

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against JANE E. BROOKS,
a Minnesota Attorney,
Registration No. 171499.

**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. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on December 6, 1985. Respondent currently practices law in Roseville, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

1. On January 14, 1993, respondent was publicly reprimanded and placed on two years probation by the Minnesota Supreme Court for failing to properly maintain client funds in trust, resulting in the misapplication of some client funds; failing to maintain proper trust account books and records; and falsely certifying that she did, in fact, properly maintain such books and records.

2. On March 21, 1993, respondent received an admonition for issuing checks on a closed business account; failing to notify the payee on the checks of that fact; and failing to cooperate in the investigation of the underlying complaint in violation of Rules 8.4(c) and 8.1(a)(3), Minnesota Rules of Professional Conduct (MRPC), and Rule 25, Rules on Lawyers Professional Responsibility (RLPR).
3. On February 22, 1995, the Minnesota Supreme Court extended respondent's probation as a result of continuing problems in the maintenance of her trust account.
4. On March 26, 1996, respondent received an admonition for concurrently representing a client in a divorce proceeding and the client's husband in business matters in violation of Rule 1.7(a), MRPC.
5. On March 3, 2003, respondent received an admonition for failing to communicate with a client concerning a pending appeal and the manner in which his file would be returned to him, failing to act promptly to recover the client's cost bond and failing to timely provide the client with his complete file in violation of Rules 1.3, 1.4 and 1.16(d), MRPC.

FIRST COUNT

Neglect of Client Matters, Failure to Communicate with Clients, Failure to Return File

Lauri Thompson Matter

1. In April 2002 Lauri Thompson retained respondent to represent her in a bankruptcy. Thompson paid respondent a \$100 fee retainer and signed a retainer agreement under which she agreed to pay respondent an additional \$200 in fees and a \$200 filing fee.
2. In August 2002 Thompson met with respondent to sign papers related to the bankruptcy. Thompson paid respondent the remaining \$200 in fees. Respondent

stated that she would hold the papers until such time as Thompson was able to pay the filing fee.

3. On February 13, 2003, Thompson paid respondent the \$200 filing fee and understood that respondent would then file her bankruptcy.

4. In approximately April 2003, respondent told Thompson that the bankruptcy court had changed its procedures to require electronic filing and that respondent would have to redraft the bankruptcy papers.

5. On October 11, 2003, respondent forwarded redrafted bankruptcy papers to Thompson and requested that she provide certain additional information.

6. On October 14, 2003, Thompson provided respondent with the requested information. Respondent thereafter failed to file Thompson's bankruptcy.

7. During the period April 2002 to the present, respondent failed to communicate with Thompson about her bankruptcy and failed to respond to Thompson's telephone calls and fax transmissions. Since November 2003, Thompson has unsuccessfully attempted to contact respondent on approximately 50 occasions.

8. To date, respondent has not filed Thompson's bankruptcy.

Tim Kellerman Matter

9. In approximately May 2003, Tim Kellerman hired respondent to represent him in a civil dispute related to his roofing business. At that time, Kellerman paid respondent \$200 in fees and agreed to pay additional fees of \$800, for a total of \$1,000. Kellerman also gave respondent various photographs, correspondence and other materials related to the matter.

10. Kellerman thereafter paid respondent the remaining \$800 in fees. In addition, at respondent's request, Kellerman paid respondent \$250 to cover the court filing fee. On July 14, 2003, respondent did, in fact, file with the court a summons and complaint on Kellerman's behalf.

11. Although Kellerman thereafter signed and returned to respondent an affidavit respondent had prepared in connection with a motion she intended to make, respondent never filed that motion or the affidavit.

12. Respondent failed to communicate with Kellerman or respond to Kellerman's telephone calls and notes left at her home and office.

13. Kellerman has not heard from respondent since approximately September 2003. Other than the summons and complaint, respondent has not filed any documents with the court or taken any other action to pursue Kellerman's claim.

14. In November 2003, Kellerman asked respondent to return the photographs, correspondence and other file materials he had provided to respondent.

15. On or about December 10, 2003, respondent returned a small portion of his file materials to Kellerman.

16. Respondent has failed to return to Kellerman his remaining file materials.

17. Respondent's conduct in neglecting the Kellerman and Thompson matters, and failing to adequately communicate with Mr. Kellerman and Ms. Thompson violated Rules 1.3 and 1.4, MRPC.

18. Respondent's conduct in failing to return Kellerman's file materials violated Rule 1.16(d), MRPC.

SECOND COUNT

Misappropriation of Filing Fee Advance

19. The allegations of paragraphs 1 to 18 above are incorporated herein by reference.

20. By December 30, 2003, respondent had neither filed Thompson's bankruptcy nor retained Thompson's filing fee in her trust account. See, paragraph 24 below. In fact, as a result of several personal purchases from respondent's trust account, including checks to grocery stores, shoe stores, and clothing stores, and

automated teller (ATM) cash withdrawals, the balance in respondent's trust account on that date was negative.

21. Respondent has used Thompson's \$200 bankruptcy filing fee for her own benefit.

22. Respondent's conduct in converting the \$200 Thompson bankruptcy filing fee to her own use violated Rules 1.15(a), 8.4(c) and (d), MRPC.

THIRD COUNT

Trust Account Overdraft

23. Since at least November 2003, respondent maintained client trust account number 6852086781 at TCF National Bank.

24. On December 30, 2003, the balance in respondent's trust account was \$145.38. On that date, respondent withdrew \$300 from the account by ATM, and an additional \$400 was disbursed by checks written on the account and converted by the recipient vendor into electronic transactions. The balance in respondent's trust account after these transactions and assessment of the related overdraft charges was a negative \$678.62.

25. On December 31, 2003, respondent withdrew an additional \$301.50 from her trust account by ATM. The balance in respondent's trust account after this withdrawal and assessment of the related overdraft charge was a negative \$1,011.10.

26. The bank's remittance of accrued interest on respondent's trust account on January 5, 2004, and assessment of the related overdraft charge increased the negative balance in the account to \$1,042.38.

27. On January 16, 2004, respondent deposited \$10,000 into her trust account to eliminate the negative balance. The balance in respondent's trust account after this deposit was \$8,826.62.

28. On January 20, 2004, respondent contacted TCF Bank and stated that she had not authorized the December 30 and 31, 2003, ATM withdrawals, and that those

withdrawals were the result of fraud. However, in discussions with TCF Bank representatives concerning the withdrawals, respondent disclosed that she had given her son permission to use the ATM card on her trust account and indicated that she knew the persons suspected of making the unauthorized withdrawals.

29. TCF Bank subsequently asked respondent to complete, sign and return documents related to her claim of fraud. Respondent failed to do so.

30. On January 26, 2004, respondent withdrew \$500 from her trust account, reducing the balance in the account to \$8,326.62. On January 27, 2004, respondent withdrew \$8,826.62 from the account, creating a negative \$500 balance in the account.

31. On February 4, 2004, however, TCF Bank provisionally credited respondent's trust account for \$551.50, the \$601.50 in disputed ATM withdrawals, less the \$50.00 for which respondent, pursuant to federal law, was liable. As a result, the balance in respondent's trust account was restored to a nominal positive balance.

32. On March 8, 2004, TCF Bank, not having received the required documents from respondent and having been unable to reach her concerning the documents, reversed the \$551.50 provisional credit to respondent's trust account, creating a \$551.50 negative balance in the account.

33. On April 15, 2004, TCF Bank transferred the sum of \$80.61 into respondent's trust account from another of her accounts, reducing the negative balance in respondent's trust account to \$470.89.

34. On May 4, 2004, TCF Bank closed respondent's trust account as a result of her failure to cure the overdraft and/or respond to TCF Bank's efforts to communicate with her. TCF Bank is currently attempting to collect the \$470.89 negative balance from respondent.

35. As discussed in the Fourth Count below, respondent has not responded to the Director's inquiries concerning the overdrafts in her trust account and has not provided the Director with any of the requested trust account books and records.

However, the Director has obtained copies of the bank statements for respondent's trust account for the period November 17, 2003, to May 17, 2004. These statements indicate that respondent operated her trust account as a business/personal account and made numerous business/personal disbursements from the account.

36. Respondent's conduct in disbursing funds from her trust account in excess of the account balance, permitting ATM and credit card access to the account, using her trust account as a business/personal account and failing to make restitution to TCF Bank for the negative balance in her trust account violated Rules 1.15(a) and 8.4(d), MRPC, and Lawyers Professional Responsibility Board Opinion Nos. 9 and 12.

FOURTH COUNT

Failure to Cooperate

37. On October 10, 2003, the Director sent notice of investigation of Tim Kellerman's complaint to respondent's last known business address. The notice directed respondent to submit her response to the complaint within 14 days. Respondent failed to respond.

38. Beginning on November 6, 2003, Linda Kohl, the District Ethics Committee (DEC) investigator assigned to investigate the Kellerman complaint, attempted to contact respondent by telephone. Ms. Kohl did not receive an answer to any of her calls and respondent did not have voicemail or an answering machine on which Ms. Kohl could leave a message.

39. On November 7, 2003, Ms. Kohl wrote to respondent's business address and asked respondent to contact her immediately. In her letter, Ms. Kohl provided both her home and work telephone numbers and her home address. Respondent failed to respond.

40. During the next few weeks, Ms. Kohl continued in her efforts to contact respondent by telephone. Again, Ms. Kohl did not receive an answer to any of her calls

and was unable to leave a message. Eventually, Ms. Kohl reached a recording indicating that respondent's telephone was not in service.

41. On November 21, 2003, Ms. Kohl again wrote to respondent's business address, by both regular and certified mail. In her letter, Ms. Kohl again provided both her home and work telephone numbers and requested respondent's response to the Kellerman complaint by December 5, 2003.

42. On December 8, 2003, respondent faxed her response to the Kellerman complaint. Respondent's response failed to specifically address Kellerman's allegations and the documents she attached to her response were incomplete and disorganized. Further, respondent alluded to unspecified personal difficulties related to her father's death, her need to attend to her elderly mother's needs in Arkansas and financial problems.

43. On January 12, 2004, after receiving the DEC's investigation report, the Director wrote to respondent's business address and asked respondent to call within one week to discuss the scheduling of a meeting. Respondent failed to respond.

44. On January 19, 2004, pursuant to Rule 1.15(j) through (o), MRPC, TCF National Bank notified the Director of the December 30, 2003, December 31, 2003, and January 5, 2004, overdrafts on respondent's trust account. See paragraphs 24 through 26 above.

45. On January 21, 2004, the Director wrote to respondent's home address, which was the address appearing on the overdraft notices, to request an explanation for, and various books and records related to, the trust account overdrafts. Respondent failed to respond.

46. In reviewing matters related to the trust account overdrafts, the Director discovered that respondent had been suspended for non-payment of her attorney registration fee since January 1, 2004. On January 22, 2004, the Director wrote to respondent's home address to request either verification of payment or an affidavit

indicating her intent to discontinue the practice of law, and an affidavit addressing her practice during the period of suspension. Respondent failed to respond.

47. On February 10, 2004, the Director again wrote to both respondent's home and business addresses to request her responses to the trust account overdraft and fee suspension matters. Respondent failed to respond.

48. On March 9, 2004, the Director called respondent's business phone and reached a recording indicating that the number was not in service. The Director called respondent's home phone and left a message on a recording device. Respondent did not respond.

49. Based on respondent's failure to respond, the Director converted the trust account overdraft inquiry into a formal disciplinary investigation. On March 10, 2004, the Director sent a notice of investigation to respondent's home address and requested respondent provide specific trust account books and records within 14 days. Respondent failed to respond.

50. Also on March 10, 2004, the Director wrote to respondent's home and business addresses, by both regular and certified mail. The Director's letter requested respondent's responses to the Kellerman complaint and the trust account overdraft notices. Respondent failed to respond.

51. Respondent failed to claim the March 10, 2004, certified letter directed to her business address and the letter sent to that address by regular mail was returned to the Director as undeliverable. Respondent did, however, claim the March 10, 2004, certified letter directed to her home address and the letter sent to respondent's home address by regular mail has not been returned to the Director.

52. On March 17, 2004, the Director sent a notice of investigation of Lauri Thompson's complaint to both respondent's home and business addresses. The notice requested respondent's written response to the Thompson complaint within 14 days. Respondent failed to respond.

53. The notice of investigation sent to respondent's business address was subsequently returned to the Director as undeliverable. The notice sent to respondent's home address has not been returned to the Director.

54. On May 20, 2004, the Director wrote again to respondent's home address by both regular and certified mail requesting respondent's responses to the Kellerman, Thompson and trust account overdraft matters. In his letter, the Director acknowledged the personal difficulties respondent mentioned in her response to the Kellerman complaint, assured respondent that the Director would take any such factors into consideration in determining the appropriate disposition of the matters and offered to assist her in arranging for any necessary professional support. Respondent failed to respond (Exhibit 1).

55. While the May 20, 2004, certified letter was returned unclaimed, the letter sent by regular mail was not returned.

56. On May 24, 2004, the May 20, 2004, letter was personally served on respondent at her home address (Exhibit 2). The personal service affidavit establishes that respondent has had actual notice of the proceedings and also establishes respondent's address is accurate.

57. Respondent has failed to respond to the Director's May 20, 2004, letter. In fact, since faxing her response to the Kellerman complaint on December 8, 2003, respondent has failed to respond to any of the Director's communications.

58. On July 29, 2004, the Director mailed to respondent at her home address charges of unprofessional conduct and notice of an August 17, 2004, pre-hearing meeting pursuant to Rule 9(e), RLPR. Respondent failed to answer the charges or to appear for the pre-hearing meeting.

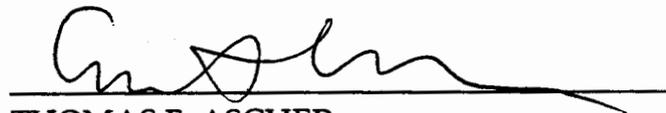
59. Respondent's conduct in failing to respond to the DEC investigator and the Director violated Rule 8.1(a)(3), MRPC and Rule 25, RLPR.

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent or imposing otherwise 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: August 19, 2004.


KENNETH L. JORGENSEN
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 159463
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and


THOMAS F. ASCHER
ASSISTANT DIRECTOR
Attorney No. 218145

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

Dated: August 31, 2004. 
KENNETH R. WHITE
PANEL CHAIR, LAWYERS
PROFESSIONAL RESPONSIBILITY BOARD

May 20, 2004

Ms. Jane E. Brooks
2036 Western Avenue
Roseville, MN 55113

BY PERSONAL SERVICE

Re: Complaint of Tim Kellerman
Complaint of Lauri Thompson
Trust Account Overdraft Notice

Dear Ms. Brooks:

We have written to you on several occasions in recent months concerning the above matters. With the exception of your December 3, 2003, response to the complaint of Tim Kellerman, we have received no response from you to any of our letters.

In your December 3, 2003, letter, you alluded to emotional difficulties you were experiencing, apparently as a result of your father's recent death. Please be advised that we will consider any such difficulties in determining the appropriate result in this matter and will assist you in obtaining whatever professional help you may require to deal with them. However, we cannot do either of these things if you continue to fail to respond to our inquiries.

We note that you recently paid your 2003/2004 attorney registration fee and provided the address to which we have directed this letter as your current mailing address. We note further that none of the letters we have written to you at that address over the past several weeks have been returned to us as undeliverable. We therefore must proceed using that this as your current address and with the understanding that you have received all of the letters we have sent to this address.

We would like to meet with you in this Office on Tuesday, June 8, 2004, at 10:00 a.m., to discuss the above matters. If you are unavailable on this date and/or time, please call paralegal Lynda Nelson or me immediately to discuss rescheduling. Please be advised

Ms. Jane E. Brooks
May 20, 2004
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that if you do not appear for the meeting or call us to reschedule the meeting, we will have no choice but to issue charges of unprofessional conduct, based both on the substantive allegations of the above matters and your failure to cooperate, and proceed to seek your public discipline.

The requests in this letter are made pursuant to Rule 25, Rules on Lawyers Professional Responsibility, and Rule 8.1(a)(3), Minnesota Rules of Professional Conduct. As noted, we will consider your failure to appear for the June 8 meeting or to contact us in advance of that meeting as a violation of those rules and will proceed promptly to the issuance of charges of unprofessional conduct.

Thank you for your anticipated cooperation.

Very truly yours,

Office of Lawyers Professional
Responsibility

By _____
Thomas F. Ascher
Assistant Director

ljn

RECEIVED

MAY 26 2004

OFFICE OF LAWYERS
PROF. REG.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

AFFIDAVIT OF SERVICE

Jason J. Monahan, being duly sworn says: that on the 24th day of May 2004 at 10:26 AM, I personally served the attached **Letter dated May 20, 2004 RE: Complaint of Tim Kellerman, Lauri Thompson Trust Account Overdraft Notice** upon Jane E. Brooks, therein named at 2036 Western Avenue in the City of Roseville, County of Ramsey, State of Minnesota, by handing to and leaving with Jane E. Brooks, a true and correct copy thereof.

Jason J. Monahan
Jason J. Monahan/Process Server

Subscribed to and sworn before me this 24th day of May 2004.

Buffy L. Monahan
NOTARY

