

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against DAVID ALAN RICHTER,
a Minnesota Attorney,
Registration No. 260356.

**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 contained in the attached May 17, 2012, stipulation for probation (Exhibit 1) pursuant to Rules 10(a) 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 27, 1995. Respondent currently practices law in Thief River Falls, Minnesota.

INTRODUCTION

Respondent and the Director entered into a stipulation for private probation effective May 17, 2012. Respondent's probation was based upon an admission that respondent had not been maintaining the required trust account books and records and had been commingling client funds with his own funds in the account. On July 15, 2011, respondent's trust account became overdrawn. The overdraft had been the result of respondent's issuance of a trust account check on behalf of a client who was not entitled to funds from the account. At that time, the balance of respondent's commingled funds in the account was not sufficient to cover the check.

Among the conditions of respondent's probation was that respondent would abide by the Minnesota Rules of Professional Conduct and commit no further

unprofessional conduct, and that if, after giving respondent an opportunity to be heard, the Director concluded that respondent had not complied with the conditions of the probation, then the Director could file this petition without the necessity of Panel proceedings.

Respondent also agreed to maintain the required law office and trust account books and records in compliance with Rule 1.15, Minnesota Rules of Professional Conduct (MRPC), and Appendix 1 to the MRPC. Those books and records were to be made available to the Director at such intervals as he deemed necessary to determine compliance.

The Director, after giving respondent an opportunity to be heard, has concluded that respondent has not complied with the conditions of the probation.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

1. On June 12, 2012, the Director wrote to respondent providing him with a fully executed copy of the stipulation for probation and asking that, pursuant to the stipulation, he provide his complete trust account books and records for the period of April through June 2012 by July 15, 2012. Respondent failed to do so.

2. On September 14, 2012, the Director wrote to respondent informing him that the Director had not received any of the required documents and informing him that his July through September 2012 records would be due on October 15, 2012.

3. On September 25, 2012, respondent wrote to the Director stating that while he was "not in compliance with the terms of [his] probation and Minnesota Rules of Professional Conduct . . . [he was attempting] to resolve [his] inadequate bookkeeping, time management and financial management skills, the end result is the same." Respondent asked the Director's permission to "cease the practice of law effective November 30, 2012 for a period of time at the Director's discretion to allow me time to straighten out my professional finances." Respondent did not provide his trust

account books and records at that time, nor when they were due in October 2012 and January 2013.

4. On May 28, 2013, the Director wrote to respondent that the Director did not have the authority to limit his practice or accept the surrender of his license. Respondent was informed that the procedure for resigning from the bar was set out in Rule 11, RLPR. The Director told respondent that if he petitioned to surrender his license, "at least as matters stand at the moment, the Director would have no objection."

5. In the May 28, 2013, letter the Director also informed respondent that if he had no clients, or was not practicing law, and was therefore not handling client funds, there would be no need to prepare client subsidiary ledgers or some of the other documents. Respondent was directed to write and let the Director know: (1) if he was practicing law, (2) whether his trust account was still open, and (3) if his trust account was still open, but he was not handling client funds, to provide bank statements for January through May 2013. Respondent did not reply.

6. On October 23, 2013, the Director again wrote to respondent requesting information regarding whether he was practicing law, whether his trust account was still open, and documentation concerning those issues. Respondent did not reply.

7. On November 8, 2013, the Director received correspondence from respondent. Despite his earlier assertion that he was going to cease the practice of law and not accept new clients, in his November 8, 2013, letter respondent wrote that he was practicing law and had "four cases open and as soon as they close [he] will no longer be practicing law." Respondent also stated, "I have not and will not accept any additional clients." In addition, respondent stated that he had closed his trust account since he did "not handle client funds or unearned retainer [sic]" and "[e]nclosed you will find my bank statements per your request."

8. With his letter, respondent provided bank statements for the period January 1, 2013, through August 31, 2013. The statements for January through March

showed a balance of \$178.37 in the account. However, there was no accounting for the origin of the funds and whether they were respondent's funds or the funds of clients.

9. The April statement showed a withdrawal of \$100, but respondent failed to provide a copy of the check disbursing the funds or an explanation for the disbursement. The May statement showed a disbursement of \$50, but respondent again failed to provide a copy of the check or a check register demonstrating the purpose of the disbursement. The August statement reflected the withdrawal of the remaining \$28.37 and the closing of the account, but again respondent did not provide any explanation for the withdrawal of the funds. In addition, respondent failed to provide any trust account books and records for the period of April 2012 through December 31, 2012.

10. On November 6, 2013, the date of respondent's letter but before it had been received in the Director's Office, the Director wrote to respondent concerning his failure to cooperate with the terms of the Director's probation. Respondent was instructed to appear at the Director's Office on November 20, 2013.

11. Subsequent to receiving respondent's letter, respondent spoke to an Assistant Director in the Office of Lawyers Professional Responsibility. During that conversation, the Assistant Director explained that respondent's submissions were incomplete. In a follow-up letter on November 18, 2013, the Director informed respondent that in lieu of the previously scheduled meeting, respondent could provide his IOLTA bank statements from April 2012 through December 31, 2012. Also, respondent needed to provide an accounting of the money he had held in his trust account, a list of his clients from the start of his probation to that date, and a written explanation for his failure to comply with the terms of the probation. Respondent was instructed to provide those materials within 21 days, i.e., by December 9, 2013. Respondent failed to reply.

12. On January 7, 2014, the Director again wrote to respondent concerning his "ongoing failure to provide documentation required by your probation." The Director informed respondent that pursuant to the language of the probation requiring that

respondent be given "an opportunity to be heard by the Director" prior to the Director filing a petition for disciplinary action, respondent was instructed to appear at the Director's Office for a January 22, 2014, meeting. On January 24, 2014, the Director received correspondence from respondent, dated January 17, in which respondent wrote, "I decline your invitation to meet on January 22, 2014 at 1:00 p.m." Respondent provided no further explanation regarding his handling of the trust account nor did he provide any of the requested records.

13. On February 11, 2014, the Director issued a notice of investigation to respondent regarding his failure to cooperate with his probation. As of the date of this petition, respondent has not responded to the notice of investigation.

14. Respondent's conduct violated Rules 1.15 and 8.1, MRPC, and Rule 25, RLPR.

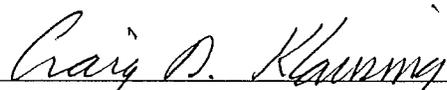
WHEREFORE, the Director respectfully prays for an order of this Court revoking respondent's probation, imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: March 4, 2014.



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