

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against SUSAN R. ANDERSON,  
a Minnesota Attorney,  
Registration No. 209612.  
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**PETITION FOR  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

Upon the approval of a Lawyers Professional Responsibility Board Panel Chair, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rules 10(d) 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 26, 1990. Respondent is currently suspended from the practice of law.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

- A. By Supreme Court order dated February 21, 2012, respondent was indefinitely suspended from the practice of law for a minimum period of one year, for failing to act with diligence, failing to communicate with a client, failing to account for and pay over to a client settlement funds, and failing to cooperate with a disciplinary investigation, in violation of Rules 1.3, 1.4(a) and (b), 1.15(b), (c)(3)

and (c)(4), and 8.1(b), Minnesota Rules of Professional Conduct (MRPC), and Rule 25, RLPR.

- B. On February 29, 2012, respondent was issued an admonition for failing to communicate with a client, failing to provide the client with a final statement of account, and failing to cooperate with the Director's investigation, in violation of Rules 1.3, 1.4(a)(3) and (4), 1.15(c)(3), and 8.1(b), MRPC, and Rule 25, RLPR.

#### FIRST COUNT

#### Lack of Diligence, Failure to Adequately Communicate with Clients, Failure to Account and Failure to Promptly Return Client Files and Property

##### **Engler Matter**

1. On February 23, 2010, Tanya Engler met with respondent to discuss representation in a marriage dissolution proceeding. Apparently because Engler could not pay the advance fee respondent required, Engler did not, at that time, retain respondent for representation. Instead, in May 2010, Engler initiated a marriage dissolution proceeding *pro se*.

2. In June 2010, after Engler's husband answered Engler's petition through an attorney, Engler again contacted respondent to discuss possible representation. Engler asked respondent if she could pay the advance fee in installments. Respondent declined.

3. On August 29, 2010, Engler telephoned respondent, leaving her a message. In her message, Engler stated that she now had the full amount of respondent's advance fee and wanted to retain her. Respondent failed to return this call and several other calls Engler thereafter placed to respondent.

4. On September 13, 2010, Engler met with respondent and retained her. At that time, Engler paid respondent a \$4,000 advance fee to be applied to future services.

5. Respondent filed a certificate of representation with the court and attended a hearing on Engler's behalf.

6. On November 8, 2010, the date of trial, the parties reached an agreement to settle the matter. Counsel for Engler's husband prepared the settlement documents and they were approved by respondent and submitted to the court. On January 17, 2011, the court approved the settlement and issued the judgment and decree.

7. During the period of time preceding issuance of the judgment and decree, Engler left multiple telephone messages for respondent that respondent failed to return.

8. Following issuance of the judgment and decree, Engler continued to attempt to contact respondent with questions regarding the foreclosure of Engler's home. Respondent failed to return many of Engler's telephone messages in this regard.

9. Respondent's representation of Engler concluded in late February 2011. By that time, respondent had not provided Engler with a billing statement indicating what portion of her advance fee was properly applied to respondent's fees and what portion was due to be refunded to Engler. Engler left multiple telephone messages for respondent regarding a refund, which respondent failed to return.

10. On August 22, 2011, respondent provided Engler with her billing statement for the period September 13, 2010, to January 17, 2011. This was the first and only billing statement Engler received from respondent.

11. Respondent's billing statement reflected that \$2,722 of Engler's \$4,000 retainer was due to be refunded to Engler. Respondent issued a refund check to Engler for that amount on August 22, 2011.

#### **Wilkins Matter**

12. On February 15, 2011, Tracy Wilkins met with respondent and discussed representation in a marriage dissolution proceeding. At that time, Wilkins completed a "Marital Information" form and signed at least one authorization.

13. On February 23, 2011, Wilkins formally retained respondent. On that date, Wilkins signed a retainer agreement and paid respondent a \$5,000 advance fee to be applied against respondent's future billings.

14. Also on February 23, 2011, respondent mailed a summons and petition for dissolution of marriage to the Douglas County Sheriff's Office and requested service of those documents on Douglas Wilkins, Wilkins' husband. Wilkins' husband was, in fact, served with the documents on February 24, 2011.

15. On March 18, 2011, attorney Lynne Ridgway contacted respondent and informed her that she would be representing Wilkins' husband in the marriage dissolution matter. Respondent agreed to allow Ridgway an extension of time in which to answer the petition. Ridgway thereafter served respondent with an answer.

16. Thereafter, respondent failed to diligently represent Wilkins in the marriage dissolution matter and failed to adequately communicate with Wilkins. For example:

- a. Wilkins telephoned respondent on March 22 and 23, 2011, leaving messages for her on both occasions. Respondent failed to return either of Wilkins' calls.
- b. On March 31, 2011, Ridgway telephoned respondent and they spoke. At that time, respondent stated that she would contact Wilkins regarding a possible temporary settlement proposal and get back to Ridgway. Respondent failed to do so.
- c. On April 1, 2011, Wilkins telephoned respondent, leaving her a message. Respondent failed to return Wilkins' call.
- d. On April 18 and May 16, 2011, Ridgway telephoned respondent, leaving messages for her on both occasions. Respondent failed to return either of Ridgway's calls.
- e. On May 16, 2011, Ridgway emailed respondent, stating that she had not heard from her or received a return call from her for a few weeks. Ridgway stated that the parties had been exchanging unproductive and

threatening email messages and asked, "Where are we at on things?"

Respondent failed to respond.

- f. During the period from approximately March 18 to July 12, 2011, respondent performed no substantive work on Wilkins' behalf.
- g. On July 12, 2011, respondent began drafting motions and an affidavit for temporary relief on Wilkins' behalf. Respondent did not, however, at that time or any other, serve or file any motions for temporary relief.
- h. On July 25, 2011, respondent filed the summons, petition and affidavit of service with the court, and paid the \$400 filing fee.
- i. During the period July 25 to November 3, 2011, respondent performed no substantive work on Wilkins' behalf.
- j. On November 1, 2011, Ridgway provided respondent with a stipulation for scheduling order and a joint informational statement. On November 3, 2011, respondent signed those documents and filed them with the court.
- k. During the period after November 3, 2011, respondent performed no substantive work on Wilkins' behalf.
- l. On December 28, 2011, Ridgway telephoned respondent, leaving her a message. In her message, Ridgway suggested that the matter be presented for mediation, and stated, "Let's get things moving."  
Respondent failed to respond.
- m. By February 17, 2012, Wilkins had terminated respondent's representation and requested her file. On February 21, 2012, respondent served and filed a notice of withdrawal of counsel.

17. Wilkins repeatedly stated to respondent that she wanted the marriage dissolution proceeding completed as soon as possible.

18. On February 17, 2012, respondent provided Wilkins with a billing statement for the period February 15, 2011, to January 16, 2012. This was the first and only billing statement Wilkins received from respondent.

19. Respondent's billing statement reflected that \$2,917 of Wilkins \$5,000 retainer was due to be refunded to Wilkins. Respondent issued a refund check to Wilkins for that amount on February 17, 2012.

20. Following termination of respondent's representation, it was necessary for Wilkins to make at least three requests to respondent for her file. The first two of Wilkins' requests were by telephone. The third request was made some two and one-half weeks after the termination of respondent's representation. At that time, Wilkins appeared at respondent's office, demanded her file and refused to leave until she received it. On that occasion, respondent provided Wilkins with her file.

21. Respondent's conduct in failing to represent Wilkins with diligence and failing to adequately communicate with Engler and Wilkins violated Rules 1.3 and 1.4(a)(3) and (a)(4), MRPC.

22. Respondent's conduct in failing to promptly provide Engler and Wilkins with billing statements, failing to promptly provide Engler with a refund of her advance fee and failing to promptly provide Wilkins with her file upon termination of representation violated Rules 1.15(c)(3) and (4) and 1.16(d), MRPC.

SECOND COUNT

Failure to Promptly Deposit Client Funds into a Trust Account

23. On numerous occasions during the period September 2008 to March 2011, respondent failed to promptly deposit client funds into her trust account. The chart below reflects each such occasion:

<u>CLIENT</u>	<u>CHECK DATE</u>	<u>DEPOSIT DATE</u>	<u>NO. OF DAYS</u>
M.K.	09/18/2008	01/02/2009	106
S.H.	10/30/2008	01/02/2009	64
J.O.	03/09/2009	04/24/2009	46
S.D.	05/11/2009	08/10/2009	91
J.S.	05/20/2009	08/10/2009	82
M.C.	06/02/2009	10/26/2009	146
W.H.	06/12/2009	10/26/2009	136
D.S.	07/09/2009	10/26/2009	109
J.J.	09/10/2009	10/26/2009	46
H.S.	09/24/2009	10/26/2009	32
J.S.	09/25/2009	10/26/2009	31
A.L.	10/20/2009	01/05/2010	77
W.I.	04/21/2010	06/17/2010	57
M.J.	05/12/2010	07/02/2010	51
L.S.	09/07/2010	10/22/2010	45
T.N.	09/13/2010	10/25/2010	42
Wilkins	02/15/2011	05/13/2011	87
D.M.	03/08/2011	05/13/2011	66

24. In failing to promptly deposit the client funds into her trust account as described above, respondent failed to properly safeguard those client funds.

25. Respondent's conduct in failing to promptly deposit client funds into her trust account violated Rule 1.15(a), MRPC.

THIRD COUNT

Failure to Cooperate

26. On March 2, 2012, Wilkins submitted a complaint against respondent to the Director.

27. On March 12, 2012, the Director mailed to respondent notice of investigation of Wilkins' complaint, which included a request for respondent's written response to the complaint within 14 days.

28. Respondent did not respond to Wilkins' complaint within the 14-day period specified in the Director's notice. In fact, respondent did not respond to Wilkins' complaint until June 11, 2012.

29. On December 11, 2012, the Director mailed to respondent notice of investigation in the file opened by the Director regarding her failure to promptly deposit client funds into her trust account. The notice requested respondent's written response in the matter within 14 days. Respondent failed to respond.

30. On January 30, 2013, the Director wrote to respondent and again requested her response to the December 11, 2012, notice of investigation. Respondent failed to respond.

31. On February 21, 2013, the Director wrote to respondent for a third time to request her response to the December 11, 2012, notice of investigation. Respondent failed to respond.

32. On March 6, 2013, the Director wrote to respondent to request that (a) she provide her response to the December 11, 2012, notice of investigation by March 20, 2013, and (b) she appear for a meeting in the Director's Office on April 3, 2013. Respondent failed to provide a response to the notice of investigation and failed to appear for the April 3 meeting.

33. On May 1, 2013, the Director issued charges of unprofessional conduct against respondent. Respondent's answer to the charges was due May 18, 2013. Respondent failed to provide an answer or otherwise communicate with the Director regarding the charges.

34. Respondent's conduct in failing to cooperate in the Director's investigation of the Wilkins complaint and the Director file regarding her failure to

promptly deposit client funds into her trust account and failing to answer the charges of unprofessional conduct violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

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: May 23, 2013.



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PROFESSIONAL RESPONSIBILITY  
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and



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This petition is approved for filing pursuant to Rules 10(d) and 12(a), RLPR, by the undersigned Panel Chair.

Dated: May 30, 2013.



RICHARD H. KYLE, JR.  
PANEL CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD