

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary  
Action against MATTHEW K. BEGESKE,  
a Minnesota Attorney,  
Registration No. 209764.  
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**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. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 26, 1990. Respondent currently practices law in Duluth, Minnesota. .

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On January 20, 1996, respondent was admonished for failing to include the word "advertisement" in a written solicitation to a prospective client in violation of Rule 7.2(f), Minnesota Rules of Professional Conduct (MRPC).

B. On September 24, 1996, respondent was admonished for failing to deposit advance fee payments into an interest bearing trust account in violation of Rule 1.15(a), MRPC, and Lawyers Professional Responsibility Board (LPRB) Opinion No. 15.

C. On January 14, 2000, respondent was publicly reprimanded and placed on two years unsupervised probation for failing to timely file and pay state and federal individual income taxes and state and federal employer withholding returns in violation of Rule 8.4(b) and (d), MRPC.

D. On March 21, 2002, respondent was placed on two years supervised private probation for neglecting two client matters and for failing to adequately communicate with both clients in violation of Rules 1.3 and 1.4, MRPC.

E. On March 11, 2004, while on private probation, respondent's probation was extended for two years based on his failure to enter into a written fee agreement with a client, failure to deposit the client's retainer into a trust account, and failure to maintain proper trust account books and records.

F. On June 20, 2006, respondent was admonished for failing to follow and competently advise two clients about the applicable Rules of Civil Appellate Procedure in violation of Rules 1.1 and 1.4, MRPC, and for failing to include the requisite language for a nonrefundable retainer in his fee agreement in violation of Rule 1.15(a), MRPC, as further interpreted by LPRB Opinion 15.

### FIRST COUNT

#### Neglect and Non-Communication

1. Stacey Mullen was convicted in February 2000 of second degree murder and is serving a prison sentence.

2. In or about July 2004, Mullen's cousin, Rachel Campbell, discussed with respondent the possibility of respondent representing Mullen in a petition for post-conviction relief. Respondent knew Campbell from representing her on previous occasions.

3. Campbell told respondent she would pay some of respondent's attorney fees if he agreed to represent Mullen, and told respondent to expect a phone call from

Mullen. Mullen contacted respondent, who agreed to visit Mullen in prison to discuss her case.

4. On or about August 26, 2004, respondent visited Mullen in prison. Respondent and Mullen discussed, among other things, the possibility of petitioning to reduce Mullen's sentence under the *Blakely v. Washington* case, which had been recently decided by the United States Supreme Court.

5. Respondent agreed to represent Mullen in August 2004, but never prepared a written retainer agreement.

6. Respondent told Mullen that her attorney fees would total approximately \$10,000, and that his fees in representing criminal defendants were nonrefundable. Mullen assured respondent that either she or her family members would pay his fees, but no specific arrangements for payment were made.

7. Respondent began working on Mullen's case in late 2004, but by March 2005 Mullen had not paid any attorney fees. Respondent informed Mullen that, unless she started making payments to him, he would be forced to withdraw from representing her. Respondent agreed to accept periodic payments from Mullen toward his fee, but a specific payment schedule was not discussed or agreed upon.

8. Because Mullen was incarcerated, she gave money for attorney fees to her mother, Shirley Bassett, who wrote checks to respondent. Between May 2005 and March 2007, Mullen made approximately 18 payments to respondent in amounts ranging from \$200 to \$1,000, for a grand total of approximately \$6,000. Despite Campbell's earlier agreement, she never made any payments toward Mullen's legal fees and all fees received by respondent were from Mullen via Bassett.

9. Between August 2004 and May 2007, respondent had occasional phone contact with Mullen, and assured Mullen that he was working on her case. In fact, respondent was doing very little work on the case. Although respondent obtained Mullen's signature on an affidavit in support of a petition for post-conviction relief in

October 2006, he failed to have the affidavit notarized and did not file a petition in the court at that time.

10. By early 2007, Mullen was extremely frustrated with respondent's lack of communication and progress on her case. In May 2007, Mullen phoned respondent to receive an update on her case. Mullen was emotionally upset and weeping on the phone. Respondent assured Mullen that he would file a petition in her case shortly.

11. On May 17, 2007, respondent visited Mullen in prison and presented to her a "Petition for Post-Conviction Remedy Pursuant to Minn. Stat. § 590.01." Mullen signed the petition and respondent filed it on May 30, 2007.

12. On June 9, 2007, the trial court denied Mullen's petition without an evidentiary hearing. Respondent appealed the order to the Minnesota Court of Appeals on August 17, 2007. In early September 2007, Mullen discharged respondent and retained other counsel. Respondent did not refund any of the fees paid by Mullen.

13. On August 5, 2008, the Minnesota Court of Appeals affirmed the district court's decision in Mullen's case.

14. Respondent's conduct in failing to diligently handle Mullen's case and failing to keep Mullen reasonably informed about the status of her case violated Rules 1.3 and 1.4(a)(3), MRPC.

15. Respondent's conduct in failing to clearly communicate the basis or rate of his fees in Mullen's case, and for charging Mullen a nonrefundable fee without clearly communicating in writing the basis for the fees violated Rule 1.5(b), MRPC.

## SECOND COUNT

### Failure to Prepare Written Fee Agreement and Account for Fees Received

16. As described above, between May 2005 and March 2007 respondent received attorney fees totaling \$6,000 on Mullen's behalf from Mullen's mother, Shirley Bassett. Respondent did not prepare a fee agreement or other writing signed by Mullen, did not notify Mullen of his receipt of fees from Bassett, and did not maintain

billing invoices and other required books and records regarding his receipt of fees in Mullen's case.

17. Respondent's failure to notify Mullen of his receipt of fees paid on her behalf by Shirley Bassett, and his failure to maintain billing invoices and other required books and records regarding his receipt of fees in Mullen's case violated Rule 1.15(c)(1) and 1.15(c)(3), 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, 2008.



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