

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary  
Action against SCOTT E. SELMER,  
a Minnesota Attorney,  
Registration No. 156024.  
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**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 (RLPR), and pursuant to this Court's December 3, 2001, order in the matter.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 11, 1984. Respondent currently practices law in Golden Valley, Minnesota.

#### INTRODUCTION

On September 11, 1997, this Court suspended respondent from the practice of law. *In re Selmer*, 568 N.W.2d 702 (Minn. 1997) (Exhibit 1). Respondent's discipline was based upon his engaging in a pattern of harassing and frivolous litigation, making false and misleading statements in response to discovery requests and in pre-trial proceedings, and failing to comply with proper discovery requests.

On December 3, 2001, this Court reinstated respondent and placed respondent on probation for five (5) years. *In re Selmer*, 636 N.W.2d 308 (Minn. 2001) (Exhibit 2). Among the conditions of respondent's probation are the following:

- a. Petitioner shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation and promptly respond to the Director's correspondence by the due date. Petitioner shall

cooperate with the Director's investigation of any allegations of unprofessional conduct which may come to the Director's attention. Upon the Director's request, petitioner shall provide authorization for release of information and documentation to verify compliance with the terms of this probation.

b. Petitioner shall abide by the Minnesota Rules of Professional Conduct.

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g. Petitioner shall pay in full the outstanding Wisconsin disciplinary judgment before the conclusion of his probation and shall provide the Director with a copy of the satisfaction of judgment at least six months prior to the end of his probationary period.

h. Petitioner will make good faith efforts to reduce and/or satisfy all outstanding tax liens and civil judgments. In addition, petitioner will provide the Director's Office with a repayment plan for satisfying his past due tax liabilities and the Schurstein civil judgment.

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j. Within 60 days from the date petitioner resumes practice, he shall provide to his probation supervisor, a written plan, acceptable to the Director, outlining office procedures designed to ensure that petitioner is in compliance with probation requirements. Petitioner shall provide progress reports as requested by either his supervisor or the Director's Office.

Respondent has committed the following unprofessional conduct warranting revocation of probation and further public discipline:

COUNT ONE

Repeated and Continuing Pattern of Failing to Comply With Probation Requirements, and False Statement to the Director's Office

1. By letter dated December 12, 2001, the Director sent to respondent a copy of the Supreme Court's December 3, 2001, order placing respondent on probation (Exhibit 2), reminded respondent of the terms and conditions of the probation; requested respondent to provide within sixty days of resuming practice a copy of respondent's written office procedures; requested respondent to provide on June 1,

2002, and every six months thereafter, reports concerning his payments toward all outstanding tax liens and judgments; and requested respondent to provide a copy of his law office business plan.

2. By letter dated December 28, 2001, the Director advised respondent that at that time he was suspended from the practice of law for non-payment of the attorney registration fee and on restricted status for failure to comply with continuing legal education (CLE) requirements, and requested respondent to provide within ten days proof of payment of the attorney registration fee and proof that respondent had been removed from CLE restricted status.

3. On or about January 11, 2002, respondent provided to the Director proof that he was then in compliance with CLE requirements.

4. By letter dated January 17, 2002, the Director requested respondent to provide a copy of his new law license from Attorney Registration once he received it. Respondent failed to respond and failed to provide a copy of his new law license.

5. Respondent failed to provide on or before June 1, 2002, the required report to the Director concerning payments toward outstanding tax liens and judgments.

6. By letter dated June 17, 2002, the Director informed respondent that the Director had not received the report concerning payments toward outstanding tax liens and judgments, had not received respondent's written office procedures, had not received respondent's business plan and had not received a copy of respondent's law license. The Director requested respondent to provide this information and documentation.

7. Respondent replied by letter dated June 27, 2002. Respondent stated, "I have not yet been able to re-establish my law practice, therefore, I have not been able to make any payments toward outstanding tax liens and judgments." Although respondent stated that he was enclosing a copy of the business plan for his private practice, no business plan was enclosed. Respondent failed to address what efforts, if any, he had made toward satisfying the outstanding tax liens and judgments.

8. By letter dated July 5, 2002, the Director requested respondent to describe what good faith efforts he had made to reduce the outstanding tax liens and judgments and again requested respondent to provide a copy of his business plan.

9. By letter dated July 10, 2002, respondent provided a business plan, but again failed to address the issue of his outstanding tax liens and judgments.

10. By letter dated July 25, 2002, the Director advised respondent that respondent had not provided to the Director any information or documents regarding respondent's good faith efforts to reduce and/or satisfy outstanding tax liens and judgments and requested respondent to provide within thirty days documentation evidencing respondent's compliance with this condition of probation.

11. Respondent replied by letter dated July 29, 2002. Respondent did not indicate that he had made any payments to satisfy the tax liens, made payments to satisfy the outstanding judgments, entered into payment arrangements, or contacted the creditors.

12. In September 2002 respondent met with a representative of the Director's Office. During that meeting, respondent stated that he had consulted with a debt advisor regarding the outstanding tax liens and judgments.

13. By letter dated October 1, 2002, the Director requested respondent to provide the name and telephone number of the debt advisor with whom respondent said he had consulted, together with a written description of respondent's current efforts to reduce and/or satisfy the outstanding tax liens and judgments. Respondent failed to respond.

14. On or about October 21, 2002, respondent served and filed with this Court a motion for permission to file a Chapter 7 bankruptcy. By order filed February 6, 2003, this Court denied respondent's motion. This Court stated:

Because respondent is not required by state or federal law to obtain the permission of this court to file for bankruptcy, there is no basis on which to grant the motion. It appears that the underlying purpose of the bankruptcy and the motion before this court is to amend the conditions of

probation to relieve respondent of his obligation to satisfy outstanding liens and judgments. Whether and under what circumstances petitioner might be relieved of that obligation as a condition of probation will be addressed only on a motion to modify the conditions of probation and based on an adequate record.

15. During 2002 and early 2003, respondent claimed to the Director that he generated very little income, such that his obligations exceeded his income.

16. By letter dated March 6, 2003, the Director requested respondent to indicate what actions he had undertaken to implement his business plan and put himself in a position to satisfy the obligations ordered by this Court; to provide information and documents regarding his efforts, if any, to find additional or alternative work; and to complete and return authorizations for release of tax information to verify respondent's claims regarding lack of income. Respondent failed to respond.

17. By letter dated March 26, 2003, the Director advised respondent that the Director had received no response to that March 6 letter and requested respondent to provide at that time the information and documents requested in that March 6 letter.

18. Respondent provided executed tax authorizations, but refused to provide the other requested information and documentation.

19. By letter dated April 9, 2003, the Director requested respondent to provide within seven days the information requested in the Director's March 6 letter that respondent had not yet provided.

20. By letter dated April 18, 2003, respondent requested an extension to April 30, 2003, to respond to the Director's April 9 letter. By letter dated April 21, 2003, the Director granted the requested extension.

21. By letter dated April 18, 2003, the Internal Revenue Service (IRS) informed the Director of respondent's delinquent tax filings for 2001 and 2002 (*see*, Count Two, below).

22. By letter dated April 23, 2003, the Director sent to respondent the IRS's April 18, 2003, letter and requested respondent to provide the information requested in that April 23 letter.

23. By letter dated April 18, 2003, and received by the Director on April 25, 2003, respondent stated that he did not wish to provide to the Director some of the information requested in the Director's March 6 letter.

24. By letter dated April 28, 2003, the Director again requested respondent to provide the information requested in the Director's March 6, 2003, letter, which respondent had not yet provided.

25. On April 28, 2003, the Minnesota Department of Revenue (DOR) informed the Director that respondent had not filed individual income tax returns for 2001 and 2002 (*see*, Count Two, below).

26. In late April 2003, respondent provided to the Director copies of his 2002 state and federal individual income tax returns, as requested in the Director's April 23 letter. Respondent did not provide the requested 2001 returns.

27. By letter dated April 30, 2003, the Director requested respondent to provide at that time copies of his state and federal individual income tax returns for 2001.

28. Respondent replied by letter dated May 2, 2003. In that letter, respondent again declined to provide the information requested in the Director's March 6 letter and stated that he "will be unable to satisfy the concerns of any creditors until I have at least some, however modest, disposal [sic] income beyond that which is essential to meet my family's basic needs."

29. By letter dated May 8, 2003, the Director requested respondent to provide information about respondent's monthly income and expenses within thirty days of the date of the letter and to provide an updated itemization on a quarterly basis thereafter. Respondent failed to respond.

30. By letter dated June 18, 2003, the Director advised respondent that the Director had received no response to that May 8 letter and requested respondent to provide at that time the requested information in that May 8 letter. Respondent failed to respond.

31. By letter dated July 3, 2003, and sent by certified mail, return receipt requested, the Director advised respondent that the Director still had received no response to that May 8 letter, reminded respondent that as a condition of probation respondent was required to cooperate with the Director's Office, and again requested respondent to provide the information requested in that May 8 letter.

32. Respondent replied to the Director's May 8 letter by letter dated July 11, 2003. Respondent provided some, but not all, of the requested information.

33. By letter dated July 23, 2003, the Director requested respondent to provide the information requested in the Director's March 6 and May 8, 2003, letters that respondent had not yet provided, together with additional information. Respondent replied by letter dated July 24, 2003.

34. By letter dated December 26, 2003, the Director requested respondent to provide no later than January 8, 2004, the information requested in that December 26 letter.

35. Respondent replied by letter dated January 12, 2004. Respondent's letter provided some, but not all, of the information requested in the Director's December 26 letter.

36. By letter dated January 22, 2004, the Director advised respondent that his January 12 letter did not provide all of the requested information and requested respondent to provide at that time the information requested in the Director's December 26 letter that respondent had not yet provided. The Director also reminded respondent that updated financial statements were due quarterly without further reminder or request from the Director by the eighth day after the close of the quarter. Respondent failed to respond.

37. By letter dated February 5, 2004, the Director advised respondent that the Director had received no response to the Director's January 22 letter and requested respondent to provide at that time the information requested in that letter (which was originally requested in the Director's December 26, 2003, letter).

38. Respondent replied by letter dated February 17, 2004. That letter provided some, but not all, of the information requested in the Director's December 26, 2003, and January 22, 2004, letters.

39. By letter dated February 23, 2004, the Director advised respondent that his February 17 letter provided some, but not all, of the information requested in the Director's letters and requested respondent to provide within seven days the requested information that respondent had not yet provided. Respondent failed to respond.

40. By letter dated April 13, 2004, the Director advised respondent that the Director had not received all of the information requested in the Director's December 26, 2003, and January 22, February 5 and February 23, 2004, letters and requested respondent to provide at that time the requested information and documents, together with the income and expense information due on April 8, 2004, which respondent had not yet provided, either. Respondent replied by letter dated April 18, 2004.

41. On April 27, 2004, respondent provided a client inventory. The inventory failed to provide all the information required by this Court's December 3, 2001, order.

42. Respondent's monthly inventory of active client matters was due to the Director on or before June 1, 2004. Respondent failed to provide the inventory.

43. Respondent's monthly inventory of active client matters was due to the Director on or before August 1, 2004. Respondent failed to provide the inventory until his letter dated August 12, 2004.

44. Respondent's monthly inventory of active client matters was due to the Director on December 1, 2004. Respondent failed to provide the inventory.

45. By letter dated December 22, 2004, the Director advised respondent that the Director had not received the inventory due December 1, 2004, and requested respondent to provide the inventory at that time. Respondent replied by letter dated December 3, 2004, but not received in the Director's Office until January 18, 2005. Respondent's inventory identified one active client matter.

46. Respondent failed to provide his quarterly report of household income and expenses, due January 8, 2005.

47. On January 19, 2005, respondent's probation supervisor made a report to the Director. Respondent's probation supervisor stated that respondent was handling three matters in addition to the matter identified in respondent's inventory dated December 3, 2004.

48. By letter dated May 19, 2005, the Director reminded respondent that no later than May 30, 2006, respondent was obligated to provide to the Director a copy of the satisfaction of the judgment from the Wisconsin disciplinary proceeding; advised respondent that throughout the probation respondent had provided no information to the Director indicating that respondent had contacted any judgment creditors or begun repayment; and requested respondent to inform the Director at that time of the efforts respondent had made to pay his outstanding debts. Respondent failed to reply until June 21, 2005.

49. By letter dated July 27, 2005, the Director advised respondent that respondent's probation supervisor had asked to be released from that position, requested respondent to provide within two weeks a list of four attorneys who would be willing to serve as probation supervisor, and requested respondent to provide, until a successor supervisor was appointed, to the Director's Office, his inventory of active client files by the first day of each month. Respondent failed to respond.

50. By letter dated August 18, 2005, the Director advised respondent that the Director had received no response to that July 27 letter and had not received the monthly inventory of active client matters due on August 1, 2005. The Director

requested respondent to provide at that time the client inventory and the information requested in that July 27 letter. Respondent replied by letter dated August 18, 2005, but not received in the Director's Office until September 2, 2005.

51. By letter dated October 18, 2005, the Director informed respondent that the Director had not received either the monthly inventory of active client matters due on October 1, 2005, or the quarterly report regarding household income and expenses due by October 8, 2005, and requested respondent to provide this information and documentation within seven days. Respondent failed to respond until his letter dated November 4, 2005, which was not received in the Director's Office until November 10, 2005.

52. By letter dated January 31, 2006, the Director advised respondent that the Director had not received respondent's monthly inventory of active client matters due on January 1, 2006, or the quarterly report regarding household income and expenses due by January 8, 2006, and requested respondent to provide this information and documentation within seven days. Respondent failed to respond.

53. By letter dated March 6, 2006, the Director advised respondent that the Director had received no response to that January 31 letter and requested respondent to provide at that time the information and documents requested in that January 31 letter. Respondent replied by letter dated March 9, 2006.

54. By letter dated July 6, 2006, the Director advised respondent that the Director had not received respondent's monthly inventory of active client matters due on April 1, May 1, June 1 and July 1, 2006, reminded respondent that the terms of the Supreme Court's probation order required respondent to pay in full the Wisconsin disciplinary judgment on or before May 30, 2006, and requested respondent to provide at that time a copy of the satisfaction of that judgment. Respondent failed to respond.

55. In July 2006, lawyer A.G. informed the Director's Office that he would represent respondent regarding the probation matter.

56. By letter to A.G. dated July 28, 2006, the Director advised respondent that the Director had received no response to the Director's July 6 letter and that respondent had not provided to the Director a copy of the satisfaction of the Wisconsin disciplinary judgment. The Director requested respondent to provide within three weeks information and documents to support respondent's claimed inability to pay the outstanding tax liens and judgments against him. Respondent failed to respond.

57. On August 14, 2006, A.G. informed the Director that he was no longer representing respondent.

58. By letter dated September 11, 2006, the Director advised respondent that the Director had received no response to that July 28 letter, requested respondent to respond to that July 28 letter at that time, and requested respondent, "If you are unable to respond within the next 14 days, please contact [the Director's Office]." Respondent failed to respond.

59. By letter dated September 25, 2006, the Director advised respondent that the Director had received no response to the Director's July 28 and September 11 letters and requested respondent to provide the requested information and documents within seven days. Respondent failed to respond.

60. By letter dated October 3, 2006, the Director advised respondent that the Director had received no response to the Director's July 28, September 11 and September 25 letters or the monthly inventories of active client matters due August 1, September 1 and October 1, 2006, respectively, and requested respondent to provide all of the information and documents requested in the Director's July 6 and July 28 letters, together with the monthly inventory of active client matters which were due on October 1, 2006.

61. Respondent replied by letter dated October 6, 2006. Respondent provided some, but not all, requested information and documents.

62. In his October 6 letter respondent stated, "I have been negotiating with the Wisconsin disciplinary agency" about that judgment. This statement was false. Respondent was not negotiating with the Wisconsin disciplinary agency.

63. By letter dated October 12, 2006, the Director requested respondent to provide within seven days the previously requested information and documents which respondent had not provided, and additional information and documents based on respondent's October 6 letter. Respondent failed to respond until October 23, 2006.

64. On October 23, 2006, respondent faxed to the Director some of the requested documents. Respondent failed to provide any of the requested information and failed to provide all the requested documents.

65. Respondent failed to provide to the Director a copy of the satisfaction of judgment of the outstanding Wisconsin disciplinary judgment, failed to pay that judgment in full, failed to make any payments toward that obligation and failed to make good faith efforts to pay.

66. Respondent failed to provide to the Director a repayment plan for satisfying his past-due federal and state tax liabilities.

67. Because of respondent's failure to cooperate as set forth above, to date the Director has not been able to determine whether respondent has paid his outstanding federal tax liens in full, has made any payments toward those liens or made good faith efforts to pay.

68. Because of respondent's failure to cooperate as set forth above, to date the Director has not been able to determine whether respondent has paid his outstanding state tax liens in full, has made any payments toward those liens or made good faith efforts to pay.

69. Respondent's conduct violated Rules 3.4(c) and 8.4(c) and (d), Minnesota Rules of Professional Conduct (MRPC), Rule 25, RLPR, and the terms of the Supreme Court's December 3, 2001, order. Respondent's conduct before October 1, 2005, also violated Rule 8.1(a)(3), MRPC. Respondent's conduct after September 30, 2005, also violated Rule 8.1(a) and (b), MRPC.

COUNT TWO  
Failure to Timely File Tax Returns

70. Respondent had sufficient gross income in 2001 and 2002 to require him to file federal individual income tax returns. Respondent failed to file his 2001 federal individual income tax return until March 22, 2003. As of April 18, 2003, respondent had failed to file his 2002 federal individual income tax return, which was due on April 15, 2003 (*see* ¶21, above).

71. Respondent had sufficient gross income in 2001 and 2002 to require him to file state individual income tax returns. As of April 28, 2003, respondent had failed to file his 2001 and 2002 state individual income tax returns (*see* ¶25, above).

72. Respondent's conduct violated the Supreme Court's December 3, 2001, order and Rule 8.4(b) and (d), MRPC.

COUNT THREE  
Criminal Assault

73. In January 2006 respondent was charged with assault in the fifth degree (Exhibit 5). On January 3, 2006, respondent assaulted a spectator at a basketball game.

74. On May 8, 2006, respondent pled guilty to assault in the fifth degree.

75. Rule 19(d), RLPR, provides in pertinent part:

**Criminal Conviction.** A lawyer's criminal conviction in any American jurisdiction . . . is, in proceedings under these Rules, conclusive evidence that the lawyer committed the conduct for which the lawyer was convicted.

76. Respondent's conduct violated Rule 8.4(b), MRPC.

DISCIPLINARY HISTORY

Respondent's record of discipline prior to his suspension is as follows:

a. On April 14, 1995, this Court publicly reprimanded respondent and ordered respondent placed on probation for two years for failing to promptly provide an accounting to a client, charging and suing to collect an unreasonable fee, abusing the discovery process in litigation against his client, failing to

maintain proper trust account books and records, commingling personal and client funds in his trust account, and false certification to the Supreme Court. *In re Selmer*, 529 N.W.2d 684 (Minn. 1995).

b. On April 14, 1995, this Court affirmed an admonition issued to respondent for improperly charging a client the costs of copying a file before returning the file to the client after respondent was discharged from representation. *In re Admonition Issued to XY*, 529 N.W.2d 688 (Minn. 1995).

WHEREFORE, the Director respectfully prays for an order of this Court revoking respondent's probation; disbaring or 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.

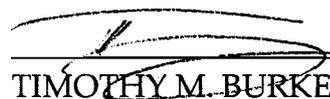
Dated: November 2, 2006.



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