

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against STEVE C. SAMBORSKI,
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 October 27, 1989. Respondent currently practices law in Minnetonka, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's record of prior discipline is an admonition issued on March 10, 1998, for refusing to pay a December 1991 court judgment against him until after the judgment debtor filed an ethics complaint in violation of Rule 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

FIRST COUNT

Cheryl Larson Matter

1. Cheryl Larson retained respondent to represent her in a suit against her former employer. A representation agreement was signed on July 30, 1996. The written representation agreement stated that it was, in part, a "flat fee" arrangement. Larson paid respondent \$7,500 as a "retainer" under the agreement. The written agreement did

not comply with the requirements of Opinion 15 because it did not indicate that the funds would not be held in a trust account and that Larson might not receive a refund of the fees if she chose to terminate respondent's services.

2. Larson's case was put into litigation by her former employer. A scheduling order was issued, but respondent failed to serve any discovery within the discovery time period. Respondent also failed to timely respond to discovery served by the employer and failed to file an answer to the amended complaint.

3. Despite Larson's frequent requests for information, respondent failed to adequately communicate with her regarding the status of the case and the nature of the motions that were brought. Respondent also failed to provide Larson with copies of relevant documents including correspondence, pleadings, and court orders.

4. The employer brought two motions for default judgment against Larson and sanctions as a result of respondent's discovery abuses and his failure to file an answer to the amended complaint. The second motion focused on respondent's *ex parte* service of illegal and improper subpoenas in violation of the modified scheduling order and Rule 45 of the Federal Rules of Civil Procedure. In his report and recommendation dated July 13, 1998, Magistrate Lebedoff characterized respondent's discovery conduct as "flabbergasting." The court further stated that the:

[D]iscovery irregularities are described thoroughly in [the employer's] memorandum, and the Court will not repeat all the individual allegations here. Many of the allegations are the result of inaction (e.g., not meeting deadlines, not following through on promises). These are very serious allegation [sic] and the Court does not intend to make light of them. There is, however, one aspect of [respondent's] conduct which is especially disturbing. The Modified Scheduling Order of January 22, 1998, states that 'discovery not previously noticed or served by January 1, 1998, is not permitted.' [The employer's] counsel states that without any notice to [the employer], [respondent] served subpoenas until April 6, 1998. [Respondent] responds to this allegation by stating, '[that he] never initiated or requested the subpoenas.' In addition, [respondent] swears in his affidavit that he 'never initiated or requested that subpoenaes [sic] be

sent to [the employer's] customers.' Exhibit AA to [the employer's] memorandum is a photocopy of a document dated March 18, 1998, entitled 'Subpoena in a Civil Case' purportedly signed by [respondent] and giving the address of [respondent's] law office. [Respondent] does not explain the discrepancy between this evidence presented by [the employer] and [his] claim that he did not initiate or request any subpoena.

(Emphasis in original).

5. Finally, the court stated that respondent "has been given countless chances to improve his discovery practices and has failed to do so." *Id.* The court thus recommended that the motion for default judgment against Larson be granted, that Larson's counterclaims be dismissed, and that her defenses be stricken.

6. Larson, with the assistance of another attorney, responded to the report by submitting an affidavit dated July 28, 1998, which indicated her opposition to the dismissal of her claims and her only recent discovery of respondent's failure to keep her adequately informed and failure to represent her interests.

7. Chief Judge Paul A. Magnuson adopted the recommendation in his order of August 17, 1998, dismissed Larson's counterclaims, and granted judgment by default against her. Judge Magnuson then referred the matter to a special master for a determination of the appropriate sanctions to be imposed against respondent.

8. On May 6, 1999, Judge Magnuson imposed sanctions of \$5,000 in attorney's fees and \$58.52 in costs against respondent. In doing so, he significantly reduced the \$22,040 in sanctions recommended by the special master. The judge also declined to suspend respondent's privilege to practice law before the Federal District Court as had been recommended by the special master.

9. Respondent has neither appealed the award of sanctions against him nor made any payment of the sanctions.

10. By letter dated September 28, 1998, respondent agreed to pay for the appeal brought by Larson and her new counsel. Larson billed respondent regularly for the costs and fees associated with the appeal. Despite the frequent requests for

reimbursements, respondent quickly fell behind on payments. Respondent's last payment to Larson occurred on or about January 25, 1999. Respondent failed to make any additional payments to Larson, who continued to bill respondent for the fees and costs of the appeal for approximately six more months, or through June 1999. Larson discontinued billing respondent after it became apparent that he was unwilling either to respond or pay the outstanding amounts. As of January 17, 2000, respondent owed Larson approximately \$17,500 in fees and costs incurred on the appeal.

11. Respondent's conduct in the Larson matter violated Rules 1.1, 1.3, 1.4, 3.2, 3.3(a)(1), 3.4(c), 3.4(d), 4.1, 4.4, 8.4(a), 8.4(c), and 8.4(d), MRPC, and Lawyers Professional Responsibility Board (LPRB) Opinion 15.

SECOND COUNT

Ann Pederson Matter

12. Ann Pederson retained respondent in March of 1998 to represent her with respect to repairs made to her townhome by the townhome association. Pederson paid respondent approximately \$4,000 in checks and cash throughout the representation. Respondent claims that the fees were paid pursuant to a "flat fee" fee agreement but did not enter into any written flat fee agreement with Pederson.

13. Despite her frequent calls requesting status updates, respondent failed to keep Pederson adequately advised as to the status of her legal matters. Respondent also failed to attend scheduled appointments at his office and at Pederson's home, and failed to return her phone calls.

14. Pederson received notice of a conciliation court matter filed against her by the association and brought it to respondent's attention. Respondent told Pederson that she should not attend the hearing because he was going to file a claim in the district court on her behalf and thus remove the conciliation court matter to the district court. As a result of respondent's advice, Pederson did not appear at the conciliation court

hearing. Respondent neither appeared in the conciliation court hearing nor filed a district court action on Pederson's behalf.

15. On August 10, 1998, the association, through its manager, Doug Strandness, obtained a conciliation court default judgment in the amount of \$740 against Pederson. Pederson did not receive a copy of the Notice of Judgment from the court, although her name and address were indicated on the Notice.

16. The association manager, Strandness, attempted to contact respondent in October 1998, after Pederson gave him a note requesting that he do so. Strandness called and left a message regarding the matter with respondent, but respondent failed to return the call. Strandness called again and spoke with respondent in December 1998. During their brief conversation, respondent indicated that he did not have time to discuss the Pederson matter, but that he would contact Strandness later. Respondent neither contacted Strandness by phone or by letter following their short conversation.

17. Pederson contacted the district court on or about March 11, 1999, to determine if respondent had in fact filed an action on her behalf. She then learned not only that respondent had failed to file an action on her behalf but also that the association had obtained a \$740 default judgment against her. Pederson called respondent repeatedly to ask why he had taken no action on her behalf. Respondent maintained that he had done "tons of things" for her and that he was attempting to obtain an accounting from the association.

18. Pederson filed an ethics complaint against respondent with the Director's Office on June 21, 1999. When he was notified of Pederson's ethics complaint, respondent requested that Pederson withdraw the complaint. Respondent indicated that if she would do so, he would complete her legal work "for free" and return her file materials (including photographs taken of Pederson's townhome). Respondent also indicated he would refund all monies she had paid. Pederson informed respondent that she did not wish him to taken any action on her behalf or represent her further.

19. Respondent has failed to refund any money to Pederson.

20. On August 5, 1999, Pederson prepared and filed a notice of motion and motion on her own behalf to vacate the association's conciliation court default judgment against her. In her motion papers, Pederson stated that she sought to vacate the default judgment because "My attorney advised me I did not have to be there and that he was going to take the matter to district court."

21. On August 15, 1999, respondent told Pederson that he would return her file materials and photographs to her that same day. Respondent failed to return the file materials or photographs to Pederson as promised.

22. On August 17, 1999, the attorney for the association, Todd Iliff, contacted respondent in an attempt to resolve the conciliation court matter. Iliff indicated that the association was willing to vacate the judgment by stipulation and have the matter reheard in conciliation court if Pederson agreed to pay \$50 in costs. Iliff faxed respondent a letter regarding the proposed stipulation.

23. Respondent contacted Pederson about the offer. Because she did not fully understand the offer she did not accept it and instead asked that respondent forward the document to her so she could consider it. Respondent promised to deliver the document to Pederson, but failed to do so.

24. On August 18, 1999, respondent falsely told Pederson that he had a document which showed that the conciliation court judgment had been vacated. Pederson requested a copy of the document, but respondent failed to forward it to her.

25. On August 20, 1999, respondent responded to the Director's request for a response to the Pederson ethics complaint and wrote that he "was never retained to defend [Pederson's] Conciliation Court case." He further wrote that "(The Associations [sic] Judgment has been vacated)." Finally, he stated that he "was never privy or attorney of record for her Conciliation Court case." Respondent's statements to the Director's Office in the disciplinary investigation were false. The conciliation court

judgment had not been vacated at the time respondent drafted his response to the ethics complaint. Moreover, respondent had held himself out as Pederson's attorney regarding the conciliation court matter to the association's manager (Strandness) and attorney (Iliff).

26. On August 27, 1999, Iliff sent a second fax letter to respondent again indicating the association's willingness to stipulate that the judgment be vacated and the matter reheard in conciliation court, provided that Pederson paid \$50 in cost. In addition, the fax cover sheet confirmed that respondent told Iliff that he would continue the conciliation court hearing scheduled for that same date at 2:00 p.m. Respondent agreed to contact the court and continue the hearing. Respondent called attorney Iliff back a short while later and stated that he had talked to the court and that the motion had been continued indefinitely. This statement was false. Respondent sent a messenger to Pederson's home that day with the association's offer to vacate the judgment by stipulation if she agreed to pay \$50 in costs, and had called Pederson regarding the offer, but she disregarded the offer to settle as she planned to attend the hearing scheduled for later that day.

27. During respondent's phone call to Pederson on August 27, 1999, respondent asked what Pederson wanted from him, and offered to pay her money, \$7,000 to \$10,000. The payment was offered to prevent Pederson either from appearing at the conciliation court hearing which was scheduled for that same day, or as an attempt to pay Pederson to withdraw her ethics complaint.

28. Pederson appeared *pro se* at the conciliation court hearing on August 27, 1999. In reliance on respondent's representations that the hearing had been continued, however, the association did not appear. Because no appearance was made by the association, the judge vacated the judgment and rescheduled a hearing for September 21, 1999.

29. On August 31, 1999, attorney Iliff sent respondent a “last and final offer” to compromise the dispute between the association and Pederson. The letter indicated that the association was willing to accept \$815 from Pederson payable in full within ten days from the date of the letter in exchange for a settlement of the conciliation court matter and a waiver of the association’s right to possible attorneys’ fees and costs. The letter warned that if the offer,

[I]f not accepted, the Association will pursue a foreclosure of its lien on Ms. Pederson’s unit in accordance with Minnesota Statutes Chapter 515B. The amount due in such foreclosure proceedings would include all assessments, late fees, and reasonable attorneys’ fees and costs and other charges recoverable by law.

30. Respondent failed to inform Pederson of the August 31, 1999, final offer of settlement. He did not deliver the letter to her or otherwise communicate the association’s offer to settle or its intent to foreclose on her townhome in the absence of such an agreement.

31. On September 21, 1999, Pederson appeared at court, but was informed that the case had been dropped from the court’s calendar. She then contacted the association’s manager, Strandness, regarding the status of the matter.

32. During their conversation, Strandness informed Pederson of the association’s August 31, 1999, final offer of settlement and its intent to foreclose. Strandness later supplied Pederson with a copy of the August 31, 1999, correspondence regarding the final offer.

33. To avoid foreclosure on her unit, Pederson was required to pay not only the \$815 as stated in the final offer letter, but also an additional \$165, which represented fees and costs incurred by the association as a result of respondent’s failure to forward the offer.

34. On several occasions, Pederson has orally terminated respondent as her lawyer and requested the return of her file materials, including her photographs.

Respondent has failed to withdraw from representation and has failed to return Ms. Pederson's file materials and photographs.

35. By letter dated November 30, 1999, respondent advised the Director's Office that he had conversed with Pederson and that they had discussed his "need" to have the photographs to resolve additional legal issues regarding her townhome. Respondent's allegations in his letter to the Director's Office as a part of the disciplinary investigation regarding an understanding with Pederson as to her file materials were false. There was no such agreement or understanding with Pederson.

36. Respondent's conduct in the Pederson matter violated Rules 1.3, 1.4, 1.5(a), 1.15(a), 1.16(a)(3), 4.1, 8.1(a)(1), and 8.4(c) MRPC, and LPRB Opinions 13 and 15.

THIRD COUNT

LaDonna Stage Matter

37. In the fall of 1995, respondent was retained to represent LaDonna Stage's son in an action against his former employer, ADC Telecommunications. Stage paid \$8,000 of the approximately \$24,000 in attorney's fees charged by respondent in her son's case. In 1996 respondent agreed to refund \$10,000 of fees he had received in that matter. Respondent suggested that he refund \$2,000 to Stage's son, and that he would put the other \$8,000 towards an employment discrimination claim on Stage's behalf against ADC Telecommunications, which was her current employer. Stage agreed to the arrangement.

38. Respondent claims that he had a "flat fee" agreement with Stage but has no written retainer agreement.

39. Respondent failed to keep Stage adequately informed regarding the status of her claim against ADC. Respondent also failed to provide Ms. Stage with copies of correspondence or other documents.

40. In September 1998 Stage told respondent she needed to file bankruptcy to discharge debts which she had incurred, in part, to support her son. Respondent asked for and received a \$180 check for filing fees from Stage. The day after receiving the check for filing fees, respondent told Stage that the bankruptcy filing had been completed and that she should expect to have a hearing in November 1998.

41. Respondent failed to keep Stage adequately informed regarding the status of her bankruptcy. In November, December, and January 1998, Stage repeatedly called respondent asking about the status of her bankruptcy matter and inquired when the hearing would take place. Complainant told respondent that she was continually receiving threatening calls and letters from creditors regarding the debt. Respondent assured her that the matter had been filed, that he "had taken care of it," and that the hearing would be "any day."

42. In February 1999 Stage contacted the bankruptcy court and was informed that the court had returned respondent's initial filings back to him in September 1998 because they were incorrect or incomplete. Stage also was told that respondent had failed to re-file the bankruptcy papers.

43. After Stage repeatedly requested information and status updates from respondent regarding the bankruptcy, respondent re-filed the bankruptcy petition on or about February 5, 1999. Respondent told Stage that the delay in the filing of the bankruptcy papers was "no big deal" despite Stage's ongoing receipt of threatening calls and letters regarding the debt which caused her anxiety and concern.

44. As a part of his representation during the bankruptcy, respondent gave Stage blank bankruptcy forms and had her sign them. Respondent then filled in the documents which had been pre-signed. As the debtor in the proceeding, Stage was required to sign the papers under penalty of perjury. Respondent failed to provide copies of the completed bankruptcy paperwork to Stage.

45. Also as part of the bankruptcy proceeding, respondent filed a statement of compensation by attorney for debtor, dated February 22, 1999. In that statement, respondent alleged that he was paid \$250 in attorney's fees for filing Ms. Stage's bankruptcy. The pleading was false. Ms. Stage did not pay respondent for his services in the bankruptcy matter, other than providing him with a check for the filing fee.

46. On June 6, 1999, respondent executed a promissory note in which he agreed to refund Stage's \$8,000 at \$800 per month beginning June 30, 1999. Respondent failed to comply with the terms of the agreement.

47. Respondent later claimed in a response to the Director's Office that the agreement regarding repayment of the note had been orally modified to provide that he pay only \$125 per month to Stage. Respondent's claim to the Director's Office in the course of the disciplinary investigation was false. No such modification to the written agreement was made with Stage.

48. Respondent failed to timely pursue Stage's employment case against her employer, ADC. Respondent took no action on the case until the spring of 1999 when he attempted service on the company.

49. On or about April 29, 1999, respondent provided Stage with a copy of an undated "Certificate of Service" in an attempt to demonstrate that he had taken action on Stage's claim against ADC. The "Certificate of Service," which was signed by a "G. Michael Wilson," was not dated or notarized, and did not specify how service on the corporation had been made. Specifically, the certificate provided:

That I certify that I have received the Summons and complaint regarding LaDonna Stage v. ADC Telecommunications. That I have served this document on the Defendant, ADC, at the following address:

ADC Telecommunications
12501 Whitewater Dr.
Minnetonka, Minnesota

/s/ G Michael Wilson

50. ADC, which received the summons and complaint by mail, raised the ineffective service as a defense. Respondent failed either to prove effective service on the company or to properly serve the company with the summons and complaint.

51. Respondent conferred on the phone, had one in-person discussion, and wrote one letter regarding settlement of Stage's case to ADC's attorney. On or about September 29, 1999, ADC's attorney wrote to respondent to inform him that ADC had investigated the matter and was "not interested in engaging in discussions to settle any of Ms. Stage's purported claims." Respondent neither sent the letter to Stage nor informed her of the company's position.

52. On several occasions, Stage has orally terminated respondent as her lawyer. Respondent failed to withdraw from representation and instead stated that Stage could not fire him.

53. On December 22, 1999, Stage obtained a conciliation court judgment by default against respondent for \$7,570 based on the promissory note he had written regarding repayment of fees. Respondent failed to appear for the conciliation court hearing despite being properly served with a subpoena. Respondent has neither appealed from that judgment nor paid the judgment entered against him.

54. Respondent contacted Stage by phone on or about February 8, 2000, and indicated that payment in full would be delivered to her "within an hour" of his phone call. No such payment was delivered.

55. Respondent contacted Stage on or about February 17, 1999, and stated that he would pay her in full on February 21, 2000. No such payment was received.

56. Respondent contacted Stage on or about February 22, 2000, and stated that he had obtained \$500 for her, that the money was "in the mail" and that she would have it by February 24, 2000. No such payment was received.

57. Respondent contacted Stage on or about February 25, 2000, and stated that he had "another \$500 for her" and that he would send it to her so that she would have

received a total of \$1,000. When Stage stated that she had not yet received the first \$500, respondent indicated that she would “for sure” receive the money. On or about March 2, 2000, Stage received \$500 from respondent.

58. Respondent’s conduct in the Stage matter violated Rules 1.1, 1.3, 1.4, 1.5(a) and (b), 1.15, 1.16(a)(3), 3.3(a)(1), 8.1(a)(1), 8.4(c) and (d), MRPC, and LPRB Opinion 15.

FOURTH COUNT

Lois Smith Matter

59. In 1996 Lois Smith listed her home for sale. She signed a purchase agreement on January 7, 1996. The buyer was unable to close on the scheduled date and requested an extension in which to close. Smith did not agree to the extension, and hired an attorney to serve a notice of cancellation of purchase agreement on the buyer. Smith later hired respondent in April 1996 regarding the cancellation of the purchase agreement. She also pursued a civil action against individuals, including the real estate agent and the lender involved in the failed sale transaction.

60. During the course of the representation, Smith paid respondent approximately \$34,000 in legal fees. Respondent claims he had a flat fee agreement with Smith for the initial \$10,500 in fees he received to “get her house back,” and another flat fee agreement for the later civil action undertaken on her behalf, but has no written retainer agreements.

61. Respondent specifically requested \$4,200 from Smith in fees “for depositions.” Respondent’s statements regarding his need for money to conduct depositions were false. Respondent neither took nor attended any depositions during his representation of Smith.

62. Respondent conducted no formal discovery on Ms. Smith’s behalf during the civil action he instituted. The defendants brought motions for dismissal and/or summary judgment under Rule 12 and Rule 56.

63. Following the hearing, respondent told Smith that the judge likely would rule on the pending motions in early January 1999. Smith frequently requested information on the status of the hearing from respondent, but respondent failed to inform her of the outcome of the hearing. The order granting the defendants' motion for summary judgment and dismissing her case with prejudice was filed on January 19, 1999. Smith became aware of the existence of the order dismissing her case only when her son retrieved a copy from the court.

64. Both in his statements to the investigator and at the hearing before the Fourth District Ethics Committee (DEC), respondent indicated that his efforts to rectify the dismissal of Smith's lawsuit were ongoing. Specifically, respondent claimed that he was pursuing a Rule 60 motion on Smith's behalf. These statements made to the DEC as a part of the disciplinary investigation were false or misleading. While a motion had been scheduled with the judge's clerk, the hearing was cancelled by respondent, who neither served and filed nor argued such a motion.

65. Respondent also told the DEC that the judge and parties agreed that the judge would not rule on the defendants' summary judgment motions until the parties tried to settle the case. Respondent later reiterated that statement to the Director's Office as a part of the disciplinary investigation. Respondent's statements to the DEC and the Director's Office were false. There was no such agreement between the parties, and the judge made no such assurance regarding a delayed decision pending settlement discussions.

66. On several occasions, Smith demanded that respondent refund the money she had paid to him. Respondent agreed to do so on several occasions but has failed to refund any money to her. For example, on July 23, 1999, Smith demanded a refund. Respondent told Smith that he would bring over a check to her on July 26, 1999. No such check was delivered or payment made.

67. Respondent's conduct in the Lois Smith matter violated Rules 1.1, 1.3, 1.4, 1.5(a) and (b), 8.1(a)(1), and 8.4(c), MRPC, and LPRB Opinion 15.

FIFTH COUNT

Non-Cooperation

68. Respondent has failed to respond to letters and notices of investigations in the investigations of the complaints against him as follows:

Cheryl Larson Matter

69. On June 24, 1999, the Director sent a notice of investigation of the Larson complaint to respondent. Respondent failed to respond. The Director sent a letter on July 29, 1999, again requesting a response to the notice of investigation. Respondent failed to respond. On August 12, 1999, the Director sent a letter via certified mail to respondent again requesting a response to the Larson complaint.

70. Respondent's written response to the complaint was not received until August 26, 1999, and included a copy of a brief which was illegible. Respondent acknowledged that the brief was not legible and promised to deliver a legible copy by August 30, 1999. Respondent failed to provide the document as promised by August 30, 1999. On October 15, 1999, the Director requested a legible copy of the brief. Respondent failed to respond. On November 19, 1999, respondent faxed a legible copy of a brief to the Director's Office. However, the brief submitted was a different brief than the brief originally requested.

Pederson Matter

71. On June 30, 1999, the Director's Office forwarded a notice of investigation of the Pederson complaint to respondent. Respondent failed to respond. The Director's Office sent a letter dated July 29, 1999, again seeking a response to the notice of investigation. Respondent failed to respond. The Director's Office then sent a certified

letter to respondent on August 12, 1999, and again requested responses to the notice of investigation. Respondent's written response was not received until August 20, 1999.

Stage Matter

72. On June 24, 1999, the Director's Office forwarded a notice of investigation of the Stage complaint to respondent. Respondent failed to respond. The Director's Office sent a letter dated July 29, 1999, again seeking a response to the notice of investigation. Respondent failed to respond. The Director's Office then sent a certified letter to respondent on August 12, 1999, and again requested responses to the notice of investigation. Respondent's written response was not received until August 20, 1999.

Schultz Matter

73. On January 27, 2000, Scott Schultz filed an ethics complaint against respondent with the Director's Office. Complainant alleged that he paid respondent over \$7,000 to represent him in an action to partition real estate, but that respondent had failed to diligently work on the matter, failed to keep him adequately informed, failed to have a written retainer agreement, and failed to fulfill his later promises to refund a portion of the fees that he had been paid. On February 3, 2000, the Director's Office sent a notice of investigation to respondent both to his address on Minnetonka Boulevard and by certified mail to his address on Carlson Parkway. Respondent failed to respond until March 24, 2000, or approximately five weeks after his response was due.

74. Respondent's conduct in the Schultz matter violated Rule 8.1(a)(3), MRPC.

75. Respondent's conduct in the Non-cooperation charges violated Rule 8.1(a)(3), MRPC.

SIXTH COUNT

Verbatim Court Reporting Matter

76. Respondent hired Verbatim Court Reporting for court reporting services at an August 12, 1996, deposition.

77. Respondent did not pay the \$295.85 invoice for the copy of the deposition he ordered despite receiving an invoice and several reminder telephone calls on the matter.

78. In 1998 Mr. Dale Schmidt, a representative of Verbatim Court Reporting, notified respondent of the company's intent to pursue the matter in conciliation court. In response, respondent wrote an October 7, 1998, letter to Mr. Schmidt in which he agreed to pay the balance owed for services rendered. Specifically, respondent stated he agreed "to pay \$50.00 with in [sic] the next 5days [sic] and the balance by November 1, 1998." As a result of the letter, complainant canceled the conciliation court hearing that had been scheduled.

79. Respondent failed to comply with his promise to pay the debt. Mr. Schmidt, on behalf of the company, accordingly obtained a judgment dated March 3, 1999, against respondent in the amount of \$335.85.

80. During the investigation, respondent assured the DEC investigator that he would pay the judgment. Despite these assurances, respondent has failed to make payments or otherwise satisfy the judgment.

81. Respondent's conduct in the Verbatim Court Reporting matter violated Rule 8.4(d), MRPC.

SEVENTH COUNT

Nonpayment of Judgments and Sanctions

82. Respondent's conduct as alleged in paragraphs 8, 9, 53, 79 and 80 regarding his failure to pay judgments and sanctions against him, together with respondent's prior discipline constitute a pattern of conduct as is defined under Rule 19, Rules on Lawyers Professional Responsibility (RLPR).

83. Respondent's conduct in the Nonpayment of Judgments and Sanctions charges violated Rule 8.4(d), MRPC, and Rule 19, RLPR.

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: August 8, 2000.



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