FILE NO. C1-98-964

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against THOMAS G. ROWE, an Attorney at Law of the State of Minnesota.	**PETITION FOR REVOCATION OF PROBATION AND FOR FURTHER 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 pursuant to Rule 12(a), Rules on Lawyers Professional Responsibility, and pursuant to this Court's September 21, 1998, order in the matter.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on April 22, 1974. Respondent currently practices law in St. Paul, Minnesota.

PRIOR DISCIPLINE

A. On February 19, 1999, respondent was issued an admonition for failing to deposit a retainer into his trust account, failure to diligently pursue a client matter and failure to communicate with a client in violation of Rules 1.15(d), 1.3 and 1.4, Minnesota Rules of Professional Conduct (MRPC).

B. On February 19, 1999, respondent was issued an admonition for practicing law while fee suspended in violation of Rule 5.5, MRPC.

C. On September 21, 1998, the Minnesota Supreme Court publicly reprimanded respondent and placed him on unsupervised probation as a result of respondent's failure to file and pay Minnesota and federal individual income tax returns. *In re Rowe*, 583 N.W.2d 923 (Minn. 1998).

D. On April 30, 1985, respondent and the Director stipulated to the Director issuing an admonition to respondent as a result of his failure to safeguard property entrusted to him in a fiduciary capacity in violation of DR 1-102(A)(5) and (6) and DR 9-102(B)(2), Minnesota Code of Professional Responsibility.

INTRODUCTION

By September 21, 1998, order, this Court publicly reprimanded respondent and ordered respondent placed on probation for two years. *In re Rowe*, 583 N.W.2d 923 (Minn. 1998). Prior to the expiration of respondent's two-year probationary period, the Director received the complaints identified below in counts one and two of this petition. In September 2000 respondent consented to the extension of his probation in order to permit resolution of these complaints.

Respondent has committed the following unprofessional conduct warranting further discipline and extension of probationary conditions:

FIRST COUNT

Wyttenback Matter

1. Respondent is the ex-spouse of Ragnhild A. Westby. Westby was suspended from the practice of law in December 1997. *In re Westby*, 572 N.W.2d 278 (Minn. 1997).

2. Prior to Westby's suspension, Shirley Wyttenback had contacted Westby about representing her in her divorce. Although Wyttenback apparently submitted information to Westby prior to her suspension, no fee was paid and no dissolution petition was prepared or filed by Westby.

3. In May 1998 Wyttenback again contacted Westby about representing her in her divorce. Westby did not disclose to Wyttenback that she was suspended from the practice of law and could not represent her. Because Wyttenback was unable to pay Westby's fee, Wyttenback's brother contacted Westby. At Westby's direction,

Wyttenback's brother wire-transferred $1,900 into Westby's personal account in late May 1998. Westby did not inform Wyttenback's brother that she was suspended from the practice of law and unable to represent Wyttenback.

4. Based upon the information obtained from Wyttenback, Westby drafted a dissolution summons and petition. On or about June 18, 1998, respondent was at Westby's home to discuss personal matters.[1] Respondent was aware that Westby had been suspended from the practice of law.

5. Westby falsely represented to respondent that she was about to be reinstated to the practice of law. Westby told respondent she was anxious to get the Wyttenback dissolution petition served and filed with the court. Westby asked respondent to sign the Wyttenback summons and petition for dissolution so that they could be served and filed. Westby falsely represented to respondent that she expected to be reinstated within the next couple of weeks and that she would represent Wyttenback in the dissolution.

6. Respondent signed the Wyttenback summons and petition for dissolution which identified him as counsel for Wyttenback. Respondent had never met or talked to Shirley Wyttenback, did not have her authority to represent her, and had no personal knowledge of the information contained in the dissolution petition. After respondent signed the summons and petition, Westby caused it to be served on Wyttenback's husband and filed with the Ramsey County District Court.

7. Westby remained suspended from the practice of law. During summer 1998 respondent began receiving notices from the Ramsey County District Court concerning the Wyttenback dissolution.

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[1] At the time, respondent and Westby were separated and their divorce proceeding was pending. The final judgment and decree was issued in May 1999.

8. In October or November 1998 respondent called Westby about the Wyttenback dissolution proceeding. Westby told respondent that she had not been reinstated to the practice of law and that respondent would need to represent Wyttenback in her dissolution. Respondent called Wyttenback and arranged to meet with her. Respondent undertook to obtain additional information from Wyttenback concerning a real estate parcel and began actively representing her in the dissolution.

9. Between March and October 1999 respondent neglected the Wyttenback dissolution and failed to adequately communicate with her. In September 1999 Wyttenback filed an ethics complaint against respondent and Westby with the Director's Office. Respondent subsequently completed the Wyttenback dissolution without charging Wyttenback any legal fees.

10. Respondent's conduct in assisting Westby in the unauthorized practice of law by signing the Wyttenback dissolution petition without ever meeting with Wyttenback, and without intending to represent her, violated Rules 5.5(b) and 8.4(d), MRPC.

11. Respondent's neglect and failure to communicate with Wyttenback between March and September 1999 violated Rules 1.3 and 1.4, MRPC.

SECOND COUNT

Stoll Matter

12. In October 1997 Vicki Stoll retained respondent to represent her in her divorce. Between January and May 1998 respondent failed to adequately communicate with Stoll concerning the divorce.

13. Stoll subsequently retained another law firm to represent her in her divorce.

14. Respondent's conduct violated Rule 1.4, MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court publicly reprimanding respondent and placing him on an additional two years of supervised probation subject to the conditions set forth in the attached stipulation for discipline.

Dated: December 6, 2000.

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