

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against RICHARD D. VARRIANO
an Attorney at Law of the
State of Minnesota.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Acting Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition seeking reciprocal discipline pursuant to Rule 10(b), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 30, 1981. Respondent currently practices law in Moorhead, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

1. Larry Beal retained respondent to represent him with regard to Beal's indictment for violations of federal narcotic laws. The trial was held in the United States District Court for the Western District of Missouri in Springfield, Missouri.

2. Rhonda Heard, Beal's friend, paid respondent a \$20,000 flat fee for the representation.

3. After a six-day trial, Beal was convicted of the drug charges and sentenced to thirty years in prison.

4. After the sentencing hearing, respondent filed with the district court a notice of appeal and a request that Beal be appointed appellate counsel. Respondent then asked the district court for permission to withdraw as counsel.

5. The district court permitted respondent to withdraw and for Beal to proceed on appeal *in forma pauperis*.

6. Beal's appeal was docketed in the United States Court of Appeals for the Eighth Circuit (the appeals court) and a briefing schedule was issued.

7. The appeals court has published rules entitled Plan to Expedite Criminal Appeals. These rules provide in pertinent part that defendant's trial counsel shall represent the defendant on appeal and that a motion to withdraw will not be granted absent unusual circumstances.

8. On January 18, 2001, respondent moved the appeals court to withdraw as appointed counsel.

9. On January 29, 2001, after a three-judge administrative review of respondent's request to withdraw, respondent's motion was denied.

10. According to a new briefing schedule, respondent was required to file Beal's brief on or before February 28, 2001. Respondent failed to file a brief.

11. Beal filed a *pro se* motion to appoint new counsel. On March 5, 2001, Beal's motion was denied, again, by a three-judge panel. The order stated respondent remained Beal's counsel for purposes of appeal.

12. On March 9, 2001, respondent requested a thirty-day extension. The extension was granted. On March 28, 2001, respondent requested a second thirty-day extension, which was denied. Respondent was told by the appeals court that his brief was due by April 17, 2001. Respondent failed to file a brief.

13. Oral argument was scheduled for September 11, 2001, in St. Louis, Missouri.

14. On August 20, 2001, respondent moved to substitute attorney Richard E. Edinger for oral argument. Respondent's motion was denied.

15. On September 4, 2001, respondent moved the appeals court to waive oral argument. Respondent's motion was denied.

16. The appeals court stated in its order denying respondent's motion: "If counsel does not appear for the scheduled oral argument, the court will issue a show cause order as to why he should not be disciplined or sanctioned."

17. Respondent spoke with the deputy clerk. Respondent stated he "was not coming to St. Louis and the Court could do whatever it wanted." Respondent failed to appear at Beal's oral argument. The case was continued.

18. The order to show cause was scheduled for December 10, 2001. Respondent appeared. Respondent told the appeals court that he did not do appellate work; his retainer agreement only covered trial work; the district court had allowed him to withdraw; he felt he was incompetent and he did not travel by air.

19. On February 1, 2002, respondent was publicly disciplined by the United States Eighth District Court of Appeals. Exhibit 1.

20. Respondent's conduct in failing to comply with applicable federal statutes, rules and regulations; failing to abide by a court's order; and failing to diligently represent his client, violated Rules 1.3, 3.4(c) and 8.4(d), Minnesota Rules of Professional Conduct.

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: October 24, 2002.



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