

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary  
Action against BARRIE S. SCHUMACK,  
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 15, 1982. Respondent currently practices law in Apple Valley, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's history of prior discipline is as follows:

1. Respondent received a December 8, 1992, admonition for failing to provide thorough preparation to ensure competent representation, failing to communicate with his client, filing a frivolous motion, and failing to comply with a court order to pay the opposing party's attorney's fees, in violation of Rules 1.1, 1.4(a), 3.1, 3.4(c), and 8.4(d), Minnesota Rules of Professional Conduct (MRPC) (Exhibit 1).

2. On October 13, 1993, respondent was placed on two years private probation for failing to (a) attend a meeting at the offices of the special master in a dissolution proceeding, (b) return phone calls, (c) respond to discovery, (d) comply with a court order, and (e) facilitate compliance with another court order, in violation of Rules 1.3, 3.2, 3.4(c) and (d), and 8.4(d), MRPC (Exhibit 2).

#### FIRST COUNT

1. Respondent has engaged in a pattern of neglect, non-communication, failure to return client files and failure to provide accountings, as more fully set forth below.

#### McGlade Matter

2. On or about October 13, 1998, Kevin McGlade was served with a summons and petition for dissolution of marriage. On October 15, 1998, McGlade retained respondent and paid him a \$2,000 retainer (Exhibit 3). At that time, McGlade outlined for respondent an answer to the petition. Respondent failed to timely serve the answer.

3. In early December, McGlade called respondent and asked him why he had not served the answer. Respondent said that he had forgotten about it. Respondent faxed the answer to opposing counsel on December 7, 1998.

4. Sometime during the week of December 14, 1998, McGlade retained new counsel and notified respondent that he no longer wanted respondent to represent him. McGlade asked respondent to return his file and the balance of his retainer. Respondent did not return McGlade's file and retainer.

5. On January 7, 1999, McGlade's new attorney wrote to respondent requesting McGlade's file and the balance of his retainer. By letter dated February 11, 1999, respondent mailed the file and a \$1,000 refund to McGlade's attorney stating that

he would send a final accounting and additional refund, if any, under separate cover (Exhibit 4).

6. Respondent has failed to provide an accounting or to communicate further with McGlade or his new counsel.

#### Adair Matter

7. In October 1997 Robert Adair hired respondent to commence and represent him in a marriage dissolution proceeding. Adair paid respondent a \$1,000 retainer.

8. On March 6, 1998, respondent served a summons, petition and proposed marital termination agreement on Adair's wife. An answer to the petition was due by approximately April 6, 1998. In conversations with Adair after April 6, 1998, respondent falsely informed Adair that he had not received an answer.

9. In early May 1998, respondent informed Adair that he had, in fact, received an answer to the petition within the 30-day period for response, but had misplaced it. Respondent promised to send Adair a copy of the answer, but failed to do so.

10. Also in early May 1998, respondent asked Adair to provide him with financial information that opposing counsel had requested in April 1998. Adair promptly complied with respondent's request. Despite Adair's request, respondent failed to provide Adair with verification that he had forwarded the financial information to opposing counsel.

11. During the period beginning March 1998, it became extremely difficult for Adair to communicate with respondent. Respondent failed to return Adair's numerous telephone messages. Adair wrote to respondent on July 17, 1998, about respondent's lack of diligence and communication (Exhibit 5). Respondent did not respond.

12. On July 28, 1998, the court issued an order for mediation in Adair's case. Respondent failed to inform Adair of the order. Adair discovered the order on August 24, 1998, when he went to the court to review the court's file on his dissolution.

13. On September 3, 1998, Adair discharged respondent, requested his file and a \$1,000 refund by September 11, 1998 (Exhibit 6). Respondent failed to respond.

14. On or about September 21, 1998, Adair's new lawyer contacted respondent and requested Adair's file, an accounting, and a refund of the unearned portion of the retainer. Respondent thereafter provided Adair's new lawyer with the file, but failed to provide an accounting or refund.

15. On December 7, 1998, after Adair filed his complaint with the Director's Office, respondent sent Adair a bill reflecting \$531.25 in services and enclosing a \$468.75 refund.

#### Capistrant Matter

16. Respondent represented the mother in a child visitation matter. Theresa Capistrant represented the father.

17. On March 19, 1998, Capistrant forwarded to respondent a stipulation of visitation issues that she and her client had signed (Exhibit 7). This stipulation was based on the parties' agreement reached during court-ordered mediation.

18. Thereafter, Capistrant discussed the matter with respondent on several occasions. Respondent confirmed that he had received the stipulation and assured Capistrant that he would obtain his client's signature on the document and file it promptly. Respondent failed to do so.

19. On August 18, 1998, Capistrant wrote to respondent requesting verification by August 24, 1998, that he had filed the stipulation. Capistrant stated that if respondent failed to provide verification, she would seek the court's assistance and an award of attorney's fees (Exhibit 8).

20. On October 21, 1998, Capistrant notified respondent of her intent to file a motion to compel his submission of the stipulation and for attorney's fees. The motion was scheduled to be heard on November 9, 1998. Capistrant requested respondent's response by October 23, 1998 (Exhibit 9). Respondent failed to respond and failed to appear at the November 9, 1998, hearing on Capistrant's motion.

21. On November 10, 1998, the court ordered respondent to pay \$350 in attorney's fees to Capistrant's client (Exhibit 10). The court stated that the award would be reduced to judgment within 90 days if respondent failed to pay.

22. Respondent failed to pay and on March 29, 1999, judgment was entered against him. Respondent did not pay the judgment until after Capistrant filed a complaint.

#### Paul Matter

23. On July 17, 1997, James Olson and Howard Thompson commenced an adversary proceeding on behalf of Jimmy's Auto Inc. (Jimmy's) in the Mark and Mary Weller bankruptcy. On or about July 10, 1998, Jimmy's retained respondent to represent it in the adversary proceeding.

24. On September 1, 1998, the bankruptcy court issued an order providing as follows:

(1) on or before October 30, 1998, counsel for all parties shall confer and enter into a stipulation of uncontroverted facts. This stipulation shall be reduced to writing and filed within ten days thereafter in a form which can be adopted by the court as findings of fact; and (2) on or before November 15, 1998, counsel for each party shall prepare, serve and file a trial brief containing an outline of evidence which will be adduced and a complete statement of points and authorities on issues of law.

25. On September 21, 1998, Mitchell Scott Paul, the Wellers' attorney, requested from respondent supplementation of several of the discovery requests that Jimmy's prior attorney had served. Paul also served a second set of discovery. Respondent failed to timely respond.

26. On October 27, 1998, Paul wrote to respondent regarding the outstanding discovery and his urgent need for responses, given the October 30, 1998, deadline for reaching agreement on the uncontested facts. Paul requested respondent's discovery responses by October 30, 1998, and stated,

In the event the discovery is not in my office by that time, I hereby call a discovery conference by telephone at 10:00 A.M. November 2, 1998 pursuant to Local Rule 1207(b). I will initiate the conference; please call me with an alternative telephone number if you will not be available at your office at that time.

(Exhibit 11.) Respondent failed to provide discovery responses by October 30, 1998. When Paul telephoned respondent's office at 10:00 a.m. on November 2, 1998, he was told that respondent was out of the office. Paul left a message, which respondent failed to return.

27. On November 12, 1998, pursuant to instructions he received from the bankruptcy court clerk, Paul served on respondent a proposed stipulation of facts. Respondent failed to reply. Instead, respondent served and filed a unilateral "stipulation" on November 17, 1998, without court instruction or approval.

28. Pursuant to the court's scheduling order, respondent's brief was due November 15, 1998. Respondent did not request an extension from the court but did not file and serve his trial brief until November 17, 1998.

29. On November 20, 1998, Paul served respondent with a motion to dismiss the adversary proceeding based on respondent's failure to comply with the scheduling order. The hearing on Paul's motion was scheduled for December 7, 1998.

30. Respondent failed to respond to the motion or appear at the December 7, 1998, hearing. Twice during the hearing, the bankruptcy court attempted to reach respondent by telephone. Respondent failed to return the court's calls. The bankruptcy court granted Paul's motion to dismiss (Exhibit 12).

31. On December 22, 1998, Paul served respondent with a motion for attorney's fees to be heard on January 5, 1999. Respondent failed to respond to the motion and failed to appear at the hearing. On January 6, 1999, the court entered judgment against respondent and Jimmy's for \$8,764.37 (Exhibit 13).

32. On January 15, 1999, Paul served respondent with the order and judgment and demanded payment. Respondent failed to respond.

33. On February 9, 1999, Paul wrote to respondent again demanding payment of the judgment. By letter dated February 12, 1999, respondent stated that Jimmy's had retained new counsel, who was in the process of preparing a motion to vacate. Respondent stated that he wished to await the outcome of that motion before beginning payments on the judgment, and would contact Paul upon his return from vacation.

34. On February 15, 1999, Paul wrote to respondent asking that respondent contact him immediately upon his return regarding payment. Respondent did not respond.

35. On March 22, 1999, Paul again wrote to respondent regarding payment. Again, respondent again failed to respond.

36. Respondent's pattern of misconduct in neglecting client matters, failing to communicate, failing to return client files promptly, failing to account and return unearned fees and in failing to promptly pay court-ordered judgments against him violated Rules 1.3, 1.4, 1.16(d), and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

#### SECOND COUNT

37. On October 20, 1998, the Director's Office mailed respondent a notice of investigation of the Adair complaint (Exhibit 14). The notice assigned investigation of the matter to the First District Ethics Committee (DEC) and requested respondent's written response within 14 days. Respondent failed to timely submit his response. Respondent thereafter failed to return the DEC investigator's telephone calls or to

respond to his letters. Respondent did not submit his response to the Adair complaint until December 8, 1998.

38. On April 23, 1999, the Director's Office mailed respondent a notice of investigation of the McGlade complaint (Exhibit 15). The notice requested respondent's written response within 14 days. Respondent failed to respond.

39. On May 5, 1999, the Director's Office mailed respondent notices of investigation of the Capistrant and Paul complaints (Exhibits 16 and 17). The notices requested respondent's written response within 14 days. Respondent failed to respond.

40. On May 14, 1999, respondent met with representatives of the Director's Office. Respondent stated that within one week he would provide: (a) written responses to the McGlade, Paul and Capistrant complaints; (b) additional information with regard to the Adair complaint; (c) each client's complete file; (d) trust account records from October 1998 to June 1999; and (e) copies of the relevant retainer agreements and billing statements. Respondent failed to provide these materials.

41. On May 28, 1999, the Director wrote to respondent requesting within ten days the materials requested at the May 14 meeting. Respondent failed to respond (Exhibit 18).

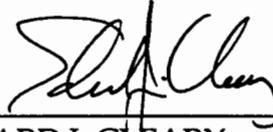
42. On June 15, 1999, the Director again wrote to respondent requesting the materials by June 21, 1999. The Director stated that if respondent was unable to timely provide the materials he should immediately contact the Director's Office. Respondent failed to respond (Exhibit 19).

43. Respondent's conduct in failing to cooperate in the investigation of discipline complaints against him violated Rules 8.1(a)(3) and 8.4(d), MRPC, Rule 25, Rules on Lawyers Professional Responsibility, and the holding in *In re Cartwright*, 282 N.W.2d 548 (Minn. 1979).

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.

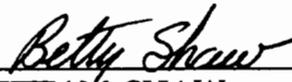
Dated: September 21, 1999.



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PROFESSIONAL RESPONSIBILITY  
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and



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BETTY M. SHAW  
SENIOR ASSISTANT DIRECTOR  
Attorney No. 130904

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

Dated: October 5, 1999



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STEVEN J. OLSON  
PANEL CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD