

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against LINDA A. BROST,  
a Minnesota Attorney,  
Registration No. 182692.  
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**PETITION FOR  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

Upon the approval of the Chair of the Lawyers Professional Responsibility Board, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rules 10(c) 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. On April 2, 2009, the Supreme Court indefinitely suspended respondent from the practice of law in Minnesota. Respondent has remained suspended.

As more particularly alleged below, on September 17, 2013, respondent was convicted of one count of felony theft by swindle in violation of Minn. Stat. § 609.52.2(4) and one count of felony identity theft in violation of Minn. Stat. § 609.527.2, a necessary element of each is theft, within the meaning of Rule 10(c), RLPR.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

On April 2, 2009, the Supreme Court indefinitely suspended respondent from the practice of law with no right to petition for reinstatement for a minimum of nine months for professional misconduct; namely, using the expired notary stamp of a

deceased notary, altering the stamp's expiration date, and forging his signature to fraudulently notarize her own signature on a certificate of trust prepared for a client, Arthur J. Fischbach; submitting the fraudulent document to a bank; and failing to cooperate with the Director's investigation in a discipline matter, in violation of Rules 8.1(a), 8.1(b), and 8.4(d), Minnesota Rules of Professional Conduct (MRPC), and Rule 25, RLPR.

### FIRST COUNT

#### Theft by Swindle and Identity Theft

1. This matter arose out of respondent's representation of Arthur J. Fischbach, which, as stated above, included drafting documents naming respondent as Fischbach's attorney-in-fact, setting up the Arthur J. Fischbach Trust, and Fischbach's last will and testament naming respondent Fischbach's personal representative. On September 11, 2005, Fischbach died.
2. At the time of his death, Fischbach owned two annuity policies purchased from Jackson National Life Insurance. Respondent knowingly and intentionally devised a scheme to surreptitiously avoid reporting the existence of Fischbach's two annuities to the Fischbach estate and to the district court during the probate of Fischbach's estate. Between March 31, 2011, and September 30, 2011, respondent cashed or collected approximately \$11,000 in monthly annuity payments from Fischbach's annuities. Between October 1, 2011, and March 31, 2012, respondent cashed or collected approximately \$32,000 in annuity payments.
3. On February 25, 2013, respondent was charged with six felony counts, including theft by swindle, identity theft, aggravated forgery and insurance fraud.
4. On July 22, 2013, respondent pled guilty to one count of theft by swindle and one count of identity theft.
5. On September 17, 2013, respondent was convicted of theft by swindle, in violation of Minn. Stat. § 609.52.2(4), and identity thief in violation of Minn. Stat. § 609.527.2, both felony level offenses.

6. Rule 19(a), RLPR, provides in pertinent part:

**Criminal Conviction.** A lawyer's criminal conviction in any American jurisdiction . . . is, in proceedings under these Rules, conclusive evidence that the lawyer committed the conduct for which the lawyer was convicted.

7. Respondent's conduct violated Rule 8.4(b) and (c), MRPC.

SECOND COUNT

False Statements to the Director

8. During the course of the disciplinary investigation which resulted in respondent's current suspension, respondent appeared for a deposition on February 11, 2008.

9. During the deposition, the following exchange occurred:

BY THE DIRECTOR:

Q: [Fischbach's personal friend] also indicated being told by you that she was the beneficiary to Mr. Fischbach's life insurance policies. What life insurance policies did Mr. Fischbach have?

A. None.

Q. He didn't have any?

A. No.

10. Respondent's testimony to the Director was false; Fischbach owned two annuity policies issued by Jackson National Life Insurance.

11. Respondent's conduct violated Rules 8.1(b) and 8.4(c), MRPC.

THIRD COUNT

Non-Cooperation with the Director's Investigation

12. On April 23, 2013, a former client of respondent, M.B., filed a complaint against respondent with the Director. On May 14, 2013, the Director mailed a notice of investigation to respondent. The notice requested respondent to provide M.B. and the

Director with her complete written response to the complaint within 14 days of the date of the notice. Respondent failed to do so.

13. By letter dated May 31, 2013, the Director advised respondent that the Director had not received her response to the notice of investigation and requested that respondent respond completely by June 14, 2013. The Director advised respondent that failure to respond to reasonable requests from the Director's Office may, itself, constitute a separate disciplinary offense pursuant to Rule 8.1(b), MRPC, and Rule 25, RLPR. Respondent failed to respond.

14. By letter dated June 20, 2013, the Director advised respondent that the Director had not received a response to the notice of investigation or the Director's May 31, 2013, letter, and requested respondent respond completely by July 5, 2013. The Director advised respondent that pursuant to Rule 8.1(b), MRPC, and Rule 25, RLPR, failure to respond to reasonable requests from the Director's Office may, itself, constitute a separate disciplinary offense. The Director did not receive a response.

15. By letter dated July 22, 2013, the Director advised respondent that the Director had not received her response to the notice of investigation or to the Director's follow-up letters sent May 31 and June 20, 2013, and requested that respondent provide her complete response by July 31, 2013.

16. On July 22, 2013, the Director mailed a second letter to respondent at W-7164 Sunset Lane, Spooner, Wisconsin, where the Director understood respondent was living, advising respondent that the Director had not received her response to the notice of investigation or the May 31 and June 20 letters previously mailed to her St. Paul, Minnesota, address, enclosing copies of the referenced documents, and requesting that respondent provide her complete response by July 31, 2013. In both letters sent July 22, 2013, the Director advised respondent that failure to respond to reasonable requests from the Director may, itself, constitute a separate disciplinary offense pursuant to Rule 8.1(b), MRPC, and Rule 25, RLPR, and that if respondent failed to respond, the Director would consider filing charges for public discipline based on

respondent's failure to cooperate with the Director's investigation. Respondent failed to respond.

17. The May 14, 2013, notice of investigation and May 31, June 20, and July 22, 2013, letters were sent to 420 Ohio Street, St. Paul, MN 55107, which, at all times material, has been respondent's address of record with the Minnesota Attorney Registration System.

18. On July 30, 2013, after first receiving authorization, pursuant to Rule 8(a), RLPR, from the Lawyers Professional Responsibility Board Executive Committee to initiate an investigation without having received a formal complaint, the Director mailed a notice of investigation regarding respondent's criminal matter to respondent at her 420 Ohio Street, St. Paul, MN 55107, address. The notice requested respondent provide her complete written explanation regarding the criminal matter within two weeks. Respondent did not respond.

19. By letters dated August 15, 2013, addressed to respondent at her St. Paul, Minnesota, and Spooner, Wisconsin, addresses, the Director advised respondent that the Director had not received a response to the May 14, 2013, notice of investigation; the Director's May 31, June 20 and July 22, 2013, letters; or the July 30, 2013, notice of investigation and requested that respondent respond completely to both notices of investigation by August 28, 2013. The Director again reminded respondent that her failure to respond to reasonable requests from the Director may, itself, constitute a separate disciplinary offense pursuant to Rule 8.1(b), MRPC, and Rule 25, RLPR, and that the Director would consider filing charges for public discipline if respondent failed to cooperate with the investigation. Respondent failed to respond.

20. By letters dated September 12, 2013, and mailed to respondent's St. Paul, Minnesota, and Spooner, Wisconsin, addresses, the Director advised respondent that the Director had not received her response to the May 14, 2013, notice of investigation, the July 30, 2013, notice of investigation, or any of the reminder letters sent May 31, June 20, July 22, and August 15, 2013, and requested that respondent respond

completely to both notices by September 26, 2013. The Director advised respondent that her failure to respond may, itself, constitute a separate disciplinary offense under Rule 8.1(b), MRPC, and Rule 25, RLPR, and that if respondent did not respond, the Director would consider filing charges for public discipline based on her failure to cooperate with the investigation. The Director did not receive respondent's responses.

21. On October 3, 2013, the Director wrote to respondent at her St. Paul, Minnesota, and Spooner, Wisconsin, addresses, advising respondent that the Director had not received her responses to the May 14, 2013, notice of investigation, the July 30, 2013, notice of investigation, or any of the reminder letters sent May 31, June 20, July 22, August 15, and September 12, 2013. The Director again advised respondent that her failure to respond may constitute a separate disciplinary offense under Rule 8.1(b), MRPC, and Rule 25, RLPR, and that the Director would consider filing charges for public discipline against respondent based on her failure to cooperate with the investigation if respondent did not respond.

22. To date, the United States Postal Service has not returned to the Director as undeliverable either notice of investigation or any of the Director's follow-up correspondence.

23. To date, the Director has not received respondent's response to the May 14, 2013, notice of investigation, the July 30, 2013, notice of investigation or any of the Director's subsequent correspondence. Neither has respondent contacted or communicated with the Director regarding either investigation.

24. Respondent's conduct violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

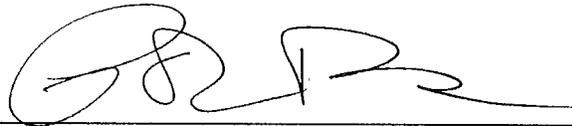
#### EXHIBITS

1. February 25, 2013, felony criminal complaint, *State of Minnesota v. Linda Ann Brost (State v. Brost)*.
2. July 22, 2013, transcript of guilty pleas, *State v. Brost*.
3. September 17, 2013, transcript of proceedings sentencing, *State v. Brost*.

4. September 17, 2013, order warrant of commitment, *State v. Brost*.
5. Minnesota State Court Information System, register of actions, *State v. Brost*.

WHEREFORE, the Director respectfully prays for an order of this Court disbarring 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: October 17, 2013.



for MARTIN A. COLE  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY  
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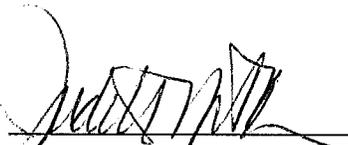
and



MEGAN ENGELHARDT  
SENIOR ASSISTANT DIRECTOR  
Attorney No. 329642

Pursuant to Rule 10(c) and 12(a), RLPR, this petition for disciplinary action is hereby approved.

Dated: October 21, 2013.



JUDITH M. RUSH  
CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD