

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:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 28, 1988. Respondent currently practices law in Brooklyn Center, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent has the following history of discipline:

A. 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).

B. 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.

C. 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.

D. 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, RLPR.

E. 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.

F. 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.

G. 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.

H. 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(d), 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.

I. 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.

J. 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.

K. 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.

L. 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 Rules 8.4(c), MRPC.

M. 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.)

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

FIRST COUNT

Pattern of Incompetence and Lack of Diligence

1. On June 21, 2005, Rosemary Madonna retained respondent to represent her in filing a Chapter 7 bankruptcy. Madonna signed a written fee agreement and paid respondent a \$700 retainer.

2. Among Madonna's assets was a 1991 structured settlement with Continental Casualty Company, the insurance company of the bar at which Madonna's husband had been drinking prior to his death in an automobile accident. Under the terms of the structured settlement, Madonna was entitled to receive (a) a lump-sum payment of \$50,000 at the time of settlement, (b) an additional sum of \$62,500 to be paid in 25 annual installments of \$2,500, and (c) a lump-sum payment of \$23,500 on March 8, 2017.

3. During their initial meeting, respondent and Madonna discussed the structured settlement and whether or not it would be considered exempt under the bankruptcy law. Madonna stated to respondent that she did not want to file bankruptcy if the structured settlement would not be exempt because these were the only funds she had available to her for her retirement. Respondent assured Madonna that the structured settlement was exempt under the law and, on that basis, Madonna directed respondent to proceed with her bankruptcy filing.

4. In August 2005 respondent filed a Chapter 7 bankruptcy petition on Madonna's behalf. The petition listed the structured settlement as exempt under Minn. Stat. Sec. 550.39 ("Exemption of insurance policies").¹ Respondent also listed as exempt

¹ For reasons and with consequences that are unclear, respondent stated the value of the structured settlement to be \$350.

Madonna's homestead and a \$1,260 property tax refund as "tools of the trade" pursuant to Minn. Stat. Sec. 550.37, subd. 6.

5. On September 20, 2005, the bankruptcy Trustee wrote to respondent objecting to respondent's claim that the structured settlement was exempt under either Minn. Stat. Sec. 550.39 or 550.37, subd. 10 ("Insurance proceeds"). The Trustee asked respondent to stipulate that the structured settlement was not exempt.

6. On September 22, 2005, respondent wrote to the Trustee and stated that Madonna would not stipulate that the structured settlement was not exempt.

7. On October 19, 2005, the Trustee filed a motion with the bankruptcy court formally objecting to Madonna's claim of exemption of the structured settlement. The Trustee also objected to the claimed exemptions of Madonna's homestead and property tax refund as "tools of the trade" pursuant to Minn. Stat. Sec. 550.37, subd. 6.

8. Respondent filed a response to the Trustee's motion on November 3, 2005. Respondent argued that Madonna's structured settlement was exempt under Minn. Stat. Sec. 550.39 and 550.37. Respondent also prepared and attached an amended "Schedule C – Property Claimed as Exempt," which (a) listed Madonna's homestead as exempt pursuant to Minn. Stat. Sec. 510.01 ("Homestead defined; exempt; exception") and 510.02 ("Area and value; how limited"), (b) listed Madonna's property tax refund as exempt pursuant to Minn. Stat. Sec. 571.922 and 550.37, subd. 13, both of which pertained to wages and earnings, (c) listed the structured settlement as exempt pursuant to Minn. Stat. Sec. 550.37, subd. 10, and (d) reduced the value of the structured settlement to \$208.33.

9. On November 9, 2005, the Trustee filed a reply to respondent's response. In his reply, the Trustee (a) stated that he had no objection to the amended claim of exemption of Madonna's homestead, (b) objected to respondent's amended claim of exemption of Madonna's property tax refund as "wages," which "have no application

whatsoever to the property tax refund,” and (c) objected to respondent’s amended claim of exemption of Madonna’s structured settlement.

10. On November 18, 2005, the bankruptcy court issued an order that provided, in pertinent part, that “[Madonna’s] exemption claim of the Structured Settlement under Minnesota Statutes [Section] 550.37, Subd. 10 is DENIED and the Trustee’s objection is SUSTAINED.” The court also denied respondent’s claimed exemption of Madonna’s property tax refund and sustained the Trustee’s objection in that regard.

11. On November 17, 2005, respondent wrote to counsel for the Trustee and stated his intent to assert another basis for exemption of the structured settlement under Minn. Stat. Sec. 550.37, subd. 22. Counsel for the Trustee responded on November 23, 2005, by stating that such a claim would be barred by *res judicata* and that respondent’s statements on the record during the November 16, 2005, hearing constituted a waiver of any additional claims. Counsel further stated that if respondent pursued any additional exemption claims, he would seek sanctions.

12. In early March 2006 Madonna received her annual \$2,500 structured settlement check. Madonna called respondent regarding the check and respondent advised Madonna to cash the check and retain the proceeds. Madonna did so.

13. On March 7, 2006, counsel for the Trustee wrote to respondent to request information concerning the structured settlement. Counsel stated, “I would like you to have your client confirm that she is aware that if she receives a payment from the insurance company, it is her obligation to endorse and immediately deliver such check to [the] Trustee.” Respondent failed to respond.

14. On March 10, 2006, counsel for the Trustee wrote to respondent requesting copies of Madonna’s 2005 state and federal income tax returns. Respondent failed to respond.

15. Counsel for the Trustee wrote again to respondent on March 20, 2006. Counsel noted that respondent had not responded to his March 7 and 10 letters. Counsel stated his belief that Madonna had received her annual structured settlement payment, but had not forwarded the funds to the Trustee. Finally, counsel asked, "Do I need to file a motion to get a response from you? Please call me." Respondent failed to respond.

16. On May 1, 2006, counsel for the Trustee brought a motion for, among other things, recovery of Madonna's annual structured settlement payment. The hearing on counsel's motion was ultimately scheduled for June 14, 2006.

17. On June 11, 2006, respondent served and filed a response and a motion to vacate the court's earlier order regarding the non-exempt nature of the structured settlement. The court determined respondent's submission to be untimely. The court further determined that respondent's submission raised no meritorious defenses to the Trustee's motion.

18. On June 16, 2006, the court issued an order striking respondent's response and motion, directing Madonna to pay to the Trustee the \$2,500 structured settlement payment she received in early March 2006, and further directing Madonna to provide the Trustee with all documents pertaining to the structured settlement. Finally, the court ordered respondent to pay the Trustee \$800 as and for his reasonable attorney's fees and costs.

19. Thereafter, Madonna obtained a loan in order to repay the \$2,500 to the Trustee. Madonna was discharged in bankruptcy on July 18, 2006.

20. As a result of her bankruptcy, Madonna's interest in her structured settlement became an asset of her bankruptcy estate. In August 2008 the Trustee agreed to sell the structured settlement to Continental Casualty Company at a discounted rate.

21. Respondent's conduct in incompetently advising Madonna that her structured settlement was exempt, pursuing exemption of the structured settlement,

asserting exemption of Madonna's homestead under the wrong statute, pursuing exemption of Madonna's property tax refund as a "tool of the trade" and as earnings or wages, advising Madonna to cash the structured settlement payment she received in early March 2006, and failing to diligently respond regarding the court's November 18, 2005, order and the Trustee's efforts to recover Madonna's structured settlement check, violated Rules 1.1, 1.3, 3.4(c) and 8.4(d), MRPC.

SECOND COUNT

Issuance of a Non-Negotiable Check and Failure to Communicate Regarding It

22. In or about May 2008, Madonna commenced a conciliation court action against respondent to recover her \$700 retainer. On approximately June 3, 2008, respondent contacted Madonna to discuss the matter, but Madonna directed respondent to communicate with her only in writing. On June 5, 2008, respondent wrote to Madonna. Respondent conceded that he knew the structured settlement was an issue prior to filing Madonna's bankruptcy petition. Respondent stated that he researched the matter at that time and concluded that the structured settlement was exempt. Respondent enclosed a \$700 check drawn on his business account as a refund of Madonna's retainer.

23. Without explanation, respondent's bank refused to allow Madonna to negotiate respondent's \$700 check when she presented it for payment on approximately June 11, 2008. Madonna contacted respondent, who stated that he would look into the matter and get back to her the next day. Respondent failed to do so.

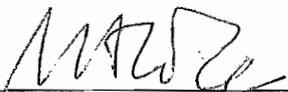
24. Madonna called and text-messaged respondent on approximately June 16, 2008. Respondent stated that he was still checking into the matter, but would get back to Madonna. Respondent failed to do so.

25. Madonna was finally able to negotiate respondent's check on June 20, 2008.

26. Respondent's conduct in issuing Madonna a non-negotiable check in refund of her retainer and failing to adequately and timely respond when Madonna was unable to negotiate that check, violated Rule 8.4(d), MRPC.

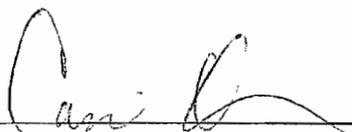
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: Nov. 26, 2008.



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