stated that the deposition for which he expected to be in St. Paul had not yet been scheduled. The Director's Office returned respondent's original 1998 operating account books and records by overnight delivery on October 13, 1999.

61. After receiving the Director's November 10, 1999, charges of unprofessional conduct in this matter, respondent contacted the Director's Office and has since cooperated in these proceedings.

62. Respondent's failure to cooperate with the Director's investigation violated Rule 8.1(a)(3), MRPC, Rule 25, Rules on Lawyers Professional Responsibility, and the Minnesota Supreme Court's holding in *See In re Cartwright*, 282 N.W.2d 548 (Minn. 1979).

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: February 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



CANDICE M. HOJAN
SENIOR ASSISTANT DIRECTOR
Attorney No. 125982