FILE NO. A08-1012

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against LINDA A. BROST, a Minnesota Attorney, Registration No. 182692.

AMENDED 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 12, 1987. Respondent states she is not currently practicing law.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Fraudulent Notarization

1. On or about September 8, 2005, respondent drafted a certificate of trust for Arthur Fischbach in which respondent is named the trustee. Respondent signed the document and notarized her own signature by forging the signature of her deceased husband, C. Robert Brost, and using his expired notary stamp. The notary stamp appears to have expired on January 31, 2000; however, respondent altered the date to reflect an expiration date of January 31, 2010. Respondent presented this document to

BankCherokee requesting a name change on Fischbach's accounts on or about September 15, 2005. The bank rejected the document because the expiration date on the notary stamp appeared to have been altered and, based on the bank's research, C. Robert Brost was not a current notary in Minnesota.

2. Respondent's purpose in presenting the bank with the fraudulently notarized certificate of trust was purportedly to re-title Fischbach's accounts into the name of the trust, which would have given respondent, as trustee, access to Fischbach's accounts and allowed her to convert the funds therein to her own use. Respondent did not present the bank with the "Arthur J. Fischbach Revocable Living Trust" instrument referenced in the certificate of trust. As of the date of this petition, respondent has failed to produce the trust instrument she allegedly drafted for Fischbach.

3. Respondent's conduct in forging her deceased husband's signature, using his notary stamp, altering the expiration date of the notary commission and attempting to access Fischbach's funds using the fraudulently notarized certificate of trust violated Rule 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Non-Cooperation and False Statements to the Director

4. On April 20, 2007, Shirle Sherrick filed a complaint with the Director alleging that Fischbach had retained respondent to draft his will. Fischbach passed away on September 11, 2005. Sherrick, a longtime friend of Fischbach, alleged that she spoke with respondent at Fischbach's funeral, and that respondent informed Sherrick that Sherrick was a beneficiary of Fischbach's will, as was a local Catholic church. Sherrick further alleged that respondent told her that she would handle everything with respect to Fischbach's estate. Sherrick believes that, although Fischbach was not wealthy, the estate would have contained at least $75,000.

5. By notice of investigation dated May 11, 2007, Sherrick's complaint was forwarded to respondent at her last known business address in St. Paul, Minnesota.

Respondent was requested to provide a complete written response to the district ethics committee (DEC) investigator within 14 days. Respondent failed to respond.

6. On June 26, 2007, the DEC investigator wrote to respondent at her last known business address and indicated that he had called respondent and left a message asking for her response to the complaint. The investigator asked respondent to call him. Respondent failed to respond.

7. On July 10, 2007, the investigator wrote to respondent again and indicated that he had not received a reply to the complaint, despite having left two additional messages for respondent. The investigator asked for respondent's reply at her earliest convenience. Respondent failed to respond.

8. On August 10, 2007, the investigator wrote to respondent again and indicated that he had written two letters and left a number of phone messages for respondent attempting to obtain her response to the complaint. The investigator reminded respondent of her duty to cooperate with the investigation and that her failure to do so can be a separate ground for discipline. The investigator asked respondent to reply at her earliest convenience. Respondent failed to respond.

9. On September 20, 2007, the investigator made his report at the DEC meeting and recommended a finding that respondent violated Rules 1.3, 1.4, and 8.1, MRPC, and Rule 25, RLPR. The investigator recommended discipline based on these violations. The investigator also recommended referral back to the Director's Office for further investigation. The DEC adopted the investigator's recommendation and the matter was referred back to the Director's Office.

10. By letter dated September 28, 2007, the Director provided respondent with a copy of the investigator's findings and recommendation. Respondent was asked to review the findings and provide a written response and any documentation that supported her version of the facts if there were any statements or conclusions contained

in the findings with which she disagreed. Although a response was not explicitly required, respondent nonetheless failed to respond.

11. On October 25, 2007, the Director sent respondent another letter, again enclosing the investigator's findings. Respondent was asked to provide specific documents pertinent to the investigation. Respondent was again reminded that her cooperation with the investigation was required. Respondent failed to respond.

12. On November 15, 2007, the Director sent respondent a final letter requesting a response to the complaint. Respondent failed to respond.

13. Respondent never provided a written response to the complaint.

14. On January 24, 2008, the Director issued charges of unprofessional conduct. Also on January 24, 2008, pursuant to Rules 9(a) and 1(8), RLPR, the Director mailed respondent notice of a February 27, 2008, pre-hearing meeting.

15. On January 24, 2008, the Director mailed respondent a notice of deposition, scheduled for February 7, 2008. Also on January 24, 2008, the Director obtained a subpoena commanding respondent to appear for the February 7, 2008, deposition and produce "[a]ny and all documents in [respondent's] possession relating to the estate of Arthur Fischbach." Respondent was personally served with the subpoena on January 30, 2008.

16. On February 6, 2008, the Director received notice from Geraldine Steen that she had been retained to represent respondent and that Steen could not appear for the deposition on February 7, 2008. Steen requested that the deposition be rescheduled. The Director accommodated the request and the deposition was rescheduled for February 11, 2008. On February 6, 2008, Steen, who agreed to accept service of the subpoena on respondent's behalf, was served by mail and facsimile transmission with the subpoena and amended notice of deposition.

17. Respondent and Steen appeared at the deposition as scheduled. Despite having been served with the subpoena, respondent failed to produce the subpoenaed

documents at the deposition on February 11, 2008. Contrary to the subpoena, Steen explained at the deposition that because respondent had until February 20, 2008, to answer the charges, Steen "told [respondent] not to worry about the fact that these documents are buried in mountains of documents. We will provide all of the documents you requested by February 20, 2008, which is her deadline."

18. On February 13, 2008, the Director sent Steen a letter memorializing respondent's promise to provide the subpoenaed documents and an answer to the charges on or before February 20, 2008. A proposal to postpone the February 27, 2008, pre-hearing meeting was made, pending the Director's receipt and review of the documents. Although the pre-hearing meeting was being postponed, respondent was nonetheless required to produce the subpoenaed documents and her answer to the January 24, 2008, charges of unprofessional conduct.

19. Respondent's answer to the charges was due on February 20, 2008, and respondent had agreed to provide the previously subpoenaed documents with her answer on February 20, 2008. On February 20, 2008, however, Steen contacted the Director and indicated that she could no longer represent respondent and that respondent wanted another lawyer, Edward Kautzer, to review the documents prior to their submission to the Director. Steen stated those documents would be reviewed by Kautzer and then delivered to the Director, presumably on February 21, 2008. Respondent never answered the January 24, 2008, charges of unprofessional conduct as required by Rule 9(b), RLPR.

20. On March 4, 2008, Kautzer informed the Director that he was not representing respondent. Shortly after speaking with Kautzer, the Director contacted respondent at the phone number she provided at the deposition. Respondent did not answer and a message was left on respondent's voice mail asking that she contact the Director and state when the subpoenaed documents could be expected. Respondent failed to respond.

21. On March 5, 2008, although not representing respondent, Kautzer faxed the Director a copy of Fischbach's last will and testament (consisting of four pages) and Fischbach's BankCherokee February 1, 2008, statement (consisting of two pages) received from respondent. Fischbach's February 1, 2008, bank statement reflects a total balance of $148,933.66.

22. At her February 11, 2008, deposition, respondent was asked under oath if she had "occasion to draft Mr. Fischbach's will." Respondent's answer was "no." The will Kautzer provided was dated July 29, 1993, and was witnessed by respondent and according to her former partner's testimony was, in fact, drafted by respondent. Respondent's deposition testimony was false.

23. On March 10, 2008, the Director issued amended and supplemental charges of unprofessional conduct based on respondent's statement at her February 11, 2008, deposition that she fraudulently notarized the certificate of trust and her continued failure to cooperate.

24. On or about March 13, 2008, Kautzer informed the Director that respondent had retained him.

25. On March 24, 2008, a pre-hearing meeting was held between the Director and respondent. Respondent appeared with counsel. Respondent, however, failed to produce the subpoenaed documents or a written answer to the March 10, 2008, amended and supplemental charges of unprofessional conduct as required by Rule 9(b), RLPR. Although respondent initially stated she had provided the Director with "everything," respondent later indicated she had a "Fischbach file" and would provide everything therein some time after the pre-hearing meeting.

26. On March 31, 2008, seven days after the pre-hearing meeting, the Director received respondent's answer to the March 10, 2008, amended and supplemental charges of unprofessional conduct from Kautzer.

27. On March 31, 2008, the Director also received from Kautzer what was presumed (based on respondent's representation at the March 24, 2008, pre-hearing meeting) to be the remainder of the Fischbach file. These documents were initially requested pursuant to subpoena dated January 24, 2008, yet respondent failed to produce them until March 31, 2008.

28. On May 7, 2008, the Director reviewed the Ramsey County Probate Court file "In re the Estate of Arthur J Fischbach." The Director discovered two letters testamentary, handwritten and purportedly signed by Fischbach, and three receipts for personal property, one of which showed that respondent received three items of Fischbach's personal property. Despite the Director's request pursuant to a valid subpoena and repeated written requests on January 24, February 6, February 13, March 6, March 13, and March 17, 2008, respondent at no time voluntarily provided the Director with the aforementioned documents. Further, at no time did respondent disclose her receipt of Fischbach's personal property. Accordingly, respondent's earlier representations that she had provided the Director with all documents in her possession related to the Fischbach estate were false.

29. On May 8, 2008, Kautzer served the Director with his notice of withdrawal as respondent's counsel.

30. It was not until May 16, 2008, that respondent personally provided what she represented to be all documents (including the documents referenced in ¶ 28 above) requested pursuant to the January 24, 2008, subpoena, more than 15 weeks after respondent was served with the subpoena.

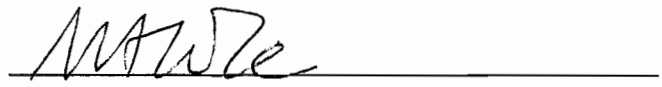
31. On May 22, 2008, Paul Peterson submitted his notice of appearance as counsel for respondent. On August 20, 2008, Peterson served the Director with his notice of withdrawal as respondent's counsel.

32. On information and belief, respondent has received all written and telephonic communication relating to the Director's investigation into this matter.

33. Respondent's conduct in failing to cooperate in the disciplinary investigation, timely and completely produce documents requested pursuant to subpoena and in making false statements to the Director in connection with this disciplinary proceeding violated Rules 8.1(a) and (b) and 8.4(c) and (d), MRPC, and Rule 25, RLPR.

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 14, 2008.



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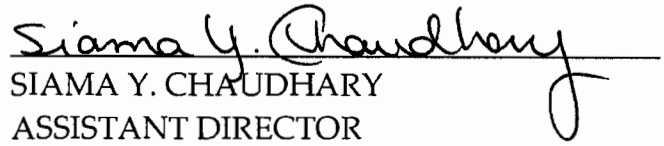

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