

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against ALAN J. ALBRECHT,
a Minnesota Attorney,
Registration No. 191826.

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 28, 1988. Respondent is currently suspended from the practice of law for attorney misconduct.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's history of prior discipline, including admonitions, is as follows:

1. On October 22, 1993, respondent was issued an admonition for negotiating checks that were not made payable to him or his law office and for failing to deposit estate checks into a trust account while he determined where the funds should be disbursed, in violation of Rules 1.15(a) and 8.4(c) and (d), Minnesota Rules of Professional Conduct (MRPC).

2. On July 15, 1994, respondent was issued an admonition for making a misleading statement to another lawyer about the relationship between

respondent and a former shareholder in respondent's firm who had been disbarred, in violation of Rule 8.4(c), MRPC.

3. On July 15, 1994, respondent was issued another admonition for making a misleading statement to the husband of a former client about the relationship between respondent and a former shareholder in respondent's firm who had been disbarred, in violation of Rule 8.4(c), MRPC.

4. On March 21, 1997, respondent was issued an admonition for charging a client a fee greater than the fee he had agreed to charge and failing to fully cooperate with the Director's investigation of the client's complaint, in violation of Rules 1.5(a) and 8.1(a)(3), MRPC, and Rule 25, Rules on Lawyers Professional Responsibility (RLPR).

5. On March 21, 1997, respondent was issued another admonition for failing to cooperate fully with the Director's investigation of a separate complaint against him, in violation of Rule 8.1(a)(3), MRPC, and Rule 25, RLPR.

6. On July 2, 1997, respondent was publicly reprimanded and placed on two years of supervised probation for a pattern of delay and non-cooperation with the Director's investigation of client complaints, neglect of client matters, non-communication with clients, and failure to deposit a retainer into his trust account, in violation of Rules 1.2(b), 1.3, 1.4, 1.15(a), 1.16(d), 8.1(a)(3), and 8.4(c) and (d), MRPC, Rule 25, RLPR, and Lawyers Professional Responsibility Board Opinion No. 15.

7. On January 9, 1998, respondent was suspended from the practice of law for a period of 45 days for failing to comply with the terms of his Supreme Court ordered probation.

8. At the time of respondent's petition for reinstatement to the practice of law, the Director had received nine additional complaints against him. In a March 19, 1998, stipulation, respondent admitted to additional acts of

client neglect and non-communication, failure to expedite litigation, failure to deposit client funds in trust, failure to return client property upon termination of representation, misconduct in a bankruptcy matter (including neglect, incompetence, false statements, conflict of interest, receipt of a fee without bankruptcy court approval and failure to comply with bankruptcy rules of procedure), practice after suspension, and failure to promptly pay a law-related judgment, in violation of Rules 1.1, 1.3, 1.4, 1.5(a), 1.7(a), 1.15(a), 1.16(f), 3.2, 3.4(c), 5.5, and 8.4(c) and (d), MRPC. On April 14, 1998, the Supreme Court reinstated respondent to the practice of law, subject to a four-year period of supervised probation.

9. On February 2, 1999, respondent was issued an admonition for failing to pay a judgment entered against him for professionally-related indebtedness, in violation of Rule 8.4(d), MRPC.

10. On February 2, 1999, respondent was issued another admonition for failing to promptly return the unused portion of a retainer paid to him by a client, in violation of Rule 1.16(d), MRPC.

11. On April 11, 2000, respondent was issued an admonition for failing to disclose to the court and opposing counsel the limited scope of his representation, in violation of Rule 8.4(d), MRPC.

12. On February 28, 2001, respondent was issued an admonition for making false statements to a client in an effort to collect his fees, in violation of Rule 8.4(c), MRPC.

13. On May 15, 2003, respondent was suspended from the practice of law for a period of 90 days, to be followed by a two-year period of supervised probation, for neglect and non-communication in multiple client matters and filing a frivolous lawsuit in violation of Rules 1.3, 1.4, and 3.1, MRPC.

Respondent was reinstated to the practice of law on September 22, 2003, subject to the two-year period of probation previously ordered.

14. On September 15, 2003, respondent was issued an admonition for failing to timely comply with the notice requirements of suspended attorneys pursuant to Rule 26, RLPR, in violation of Rule 8.4(d), MRPC.

15. On March 18, 2010, respondent was suspended from the practice of law for a period of two years for incompetence and lack of diligence in a client file, and for failing to pay a law-related judgment, in violation of Rules 1.1, 1.3, 3.4(c), and 8.4(d), MRPC.

16. On July 22, 2010, respondent was issued an admonition for practicing law while suspended, in violation of Rules 5.5(a) and 8.4(d), MRPC.

17. On July 22, 2010, respondent was issued another admonition for neglect and incompetence in a client's malpractice case, resulting in the expiration of the client's claim under the statute of limitations, then communicating to the client that the claim was still feasible, serving a complaint on the time-barred claim on the defendant, and subsequently refusing to refund any portion of the retainer, in violation of Rules 1.1, 1.3, 1.4, 1.5(a), 3.1, 3.2, and 8.4(d), MRPC.

18. On April 28, 2011, respondent was issued an admonition for, while working as a paralegal in a bankruptcy matter, failing to notify the client that he was a suspended attorney, in violation of Rule 7.1, MRPC.

FIRST COUNT

Alden-Aksteter Matter—Sexual Relations with Client

1. Respondent represented Kristine Alden-Aksteter in a variety of matters beginning in December 2004, and continuing until at least November 2007. In

particular, respondent represented Alden-Aksteter in the following matters, between the following dates:

a. Respondent represented Alden-Aksteter in a contempt of court matter (27-CR-04-064373) beginning in January 2005, and continuing until at least May 2007.

b. Respondent represented Alden-Aksteter in the post-decree portion of a dissolution matter (27-FA-240503) between January 20, 2005, and until at least October 2005.

c. Respondent represented Alden-Aksteter in a marriage dissolution matter (86-F9-05-002819) at least as early as October 2005, and continuing until at least October 2006.

d. Respondent represented Alden-Aksteter in a DWI matter (86-K0-06-000032) between December 29, 2005, and July 7, 2006.

e. Respondent represented Alden-Aksteter in a DWI matter (27-CR-07-101020) between August 27, 2007, and November 19, 2007.

2. There was no sexual contact between respondent and Alden-Aksteter prior to December 2004.

3. Respondent had sexual relations, as defined in Rule 1.8(j)(1), MRPC, with Alden-Aksteter on multiple occasions beginning in approximately August 2005, and concluding in summer 2009. At least some of these incidents occurred while respondent was representing Alden-Aksteter in the matters specified above.

4. Respondent, by engaging in sexual relations with a client in the Alden-Aksteter matter, violated Rule 1.8(j), MRPC.

SECOND COUNT

Unauthorized Practice of Law

5. Respondent was suspended from the practice of law for a minimum of two years effective April 1, 2010, as a result of being found to have committed misconduct. *In re Albrecht*, 779 N.W.2d 530 (Minn. 2010).

6. Beginning May 1, 2010, respondent worked as a paralegal for the firm of Thao & Li, P.A. Respondent's work for Thao & Li was governed by a written contract, which had been drafted by respondent. The contract was signed by respondent and attorney Frances Li on or about May 1, 2010. Within that contract, respondent agreed that he would not "render any legal advise [sic] to the client"; that he would not "receive, disburse, or otherwise handle client funds"; and that he would not "engage in activities that constitute the practice of law." This language is identical to the language in Rule 5.8(c), MRPC, which governs the employment of suspended lawyers.

7. Respondent accepted payment directly from the following clients of Thao & Li:

- a. Randall Johansen, May 2010.
- b. Chester Renollet, August 2010.
- c. Sikong Chum, August 2010.
- d. Ann Scott, November 2010.
- e. Jennifer Herricks, December 2010.
- f. Joseph Seidel, December 2010.
- g. Derek Moody, January 2011.

8. At some time prior to February 16, 2011, Li gave respondent "strict instruction not to identify himself as an attorney nor give any legal advice to any clients or potential clients."

9. On or about August 7, 2011, Joseph McKee signed a written retainer agreement with Thao & Li in which he hired them to represent him in his bankruptcy

matter. Within the retainer agreement, McKee agreed to pay a total of \$2,600, plus a filing fee of \$299.

10. Respondent was McKee's primary contact with Thao & Li. McKee had no communication regarding this representation with any person at Thao & Li other than respondent prior to signing the retainer agreement.

11. Throughout the representation, respondent gave McKee legal advice as to whether bankruptcy was appropriate for McKee, the effect of bankruptcy on creditors' attempts to secure repayment, the consequences to McKee's credit rating and ability to obtain credit in the future, and which form of bankruptcy was appropriate for respondent. Li, the attorney who allegedly was supervising respondent, did not communicate directly with McKee, or meet with McKee, until months after McKee's discharge had been granted.

12. Thao & Li made a partial bankruptcy filing on behalf of McKee on August 9, 2011. McKee was required to complete the filing on or before August 24, 2011.

13. On or about August 16, 2011, Tom Jussila, a friend of McKee's and a former bankruptcy client of respondent's, personally delivered a check directly to respondent in the amount of \$600, for payment of legal fees related to McKee's bankruptcy.

14. Respondent did not tender any of the \$600 tendered to him by Jussila to Thao & Li, but kept those funds as payment for his services in the McKee bankruptcy matter.

15. On August 24, 2011, Melissa Nelson, McKee's girlfriend, originated a wire transfer of funds in the amount of \$850 for payment of legal fees related to McKee's bankruptcy. That wire transfer was made directly to Wells Fargo account no. xxxxxx8356, an account held by respondent.

16. Respondent did not tender any of the \$850 received by wire transfer on August 24, 2011, to Thao & Li. Respondent did not inform Thao & Li that he had received those funds. Respondent kept those funds as payment for his services in the McKee bankruptcy matter.

17. The bankruptcy filing was not completed by August 24, 2011. As a result, the partial bankruptcy petition was dismissed on August 25, 2011.

18. The partial bankruptcy filing had imposed an automatic stay of collection activities. When the partial bankruptcy petition was dismissed, the automatic stay was no longer effective. Within hours of the dismissal on August 25, 2011, creditors began collection activities against McKee, including the repossession of one of his vehicles.

19. Thao & Li filed a second partial bankruptcy petition on McKee's behalf on September 9, 2011. That filing was completed by the deadline.

20. McKee initiated a wire transfer of funds to respondent on November 1, 2011, in the amount of \$250, exclusive of fees. This amount was intended to be payment for McKee's bankruptcy. Respondent received these funds. Respondent did not inform Thao & Li that the money had been received, and did not tender any of that money to Thao & Li.

21. The court granted McKee's discharge on December 6, 2011. McKee did not directly communicate with Li with regard to this representation until March 7, 2012. McKee did not meet Li in regard to this representation until March 7, 2012.

22. On or about December 16, 2011, Hermantown Federal Credit Union filed a summons and complaint in state court ("HFCU action") in which they sought a lift of the automatic stay with respect to McKee's vehicles. Li submitted a letter to the judge on behalf of McKee, on December 22, 2011. Within that letter, Li states that she was not representing McKee. Thao & Li did no substantial legal work on behalf of McKee in the HFCU action after December 22, 2011.

23. The trustee in McKee's bankruptcy case had filed a motion to turn over certain property in McKee's bankruptcy case. That motion was set for hearing on January 4, 2012. McKee appeared for that hearing, but neither respondent nor Li appeared.

24. Prior to the January 4, 2012, hearing, McKee communicated with respondent in relation to the motion. Respondent advised McKee that the motion for turnover was "bogus," and that he could not be forced to turn over what he did not have.

25. During the January 4, 2012, hearing, McKee stated to Judge Kishel that respondent had told him that it would be necessary for McKee to retain Li in order for her to attend the January 4, 2012, hearing.

26. Following the January 4, 2012, hearing, Judge Kishel issued an order commanding Li to appear and to explain the various circumstances of her non-appearance, the amount of her involvement in the case, and respondent's representation that the motion was "bogus." That hearing was set for March 7, 2012.

27. On or about February 13, 2012, HFCU submitted a notice of motion and motion for default judgment, or in the alternative, summary judgment, in the HFCU action. Such motion was set for hearing on March 19, 2012.

28. On or about March 7, 2012, prior to McKee's appearance at the hearing in his bankruptcy case, respondent contacted McKee by telephone. During that telephone conversation, which was recorded by McKee, respondent gave legal advice to McKee regarding his bankruptcy matter. Respondent explained legal concepts to McKee, including what types of fee agreements were permissible in bankruptcy, and the effects of McKee's testimony. Respondent coached McKee as to his testimony at the hearing, discussed the consequences of certain testimony, and suggested that McKee tell the judge that he had been confused during his January 4, 2012, court appearance.

29. Prior to March 9, 2012, and while not under the supervision of any attorney, respondent drafted an answer, a responsive motion, an affidavit, and one other document in response to the February 13, 2012, motion in the HFCU matter.

30. On or about March 9, 2012, respondent contacted McKee by telephone in regard to the HFCU state court replevin action. Respondent requested that McKee meet him to sign the documents respondent had prepared. At the time of the telephone call, Li was not representing McKee in regard to the HFCU action, and was not supervising respondent. Respondent indicated within the telephone call, “[Li] is not representing you. She’s not doing anything on this. I—I am helping you, but only behind the scenes.”

31. Respondent, by receiving, disbursing, or otherwise handling client funds in the McKee matter and several additional matters while performing paralegal services for Thao & Li, P.A., violated Rule 5.8(b)(5), MRPC.

32. Respondent, by rendering legal consultation or advice in the McKee bankruptcy and HFCU matters, violated Rules 5.5 and 5.8(b)(1) and (6), MRPC.

33. Respondent, by receiving and retaining payment for legal services that were performed in the McKee matter, and failing to report or transfer those funds to Thao & Li, P.A., violated Rules 1.15(a) and 8.4(c) and (d), MRPC.

COUNT THREE

Non-Cooperation/False Statements to the Director

34. On February 24, 2012, respondent submitted a response to a notice of investigation in the unauthorized practice of law matter. In his response, respondent indicated that he had done legal work, under the supervision of Li, in the HFCU state court replevin matter. He stated within that response that “my involvement with the [HFCU state court replevin action] consisted of doing research and providing [Li] with a draft of the Responsive Motion, Memorandum and Affidavit.” This statement was

false, in that it omitted mention of respondent's preparation of four legal documents in the HFCU state court replevin matter after Li's withdrawal on December 22, 2011.

35. In the HFCU action, HFCU had filed a motion for default, based on McKee's failure to submit an answer, on February 13, 2012.

36. Respondent drafted an answer, a responsive motion, an affidavit, and one other document and attempted to submit those documents to McKee for his signature and submission on or about March 9, 2012.

37. To date, respondent has not issued any correction or addition to his statement, made February 13, 2012.

38. On August 24, 2011, a wire transfer in the amount of \$850 was made directly to respondent's account. The notes on the wire transfer memo indicate that those funds were intended as payment of McKee's bankruptcy.

39. On August 20, 2012, respondent, in response to the Director's question, stated: "Electronic payment made on August 24. I had no idea that this payment had been made. I could not handle funds. I did not know about the payment until after McKee's [July 27, 2012] deposition." This statement was false.

40. Respondent was aware of the payment, and credited that payment towards McKee's legal fees. Respondent submitted a receipt to Li, in his own handwriting, indicating that \$900 was paid on August 24.

41. To date, respondent has not issued any correction or amendment to his August 20, 2012, statement.

42. Respondent, by making multiple false statements to the Director in the course of a disciplinary investigation, violated Rules 8.1(b) and 8.4(c) and (d), MRPC, and Rule 25, RLPR.

43. Respondent, by failing to cooperate with the Director's investigation, violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

WHEREFORE, the Director respectfully prays for an order of this Court disbarring or suspending respondent or imposing otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: March 8, 2013.



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