

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

STATE OF MINNESOTA

IN SUPREME COURT

-----  
In Re Petition for Disciplinary  
Action against HAROLD R. WINGERD,  
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 5, 1973. Respondent currently practices law in St. Paul, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

1. On October 28, 1986, respondent received an admonition for neglecting a client matter, in violation of DR 6-101(A)(3), Minnesota Code of Professional Responsibility, and Rule 1.3, Minnesota Rules of Professional Conduct (MRPC).

2. On March 10, 1988, the Minnesota Supreme Court ordered a stayed 60-day suspension against respondent and placed him on probation for three years for failing to timely file state income tax returns.

3. On April 24, 1990, respondent received an admonition for neglecting a marriage dissolution matter, failing to communicate with his client and failing to

deposit his client's retainer in his trust account, in violation of Rules 1.3, 1.4(a) and 1.15(a), MRPC.

4. On February 22, 1993, respondent was placed on a two-year private probation for incompetence, neglect and charging an unreasonable fee in a probate matter, in violation of Rules 1.1, 1.3 and 1.5(a), MRPC.

#### FIRST COUNT

##### Misappropriation and Pattern of Trust Account Violations

1. At all times relevant, respondent has maintained Firststar Bank trust account no. 173443280 ("trust account") and Liberty State Bank business account no. 02-073-5 ("business account").

2. On May 13, 1999, Susie Sullivan paid respondent a \$2,500 retainer to represent her in a marriage dissolution proceeding. On May 14, 1999, respondent forwarded a retainer agreement to Sullivan for signature. Sullivan signed and returned the retainer agreement on May 18, 1999. The retainer agreement acknowledged receipt of Sullivan's \$2,500 retainer and provided that the retainer would be "credited against all time expended by us and against all costs incurred on your behalf." The retainer agreement did not state that the funds would not be held in trust, that the retainer was non-refundable or that respondent had earned the funds upon receipt.

3. On May 13 or 14, 1999, prior to performing substantial work on the file, respondent deposited Sullivan's entire retainer to his business account, thereby misappropriating substantially all of Sullivan's retainer.

4. On the following dates, the balance in respondent's business account was below the \$2,500 necessary to cover Sullivan's unearned retainer:

Date	Balance
May 18, 1999	\$1,845.72
May 19, 1999	(\$48.21)
May 20, 1999	(\$109.21)
May 21, 1999	\$270.79
May 24, 1999	(\$22.92)
June 17, 1999	\$1,695.37
June 18, 1999	\$1,932.07
June 21, 1999	\$1,491.07

5. On June 25, 1999, respondent issued Sullivan a \$2,500 check on his business account as a refund of her entire retainer.

6. Until approximately March 2000, respondent routinely held unearned client retainers in his office until he had earned them, rather than depositing the retainers into his trust account.

7. For the period until at least March 2000, respondent has failed to maintain the trust account books and records required by Rule 1.15(h), MRPC, and Lawyers Professional Responsibility Board (LPRB) Opinion 9. Specifically, respondent failed to maintain accurate and contemporaneous client subsidiary ledgers and failed to perform the monthly trial balances and reconciliations.

8. Respondent's conduct in misappropriating Sullivan's retainer, routinely failing to deposit unearned retainers to his trust account and failing to maintain required trust account books and records violated Rules 1.15(a)(2), (e) and (g), and 8.4(c), MRPC, and LPRB Opinion 9.

## SECOND COUNT

### False Statements

9. On May 31, 1999, respondent prepared and mailed to Sullivan a billing statement falsely stating that respondent had performed the following services on May 13, 1999:

[D]raft Certificate of Representation, Interrogatories and Request for Production of Documents.

In fact, respondent had not performed these services.

10. In addition, respondent's billing statement falsely implied that Sullivan's unearned retainer balance was being held in trust on her behalf. In fact, respondent had deposited Sullivan's retainer to his business account and misappropriated it in its entirety.

11. In explaining his neglect of the Sullivan matter in an October 1, 1999, response to the Sullivan complaint, respondent stated:

As best I can ascertain, my Paralegal apparently and inadvertently marked "done" on a sheet that we maintain for client file activity, on Suzie Sullivan's file. That in fact was supposed to be entered on the client file located directly below Ms. Sullivan's file on the client listing.

12. Respondent repeated this explanation during an October 18, 1999, meeting with the district ethics committee (DEC) investigator. Respondent stated further at that time that he routinely met with his paralegal approximately every ten days and that they discussed the Sullivan matter during one such meeting.

13. In February 1 and May 9, 2000, meetings with the Director's Office, respondent again repeated this explanation. Respondent stated at that time that he discussed the Sullivan matter with his paralegal in late May or early June 1999.

14. Respondent's statements that (a) he discussed the Sullivan matter with his paralegal in late May or early June 1999, and (b) his paralegal had inadvertently recorded on the client list that work on the Sullivan matter was "done," were false. In fact, respondent did not discuss the Sullivan matter with his paralegal at any time between May 14 and learning of the default judgment, and his paralegal did not inadvertently write "done" next to the Sullivan matter on the client listing.

15. Respondent encouraged his paralegal to help him create an acceptable explanation for the neglect in the Sullivan matter. Respondent knew that the explanation given to the DEC investigator and to the Director's Office was not a true and accurate description of what occurred.

16. Respondent's conduct in making false statements to Sullivan, the DEC investigator and the Director's Office violated Rule 8.4(c), MRPC.

THIRD COUNT

Failure to Timely File and Pay Income, Employer Withholding  
and Unemployment Taxes

Federal Income Tax Returns

17. Respondent failed to timely file his 1995, 1996 and 1997 federal income tax returns, although required by law to do so. Respondent filed those returns on the following dates:

Tax Year	Date of Filing
1995	08/27/98
1996	09/09/98
1997	09/08/98

Federal Employer Withholding Returns

18. As shown below, respondent failed to timely file federal employer withholding returns for the quarters ending March 31, 1995; June 30, 1995; September 30, 1995; December 31, 1995; March 31, 1996; December 31, 1996; March 31, 1997; June 30, 1997; September 30, 1997; December 31, 1997; March 31, 1998; March 31, 1999; June 30, 1999; December 31, 1999; March 31, 2000; and June 30, 2000:

Tax Period Ending	Due Date of Return	Date of Filing
03/31/95	04/30/95	04/09/97
06/30/95	07/31/95	04/09/97
09/30/95	10/31/95	04/09/97
12/31/95	01/31/96	04/10/97
03/31/96	04/30/96	04/10/97
12/31/96	01/31/97	06/05/98
03/31/97	04/30/97	06/05/98
06/30/97	07/31/97	06/05/98
09/30/97	10/31/97	06/02/98
12/31/97	01/31/97	06/05/98
03/31/98	04/30/98	06/06/98
03/31/99	04/30/99	05/21/99
06/30/99	07/31/99	08/13/99
12/31/99	01/31/99	02/13/00
03/31/00	04/30/00	08/14/00
06/30/00	07/31/00	09/18/00

19. Respondent failed to timely pay the taxes due on his federal employer withholding returns for the quarters ending December 31, 1996; March 31, 1997; June 30, 1997; December 31, 1997; March 31, 1998; and June 30, 2000, although required by law to do so. Respondent's total unpaid withholding tax obligation exceeded \$5,000.

State Income Tax Returns

20. Respondent failed to timely file his 1995 and 1996 state income tax returns, although required by law to do so. Respondent filed those returns on the following dates:

Tax Year	Date of Filing
1995	09/08/98
1996	09/08/98

State Employer Withholding Tax Returns

21. As shown below, respondent failed to timely file state employer withholding returns for the quarters ending March 31, 1995; June 30, 1995; September 30, 1995, December 31, 1995; March 31, 1996; December 31, 1996; March 31,

1997; June 30, 1997; September 30, 1997; December 31, 1997; March 31, 1998; June 30, 1998; September 30, 1998; December 31, 1998; March 31, 1999; June 30, 1999; December 31, 1999; March 31, 2000; and June 30, 2000:

Tax Period Ending	Due Date of Return	Date of Filing
03/31/95	04/30/95	05/23/95
06/30/95	07/31/95	06/14/96
09/30/95	10/31/95	06/14/96
12/31/95	01/31/96	06/12/96
03/31/96	04/30/96	05/07/96
12/31/96	01/31/97	01/20/99
03/31/97	04/30/97	01/21/99
06/30/97	07/31/97	01/21/99
09/30/97	10/31/97	01/28/99
12/31/97	01/31/97	03/30/99
03/31/98	04/30/98	03/30/99
06/30/98	07/31/98	03/30/99
09/30/98	10/31/98	03/30/99
12/31/98	01/31/99	03/30/99
03/31/99	04/30/99	05/20/99
06/30/99	07/31/99	09/16/99
12/31/99	01/31/99	Not yet filed
03/31/00	04/30/00	09/14/00
06/30/00	07/31/00	09/18/00

Unemployment Tax Returns

22. Between 1995 and 1998 respondent failed to timely file federal unemployment compensation returns or to timely pay the unemployment taxes when due. In 1997 the IRS prepared the unemployment return for respondent. In 1996, 1997 and 1998 respondent filed only after receiving demand notices from the IRS.

<u>Tax Year</u>	<u>Date Due</u>	<u>Date Filed</u>	<u>Date Paid</u>
1995	1/31/96	7/17/97	10/23/97
1996	1/31/97	10/23/99	11/29/99
1997	1/31/98	10/23/99	8/16/00
1998	1/31/99	10/23/99	11/29/99

23. Respondent's conduct in failing to timely file federal and state income, employer withholding tax returns and unemployment returns violated Rules 8.4(b) and (d), MRPC, and the Minnesota Supreme Court's holding in *In re Bunker*, 294 N.W.2d 199 (Minn. 1972).

#### FOURTH COUNT

##### Neglect and Non-Communication

24. On February 1, 1999, prior to retaining respondent, Sullivan obtained an order for protection. Among other things, the order for protection temporarily granted Sullivan custody of her three minor children, child support and possession of the parties' homestead.

25. On April 26, 1999, Sullivan was served with a summons and petition for dissolution of marriage. On May 13, 1999, Sullivan retained respondent to represent her in the marriage dissolution proceeding. Thereafter, respondent failed to prepare and serve an answer or to otherwise perform any work on Sullivan's matter.

26. On June 14, 1999, the court entered a default judgment. The default judgment reduced Sullivan's husband's child support obligation, provided for no spousal maintenance and required Sullivan to move from the parties' homestead by June 15, 2000. When Sullivan received notice of the default judgment she immediately advised respondent's office.

27. Sullivan hired new counsel who unsuccessfully moved the trial court to vacate the judgment. Sullivan then appealed to the Minnesota Court of Appeals, which, on February 15, 2000, ordered the default judgment vacated and remanded the matter for a full evidentiary hearing.

28. During the period after approximately June 14, 1999, both Sullivan and her new counsel attempted to reach respondent by telephone to discuss the default

judgment. Respondent failed to return their telephone messages and failed to contact opposing counsel.

29. On June 25, 1999, respondent refunded Sullivan's \$2,500 retainer and has agreed to pay the attorney's fees Sullivan incurred in vacating the default judgment.

30. Respondent's conduct in failing to timely pay federal and state employer withholding taxes violated Rules 8.4(b) and (d), MRPC.

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.

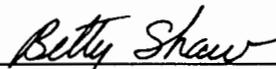
Dated: February 26, 2001.



---

EDWARD J. CLEARY  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY  
Attorney No. 17267  
25 Constitution Avenue, Suite 105  
St. Paul, MN 55155-1500  
(651) 296-3952

and



---

BETTY M. SHAW  
SENIOR ASSISTANT DIRECTOR  
Attorney No. 130904