

FILE NO. A12-0603  
STATE OF MINNESOTA  
IN SUPREME COURT

In re Petition for Disciplinary Action against  
Vicki M. Ahl  
a Minnesota Attorney, Registration No. 149548

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND  
RECOMMENDATIONS FOR DISCIPLINE

This matter was heard before the undersigned Referee in the Minnesota Professional Responsibility Courtroom at the Minnesota Judicial Center, St. Paul, Minnesota, on December 11 and 12, 2012.

Patrick R Burns, First Assistant Director, appeared on behalf of the Director of the Office of Lawyers Professional Responsibility (Director).

Terrence Fleming, Lindquist & Vennum LLP, appeared with and on behalf of Vicki M. Ahl (Respondent).

The Director called the following witnesses to testify at the hearing: Gregory Hedgecoth, Mary Pelascini, Therese Snyder, Sister Beverly Hedgecoth, David Bloomquist, and Respondent, for cross examination. Further, the Director offered Exhibits 1 through 17 into evidence, all of which were received.

Respondent's counsel called Respondent to testify on direct examination and further called Stephen Grisham as an expert witness in this matter. Respondent's counsel offered Exhibits 20 through 74 into evidence, all of which were received.

At the conclusion of the hearing, the undersigned Referee directed counsel to submit written arguments/briefs together with proposed findings of fact, conclusions of law, and recommendations for discipline by January 4, 2013. The parties were further permitted to submit reply briefs by January 16, 2013.

Based upon the Petition for Disciplinary Action herein, Respondent's Answer to said Petition, the exhibits received, and the testimony presented, the undersigned Referee makes the following findings of fact, conclusions of law and recommendations for discipline:

#### FINDINGS OF FACT

1. Respondent was admitted to practice law in Minnesota on October 21, 1983, and currently maintains a professional office in Richfield, Minnesota.

2. At all times relevant to this proceeding Respondent was a licensed attorney in Minnesota and a Certified Public Accountant. At the time of this hearing Respondent was also a Certified Financial Consultant and a Certified Life Underwriter. No evidence was offered at the hearing as to when Respondent received these last two certifications.

3. In her professional practice Respondent handles matters involving probate, elder law, estate planning, and small business issues. During tax season Respondent prepares income tax returns.

4. Beverly Hedgecoth (Sister Beverly), is Respondent's aunt. Sister Beverly is a nun, a member of the Congregation of the Good Shepherd Sisters. Prior to entering the convent Sister Beverly had worked as an accountant for the government for over 20 years.

5. In August 1993, Sister Beverly contacted Respondent and requested that Respondent prepare a trust agreement for the benefit of Sister Beverly's three children and four grandchildren: Mary Pelascini (daughter), Therese Snyder (daughter), Gregory Hedgecoth (son), Robert Heinz (grandson), Jacob Snyder (grandson), Brenda Pelascini (step-granddaughter), and Brian Pelascini, (step-grandson).

6. The trust was to be funded with \$130,000.00 of the proceeds from the sale of Sister Beverly's home in California. Of that amount, \$30,000.00 was to be allocated to each child and \$10,000.00 was to be allocated to each grandchild or step-grandchild.

7. Sister Beverly directed that the trust agreement provide that the funds allocated for her three children be distributed to them at age 35 and that the funds allocated for her grandchildren and step-grandchildren be available to them for educational expenses following their high school graduation or distributed to them at age 35 if they did not pursue further education beyond high school.

8. Respondent initially recommended that Richfield Bank and Trust Co. be designated as trustee.

9. On September 14, 1993, Respondent mailed a letter to Sister Beverly and enclosed a copy of a draft trust agreement. The draft designated Richfield Bank and Trust Co. as trustee and contained a provision addressing the rule against perpetuities at paragraph 10.4 reading as follows:

Each trust, if not sooner terminated pursuant to the provisions hereof, shall terminate twenty-one (21) years after the death of the survivor of the Trustor, the **Testator's sister, Valeria T. Hedgecoth, and the Testator's grandniece, Jessica Ann Mastey.** In the event of termination of a trust under this provision, assets shall be distributed to the person to whom income may be

distributed.

(emphasis added). Sister Beverly did not have a sister named the Valeria T.

Hedgecoth nor a grandniece named Jessica Ann Mastey.

10. On October 27, 1993, Respondent sent a memo to Sister Beverly indicating that Respondent had experienced difficulty contacting Sister Beverly by telephone and that she was still working with Richfield Bank and Trust Co. on a final draft of the trust agreement.

11. At some point prior to November 5, 1993, Respondent was advised by Richfield Bank and Trust Co. that its minimum fee for serving as trustee was \$2500.00 per year per trust. Because Sister Beverly's trust allocated specific separate amounts for each of the beneficiaries each of the allocated amounts would be treated by the bank as a separate trust subject to the annual minimum fee. Because of the minimum fee and because the allocated amount for each of the grandchildren and step-grandchildren was only \$10,000.00, the bank determined that the allocated trust amounts would be depleted prior to the grandchildren and step-grandchildren attaining the age at which they would be entitled to distributions from the trust and declined to serve as trustee.

12. On November 5, 1993, Respondent met with Sister Beverly at Respondent's office for the purpose of executing the trust agreement.

13. At the November 5 meeting Sister Beverly requested that Respondent serve as trustee and Respondent agreed to do so.

14. The trust agreement was executed in duplicate on November 5, 1993. One executed copy of the trust agreement was either given to Sister Beverly at

Respondent's office on the date of execution or subsequently mailed to her. The second executed copy of the trust agreement was retained by Respondent.

15. The introductory paragraph of the draft trust agreement Respondent mailed to Sister Beverly on September 14, 1993, included the following printed language: "THIS TRUST AGREEMENT . . . is made this \_\_\_\_\_ day of \_\_\_\_\_, 1993, between Beverly Hedgecoth . . . and Richfield Bank and Trust Co. . . ." The introductory paragraph of the executed trust agreement provided to Sister Beverly included the following printed language: "THIS TRUST AGREEMENT . . . is made this 24th day of September, 1993, between Beverly Hedgecoth . . . and Vicki M. Ahl . . ." In the executed trust agreement received by Sister Beverly, "24<sup>th</sup>" and "September" had been lined out and "5<sup>th</sup>" and "November" inserted in handwriting. Both the draft trust agreement and the executed trust agreement received by Sister Beverly contained the provision addressing the rule against perpetuities quoted in Finding of Fact No. 9.

16. The introductory paragraph of the executed trust agreement retained by Respondent included the following printed language: "THIS TRUST AGREEMENT . . . is made this 5<sup>th</sup> day of November, 1993, between Beverly Hedgecoth . . . and Vicki M. Ahl . . ." In this iteration of the executed trust agreement the provision addressing the rule against perpetuities reads as follows:

10.4 Rule Against Perpetuities. Each trust, if not sooner terminated pursuant to the provisions hereof, shall terminate twenty-one (21) years after the death of all descendants of mine who are living on the date of my death. In the event of termination of a trust under this provision, assets shall be distributed to the person to whom income may be distributed.

17. Based upon the existence of three varying versions of the trust agreement, it

is apparent that Respondent had the ability to make necessary changes in the document with minimal effort.

18. All three versions of the trust agreement include the following provision with respect to irrevocability in Article Two:

The Trustor has carefully considered the advisability of reserving the right to amend, alter or revoke this Agreement, and has determined and now declares that **this Agreement shall not be subject to amendment, alteration or revocation, and the Trustor does hereby expressly waive and surrender any right or power to alter, amend, revoke or terminate, either in whole or in part, this Agreement or the terms of the trust.**

(emphasis added).

19. All three versions of the trust agreement reserved the following rights to Sister Beverly as trustor in Article Three:

To receive annually a written statement showing all cash transactions since the date of the last like preceding statement and containing an inventory of the assets of the trust estate as of the date of each such statement.

To examine the books and records of the trustee insofar as they relate to the trust at reasonable times.

20. All three versions of the trust agreement include the following provisions with respect to disposition of trust assets in Article Four:

4.1.1 The trustees [*sic*] shall distribute to the child or apply directly for the benefit of the child such portions of the income and principal of the trust as the independent trustee deems advisable for such child's education. Subject to these distribution standards, the trustee may determine that no distribution shall be made to the child.

4.1.2 When the child attains age thirty-five (35), the trustees [*sic*] shall distribute to the child the remaining assets of the

trust.

21. All three versions of the trust agreement include the following provision with respect to compensation in Article Seven:

7.5 Compensation. The Trustee hereunder shall receive such compensation, if any, as shall have been provided for in a written agreement between the Trustee and the Trustor or the other person or persons who shall have appointed such Trustee as provided in this agreement, or, in the absence of any such agreement as to compensation, as shall be reasonable under the laws of the State of Minnesota.

22. All three versions of the trust agreement include the following provision with respect to discretionary termination in Article Twelve:

12. If the Trustee determines that continuation of any trust being administered under this Trust is contrary to the best interests of the beneficiaries thereof by reason of (1) legislation, (2) unforeseen changes or circumstances, or (3) because the value of the trust's assets are at such a level, in the sole judgment of the Trustee, as to make continued administration thereof financially burdensome and uneconomical, then the Trustee, in the Trustee's sole discretion, may terminate such trust and distribute the principal thereof, together with undistributed income, to the persons then entitled to receive the Trust income, or to have it accumulated for their benefit, in the same shares as those in which such income is then being distributed to, or accumulated for, them.

23. Sister Beverly paid Respondent \$750.00 for drafting the trust agreement.

24. Respondent's Exhibit 28 is a handwritten sheet of notes which Respondent testified were made by Respondent contemporaneously with the execution of the trust agreement on November 5, 1993. In this exhibit Respondent represents: that Sister Beverly advised Respondent that it was Sister Beverly's wish to keep fees under \$2500.00 per trust per year and that it was acceptable to allocate more fees to the

children's trusts and less fees to the those of the grandchildren and step-grandchildren with the goal of preserving the trusts of the grandchildren and step-grandchildren; that Sister Beverly approved Respondent's suggestion that the trust assets be invested in IDS (subsequently Ameriprise) mutual funds; that additional copies of the trust agreement were given to Sister Beverly to be distributed to the children; that Sister Beverly told Respondent that Sister Beverly would give the additional copies of the trust agreement to her daughters, Mary Pelascini and Therese Snyder; that all contact between Respondent and Gregory Hedgecoth was to be channeled through Therese Snyder; that Sister Beverly would instruct the children that they were to contact Respondent with respect to distributions for themselves or the grandchildren or step-grandchildren; and that Sister Beverly would instruct Mary Pelascini and Therese Snyder to call Respondent regarding any questions they may have with respect to the trust. Although Respondent had the ability to incorporate new language and provisions in the trust agreement (Finding of Fact No. 17), the draft trust agreement was not modified to reflect any of the matters addressed in Respondent's Exhibit 28 prior to its execution.

25. Sister Beverly had no contemporaneous notes relating to the execution of the trust agreement and acknowledged in her testimony that her memory of the November 5, 1993, meeting at Respondent's office was not "exact." Sister Beverly did testify, however, that Respondent did not review the trust agreement with her prior to execution, that she received only one copy of the trust agreement, that she did not tell Respondent that she would give copies of the trust agreement to her daughters, that she did not instruct Respondent to contact Gregory through Therese, that she did not

tell Respondent that Respondent was to withhold distributions from the trust until Respondent received a request for distribution, that she did not instruct Respondent to try to keep her fees under \$2,500.00 per trust per year, that there had been no discussion of fees prior to execution of the trust agreement, and that she was not aware that Respondent even intended to charge fees for administering the trust. Sister Beverly's recollection of the conversation at the time the trust agreement was executed was that it related to the children's addresses, telephone numbers, and Social Security numbers, which Sister Beverly did not have immediately available to her at the time.

26. Having had the opportunity to observe Sister Beverly while testifying and taking into consideration the fact that she spent over twenty years working as an accountant "for the government" monitoring budgets and expenditures, it is absolutely inconceivable to the undersigned Referee that Sister Beverly would have placed the subject funds in Respondent's hands with the instruction "try to keep your fees under \$2,500.00 per year per trust." Accordingly the undersigned Referee finds the testimony of Sister Beverly as outlined in Finding of Fact No. 25 to be more credible than the representations of Respondent based upon Respondent's Exhibit No.. 28..

29. Neither Respondent nor Sister Beverly provided copies of the trust agreement to Sister Beverly's three children; however, there had to have been some discussion regarding the action that Sister Beverly had taken as all three of the children testified that they had some vague understanding that their mother had set some money aside for them and or their children but no specific knowledge of the details.

30. Following the execution of the trust agreement, Respondent worked with David Bloomquist, a Certified Financial Planner at IDS Financial Services Inc., and set

up separate investment accounts for each of the children in the amount of \$30,000 and for each of the grandchildren and step-grandchildren in the amount of \$10,000.

31. On December 22, 1993, Sister Beverly sent a letter to Respondent advising Respondent of the address and telephone number of each of the trust beneficiaries. In her letter, Sister Beverly noted that she did not know how long the address provided for Gregory Hedgecoth would be good.

32. Subsequent to her December 22, 1993, letter, Sister Beverly provided Respondent with updated information on the addresses of sister Beverly's three children. In this update Sister Beverly listed Therese Snyder's address as the address at which Gregory Hedgecoth could be contacted.

33. In 1994 a ceremony was held at which Sister Beverly took her vows as a nun. This ceremony was attended by all three of Sister Beverly's children and by Respondent. In conjunction with that ceremony Teresa Snyder had a conversation with Sister Beverly in which Sister Beverly in a very brief and general way advised Therese Snyder that Respondent would be managing some funds for Sister Beverly. Sister Beverly did not tell Teresa Snyder what amounts were involved, for whose benefit the funds were being held, or any other details regarding the funds. Therese Snyder does not recall whether the term "trust" was used in the conversation. Sister Beverly did not offer more information nor did Teresa Snyder seek to obtain more information. While at the ceremony Therese Snyder also spoke with Respondent. Respondent acknowledged that Sister Beverly had worked very hard. Respondent stated in a very general way that she would be helping Sister Beverly. Neither Sister Beverly nor Respondent advised Therese Snyder that funds had been set aside for her, that the

funds were being held in trust, or if, how, or when she could access those funds.

34. On March 9, 1995, Respondent spoke with Mary Pelascini by telephone to request that Respondent be provided with Mary Pelascini's Social Security number and the Social Security numbers of the grandchild and the two step-grandchildren who resided with her. Respondent testified that in the course of that conversation she reminded Mary Pelascini to contact Respondent in the event Mary Pelascini wished to request a distribution from the funds Respondent was managing. Mary Pelascini testified that Respondent informed Mary Pelascini that Sister Beverly had set aside funds for her children and grandchildren, but based upon Respondent's comments, Mary Pelascini assumed that such funds would not be distributed prior to Sister Beverly's death. Mary Pelascini subsequently provided Respondent with the requested Social Security numbers.

35. On March 9, 1995, Respondent sent a letter to Therese Snyder. The subject of the letter was identified as "Hedgecoth Irrevocable Family Trust Agreements." In that letter Respondent requested that Therese Snyder provide Respondent with Social Security numbers for Therese Snyder, her son, and her brother, Gregory Hedgecoth. Respondent stated that Sister Beverly had directed Respondent to contact Therese Snyder with regard to anything concerning Gregory Hedgecoth. Respondent further stated that she needed the Social Security numbers to obtain Minnesota tax identification numbers for each of the trusts Respondent was administering. Respondent did not provide Therese Snyder with any information as to amounts held in trust, for whom any such funds were being held, or if, how, or when such funds could be accessed for distribution. Therese Snyder subsequently provided Respondent with

the requested Social Security numbers.

36. In 1999 Therese Snyder had a conversation with Sister Beverly in which Therese Snyder advised Sister Beverly that Therese Snyder and her husband were in the process of refinancing. Sister Beverly inquired of Therese Snyder whether she had received anything from Respondent. When Therese Snyder responded that she had not, Sister Beverly indicated that she thought Respondent was to have sent statements to Therese Snyder regarding the funds that Respondent was then holding.

37. Following her conversation with Sister Beverly, Therese Snyder contacted Respondent by telephone. Therese Snyder explained to Respondent that Therese Snyder and her husband were in the process of refinancing and requested that Respondent provide Therese Snyder with a statement relating to any funds being held by Respondent for the benefit of Therese Snyder. In response Respondent provided Therese Snyder with a two-page statement of the investment account held for the benefit of Therese Snyder indicating a then current value of approximately \$67,000.00.

38. Respondent testified that during the 1999 telephone conversation with Therese Snyder, respondent inquired as to whether Therese Snyder wished to obtain a distribution from the funds which Respondent was holding. Respondent further testified that Therese Snyder responded to Respondent's inquiry by directing Respondent to continue to hold the funds. Therese Snyder testified that Respondent did not make any inquiry as to whether Therese Snyder wished to obtain a distribution from the funds which Respondent was holding and further testified that had such an inquiry been made, Therese Snyder would have requested the distribution of any funds to which she was then entitled.

39. In 2004 or 2005, Respondent received a telephone call from Sister Beverly in which Sister Beverly informed Respondent that Mary Pelascini was getting a divorce. Respondent understood that the divorce would result in Brian and Brenda Pelascini no longer being step-grandchildren of Sister Beverly. Sister Beverly did not expressly indicate that the divorce affected her thoughts or her wishes with respect to the funds being held in trust for either Brian or Brenda Pelascini. In spite of the lack of an express indication from Sister Beverly, Respondent discerned by "reading between the lines" that Sister Beverly was suggesting a disproportionate allocation of Respondent's fees to the trust balances for Brian and Brenda Pelascini. In 2005 Respondent allocated all of her fees to the trust balances held for Brian and Brenda Pelascini and none of her fees to the trust balances held for the remaining five trust beneficiaries. This action resulted in the total depletion of the funds held in trust for Brian and Brenda Pelascini.

40. In April 2009, Therese Snyder initiated a series of e-mail communications with Respondent. In the first such communication Therese Snyder indicated that she and her husband were considering refinancing their house and requested a copy of a "current statement for our account." In June 2009, Respondent provided an account statement indicating an account value of approximately \$19,000.00 and commented that values had taken "quite a hit with this economy." Therese Snyder responded by inquiring as to a cash withdrawal which had been made from the account in March 2009. Respondent explained that she annually, after completion of the tax returns, made a withdrawal to pay her fees for the prior year, including the preparation of tax returns, plus the amount of taxes determined to be payable, plus the fees for the

financial advisor.

41. On September 11, 2009, Respondent received a telephone call from Sister Beverly in which Sister Beverly questioned Respondent regarding trustee fees paid, tax preparation fees and why they go up each year, and account values. Sister Beverly indicated a lack of understanding as to why the account values went down when she could simply place the funds in savings and the values would not go down.

42. In 2009 Sister Beverly sent a copy of the trust agreement to Therese Snyder. This was the first time Therese Snyder had seen a copy of the trust agreement. In reading the trust agreement Therese Snyder became aware that Sister Beverly had placed funds in trust to be held for the benefit of Sister Beverly's children, grandchildren, and step-grandchildren, and that the funds held in trust for Sister Beverly's children were to have been distributed to the children when they attained the age of 35. Therese Snyder spoke with her siblings regarding the existence of the trust agreement and its terms and provided her siblings with copies of the document. It was only after receipt of a copy of the trust agreement from Therese Snyder that Mary Pelascini and Gregory Hedgecoth had an opportunity to see and read the document for the first time.

43. By December 2009 Sister Beverly had requested that Respondent provide copies of all account records for the trust.

44. On January 10, 2010, Respondent delivered the "first box of statements" to Sister Beverly.

45. By March 23, 2010, Mary Pelascini, Therese Snyder, and Gregory Hedgecoth had retained the law firm of Henson & Efron.

46. On March 23, 2010, Amy Papenhausen of the law firm of Henson & Efron sent a letter to Respondent indicating that Henson & Efron had been retained regarding the Hedgecoth Irrevocable Family Trust. Ms. Papenhausen indicated in her letter that the beneficiaries had questions regarding the administration of the trust and that Henson & Efron had been asked to assist the beneficiaries in gathering information. Among the specific requests made in the letter was a request that Respondent provide "copies of all time records kept by [respondent] as trustee . . . from inception to the present." The letter further stated that the beneficiaries were requesting that Respondent resign as trustee and included a resignation document for Respondent's signature.

47. Respondent executed a document redesigning as trustee and designating a successor trustee on April 2, 2010.

48. On April 28, 2010, Respondent replied to Amy Papenhausen's letter of March 23, 2010. In response to the request for copies of time records, Respondent enclosed twelve documents each of which was titled "DAILY TIME SHEET." These time sheets cover the time period from April 12, 2006, through March 31, 2010. Each of the time sheets contains a column identifying specific dates on which work relating to the Hedgecoth trust was performed by Respondent, a column indicating the time Respondent spent working on the Hedgecoth trust on each identified date, and a column containing a description of the work performed on each identified date. The column which indicates the time spent working on the Hedgecoth trust specifies that time to the tenth of an hour. These time sheets were enclosed with a letter which states in part: "Copies of time records for 2006-2009 are enclosed. Any other time

records would be with my archived corporate tax records, which are in an off-site storage locker, and have not been located as of today.” In providing these time records, Respondent did not indicate that they were not copies of original time records made contemporaneously with Respondent’s performance of the services described.

49. Although Respondent stated in her letter of April 28, 2010, that “[a]ny other time records would be with my archived corporate tax records, which are in an off-site storage locker”, at the hearing in this matter Respondent testified that it was her practice to dispose of time records once she had been paid for the services described in those time records.

49. In either late June or early July 2010, counsel for Respondent advised counsel for the trust beneficiaries that the time records provided by Respondent with her letter of April 28, 2010, were, in fact, reconstructions of the time Respondent represented that she spent on matters related to the Hedgecoth trust. Despite the fact that Respondent’s letter stated “[a]ny other time records would be with my archived corporate tax records, which are in an off-site storage locker, and have not been located as of today”, Respondent’s counsel further stated that Respondent had no original time records made contemporaneously with Respondent’s performance of the services described.

50. After the execution of the Hedgecoth Irrevocable Family Trust, Respondent testified that her administration of the trust consisted of the following:

- a. Setting up separate investment accounts for each of the children in the amount of \$30,000.00 and for each of the grandchildren and step-grandchildren in the amount of \$10,000.00;

- b. Applying for and obtaining business registrations and tax identification numbers for each of the investment accounts;
- c. Annually preparing federal and state income tax returns for each of the separate investment accounts. Respondent testified that she set aside 40 hours each year to prepare the tax returns for the trust related accounts and that the actual preparation of the tax returns was preceded by a review of the tax returns for the prior three years, a review of the federal and state instructions for preparing the current returns, assembling the various forms received from IDS/Ameriprise, and preparing a worksheet summarizing purchases, sales, and short and long term capital gains and losses;
- d. Monitoring the investments in each of the trust related accounts by reviewing the monthly statements received from IDS/Ameriprise, reviewing prospectus documents related to the various investments, and meeting with and talking to David Bloomquist, the Certified Financial Planner with whom she was working;
- e. Reviewing the individual investment accounts annually to determine whether continued administration of the trust made economic sense and was in the best interest of the beneficiary of the account.

51. David Bloomquist testified that he met annually with Respondent regarding the Hedgecoth trust but that those meetings were never more than one hour in duration. David Bloomquist also testified that he maintained time records utilizing a computer program called Automated Client Tracking (ACT). Bloomquist's practice was

to make a note with respect to telephone conferences with clients. The telephone conference notes were then given to Bloomquist's assistant who, in turn, would make an entry in the ACT program. If a telephone conference with a client occurred while Bloomquist was in his car, Bloomquist would call his assistant and dictate the entry for the a ACT program at the conclusion of the conference. With respect to meetings with clients, Bloomquist would again call his assistant following the meeting and dictate the entry for the a ACT program.

52. In the time sheets enclosed with Respondent's April 28, 2010, letter, Respondent represented that she had met with David Bloomquist for 4.4 hours on June 21, 2006. David Bloomquist's time records contained no entry indicating that such a meeting had occurred.

53. In the time sheets enclosed with Respondent's April 28, 2010, letter, Respondent represented that she had met with David Bloomquist for 3.9 hours on November 30, 2006. David Bloomquist's time records contained no entry indicating that such a meeting had occurred.

54. In the time sheets enclosed with Respondent's April 28, 2010, letter, Respondent represented that she had met with David Bloomquist for 4.6 hours on May 8, 2007. David Bloomquist's time records contained no entry indicating that such a meeting had occurred.

55. In the time sheets enclosed with Respondent's April 28, 2010, letter, Respondent represented she had met with David Bloomquist for 4.8 hours on November 14, 2007. David Bloomquist's time records contained no entry indicating that such a meeting had occurred.

56. In the time sheets enclosed with Respondent's April 28, 2010, letter, Respondent represented that she had met with David Bloomquist for 4.2 hours on May 7, 2008. David Bloomquist's time records contained no entry indicating that such a meeting had occurred.

57. In the time sheets enclosed with Respondents April 28, 2010, letter, Respondent represented that she had met with David Bloomquist for 4.1 hours on November 20, 2008. David Bloomquist's time records contained no entry indicating that such a meeting had occurred.

58. In light of Respondent's representations in her letter of April 28, 2010, that "[a]ny other time records would be with my archived corporate tax records, which are in an off-site storage locker, and have not been located as of today", the nature of the detail contained in the time sheets enclosed with Respondent's letter, Respondent's testimony that it was her practice to dispose of time records once she was paid for the services described in those time records, and the testimony of David Bloomquist, this Referee finds that Respondent's letter of April 28, 2010, and the time sheets enclosed therewith, were submitted with the intent to deceive. This Referee also finds that Respondent's testimony that the time records submitted with her April 28, 2010, letter were intended to be interpreted as reconstructions or approximations is not credible. Further, this Referee finds that the time records submitted by Respondent with her letter of April 28, 2010, are not a credible reconstruction of the time Respondent devoted to working on matters involving the Hedgecoth trust.

59. Despite the fact that Sister Beverly had no recollection that there had been any discussion of fees prior to execution of the trust agreement, and the fact that Sister

Beverly was not aware that Respondent even intended to charge fees for administering the trust, the trust agreement clearly states that the trustee is entitled to compensation either “. . .as shall have been provided for in a written agreement . . . or . . . as shall be reasonable under the laws of the State of Minnesota.” (Hedgecoth Irrevocable Family Trust, 7.5)

60. Respondent did charge and receive payment of fees for administering the Hedgecoth trust from the inception of the trust through 2009. A chart showing the fees withdrawn by Respondent from the individual investment accounts within the Hedgecoth trust is set out in Respondent's Exhibit 72. A copy of Exhibit 72 is attached as Appendix A and incorporated herein by reference.

61. The basis on which Respondent calculated her fees is explained in Respondent's Exhibit 64 as follows:

Trust administration fees were charged on an hourly basis. Ms. Ahl's rate started at \$150 in 1991 and increased throughout the years in \$25 increments. In 2000, her hourly rate was \$200. Her hourly rate is currently \$250. Out-of-pocket [*sic*] costs were added to hourly fees.

The rate charged for tax preparation was based upon these eight factors:

- 1) Type of return (individual vs. business). Trust tax returns are business returns and were billed at a higher rate than individual returns.
- 2) Time (hours) required to complete returns. Ms. Ahl allocated 40 hours per year to complete the required annual tax returns and additional time in years requiring carrybacks and/or carryovers [*sic*]
- 3) Preparer and taxpayer liability exposure associated with the type of return prepared. Fiduciary income tax returns fall into the category of business tax returns. As such, the

returns were subject to the penalty provisions of the Small Business Tax Act of 2007, effective for tax returns prepared after May 25, 2007. With enactment of the Small Business Tax Act of 2007, federal tax return fees have been subject to a \$1000, per return, minimum fee.

4) Hourly and overall rates charged by return preparers with similar experience, credentials and expertise.

5) Local market rate for similar returns.

6) Whether or not the return contains unique issues.

7) Tax preparation charges in prior years.

8) Out-of-pocket costs incurred to file return, including software processing costs, tax liabilities paid on behalf of each trust, special mailing costs paid and mileage at the IRS standard mileage rate.

62. A chart showing the year-end balances in the individual investment accounts within the Hedgecoth trust is set out in Respondent's Exhibit 73. A copy of Exhibit 73 is attached as Appendix B and incorporated herein by reference.

63. A chart showing the cumulative year-end balances of all of the individual investment accounts within the Hedgecoth trust, the cumulative total of fees paid to Respondent on an annual basis, a running total of all fees paid to Respondent from year-to-year, and a running total of all fees that would have been paid had Respondent charged \$2500.00 per year per investment account is set out in Respondent's Exhibit 74. A copy of Exhibit 74 is attached as Appendix C and incorporated herein by reference. Over the 17 years that Respondent administered the Hedgecoth trust she paid herself a total of \$145,144.00 in fees.

64. In 2000 Respondent was paid fees totaling \$25,060.00, nearly twice as much as she had been paid in any prior year. Respondent's explanation for this higher

fee total is that she hadn't billed what she was entitled to bill in prior years and obtained payment for that unbilled time in 2000 because the values of the various investment accounts had appreciated.

65. In 2002 Respondent was paid fees totaling \$32,596.00, again considerably more than she had been paid in prior years. Respondent's explanation for this higher fee total is that it covered an 18 month time period rather than a 12 month time period. Respondent went on to explain that the investment accounts had, on the recommendation of David Bloomquist, been redeemed in 2001 and reinvested in a different "family" of mutual funds. Respondent testified that this conversion resulted in administrative issues that she was required to address. The administrative issues included the receipt of statements without identification numbers and the receipt of statements with incorrect beneficiary identifications. As a result, Respondent was required to apply for and receive an extension for the filing of income tax returns and was unable to file the returns until October 2002.

66. This Referee can recall no explanation having been offered by Respondent for no fees having been billed or collected in 2003 and a negative \$5.00 fee being reflected on Exhibit 74 for 2004.

67. The fact that Respondent's fees were allocated only to the investment accounts of Brenda and Brian Pelascini in 2005, thereby depleting those two investment accounts in their entirety, is addressed in Finding of Fact No. 39.

68. Mary Pelascini he was born on October 4, 1961, and turned 35 on October 4, 1996. Therese Snyder was born on November 29, 1962, and turned 35 on November 29, 1997. Gregory Hedgecoth was born on April 20, 1967, and turned 35 on

April 20, 2002.

69. Respondent did not, as required by the terms of the trust agreement, distribute to Mary Pelascini her share of the trust when she attained the age of 35 in 1996. Respondent's Exhibit 73 (Appendix B) indicates that the 1996 year-end value of Mary Pelascini's investment account was \$36,844.48. Respondent's Exhibit 73 further indicates that the 2009 year-end value of Mary Pelascini's investment account was \$19,936.10. The 2009 year-end value of Mary Pelascini's investment account was \$16,908.38 less than its 2006 year-end value. Further, Respondent's Exhibit 72 (Appendix A) indicates that Respondent paid herself \$26,980.00 in fees from Mary Pelascini's investment account for the years 1997 through 2009.

70. Respondent did not, as required by the terms of the trust agreement, distribute to Therese Snyder her share of the trust when she attained the age of 35 in 1997. Respondent's Exhibit 73 (Appendix B) indicates that the 1997 year-end value of Therese Snyder's investment account was \$41,996.77. Respondent's Exhibit 73 further indicates that the 2009 year-end value of Therese Snyder's investment account was \$19,919.66. The 2009 year-end value of Therese Snyder's investment account was \$22,077.11 less than its 1996 year-end value. Further, Respondent's Exhibit 72 (Appendix A) indicates that Respondent paid herself \$25,468.00 from Therese Snyder's investment account for the years 1998 through 2009.

71. Respondent did not, as required by the terms of the trust agreement, distribute to Gregory Hedgecoth his share of the trust when he attained the age of 35 in 2002. Respondent's Exhibit 73 (Appendix B) indicates that the 2002 year-end value of Gregory Hedgecoth's investment account was \$18,268.94. Respondent's Exhibit 73

further indicates that the 2009 year-end value of Gregory Hedgecoth's investment account was \$19,641.99. The 2009 year-end value of Gregory Hedgecoth's investment account was \$1,373.05 more than its 2002 year-end value. Further, Respondent's Exhibit 72 (appendix A) indicates that Respondent paid herself \$7,197.00 from Gregory Hedgecoth's investment account for the years 2003 through 2009. Given the fact that Gregory Hedgecoth's birthday is April 20 it should be noted that the value of his investment account at the beginning of 2002 was \$33,867.96.

72. Stephen Grisham, President and CEO of Alternative Decision Makers, Inc., was called by Respondent to testify as an expert witness as to whether Respondent's fees as trustee of the Hedgecoth trust were reasonable. Mr. Grisham testified that it was his opinion that the fees charged by Respondent were reasonable. Mr. Grisham based his opinion on the fact that the fees charged by Respondent were far less than the fees which would have been charged by Richfield Bank and Trust Co. and the fact that Respondent did provide extensive services over a time period of 17 years.

73. Respondent did not provide the trust beneficiaries with copies of the trust agreement and did not advise the trust beneficiaries that they were entitled to the distribution of the funds held on their behalf when they attained age 35.

74. Respondent maintains that the trust beneficiaries were entitled to the distribution of the funds held on their behalf when they attained age 35 but that the trust beneficiaries, pursuant to an oral instruction Respondent claimed to have received from Sister Beverly, were required to contact Respondent and make a request for distribution.

75. Sister Beverly had, however, expressly waived and surrendered any right or

power to alter or amend the terms of the trust agreement and Respondent's failure to distribute funds held on behalf of a beneficiary who had attained the age of 35 was in violation of the explicit provisions of the trust agreement which mandated that she do so.

76. Both Mary Pelascini and Therese Snyder testified that they would have requested the distribution of any funds held on their behalf had they known they were entitled to the distribution of those funds at age 35.

77. Gregory Hedgecoth testified that he had no direct contact with Respondent and was not aware of the existence of the trust until Teresa Snyder provided him with a copy of the trust agreement in 2009.

78. Although, based upon the testimony of Stephen Grisham, Respondent's fees may have been reasonable in the abstract, any fees received by Respondent after the 35<sup>th</sup> birthdays of Mary Pelascini, Therese Snyder, and Gregory Hedgecoth were unreasonable as the funds held in trust for those beneficiaries should have been distributed and there should no longer have been any need for Respondent to administer those funds in her capacity as trustee.

79. As noted in Finding of Fact No. 22, Respondent did have the power to terminate administration of any individual investment account if she determined that continued administration no longer made economic sense or was no longer in the best interests of the beneficiary of that account. Although Respondent testified that as a part of her administration of the trust she annually reviewed the individual investment accounts to determine whether continued administration of each account made economic sense and was in the best interest of the beneficiary of the account, she in no

instance determined that continued administration of any individual account no longer made economic sense or was not in the best interest of the beneficiary of that account.

80. During the 17 years of her administration as trustee, Respondent continued to withdraw fees from the various individual investment accounts. During that 17 years not one penny was distributed to any of the trust beneficiaries. The individual investment accounts held for Brenda and Brian Pelascini were depleted in their entirety by fees withdrawn by Respondent. In 2005, the year in which Brenda and Brian Pelascini's individual investment accounts were fully depleted, Respondent withdrew as fees, nearly one-third of the original \$10,000.00 principal amount of each account.

81. Respondent failed to notify either Sister Beverly or Mary Pelascini that the individual investment accounts held for Brenda and Brian Pelascini had been depleted in their entirety.

82. During the 17 years of her administration as trustee, Respondent failed to provide an accounting with respect to the trust to Sister Beverly or to the beneficiaries. During that 17 years Respondent failed to notify either Sister Beverly or the beneficiaries that Respondent was annually withdrawing fees from the individual investment accounts. It was only in 2009, in response to a request for an explanation of a withdrawal reflected in an account statement provided by Respondent to Teresa Snyder, that Respondent first indicated to either Sister Beverly or any of the beneficiaries that Respondent was charging fees for her administration of the trust and withdrawing those fees from the individual investment accounts annually. (See Finding of Fact No. 40)

83. It is Respondent's position that the trust agreement does not require annual

accountings by the trustee nor does it require that the trustee provide the beneficiaries with monthly statements for the individual investment accounts. As noted in Finding of Fact No. 19, Sister Beverly, as trustor, did reserve the right to receive annual written statements showing all cash transactions and containing an inventory of the assets of the trust estate. While this Referee agrees that Respondent had no obligation under the trust agreement to provide the beneficiaries with monthly statements for the individual investment accounts, this Referee finds that the trust agreement reserved to Sister Beverly not the right to request an annual accounting but the right to receive an annual accounting. Accordingly, this Referee finds that Respondent's failure to provide Sister Beverly with annual accountings of the trust constitute a violation of the terms of the trust agreement.

84. In 2010 the beneficiaries initiated a civil lawsuit against Respondent. The outcome of this lawsuit was Respondent's payment of \$139,000.00 to the beneficiaries in accordance with a mediated settlement. This payment of \$139,000.00 to the beneficiaries, less approximately \$62,000.00 in attorneys fees incurred by the beneficiaries in the lawsuit, augmented the \$64,411.00 balance in the trust at the time Respondent resigned as trustee.

#### CONCLUSIONS OF LAW

1. Respondent's total depletion of the individual investment accounts held for Brenda and Brian Pelascini by withdrawing funds from their investment accounts to pay fees attributable to the administration of investment accounts of other beneficiaries violated Respondent's fiduciary duty as trustee to Brenda and Brian Pelascini.
2. Respondent's failure to distribute the funds in Mary Pelascini's individual

investment account upon her attaining age 35, as required by the explicit terms of the trust agreement, violated Rule 1.15(c)(4), Minnesota Rules of Professional Conduct (MRPC).

3. Respondent's failure to distribute the funds in Therese Snyder's individual investment account upon her attaining age 35, as required by the explicit terms of the trust agreement, violated Rule 1.15(c)(4), MRPC.

4 Respondent's failure to distribute the funds in Gregory Hedgecoth's individual investment account upon his attaining age 35, as required by the explicit terms of the trust agreement, violated Rule 1.15(c)(4), MRPC.

5. Respondent's conduct in violating her fiduciary duties as trustee by failing to make distributions as required by the trust agreement and in charging unnecessary fees violated Rule 8.4(d), MRPC.

6. Respondents conduct in misrepresenting that the time records provided to counsel for the beneficiaries were copies of or original time records made contemporaneously with performance of the work described therein violated Rule 8.4(c), MRPC.

#### MITIGATING FACTORS

1. Respondent accepts full responsibility for not handling the subject trust properly.

2. Respondent intimates that her payment of \$139,000.00 in settlement of the beneficiaries' civil lawsuit should be considered as a mitigating factor. This Referee rejects that. The \$139,000.00 was paid by Respondent only after the beneficiaries had commenced litigation and incurred \$62,000.00 in attorneys fees.

## AGGRAVATING FACTORS

1. Respondent was previously disciplined. On September 26, 1991, Respondent was issued an admonition for violation of Rules 1.5(e), 7.1(a), and 8.4(c), MRPC.

2. Respondent's misconduct took place over a period of 17 years.

3. As an experienced attorney and Certified Public Accountant, Respondent should have recognized the impropriety of her conduct in administering the subject trust.

## RECOMMENDATIONS FOR DISCIPLINE

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned Referee recommends:

1. That Respondent, Vicki M Ahl, be indefinitely suspended from the practice of the law, ineligible to apply for reinstatement for a minimum of two years from the date of the Court's suspension order.

2. That the reinstatement hearing provided for in rule 18, Rules of Lawyers Professional Responsibility (RLPR), not be waived.

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3. That Respondent's reinstatement be conditioned upon:

a. Completion of the minimum period of suspension.

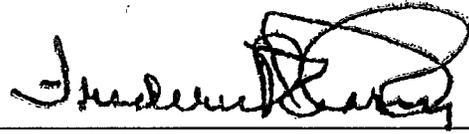
b. Compliance with Rule 26, RLPR.

c. Payment of costs, disbursements, and interest pursuant to Rule 24, RLPR.

d. Successful completion of the professional responsibility examination pursuant to rule 18(e), RLPR.

e. Satisfaction of the continuing legal education requirements pursuant to Rule 18(e), RLPR.

Dated: January 28, 2013

A handwritten signature in black ink, appearing to read "Frederick J. Casey", written over a horizontal line.

Frederick J. Casey  
Referee/Retired District Court Judge

## APPENDIX A

**FEEES WITHDRAWN BY VICKI AHL FROM THE HEDGECOOTH TRUST**

Year	Therese	Greg	Mary	Robert Thomas	Jacob	Brenda	Brian
1993	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1994	\$1,279.00	\$1,000.00	\$1,013.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00
1995	\$1,100.00	\$1,153.00	\$1,089.00	\$423.00	\$423.00	\$423.00	\$431.00
1996	\$1,608.00	\$1,566.00	\$1,595.00	\$750.00	\$750.00	\$750.00	\$750.00
1997	\$2,000.00	\$2,000.00	\$2,000.00	\$750.00	\$750.00	\$750.00	\$750.00
1998	\$2,250.00	\$2,250.00	\$2,250.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00
1999	\$1,500.00	\$1,200.00	\$1,500.00	\$900.00	\$900.00	\$900.00	\$900.00
2000	\$6,739.00	\$7,630.00	\$6,691.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00
2001	\$1,300.00	\$1,176.00	\$1,128.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00
2002	\$5,990.00	\$5,998.00	\$5,983.00	\$3,750.00	\$3,610.00	\$3,635.65	\$3,630.00
2003	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2004	-\$1.00	\$0.00	-\$4.00	\$0.00	\$0.00	\$0.00	\$0.00
2005	\$0.00	\$0.00	-\$1.00	\$0.00	\$0.00	\$3,198.87	\$3,165.05
2006	\$1,425.00	\$1,431.00	\$1,425.00	\$350.00	\$350.00	N/A	N/A
2007	\$1,500.00	\$1,500.00	\$1,500.00	\$0.00	\$0.00	N/A	N/A
2008	\$2,477.00	\$2,483.00	\$2,477.00	\$495.00	\$495.00	N/A	N/A
2009	\$1,800.00	\$1,800.00	\$1,800.00	\$268.00	\$296.00	N/A	N/A
<b>Total Disbursements</b>	<b>\$30,967.00</b>	<b>\$31,187.00</b>	<b>\$30,446.00</b>	<b>\$12,186.00</b>	<b>\$12,074.00</b>	<b>\$14,157.52</b>	<b>\$14,126.05</b>

EXHIBIT 3 TO SECOND REQUEST FOR  
ADMISSIONS TO VICKI AHL

## **APPENDIX B**

YEAR END	MARY	THERESE	GREG	BRENDA	BRIAN	THOMAS	JAKE
1993	29,744.37	29,744.36	29,681.58	9,929.09 <sup>1</sup>	10,370.93 <sup>2</sup>	10,421.34 <sup>3</sup>	9,929.09 <sup>4</sup>
1994	26,907.48	26,933.65	26,905.95	8,376.57	8,364.19	8,376.57	8,384.64
1995	32,568.71	32,602.82	32,462.49	9,677.49	9,661.35	9,677.49	9,688.03
1996	36,844.48	36,885.90	36,260.94	10,354.51	10,334.93	10,354.51	10,367.33
1997	41,944.49	41,996.77	41,296.43	11,375.81	11,351.11	11,375.81	11,392.02
1998	48,627.73	48,691.95	48,689.74	12,237.12	12,206.74	12,237.12	12,346.86
1999	58,922.86	59,000.21	59,864.78	14,268.41	14,231.83	14,268.41	14,640.27
2000	46,177.57	46,194.43	45,960.19	11,874.67	11,842.31	11,874.67	12,279.60
2001	34,049.49	34,063.92	33,867.96	8,160.86	8,133.74	8,160.86	8,488.46
2002	18,424.63	18,438.08	18,268.94	2,491.72	2,468.33	2,491.72	2,774.48
2003	22,690.26	22,678.67	22,467.86	3,000.90	2,971.72	3,000.90	3,353.44
2004	25,550.65	25,535.88	25,293.26	3,285.84	3,252.30	3,285.84	3,691.51
2005	27,132.96	27,117.51	26,849.84	0	0	3,442.75	3,873.66
2006	29,470.31	29,451.47	29,129.09			3,378.86	3,847.53
2007	31,088.04	31,067.74	30,720.56			3,824.97	4,300.77
2008	18,568.07	18,554.43	18,321.72			2,563.41	2,458.48
2009	19,936.10	19,919.66	19,641.99			2,444.72	2,468.51

## Exhibit 73

<sup>1</sup> From 12/31/93 1099

<sup>2</sup> From 2/19/94 Statement

<sup>3</sup> From 2/19/94 Statement

<sup>4</sup> From 12/31/93 1099

## **APPENDIX C**

## SUMMARIES

YEAR END	YEAR END ACCOUNT BALANCES TOTAL (ALL TRUSTS)	FEES BY YEAR, TOTAL (ALL TRUSTS)	RUNNING TOTAL OF ALL FEES BY YEAR (ALL TRUSTS)	RUNNING TOTAL ASSUMING \$2500 FEES PER ACCOUNT (17,500)
1993	129,821			
1994	114,250	7,292	7,292	17,500
1995	136,338	5,042	12,334	35,000
1996	151,403	7,769	20,103	52,500
1997	170,732	9,000	29,103	70,000
1998	195,037	12,750	41,853	87,500
1999	235,197	7,800	49,653	105,000
2000	186,203	25,060	74,713	122,500
2001	134,925	7,604	82,317	140,000
2002	65,358	32,596	114,913	157,500
2003	80,164	0	114,913	175,000
2004	89,895	(5)	114,908	192,500
2005	88,417	6,363	121,272	210,000
2006	95,277	4,981	126,253	222,500
2007	101,002	4,500	130,753	235,000
2008	60,466	8,427	139,180	247,500
2009	64,411	5,964	145,144	260,000