FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against SCOTT ALAN BECKER, a Minnesota Attorney, Registration No. 0248253.	**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, 1994. Respondent currently practices law in Eagan, Minnesota. Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

1. Respondent was hired by Richard Linde in late 2008 for assistance in probating the estate of his father, Dwaine Linde, who had died intestate. During the course of that representation, respondent learned that Dwaine's estate consisted of assets in excess of $500,000, exclusive of the value of the home in which Richard lived.

2. On September 6, 2011, Richard Linde was found dead in his home. The police were able to identify Robert and Lois Denison as relatives of Richard's. Robert Denison was Richard's uncle (Richard's mother and Robert were brother and sister). In going through papers in Richard's house, the Denisons apparently discovered

respondent's business card and contacted respondent for assistance. The Denisons were an elderly couple and were concerned about handling the estate.

3. Respondent then prepared a letter/retainer agreement dated September 8, 2011, in which he proposed offering assistance to the Denisons "with probate and issues dealing with the passing of a relative, specifically with regard to Richard Linde's passing." In this letter, respondent advised the Denisons that his normal rate was "$250 per hour." However, "due to the nature of this unique case . . . I will waive my normal hourly fee and be willing to provide services in this matter in exchange for your assigning to my firm any assets that may be found that would be part of Mr. Richard Linde's estate." In other words, respondent was to accept the proceeds of the estate in lieu of attorney fees.

4. Respondent also prepared, and had the Denisons sign on that same date, an "Assignment of Estate Property Agreement." Under the "recitals" portion of the agreement, the assignor was listed as "his aunt," Richard's "sole surviving heir." This was incorrect on two counts; first, Robert Denison (not his wife, Lois) was Richard's heir and second, there were other heirs. Neither of the documents prepared by respondent contained any information regarding the potential value of the estate, information which had been known to respondent because of his prior representation of Richard.

5. Three days later, on September 13, 2011, after he had already entered into the assignment agreement with the Denisons, respondent contacted the Director's Office seeking an "advisory opinion" about the ethics of such an arrangement. In seeking the advisory opinion, respondent failed to acknowledge that he had already entered into the agreement and otherwise failed to fully or accurately describe the situation.

6. In his advisory opinion request, respondent asked whether he could (not indicating that he already had) prepare an assignment for the uncle to sign, giving

respondent the homestead and respondent would then use the money to pay for the funeral and other closing costs. Respondent did not disclose that he knew, or had reason to know, that the value of the estate far exceeded the cost of burial and costs associated with closing out the estate.

7. Nonetheless, the Director's Office advised respondent that what he was proposing raised significant concerns about self-dealing and conflicts of interest. For example, the attorney from the Director's Office asked whether the value of the estate exceeded the cost of burial. Respondent was told that if the uncle had the benefit of counsel and the probate court approved the arrangement, then maybe that would resolve the potential conflict of interest.

8. On September 14, 2011, respondent emailed a former law clerk of his, Joel Sommers, asking if he handled probate matters. Respondent and Mr. Sommers subsequently spoke by phone about the possibility of Mr. Sommers representing Robert Denison in his capacity as personal representative. Respondent did not provide Mr. Sommers with a copy of the Assignment of Estate Property Agreement that he had previously had the Denisons sign, nor did he advise Mr. Sommers of the existence of the agreement.

9. On September 20, 2011, Mr. Sommers prepared a retention letter for Robert Denison as personal representative of Richard Linde's estate. Mr. Sommers did not meet with the Denisons or provide the letter directly to them, rather, he emailed a copy of the retention letter to respondent who printed it and brought it to the Denisons' home. While respondent was present in the house, the Denisons spoke with Mr. Sommers on the phone. Respondent then obtained the Denisons' signatures on the agreement.

10. At that same time, respondent obtained Robert Denison's signature on a document entitled "Informed Consent of Robert Denison." In that document, Robert Denison agreed to "assign and gift all rights, title, and interest to Scott A. Becker

[respondent], aside from services rendered at his hourly rate, all assets of the estate of Richard S. Linde . . . for which I am the sole surviving heir." Pursuant to the agreement, respondent agreed to assume responsibility for the handling of the estate "in exchange for his hourly rate." The agreement also provided that Robert Denison had "been informed as to the approximate value of Linde's estate" although the agreement itself contained no information as to the estate's value.

11. Despite the fact that Robert Denison had retained Mr. Sommers to represent him, respondent did not provide a copy of the informed consent to Mr. Sommers or provide Denison with an opportunity to have the agreement reviewed by Mr. Sommers.

12. On October 6, 2011, Mr. Sommers filed an application for informal probate and the appointment of Robert Denison as personal representative. An heir locator, Allen Noot, apparently noted the filing and contacted heirs of Richard Linde, one of whom (Thomas Linde) then contacted Mr. Sommers to inquire about the estate.

13. After learning that there were a number of cousins who were potential beneficiaries of the estate and additional details about the cousins, including that at least one resided outside of the country, Mr. Sommers concluded that the estate should proceed through formal probate. Respondent disagreed with this conclusion. On October 18, 2011, Mr. Sommers informed Denison of his decision to withdraw and advised Denison to retain substitute counsel. Mr. Sommers formally withdrew from the representation later that month.

14. That same day, October 18, 2011, respondent emailed Thomas Linde regarding the Richard Linde estate. In that email, respondent stated that if he acted as the personal representative in the matter, "then I couldn't be the lawyer . . . so I had to find a firm/lawyer to file the forms." And, "just so we are all clear here, I am acting with a power of attorney from Robert [Denison] as the personal rep." Respondent did

not tell Thomas Linde that Mr. Sommers had, or was in the process of, withdrawing as Robert Denison's attorney or that he, respondent, was assuming that role.

15. Respondent proposed to Thomas Linde that he and his siblings renounce their claims to be personal representative and to permit Robert Denison to continue in that role. Respondent provided a "Renunciation of Priority for Appointment and Right to Nominate Personal Representative" for Thomas Linde, Stephen Linde, Annette Gamboa, and Susan Linde which he provided to Thomas. Respondent did not tell Thomas Linde or the other heirs about his arrangement with Mr. Denison, that he (respondent) was actually handling the administration of the estate or that Mr. Denison had assigned his interest in the estate to respondent.

16. On October 25, 2011, Thomas Linde emailed respondent about continuing contact from Noot. Respondent replied that same day inquiring further about "this Noot guy." Respondent wrote that "[w]ithout wanting to sound defensive, because I am not, I have tried to be as open with all of you as I can." However, respondent again did not disclose his actual role in the matter (i.e., that Mr. Denison's interest in the estate had been assigned to him).

17. In that same email, respondent wrote:

> Do we need to cement our relationship in writing, too, to get this guy [Noot] off your back? I can draft it and send, although it creates a bit of an issue for me as I can't fully represent you since I am already busy on that end. You would simply be agreeing to allow me to be the attorney for the estate, although you understand that you could obtain other counsel if you deem necessary.

Respondent did not tell Thomas Linde of Mr. Sommers' withdrawal or that he was now representing Robert Denison.

18. Thomas Linde responded that the heirs did not need help dealing with Noot and also noted that "[t]he Linde heirs are acting essentially pro se on this . . . ." The heirs then provided respondent with the executed renunciation forms.

19. Respondent continued to have email communication with Thomas Linde regarding the Richard Linde estate, but never informed Thomas of his interest in the matter.

20. In early January 2012, respondent prepared an "Affirmation of Assignment of Estate Property Agreement." On January 25, 2012, he presented to, and obtained the signature of, Robert Denison. In this document, Mr. Denison assigned "by gift all of his interest in the Linde estate to Assignee [respondent] under this final agreement." Mr. Denison did not have an opportunity to consult with counsel before signing the agreement.

21. Despite his previous agreements that he would provide services to the Richard Linde estate in exchange for Robert Denison assigning his interest in the estate to respondent, and despite receiving roughly $390,000 pursuant to that assignment, respondent nonetheless charged the estate $24,040 in attorney fees. Respondent's conduct reduced the funds the other heirs received by $12,020.

22. As of the date of this petition, respondent has not disgorged any of the $390,000 to the heirs who would have received the funds pursuant to a disclaimer by Robert Denison.

23. Respondent's conduct in agreeing to represent Robert Linde in exchange for being assigned the proceeds of the estate violated Rule 1.7(b), Minnesota Rules of Professional Conduct (MRPC).

24. Respondent's conduct in entering into the September 8, 2011, Assignment of Estate Property Agreement with Robert and Lois Denison violated Rule 1.8(a), MRPC.

25. Respondent's conduct in entering into the September 20, 2011, Informed Consent of Robert Denison agreement violated Rule 1.8(a), MRPC.

26. Respondent's October 18, 2011, statements to Thomas Linde that the arrangement with Mr. Sommers acting as attorney would probably continue, and that

respondent was not really representing anyone in the matter, were false statements and violated Rule 4.1, MRPC.

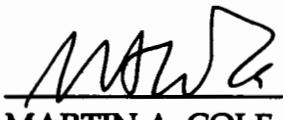
27. Respondent's communications with Thomas Linde regarding the Richard Linde estate violated Rule 4.3(a) and (c), MRPC.

28. Respondent's conduct in preparing the January 25, 2015, Affirmation of Assignment of Estate Property Agreement, violated Rule 1.8(c), MRPC.

29. Respondent's conduct in charging the Estate of Richard S. Linde attorney fees in the amount of $24,040, was a violation of Rule 1.5(a), 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 3, 2015.



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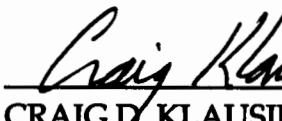

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