

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary  
Action against JAMES L. BERG,  
a Minnesota Attorney,  
Registration No. 139105.  
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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 (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 15, 1982. As is further detailed below, respondent is currently suspended from the practice of law.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent has the following disciplinary history:

A. By Supreme Court order dated November 29, 2007, respondent was indefinitely suspended from the practice of law for a minimum period of five years for misappropriating client funds; endorsing a client's signature and negotiating a settlement check without the client's consent; making false statements to conceal his misappropriation; commingling personal funds in his trust account and using his trust account to deposit and disburse personal funds; general mishandling of and failure to account for client settlement funds; neglecting client matters and failing to adequately communicate with clients;

failing to enter into written contingency fee agreements and depositing advance fee retainers into his trust account; issuing insufficient funds checks for filing fees and failing to comply with a court order; and failing to cooperate with the Director, all in violation of Rules 1.1, 1.3, 1.4, 1.5(b) and (c), 1.15(a) and (b), 3.2, 3.4(c), 4.1, 8.1(a) and (b), and 8.4(b), (c) and (d), Minnesota Rules of Professional Conduct (MRPC), and Rule 25, RLPR.

B. On December 21, 2007, respondent was issued an admonition for failing to make a prompt refund of a client's unearned retainer, in violation of Rule 1.16(d), MRPC.

C. On December 21, 2007, respondent was issued an admonition for failing to refund another client's unearned retainer and improperly retaining the entire retainer, in violation of Rules 1.5(a) and 1.16(d), MRPC.

#### FIRST COUNT

#### Misappropriation, Failure to Account, Failure to Deposit Unearned Funds in a Trust Account and Unreasonable Fees

#### **Stanley Matter**

1. On July 19, 2006, Ellen Stanley formally retained respondent to represent her in a divorce proceeding (respondent had previously assisted Stanley with regard to a May 17, 2006, hearing in the matter). By July 19, 2006, Stanley's divorce proceeding had already been commenced, a number of hearings and other proceedings had already occurred and an August 17, 2006, pretrial had been scheduled. Stanley had been represented by other counsel regarding these matters prior to retaining respondent.

2. Respondent and Stanley entered into a written fee agreement, which provided for payment of a \$10,000 nonrefundable retainer to be paid from the proceeds of the sale of two parcels of real estate owned by Stanley. Respondent told Stanley that (a) the \$10,000 retainer required by the fee agreement represented the maximum fee

respondent would charge, (b) he expected to complete her matter for much less than \$10,000, and (c) he would refund to her any unearned portion of the retainer.

3. Stanley made the following payments to respondent, all of which constituted payments against respondent's \$10,000 nonrefundable retainer:

<u>DATE</u>	<u>AMOUNT</u>
05/22/06	\$200.00
08/14/06	\$4,000.00
11/06/06	<u>\$1,000.00</u>
TOTAL:	\$5,200.00

4. Thus, by November 6, 2006, respondent was entitled to an additional retainer from Stanley of \$4,800 (\$10,000 minus \$5,200).

5. The closing on the sale of Stanley's two parcels of real estate was scheduled for December 7, 2006. At this point, the court had not yet issued its judgment and decree in the Stanley matter and entitlement to the real estate proceeds had thus not been determined. Immediately prior to the closing, respondent spoke with Amy Senn, counsel for Stanley's estranged husband. During that conversation, respondent agreed to hold one-half of the real estate sales proceeds in his trust account and to forward the other half of the proceeds to Senn to be held in her trust account. Respondent and Senn agreed that they would not "disburse any funds from our respective trust accounts until further Order of the Court and/or by an agreement of the parties, irregardless [sic] of the language regarding an award of the land and/or proceeds that may be contained in the Judgment and Decree to be issued shortly . . . ."

6. Following the December 7, 2006, closing, respondent received a total of \$25,797.23 in sales proceeds on Stanley's behalf. Respondent received the proceeds in the form of two separate checks, one for each of the two parcels and both in the approximate amount of \$12,898. Respondent deposited these checks into his Wells Fargo Bank trust account no. 380-0300150 (hereinafter "trust account") as follows:

<u>DATE OF DEPOSIT</u>	<u>AMOUNT OF DEPOSIT</u>
12/08/06	\$12,898.61
01/02/07	<u>\$12,898.62</u>
TOTAL:	\$25,797.23

7. On information and belief, respondent held the second check and did not immediately deposit it into his trust account anticipating that he would be required to forward it to Senn based on his agreement with her. Despite Senn's requests, respondent did not, in fact, forward any portion of the sales proceeds to Senn.

8. On December 20, 2006, the court issued its judgment and decree in the Stanley matter which, among other things, awarded the entire real estate sales proceeds to Stanley. On information and belief, respondent deposited the second check into his trust account upon receipt of the court's December 20, 2006, judgment and decree.

9. During the month of December 2006, respondent disbursed to himself the entire \$12,898.61 he had deposited into his trust account on Stanley's behalf on December 8, 2006. In so doing, respondent disbursed to himself \$8,098.61 more than that to which he was entitled under his fee agreement with Stanley (\$12,898.61 minus \$4,800). Respondent did not obtain Stanley's approval to make these disbursements, or even inform her of them. Respondent's actions in this regard constituted misappropriation.

10. Further, many of respondent's December 2006 disbursements occurred prior to the court's issuance of its judgment and decree awarding the proceeds to Stanley. Thus, respondent disbursed funds to himself that had not yet been awarded to his client. In addition, respondent's December 2006 disbursements constituted a violation of his agreement with Senn to hold the proceeds pending further order or agreement.

11. During the month of January 2007, respondent disbursed to himself the entire \$12,898.62 he had deposited into his trust account on Stanley's behalf on

January 2, 2007. Respondent did not obtain Stanley's approval to make these disbursements, or even inform her of them. Respondent's actions in this regard constituted misappropriation.

12. Thereafter, Stanley authorized respondent to pay himself the remaining \$4,800 due on his nonrefundable retainer, and make the following disbursements from the sales proceeds: \$11,001.81 for a windows assessment; \$900 for unpaid utilities; and \$1,700 for real estate taxes.<sup>1</sup>

13. At the time of the closing, foreclosure proceedings had been initiated against Stanley's home as a result of the unpaid windows assessment. Following issuance of the court's judgment and decree, Stanley repeatedly directed respondent to satisfy the windows assessment from the real estate sales proceeds so that the foreclosure proceedings would be terminated. Despite Stanley's repeated requests, it was not until January 12, 2007, that respondent delivered a cashier's check in payment of the windows assessment. Respondent later obtained and delivered cashier's checks in payment of Stanley's utility charges and real estate taxes.

14. Respondent is indebted to Stanley in the total amount of \$7,395.42, as follows:

Total Real Estate Proceeds Received:	\$25,797.23
Less: Balance of Nonrefundable Retainer:	(\$4,800.00)
Less: Windows Assessment:	(\$11,001.81)
Less: Unpaid Utilities:	(\$900.00)
Less: Real Estate Taxes:	<u>(\$1,700.00)</u>
Total Remaining Due Stanley:	\$7,395.42

15. At all times following respondent's receipt of her real estate proceeds, Stanley understood and believed that respondent was holding this \$7,395.42 balance of

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<sup>1</sup> As described in ¶ 16, below, Stanley had also asked respondent to disburse a portion of her proceeds in payment of one or more credit card bills.

her funds in his trust account. Stanley was not aware that respondent had disbursed these funds to himself as described above and did not authorize him to do so.

16. In August 2006 Stanley requested that, upon receipt of her real estate sales proceeds, respondent disburse a portion of those proceeds in payment of one or more of Stanley's credit card bills. Stanley provided respondent with her credit card statements at that time. Despite Stanley's request, respondent failed to disburse any portion of Stanley's real estate sales proceeds in payment of Stanley's credit card bills.

17. On January 17, 2007, Stanley sent an e-mail to respondent in which she, among other things, requested that respondent provide her with a cashier's check for the balance of her real estate proceeds and an accounting of her funds. Respondent failed to either disburse any funds to Stanley or to provide her with the accounting she requested.

18. On April 26, 2007, Stanley met with another attorney regarding a possible bankruptcy. Following this meeting, Stanley directed respondent to disburse a portion of her real estate sales proceeds to the bankruptcy attorney to enable Stanley to proceed with a bankruptcy filing. Respondent failed to do so.

19. On July 20, 2007, Stanley sent a letter to respondent in which she, among other things, requested that respondent disburse to her the balance of her real estate proceeds and provide her with an accounting of those funds. Respondent failed to either disburse any funds to Stanley or to provide her with the accounting she requested.

### **Goehring Matter**

20. Beginning in 2003, respondent represented Cheryl Goehring ("Goehring") in a marriage dissolution matter.

21. The judgment and decree was entered on May 14, 2004. Among other things, the judgment and decree awarded Goehring a one-half interest in the Fidelity Investment retirement account of her former husband, Scott Goehring ("Scott").

22. Respondent billed Goehring \$15,698 for his services in her marriage dissolution matter. Goehring paid respondent's bill in full.

23. In or about August 2004, Goehring began to suspect that Scott had liquidated the retirement account and retained the proceeds. Goehring retained respondent to assist her in recovering her share of the retirement account proceeds. Scott was represented in these post-judgment proceedings by attorney Anne Tuttle.

24. In October 2004 respondent deposed Scott, who admitted that he had, in fact, liquidated the retirement account and retained the proceeds.

25. Respondent demanded that Scott pay to Goehring all of the retirement account proceeds remaining in his possession. Instead, Scott placed those remaining proceeds, which totaled \$39,700, into Tuttle's trust account.

26. On November 23, 2004, a hearing was held on Goehring's motions to find Scott in contempt of court and to recover her share of the retirement account.

27. Respondent requested that Tuttle pay to him one-half of the retirement account proceeds she was then holding in her trust account, to be held in respondent's trust account. On January 5, 2005, respondent received \$19,700 from Tuttle and deposited it into his trust account.

28. Thereafter, respondent withdrew and paid to himself substantially all of the \$19,700 in retirement account proceeds he had received on Goehring's behalf. Respondent did not obtain Goehring's approval to make these withdrawals, or even inform her of them. Respondent's actions in this regard constituted misappropriation.

29. Further, many of respondent's disbursements occurred prior to the court's issuance of any order awarding the proceeds to Goehring. Thus, respondent disbursed funds to himself that had not yet been awarded to his client.

30. On February 16, 2005, the court issued its findings of fact, order in contempt, order for judgment and judgment finding Scott in contempt of court, awarding the \$39,700 being held in trust (\$20,000 in Tuttle's trust account and \$19,700 in

respondent's trust account) to Goehring, and requiring Scott to pay Goehring's remaining share of the retirement account proceeds in monthly installments. By the date of the court's order, the balance in respondent's trust account had already been reduced to approximately \$2,600 as a result of respondent's withdrawals from the account.

31. Goehring has repeatedly contacted respondent and requested payment of and/or an accounting of the retirement account proceeds he is supposed to be holding in his trust account. Respondent has failed to pay the proceeds to Goehring, falsely claiming that additional work must be done before he can release the funds, and has failed to produce to her an accounting of her funds.

32. Respondent billed Goehring \$3,840 for his services regarding the retirement account. In a February 16, 2005, order separate from the court's findings of fact, order in contempt, order for judgment and judgment, the court ordered Scott to pay Goehring \$3,338.06 in attorney's fees and costs within 90 days. On information and belief, Scott failed to pay these attorney's fees and costs as ordered and respondent did not pursue their recovery. Instead, respondent stated to Goehring that it was her responsibility to pay his fees and to undertake to recover the amount awarded under the order from Scott.

#### **Petit Matter**

33. On or about September 2, 2006, Martin Petit retained respondent to represent him in a criminal matter. Respondent stated that he would require a \$15,000 retainer from Petit. Respondent did not, at this time or any other, enter into a written retainer agreement with Petit.

34. On or about September 2, 2006, Petit's mother paid respondent \$5,000 toward the required retainer. On or about September 5 and 6, 2006, Petit paid respondent an additional \$10,000. Respondent did not deposit any of these payments into his trust account.

35. Within a week after hiring respondent, Petit decided to retain a more experienced criminal lawyer to represent him and so informed respondent. Petit requested return of his \$15,000 retainer. Respondent agreed to refund Petit's retainer.

36. Thereafter, Petit made repeated requests to respondent for a refund of his retainer. On or about October 2, 2007, respondent provided Petit with a \$500 money order. Despite repeated requests from Petit, and respondent's repeated promises to do so, respondent has failed to refund any other portion of Petit's retainer.

### **Schreiner Matter**

37. In July 2007 Michael Schreiner retained respondent to represent him in a criminal matter. Schreiner paid respondent a \$2,500 retainer. Respondent did not, at this time or any other, enter into a written retainer agreement with Schreiner. On information and belief, respondent did not deposit Schreiner's retainer into his trust account.

38. As further detailed below, respondent failed to appear for an August 22, 2007, omnibus hearing in Schreiner's case. Respondent appeared for the rescheduled omnibus hearing on October 17, 2007. Shortly thereafter, respondent was suspended from the practice of law and unable to provide further legal services to Schreiner.

39. Schreiner learned of respondent's suspension at a February 29, 2008, hearing. Schreiner called respondent who confirmed his suspension and offered to make a \$1,500 refund. Respondent has never made the promised refund.

40. Respondent's conduct in misappropriating Stanley's real estate proceeds and Goehring's retirement account proceeds, disbursing those proceeds to himself before they had been awarded to either Stanley or Goehring, and violating his agreement with Amy Senn, violated Rules 1.15(a) and (b), 3.4(c), and 8.4(c), MRPC.

41. Respondent's conduct in failing to disburse Stanley's real estate sales proceeds in the manner she requested, to produce an accounting of Stanley's or

Goehring's funds or to otherwise respond to their requests in that regard violated Rules 1.4(a)(4) and 1.15(c)(3) and (4), MRPC.

42. Respondent's failure to either enter into a written retainer agreement with Petit or Schreiner or to deposit their retainers into a trust account, and his charging of unreasonable fees in those matters, violated Rules 1.15(a) and (c)(5), and 1.5(a) and (b), MRPC.

## SECOND COUNT

### False Billing Statement

43. In November 2006 Stanley received a billing statement from respondent dated October 31, 2006, reflecting services valued at \$5,772 through October 31, 2006. Stanley did not receive any other billing statements from respondent.

44. Attached to respondent's November 16, 2007, response to Stanley's complaint, *see* paragraph 50, below, were copies of the October 31, 2006, billing statement and a July 20, 2007, billing statement, which Stanley had not previously received from respondent. Respondent produced these billing statements to the Director in an attempt to justify his misappropriation of Stanley's real estate proceeds.

45. Respondent's July 20, 2007, billing statement was false in the following respects:

a. The time entries reflected on the July 20, 2007, billing statement for the period August 24 to October 23, 2006, the total value of which was approximately \$1,775, were duplicate of entries appearing on respondent's October 31, 2006, billing statement.

b. The implication in respondent's November 16, 2007, response is that he provided Stanley with the July 20, 2007, billing statement at or about the time it was dated. Respondent did not, however, do so. Stanley received respondent's purported July 20, 2007, billing statement only after she filed her complaint with the Director.

c. The July 20, 2007, billing statement reflected numerous telephone conversations and other communications from Stanley that were necessary only because respondent failed to take actions he had assured Stanley he would take on her behalf. For example, the billing statement reflects 3.5 hours (or \$682.50 in fees) on January 12, 2007, for "Numerous Telephone conference with client; telephone conference with Kampa; obtained cash." In fact, the referenced telephone conversations with Stanley were necessary only because respondent had failed to timely satisfy Stanley's windows assessment causing Stanley desperate concern that her home would be foreclosed upon. Further, it was necessary for respondent to "obtain cash" only because he had misappropriated Stanley's real estate proceeds from his trust account.

d. Similarly, many of the communications Stanley had with respondent during the period after December 7, 2006, and which respondent included on the July 20, 2007, billing statement, consisted of her repeated requests for return of and/or an accounting for her real estate sales proceeds.

e. The July 20, 2007, billing statement reflected at least one telephone conversation with Stanley that purports to have occurred on a Sunday. In fact, Stanley never had any conversations with respondent on the weekend.

46. Respondent's conduct in preparing and attaching to his response to Stanley's complaint a false billing statement violated Rules 8.1(a) and 8.4(c), MRPC.

### THIRD COUNT

#### Failure to Cooperate

#### **Stanley Matter**

47. The Director received Ellen Stanley's complaint against respondent on October 15, 2007, while the petition that resulted in respondent's current suspension already was under advisement by the Supreme Court, following oral argument. Stanley complained regarding respondent's failures to (a) provide her with billing

statements, (b) provide her with an accounting of her trust account funds, and (c) respond to her requests for billing statements and an accounting.

48. On October 19, 2007, the Director forwarded Stanley's complaint to respondent's counsel, together with a notice of investigation requesting respondent's written response to the complaint.

49. On October 26, 2007, after learning from respondent's counsel that he was not representing respondent concerning the Stanley complaint, the Director forwarded the complaint and the notice of investigation directly to respondent.

50. On November 16, 2007, the Director received respondent's written response. Respondent produced copies of the October 31, 2006, and July 20, 2007, billing statements referenced above, and described the services he claimed to have provided to Stanley since July 20, 2007. Respondent did not otherwise respond to Stanley's complaints, i.e., his alleged failures to provide Stanley with billing statements, an accounting of her trust account funds, and to respond to Stanley's requests for billing statements and an accounting.

51. On December 3, 2007, after receipt of the Supreme Court order suspending respondent, the Director wrote to respondent for additional information regarding his handling of Stanley's case and funds, including his original file, various trust account books and records and a full description of the basis for his claimed entitlement to Stanley's real estate proceeds. Although respondent thereafter delivered to Stanley substantially all of her client file, he failed to respond to the Director's letter.

52. On December 17, 2007, the Director wrote again to respondent to request his response to the Director's December 3, 2007, letter.

53. On January 9, 2008, the Director received a letter from respondent in which he stated he had delivered Stanley's file to her and that the Director "should have all my trust records relating to this case." Respondent did not respond regarding the basis for his claimed entitlement to Stanley's funds. Further, the Director did not, in

fact, have all respondent's trust account records reflecting the Stanley funds and it was necessary for the Director to obtain and process an investigatory subpoena pursuant to Rule 8(c), RLPR.

54. On February 12, 2008, the Director wrote again to respondent to request the basis for his claimed entitlement to the Stanley funds, given the terms of his July 19, 2006, fee agreement with Stanley and the false entries in his July 20, 2007, billing statement. Respondent failed to respond.

55. On March 31, 2008, a pre-hearing meeting on the Director's February 28, 2008, charges of unprofessional conduct was held pursuant to Rule 9(e), RLPR. Respondent appeared for the pre-hearing, but did not provide the Director with any affidavits or exhibits or otherwise identify the evidence he intended to present at the Panel hearing.

56. On April 1, 2008, the Director wrote to respondent to request that respondent identify his exhibits and witnesses by April 15, 2008, and produce various trust account books and records, which respondent had indicated he was willing and able to produce. Respondent failed to respond.

57. On April 18, 2008, the Director wrote again to respondent to request the information and documents that the Director had requested on April 1, 2008.

58. Respondent faxed a letter to the Director on April 28, 2008. Respondent stated that he had "requested the trust records and should have them available by Friday . . . ." Respondent did not provide any further information regarding his exhibits or witnesses.

59. By April 28, 2008, the Director had already sought and obtained an investigatory subpoena pursuant to Rule 8(c), RLPR, to obtain respondent's trust account records directly from the bank. On May 5, 2008, the Director informed respondent of this fact.

60. To date, respondent has not provided any further response to the Director regarding his witnesses or exhibits.

### **Goehring Matter**

61. The Director received Cheryl Goehring's complaint against respondent on April 13, 2008.

62. On April 15, 2008, the Director sent to respondent a notice of investigation of Goehring's complaint, together with a copy of the complaint itself, and requested respondent to produce his written response to the complaint within 14 days. Respondent failed to do so.

63. On May 6, 2008, the Director wrote again to respondent, enclosing copies of the notice of investigation and Goehring's complaint, and requested respondent's written response to the complaint within one week. Respondent failed to respond.

64. To date, respondent has not produced a written response to Goehring's complaint.

### **Young Matter**

65. On April 16, 2008, the Director received a complaint against respondent from Rose Young, a former client.

66. On May 6, 2008, the Director sent to respondent a notice of investigation of Young's complaint, together with a copy of the complaint itself, and requested respondent to produce his written response to the complaint within 14 days. Respondent failed to do so.

67. On May 23, 2008, the Director wrote again to respondent, enclosing copies of the notice of investigation and Young's complaint, and requested respondent's written response to the complaint within one week. Respondent failed to respond.

68. To date, respondent has not produced a written response to Young's complaint.

## Schreiner Matter

69. On April 21, 2008, the Director received a complaint against respondent from Michael Schreiner, a former client.

70. On May 13, 2008, the Director sent to respondent a notice of investigation of Schreiner's complaint, together with a copy of the complaint itself, and requested respondent to produce his written response to the complaint within 14 days. Respondent failed to do so.

71. Respondent's conduct in failing to fully cooperate in the Director's investigation of the Stanley, Goehring, Young and Schreiner complaints violated Rules 8.1(b), MRPC, and Rule 25, RLPR.

### FOURTH COUNT

#### Noncompliance with Rule 26, RLPR, and Unauthorized Practice of Law

72. By Supreme Court order dated November 29, 2007, respondent was suspended from the practice of law.

73. Rule 26, RLPR, requires a suspended lawyer to, among other things, notify each client the lawyer is representing of the lawyer's suspension, including a copy of the Court's suspension order, and produce an affidavit attesting to the notification to the Director.

74. The Director received from respondent an affidavit pursuant to Rule 26, RLPR, on December 18, 2007. The Director noted a couple of deficiencies in respondent's affidavit and wrote to respondent's then-counsel regarding those deficiencies on December 21, 2007, January 15, 2008, and January 31, 2008. On February 11, 2008, respondent's counsel informed the Director that he was no longer representing respondent. On that date, the Director spoke with respondent by telephone. Among other things, respondent stated that he had failed to provide notice to five to ten additional clients that he did not think he was representing at the time of his suspension. The Director instructed respondent to provide the required notification

to those clients and to submit an amended affidavit to the Director. Respondent failed to do so.

75. Among the clients respondent was representing at the time of his suspension were Cheryl Goehring and Karen Vavrichek.

76. Respondent did not, at any time, inform Goehring or Vavrichek of his suspension. Further, Goehring and Vavrichek are not among the clients to whom respondent sent written notice pursuant to Rule 26, RLPR.

77. Both Goehring and Vavrichek learned of respondent's suspension independently and long after the fact.

78. Since his suspension on November 29, 2007, respondent has met and spoken with Goehring on several occasions, most recently on February 4, 2008. During that time, Goehring continued to believe that respondent was both holding her retirement account proceeds in his trust account and acting as her lawyer with regard to the Qualified Domestic Relations Order (QDRO).

79. Respondent's failure to inform Goehring and Vavrichek of his suspension from the practice of law and his unauthorized practice of law with regard to Goehring, violated Rules 5.5(a) and 8.4(d), MRPC, and Rule 26, RLPR.

#### FIFTH COUNT

##### Acceptance of Compensation From a Third Party

80. Complainant Marilyn Dann retained respondent to represent her with regard to a pre-nuptial agreement. Dann paid respondent \$250 for his services. Dann understood that this \$250 would constitute respondent's entire fee for those services.

81. On February 12, 2007, respondent and Dann met with Dann's fiancé and his attorney to execute the prenuptial agreement. At the conclusion of the meeting, respondent requested, and Dann's fiancé paid, an additional \$500 for respondent's services. Respondent did not inform Dann of his intent to request and receive compensation from her fiancé and did not obtain Dann's consent to do so.

82. Respondent's acceptance of compensation for Dann's representation from Dann's fiancé, without obtaining Dann's informed consent to do so, violated Rule 1.8(f), MRPC.

### SIXTH COUNT

#### Neglect, Failure to Adequately Communicate with a Client and Failure to Appear for a Hearing

##### **Schreiner Matter**

83. As noted above, respondent represented Michael Schreiner in a criminal matter.

84. An omnibus hearing in Schreiner's case was scheduled for August 22, 2007. Respondent failed to appear for the hearing and, as a result, the hearing was rescheduled for September 19, 2007. (That hearing was subsequently rescheduled to October 17, 2007, due to a conflict with Schreiner's schedule.)

##### **Vavrichek Matter**

85. On or about September 28, 2005, Karen Vavrichek retained respondent to represent her in a personal injury matter. Vavrichek paid respondent a \$1,500 retainer.

86. Respondent took no action on Vavrichek's case until February 27, 2006, when he provided the insurance company with notice of his representation.

87. On April 11, 2006, the insurance company requested Vavrichek's signature on an authorization, a list of all her medical providers and copies of her medical records. Respondent forwarded to Vavrichek a copy of the insurance company's letter on April 20, 2006.

88. On May 2, 2006, respondent forwarded to the insurance company the authorization signed by Vavrichek and a list of Vavrichek's medical expenses. Respondent stated, "I am compiling a complete listing of medical bills and will submit this documentation together with a demand letter shortly."

89. In June 2006 Vavrichek delivered to respondent's office copies of her medical bills.

90. Thereafter, Vavrichek attempted to reach respondent on numerous occasions regarding her case. Respondent failed to respond to Vavrichek's messages.

91. In February 2007 Vavrichek was informed by the receptionist at respondent's office that he was no longer officing at that location. Respondent had not informed Vavrichek of his address change.

92. In August 2007 a conference call was conducted between respondent and the insurance company.

93. Again, Vavrichek attempted to reach respondent on numerous occasions. Respondent failed to respond to Vavrichek's many messages.

94. In November 2007 respondent informed Vavrichek that the insurance company had additional questions regarding Vavrichek's case. This was the last communication Vavrichek received from respondent. In January 2008 Vavrichek independently discovered that respondent had been suspended from the practice of law.

### **Goehring Matter**

95. Since at least February 2005, respondent has unsuccessfully attempted to provide Fidelity Investments, the company through which Scott had his retirement account, with an acceptable QDRO. On at least two occasions, Fidelity Investments returned to respondent his proposed QDRO for correction within 90 days. On both occasions, respondent failed to timely submit a corrected QDRO to Fidelity Investments. In fact, respondent had failed to submit an acceptable QDRO by the date of his suspension.

96. Respondent's neglect of the Schreiner and Vavrichek matters, failure to adequately communicate with Vavrichek and failure to appear for a hearing in the Schreiner matter, violated Rules 1.3 and 1.4(a)(3) and (a)(4), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court disbarring respondent, 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: July 18, 2008.



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