

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against JOHN NWABUWANE AKWUBA,
a Minnesota Attorney,
Registration No. 0280446.

**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 November 5, 1997. Respondent currently practices law in St. Paul, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Criminal Matter

1. On June 21, 2011, respondent was charged with one count of domestic assault by strangulation, in violation of Minn. Stat. § 609.2247.2; and one count of terroristic threats – reckless disregard of the risk of causing terror, in violation of Minn. Stat. § 609.713.1, felony level offenses, arising out of an incident in which respondent assaulted his seven-year-old son.

2. On September 27, 2011, respondent pled guilty to one count of terroristic threats.

3. On December 6, 2011, respondent was convicted of one count of terroristic threats, in violation of Minn. Stat. § 609.713.1, and sentenced to 365 days in the Ramsey County Correctional Facility, 361 days to be stayed for 2 years, respondent to serve four days, credited with four days' time served, and placed on supervised probation for two years. Pursuant to Minn. Stat. § 609.13, respondent's conviction was deemed a gross misdemeanor.

4. On December 6, 2013, respondent was discharged from probation.

5. Respondent's conduct that resulted in his criminal conviction violated Rule 8.4(b), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

J.N.G. Matter

6. In January 2007, J.N.G. retained respondent in an immigration matter. Respondent did not enter into a signed fee agreement with J.N.G.

7. On or about January 8, 2007, B.A. paid respondent \$1,500, the first of two installments, toward respondent's \$2,000 fee to represent J.N.G. Respondent failed to have B.A. countersign the receipt.

8. On or about January 10, 2007, respondent filed a motion to reduce J.N.G.'s bond. The Department of Homeland Security (DHS) eventually reduced J.N.G.'s bond to \$3,000.

9. J.N.G. still could not afford to pay the bond. B.A. agreed to pay respondent \$3,000 for the bond, in addition to the \$2,000 he had already paid, on behalf of J.N.G.

10. On February 1, 2007, respondent posted the \$3,000 bond on behalf of J.N.G. In forms he submitted along with the bond, respondent listed himself as the obligor.

11. Respondent's representation of J.N.G. ended on or about May 2, 2007.

12. On March 31, 2011, DHS notified respondent of the cancellation of the bond. DHS returned the \$3,000 to respondent.

13. Later in February 2011, respondent informed B.A. that the money had been returned. B.A. told respondent that he did not consider the money to be his.

14. On or about March 31, 2011, respondent received a check from DHS in the amount of \$3,374.65, representing J.N.G.'s \$3,000 bond proceeds, plus interest accrued. Respondent did not deposit these funds into a trust account. Instead, on April 5, 2011, respondent deposited J.N.G.'s funds into his personal operating account no. ending 6357 at TCF Bank (*see* ¶ 26, below).

15. Respondent did not inform J.N.G. of the receipt of the funds. J.N.G. discovered that respondent had received the bond proceeds by contacting the Immigration Court.

16. On April 20, 2011, J.N.G. submitted an ethics complaint to the Director. On April 25, 2011, the Director issued a notice of investigation to respondent.

17. In completing his response to the notice of investigation, respondent drafted an affidavit to be signed by B.A.

18. B.A. reviewed the affidavit and notified respondent that certain portions were inaccurate. On May 3, 2011, B.A. signed the affidavit based upon respondent's promise that portions would be changed prior to submission.

19. Respondent submitted a response to the complaint on or about May 5, 2011. With that response, respondent submitted the May 3, 2011, affidavit of B.A. Respondent did not make the changes that B.A. had requested.

20. By letter dated September 15, 2011, respondent acknowledged his failure to correct B.A.'s affidavit.

21. Respondent's conduct in failing to obtain a receipt counter signed by B.A. for a cash payment received from B.A. violated Rule 1.15, MRPC, and Appendix 1 thereto.

22. Respondent's conduct in failing to inform J.N.G. of the funds respondent had received from DHS on J.N.G.'s behalf violated Rule 1.4(a)(3) and (b), MRPC.

23. Respondent's conduct in submitting an affidavit he knew to be false in the course of a disciplinary investigation, violated Rules 8.1(b) and 8.4(c), MRPC.

24. Respondent's conduct in failing to deposit J.N.G.'s funds into a trust account violated Rule 1.15(a), MRPC.

THIRD COUNT

Improper Use and Maintenance of Trust Account

25. In the course of investigating J.N.G.'s complaint, the Director requested that respondent provide trust and business account books and records evidencing his handling of J.N.G.'s bond proceeds.

26. On May 29, 2013, respondent, through counsel, provided documentation supporting his explanation that on April 5, 2011, respondent deposited J.N.G.'s \$3,374.65 bond proceeds into his operating account (account no. ending 6357 at TCF Bank), instead of his trust account. Respondent stated that he "transferred the bond funds of \$3,374.65, with some additional funds, to his trust account (ending in 5709) on June 27, 2011."

27. Respondent later informed the Director that the June 27, 2011, deposit actually involved another client (*see* ¶ 35(h), below).

28. On July 18, 2013, the Director requested that respondent provide trust account books and records for the period of April 1, 2011, through the present.

29. On August 27, 2013, respondent provided bank statements for three accounts:

- TCF Bank trust account no. ending 5709 (his trust account) for the period of April 19, 2011, through March 19, 2012;
- TCF Bank account no. ending 6357 (his personal account) for the period of March 8, 2011, through September 8, 2011; and

- TCF Bank account no. ending 0007 (his business account) for the periods of March 31, 2011, through May 31, 2011; and July 29, 2011, through August 31, 2011.

30. Respondent admitted that he failed to maintain check registers for and canceled checks or duplicate deposit slips from any of these accounts.

31. By letter dated August 30, 2013, the Director requested that respondent provide subsidiary ledgers, trial balances and reconciliations for the trust account for the period of April 2011 through the present and bank statements for March 2012 through the present for the trust account.

32. On September 16, 2013, respondent provided bank statements for the trust account for the period of February 17, 2012, through August 19, 2013, but failed to provide trust account subsidiary ledgers, subsidiary ledger trial balances and reconciliations of the trust account because respondent (and his counsel) had "not yet been able to reconstruct [respondent's] trust account records for the other transactions in the trust account during the period of [the Director's] inquiry."

33. On October 22, 2013, respondent provided "reconstructed" trust account records consisting of a trust account checkbook register for the period of April 19, 2011, through August 19, 2013; client subsidiary ledgers; and an August 31, 2013, reconciliation of respondent's trust account books.

34. Based on the trust account books and records respondent provided, the Director prepared an audit of the trust account for the period of April 19, 2011, through August 31, 2013 (review period).

35. The Director's audit revealed the following:

(a) Respondent claimed ownership of the entire April 19, 2011, beginning balance of \$905.49. To the extent that all or a portion of this amount was earned fees, respondent failed to promptly disburse those fees and costs upon establishing his right to those funds. Instead, respondent commingled

earned fees in the trust account through at least May 18, 2011, in an amount substantially exceeding the nominal amount of personal funds a lawyer is permitted to hold in trust, pursuant to Rule 1.15(a)(1), MRPC, to pay service charges.

(b) On May 18, 2011, respondent withdrew \$800 from the trust account to reduce the amount of personal funds held in the trust account to \$105.49.

(c) Over the course of the review period, respondent deposited funds in four client matters to the trust account: J.N.G., J.S., C.U. and C.A.

J.N.G. Matter

(d) As stated above (¶¶ 14 and 26), respondent failed on April 5, 2011, to deposit the J.N.G. bond proceeds into the trust account as required by Rule 1.15(a), MRPC.

(e) Between May 13, 2011, and May 31, 2011, respondent made four separate deposits to the trust account (\$1,000, \$1,000, \$1,000 and \$350) totaling \$3,350 and transferred (on paper) \$24.05 in personal funds to the J.N.G. subsidiary ledger to restore \$3,350 to the trust account and fully fund the J.N.G. subsidiary ledger.

(f) The J.N.G. bond proceeds remained in the trust account for the remainder of the review period.

(g) The following subsidiary ledger, extracted from the Director's audit, summarizes respondent's handling of the J.N.G. bond proceeds:

DATE	NO.	PAYEE/SOURCE	PYMT/DEP	BALANCE
05/13/11		Deposit	\$1,000.00	\$1,000.00
05/31/11		Trans from Acct no. xxx6357	1,000.00	2,000.00
05/31/11		Deposit	1,000.00	3,000.00
05/31/11		Deposit	350.00	3,350.00
05/31/11	Paper	Trans Firm Funds to J.N.G.	24.05	3,374.05

J.S. Matter

(h) On June 27, 2011, respondent deposited a \$4,000 insurance settlement received from Progressive Insurance on behalf of J.S. into the trust account (*see* ¶ 27, above). Respondent represented J.S. pursuant to a one-third contingency fee agreement. After deducting respondent's \$1,333.33 fee, J.S.'s portion of the settlement was \$2,666.67.

(i) On or about June 30, 2011, respondent disbursed \$2,066.67 from the trust account by way of check no. 2200 payable to J.S. Respondent retained \$600 from J.S.'s portion of the settlement in the trust account to pay J.S.'s chiropractor.

(j) On August 3, 2011, respondent issued check no. 3000 in the amount of \$600 payable to the chiropractor to settle J.S.'s outstanding chiropractic bill. For unknown reasons, the chiropractor did not receive or negotiate check no. 3000.

(k) Because check no. 3000 was outstanding, respondent was obligated to hold \$600 in the J.S. ledger to fund that check. Respondent failed to do so. (*See* ¶¶ 35(n), 35(p), and 35(t), below.)

(l) Respondent failed to disburse earned fees and costs intact and promptly upon the establishment of his right to those funds as required by Rule 1.15, MRPC, and Appendix 1. Instead, respondent commingled his fee from the J.S. representation in the trust account through at least October 19, 2011.

(m) Between June 30 and October 4, 2011, by way of check nos. 3001, 3002 and 3003, payable to himself, respondent disbursed attorney fees totaling \$1,100 from the J.S. ledger. As of October 4, 2011, respondent held \$833.33 on behalf of J.S.

(n) On October 19, 2011, by way of check no. 3005, payable to himself, respondent disbursed another \$400 for a total of \$1,500 in attorney fees from the J.S. matter, leaving \$433.33.

(o) Since respondent's fee in the J.S. matter was \$1,333.33, respondent's withdrawal of \$1,500 constituted negligent misappropriation of client funds (i.e., respondent took \$166.67 more than he was entitled to).

(p) On October 24, 2011, by way of an electronic fund transfer (EFT), respondent paid himself another \$250 or \$1,750 in total attorney fees on the J.S. matter, leaving \$183.33 in the J.S. ledger.

(q) Respondent's withdrawal of fees totaling \$1,750 now exceeded by \$416.67, the fee due respondent in the J.S. matter. Respondent's conduct in this regard constituted negligent misappropriation of client funds.

(r) On April 18, 2012, respondent issued check no. 3004 payable to J.S.'s chiropractor in the amount of \$600 to replace check no. 3000. On April 27, 2012, check no. 3004 cleared the trust account.

(s) On April 18, 2012, respondent deposited an \$85,000 AAA Insurance settlement into the trust account on behalf of C.U. (¶ 35(y), below). Prior to this deposit, the trust account bank balance (\$3,620.05) was insufficient to fully fund respondent's \$3,974.05 total trust account obligations in the J.N.G. (\$3,374.05) and J.S. (\$600) matters.

(t) On April 27, 2012, check no. 3004 for \$600 cleared the trust account. Because check no. 3004 exceeded the remaining funds held for J.S. by \$416.67 (\$600 minus \$183.33), the chiropractor's negotiation of check no 3004 created a \$416.67 negative balance in the J.S. ledger and a \$354.18 overall shortage in the trust account. Respondent's conduct in this regard constituted further negligent misappropriation of client funds.

(u) Respondent's trust account remained short until respondent credited \$416.67 of earned attorney fees (which he was still holding in his trust account) to the J.S. ledger (¶ 35(kk), below).

(v) The following subsidiary ledger, extracted from the Director's audit, summarizes respondent's handling of J.S.'s funds:

DATE	NO.	PAYEE/SOURCE	PYMT/DEP	BALANCE
6/27/11		Progressive (Settlement)	\$4,000.00	\$4,000.00
6/30/11	2200	J.S.	-2,066.67	1,933.33
8/5/11	3001	John Akwuba - atty fees	-550.00	1,383.33
8/11/11	3002	John Akwuba - atty fees	-150.00	1,233.33
10/04/11	3003	John Akwuba - atty fees	-400.00	833.33
10/19/11	3005	John Akwuba - atty fees	-400.00	433.33
10/24/11	EFT	John Akwuba - atty fees	-250.00	183.33
4/27/12	3004	Chiropractor	-600.00	-416.67

(w) Respondent acknowledges that he over-disbursed attorney fees in the J.S. matter.

(x) Respondent acknowledges that he failed to create and sign the written memorandum authorizing the October 24, 2011, EFT as required by paragraph I(6) of Appendix 1 to the MRPC.

C.U. Matter

(y) On April 18, 2012, respondent deposited an \$85,000 insurance settlement on behalf of C.U., a minor.

(z) On May 2, 2012, respondent prepared and delivered to C.U.'s father, L.U., a settlement statement itemizing respondent's one-third attorney fee of \$28,333.33 and outstanding costs totaling \$730.03.

(aa) On or about May 11, 2012, respondent disbursed check no. 3007 payable to L.U. in the amount of \$27,291.79.

(bb) On or about May 21, 2012, respondent disbursed check no. 3006 payable to Ingenix Subrogation Services in the amount of \$28,644.85 on behalf of L.U.

(cc) Thereafter, respondent failed to promptly disburse earned fees and costs upon the establishment of his right to those funds. Instead, between May 21 and August 8, 2012, respondent issued 12 separate checks payable to himself disbursing attorney fees totaling \$24,550.

(dd) On July 26, 2012, respondent used a debit card tied to the trust account to purchase \$646.30 in personal computer and/or office equipment at Best Buy.

(ee) On July 30, 2012, respondent again used the debit card tied to the trust account to purchase \$267.82 in personal computer and/or office equipment at Best Buy.

(ff) Respondent states that the Best Buy transactions were attributed to the C.U. subsidiary ledger because there were funds available to cover the otherwise unrelated transactions.

(gg) On November 14, 2012, by EFT to account no. ending 9655 in the total amount of \$900, respondent disbursed \$766.67 to himself as attorney fees in the C.U. matter and \$133.33 as attorney fees in the C.A. matter (*see* ¶ 35(pp), below).

(hh) Respondent did not create and sign a written memorandum authorizing the November 14, 2012, EFT.

(ii) After November 14, 2012, and continuing through the end of the review period, respondent retained and commingled in the trust account the remainder of his fee in the C.U. matter (\$832.57).

(jj) The following subsidiary ledger, extracted from the Director's audit, summarizes respondent's handling of the C.U. settlement:

DATE	NO.	PAYEE/SOURCE	PYMT/DEP	BALANCE
4/18/12		AAA (Settlement)	\$85,000.00	\$85,000.00
5/11/12	3007	C.U.	-27,291.79	57,708.21
5/21/12	3006	Ingenix Subrogation Svcs	-28,644.85	29,063.36
5/21/12	3008	John Akwuba - atty fees	-1,000.00	28,063.36
5/23/12	3009	John Akwuba - atty fees	-600.00	27,463.36
5/24/12	3010	John Akwuba - atty fees	-150.00	27,313.36
6/11/12	3011	John Akwuba - atty fees	-650.00	26,663.36
6/14/12	3012	John Akwuba - atty fees	-700.00	25,963.36
6/19/12	3013	John Akwuba - atty fees	-900.00	25,063.36
6/27/12	3014	John Akwuba - atty fees	-1,000.00	24,063.36
7/16/12	3015	John Akwuba - atty fees	-300.00	23,763.36
7/16/12	3016	John Akwuba - atty fees	-300.00	23,463.36
7/20/12	3017	John Akwuba - atty fees	-400.00	23,063.36
7/23/12	3018	John Akwuba - atty fees	-550.00	22,513.36
7/24/12	3019	John Akwuba - atty fees	-2,000.00	20,513.36
7/26/12	EFT	Best Buy	-646.30	19,867.06
7/30/12	EFT	Best Buy	-267.82	19,599.24
8/8/12	3023	John Akwuba - atty fees	-18,000.00	1,599.24
11/14/12	EFT	John Akwuba - atty fees	-766.67	832.57

(kk) Respondent used a portion of the commingled fees in the C.U. matter to cure the shortage in the J.S. subsidiary ledger (¶ 35(u), above).

(ll) Respondent acknowledges that his use of the debit card for personal purchases at Best Buy was improper.

(mm) Respondent acknowledges that he failed to create and sign the written memorandum authorizing the November 14, 2012, EFT.

C.A. Matter

(nn) On August 31, 2012, respondent deposited into his trust account an American Family Insurance settlement check (on behalf of C.A.) in the amount of \$5,500. On September 10, 2012, respondent disbursed \$3,666.67 to C.A. Respondent retained \$1,833.33 in the trust account for his attorney fee.

(oo) Thereafter, respondent failed to disburse earned fees and costs promptly upon the establishment of his right to his attorney fee. Instead, between September 21, 2012, and November 14, 2012, respondent disbursed five separate checks totaling \$1,700.

(pp) On November 14, 2012, by EFT in the total amount of \$900 to account no. ending 9655, respondent disbursed attorney fees to himself in the C.A. matter (\$133.33) and in the C.U. matter (\$766.67) (*see* ¶ 35(gg), above).

(qq) Respondent did not create and sign a written memorandum authorizing the November 14, 2012, EFT.

(rr) The following subsidiary ledger, extracted from the Director's audit, summarizes respondent's handling of the C.A. settlement:

DATE	NO.	PAYEE/SOURCE	PYMT/DEP	BALANCE
8/31/12		American Family (settlement)	\$5,500.00	\$5,500.00
9/10/12	3024	C.A.	-3,666.67	1,833.33
9/21/12	3025	John Akwuba - atty fees	-200.00	1,633.33
10/3/12	3026	John Akwuba - atty fees	-300.00	1,333.33
10/15/12	3027	John Akwuba - atty fees	-1,000.00	333.33
10/30/12	3028	John Akwuba - atty fees	-200.00	133.33
11/14/12	EFT	John Akwuba - atty fees	-133.33	0.00

36. Respondent acknowledges that he failed to create and sign the written memorandums authorizing EFTs.

37. Respondent acknowledges that during the period from April 19, 2011, through August 31, 2013, he failed to maintain the required trust account books and records. In particular, respondent failed to maintain a trust account check register; subsidiary ledgers; monthly subsidiary ledger trial balances; monthly reconciliations of the checkbook balance, the subsidiary ledger trial balance total and the adjusted bank statement balance; canceled checks; duplicate deposit slips; and other bank records.

38. Respondent's conduct in withdrawing money from the funds he held for J.S., in excess of the amount held, constituted negligent misappropriation in violation of Rules 1.15 and 8.4(d), MRPC.

39. Respondent's failure to promptly disburse earned fees in his representations of J.S., C.A. and C.U., after determining that he was entitled to those fees, resulted in a commingling of client funds and respondent's funds in violation of Rule 1.15(b), MRPC.

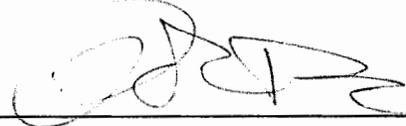
40. Respondent's conduct in failing to maintain the proper trust account books and records concerning the funds he held in trust for J.N.G., J.S., C.U. and C.A. violated Rule 1.15, MRPC, and Appendix 1 thereto.

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.

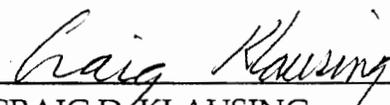
Dated: JULY 20, 2015.

MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY

By


PATRICK R. BURNS
FIRST ASSISTANT DIRECTOR
Attorney No. 0134004
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and


CRAIG D. KLAUSING
SENIOR ASSISTANT DIRECTOR
Attorney No. 0202873