FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against JOHN M. BROEKER, a Minnesota Attorney, Registration No. 11782.	**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 contained in the attached January 10, 2007, stipulation for probation (Exhibit l) 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 13, 1965. Respondent currently practices law in Bloomington, Minnesota.

INTRODUCTION

On January 10, 2007, respondent and the Director entered into a stipulation for private probation. Respondent's probation was based upon respondent's admission that respondent had overdrafts on his trust account caused by his failure to properly account for the activity in his account. In addition, there were shortages in respondent's trust account resulting from his issuance of trust account checks in payment of his own personal and business expenses that exceeded the balance of respondent's earned fees in the trust account.

Among the conditions of respondent's probation was that respondent would abide by the Minnesota Rules of Professional Conduct (MRPC) and commit no further unprofessional conduct, and that if, after giving respondent an opportunity to be heard,

the Director concluded that respondent had not complied with the conditions of the probation, then the Director could file this petition without the necessity of Panel proceedings.

Also among the conditions of respondent's probation was the requirement that respondent maintain law office and trust account books and records in compliance with Rule 1.15, MRPC, and Appendix 1 to the MRPC. Such books and records were to be made available to the Director within 30 days of the approval of the stipulation and thereafter at such intervals as the Director deems necessary to determine compliance.

The Director, after giving respondent an opportunity to be heard, has concluded that respondent has not complied with the conditions of the probation.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Failure to Comply With Probation

1. On January 19, 2007, the Director wrote to respondent providing a copy of the stipulation for probation and reminding respondent of his obligations under the probation. Respondent was reminded that he was to provide books and records evidencing his compliance with Rule 1.15, MRPC, and Appendix 1 to the MRPC, within 30 days of the approval of the stipulation (i.e., by February 12, 2007).

2. Respondent was further reminded that thereafter he was to provide trust account books for review without additional reminder or specific request on a quarterly basis by the 15th day of the month following the close of the quarter. "That is, your second submission consisting of January through March 2007 is due on April 15, 2007, unless otherwise instructed."

3. Respondent failed to respond to the Director's request for information.

4. On April 3, 2007, the Director wrote to respondent reminding him that the Director had not received respondent's trust account books and records. Respondent was further informed that his books and records for the next quarter of his probation

would be due by April 16, 2007. Respondent was instructed to have both sets of records to the Director by April 16, 2007.

5. On April 16, 2007, respondent called the Director regarding his April 3 letter. Respondent represented to the Director that there had been no activity in the trust account for over a year and he had no trust account reconciliations to provide. The Director instructed respondent to provide copies of his bank statements to confirm that there had been no activity in the account. Respondent stated that he would do so by the end of the week. Respondent failed to provide the requested bank statements.

6. On May 3, 2007, the Director wrote to respondent reminding him of his April 16, 2007, telephone conversation. The Director reiterated his request for trust account bank statements for November 2006 through April 2007.

7. On May 11, 2007, respondent called the Director and informed him that he had been out of town, which is why he had not provided his books and records. Respondent further stated he would pull those records together that weekend and mail them on Monday, May 14, 2007.

8. On May 17, 2007, respondent wrote to the Director, providing copies of his U.S. Bank statements from October 2006 through March 2007. In his cover letter, respondent asserted that what he had said previously was that he "had no client funds in the account for the period represented by the enclosed statements. While there was activity in the account, the deposits were received for client legal fees which were then distributed from the account." Respondent further stated that he had just opened a new, non-trust account, at Twin City Federal where in the future he would be depositing fee checks.

9. On July 12, 2007, the Director wrote to respondent. In his letter, the Director indicated that respondent's statement that the funds in his trust account were client legal fees was not consistent with his April 16, 2007, statement. The Director also wrote that ownership of the funds held in his trust account was not clear and the Director was concerned that the trust account was not being appropriately managed.

10. The Director informed respondent that since there was activity in his trust account, he was required to maintain books and records to be able to identify whose funds were held in his account. The Director instructed respondent to submit his monthly trust account books and records from October 2006 through June 2007 within two weeks of the date of the Director's letter. Respondent was again informed what those books and records should include (i.e., client subsidiary ledgers, checkbook registers, trial balances, reconciliations, canceled checks as provided by the bank, and duplicate deposit slips).

11. On August 14, 2007, the Director wrote to respondent indicating that the Director still had not received answers to several questions he had posed regarding respondent's trust account. The Director also noted that he still had not received the trust account books and records due on July 15, 2007. Accordingly, the Director had scheduled a meeting for Monday, August 27, 2007. Respondent was directed to "bring all pertinent trust account records with you, together with a written response to my July 12, 2007, letter."

12. On August 24, 2007, respondent wrote to the Director. Respondent stated that there had been "extenuating circumstances" which he preferred to discuss with the Director at an August 27, 2007, meeting. Regarding the comment by the Director in his July 12, 2007, letter that respondent had previously stated there was no activity in his trust account, respondent wrote "[e]ither I misspoke or what I stated was misunderstood. What I meant to say then and in my letter of May 17 was that there were no client funds deposited or disbursed from this account during the period of time referenced. Either way I apologize for any misunderstandings. There were client funds deposited and disbursed from the account as noted in the May 17 letter, but this practice changed when a new business account was opened in May." Respondent further indicated there had only been two instances of client funds being deposited in the trust account since April and he would bring in an accounting of those funds to the August 14, 2007, meeting.

13. On August 27, 2007, respondent met with a Senior Assistant Director from the Director's Office. At that time respondent admitted that he continued to use his U.S. Bank trust account for personal and business use. Respondent provided the Director with original trust account documents. The documents provided showed respondent used his trust account to pay himself, his wife, and vendors such as Qwest, Capital One, Chrysler Financial, and MN Paralegal Services. The documents also showed that respondent failed to maintain the proper trust account books and records as required by Rule 1.15, MRPC, and Appendix 1 to the MRPC.

14. On October 1, 2007, respondent wrote to the Director requesting the Director return original documents he had left with the Director. On October 9, 2007, the Director returned those documents. In his cover letter the Director reminded respondent that he had agreed to send client billing statements for the period beginning in September 2006 through the present billing cycle. The Director instructed respondent to provide those statements within 10 days. Respondent never provided the statements requested by the Director.

15. On December 10, 2007, the Director received a complaint from Rebecca Osunkoya (Second Count below). On December 18, 2007, the Director issued a notice of investigation in the Osunkoya complaint. Respondent was instructed to provide a written response to the complaint within 14 days. The matter was referred to the district ethics committee (DEC) for investigation.

16. On January 7, 2008, when she still had not received a response to the complaint, the DEC investigator telephoned respondent informing him of that fact. Respondent returned her call, indicating that he would mail a response by Friday of that week. Respondent failed to do so.

17. On January 15, 2008, the DEC investigator called respondent again leaving a message for him to call her regarding whether he had mailed his response. On January 16, 2008, respondent telephoned the investigator indicating that he and his wife

had been sick and he was just now working on the response, which should be mailed by the next day. Respondent failed to mail the response as requested.

18. On January 29, 2008, the DEC investigator wrote to respondent outlining the history set out above. She further informed respondent that the DEC screening committee would be meeting within the week and if she did not receive his response before that time, the only thing she could do was to report his failure to respond to the committee. Respondent failed to respond.

19. On February 5, 2008, the DEC investigator wrote to respondent again requesting his response. Respondent failed to respond.

20. On April 2, 2008, the DEC Investigative Review Committee met to consider the complaint. Respondent reported to the committee that he had been having mental health issues and passed around a signed letter provided from his therapist at the Park Nicollet Clinic. Respondent indicated that he had resumed his practice at half speed and was still undergoing outpatient treatment. Respondent did not provide the DEC screening committee with a copy of the letter.

21. On April 11, 2008, the Director received the DEC's report. On April 17, 2008, the Director provided respondent with a copy of the DEC's report and invited any further response. Respondent never replied to that letter.

22. On January 30, 2008, the Director wrote to respondent reminding him of his obligation to provide trust account books and records. Respondent failed to reply.

23. On March 7, 2008, respondent telephoned the Director's Office indicating that he had been hospitalized and would have the records from August by next week. However, those records were never provided.

24. On July 14, 2008, the Director again wrote to respondent requesting his trust account books and records and reminding him of his obligation to cooperate under the terms of his probation. Respondent has not replied.

25. Respondent's failure to comply with the terms of his probation and failure to provide requested information and documentation violated Rule 8.1(b), MRPC, and

Rule 25, Rules on Lawyers Professional Responsibility (RLPR). Respondent's failure to maintain proper trust account books and records and continued use of the trust account for purposes other than holding client funds violated Rule 1.15, MRPC, and as interpreted by Appendix 1 to the MRPC.

SECOND COUNT

Rebecca Osunkoya Matter

26. On October 11, 2007, Rebecca Osunkoya retained respondent to represent her regarding estate planning issues pertaining to her father. Osunkoya paid respondent advanced fees of $750, signed a retainer agreement and gave respondent original documentation regarding her father's finances and assets. The documents included original mortgage documentation.

27. Approximately three weeks after retaining respondent, Osunkoya went to respondent's office to see if he had reviewed her father's documents. Respondent stated that he had not had a chance to look at them.

28. Osunkoya called respondent multiple times through November 2007. Respondent failed to return her telephone calls. On November 23, 2007, Osunkoya sent respondent a certified letter. In her letter, Osunkoya terminated respondent's services and requested he return her father's original documents together with her $750 retainer. Osunkoya stated that she was trying to sell her father's house but was unable to do so without the documents she had provided respondent. Osunkoya gave respondent until December 7, 2007, to respond. Osunkoya received a certified mail receipt indicating that respondent had received the letter.

29. On December 6, 2007, having not heard from respondent, Osunkoya called respondent's office. Osunkoya received respondent's voice mail that indicated he was out of the office, but would be returning by 2:00 p.m. Osunkoya left a message that she needed her father's documentation so that she could hire another attorney. Osunkoya asked respondent to call her back. Respondent did not call her back and did not return the documentation or any part of the retainer fee.

30. On December 10, 2007, Osunkoya filed a complaint against respondent. (*See* paragraphs 15 through 21 above.) In late January 2008 Osunkoya arrived at respondent's office unannounced. While she was able to obtain the documents she needed, respondent did not refund any fees.

31. On April 2, 2008, the Fourth DEC Investigative Review Committee considered the complaint against respondent. At the meeting, respondent stated he had mental health issues and that he was undergoing outpatient treatment. Respondent stated that he was willing to refund Osunkoya's fees. However, respondent has not done so.

32. Respondent's failure to act with reasonable diligence in representing Osunkoya and failure to communicate with her violated Rules 1.3 and 1.4, MRPC. Respondent's failure to return funds belonging to his former client violated Rule 1.16(d), MRPC.

COUNT THREE

William Doubek Matter

33. In July 2001 William Doubek retained respondent to defend him against claims brought by Jaguar Credit amounting to $16,325.85. Respondent agreed to represent Doubek on an hourly fee basis. On September 11, 2001, Jaguar Credit served Doubek with a complaint. Respondent and Jaguar Credit entered into informal negotiations. On July 17, 2002, Jaguar Credit served discovery requests upon respondent. Meanwhile, Doubek had moved to Arizona.

34. On July 22, 2002, respondent notified Doubek by letter of the discovery requests. Respondent stated in his letter that Jaguar Credit had yet to file the matter with the court, that answering discovery would incur more attorney's fees and that respondent saw a need to evaluate the time and resources Doubek wanted to put into defending the matter. Respondent's letter goes on to state, "Assuming for the moment we want to respond to discovery, . . . you may want to pencil in your reactions to these discovery requests since they are due on or about August 16, 2002. Particularly with the

request for admissions, time is somewhat of the essence since admissions are deemed to have been made if a timely response is not filed."

35. Doubek did not respond to respondent's letter or to the discovery requests. On October 16, 2002, Jaguar Credit filed suit in Hennepin County. On November 20, 2002, the court filed a scheduling order and referred the matter to arbitration.

36. On December 17, 2002, Jaguar Credit filed a motion to compel responses to its July discovery requests. Respondent did not respond to the motion or ask for an extension. Further, respondent did not inform Doubek of the motion or the consequences of not responding.

37. On January 16, 2003, the court heard Jaguar Credit's motion. Respondent did not appear nor did he submit a response. The court ordered Doubek to respond to the discovery within 14 days and awarded Jaguar Credit $250 in attorney's fees. The court stated that failure to respond to discovery within 14 days would result in a judgment entered against Doubek in the amount of $24,901.16.

38. Respondent did not inform Doubek of the court's order, did not respond to the discovery or ask for an extension. On February 2, 2003, having received no response, Jaguar Credit asked the court for default judgment. On March 10, 2003, respondent wrote to Doubek returning a $100 payment that Doubek had made. In the letter, respondent wrote, "I intend to get back to you in the near future on the Jaguar matter." Respondent made no mention of the nearly $25,000 default judgment being considered by the court.

39. On March 20, 2003, the court filed an order and judgment. On March 21, 2003, Jaguar Credit filed a notice of judgment entered. Doubek received notice of the $25,131.26 judgment. Doubek tried to communicate with respondent. However, respondent did not return Doubek's calls. At no time did respondent notify Doubek, opposing counsel, or the court that he had withdrawn from the case.

40. Because he was unaware of the lawyer disciplinary system until sometime after the conduct he complains of, Doubek did not file his complaint until December 2007.

41. Respondent's failure to respond to discovery requests, motions and court orders violated Rules 1.3 and 3.4(c), MRPC. Respondent's failure to return client telephone calls and failure to keep his client informed of the status of his litigation matter, violated Rule 1.4, MRPC.[1]

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: October 9, 2008.

MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and

CRAIG D. KLAUSING
SENIOR ASSISTANT DIRECTOR
Attorney No. 202873

[1] Respondent's misconduct in this matter occurred before October 1, 2005. Therefore, citations to the MRPC are to the Rules as they existed prior to the amendments effective October 1, 2005.