

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against PATRICK CHRISTOPHER BURNS,  
a Minnesota Attorney,  
Registration No. 307890.  
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**PETITION FOR  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 11, 2001. Respondent currently practices law in Minneapolis, Minnesota. Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On November 18, 2008, respondent was issued an admonition for communicating with a represented party about the subject matter of the litigation in violation of Rule 4.2, Minnesota Rules of Professional Conduct (MRPC).

B. On February 27, 2007, respondent was issued an admonition for filing a lien against an opposing party's property and bringing a lawsuit without taking adequate and appropriate steps to determine whether there was a good faith basis for the lawsuit in violation of Rule 1.1, MRPC.

## FIRST COUNT

### Failure to Timely Remit Unearned Client Funds

1. Suzanne Pasch was facing financial difficulties and was unable to afford the mortgage payments on her homestead. The amount Pasch owed on her mortgage exceeded the value of the homestead. On August 31, 2009, Pasch contacted Patrick Burns & Associates (hereinafter "the Burns' law firm") seeking legal assistance with her financial troubles. Pasch signed a written fee agreement and provided a \$1,500 retainer which was deposited into the trust account for the Burns' law firm.

2. Pasch's bankruptcy matter was assigned to Andrew Myers, an associate in the Burns' law firm, who initiated negotiations with the lender on behalf of Pasch. Myers prepared an application for a mortgage negotiation which was rejected by the lender because Pasch was not in default on her loan. In December 2009, Myers discussed the possibility of Pasch defaulting on her mortgage payments and filing for bankruptcy. In January 2010, Pasch met with Martin Melang, another associate in the Burns' law firm, to discuss bankruptcy proceedings and the legal costs thereof.

3. Pasch decided to terminate the representation and pursue legal relief that was more cost efficient. On January 26, 2010, Pasch sent respondent an email terminating the representation. At that time, respondent was still holding approximately \$725 in unearned fees in trust for Pasch. Respondent did not refund the unearned retainer to Pasch.

4. On July 6, 2010, Pasch sent respondent an email through the Web site [www.findlaw.com](http://www.findlaw.com), which is an online marketing Web site for legal services. Pasch requested a refund of the unearned retainer. Pasch's email was directed to the spam folder and was not received by the Burns' law firm. Regardless, respondent had still not returned the unearned \$725 despite Pasch having terminated the representation over five months prior.

5. On July 26, 2010, Pasch sent respondent a letter again requesting a refund. Respondent failed to respond. On August 13, 2010, Pasch filed an ethics complaint with the Director claiming respondent had failed to remit unearned attorney's fees. On August 26, 2010, respondent remitted the unearned fees in the amount of \$725 to Pasch.

6. Respondent's conduct in failing to timely remit client funds in the Pasch matter violated Rules 1.15(c)(4) and 1.16(d), MRPC.

## SECOND COUNT

### Unauthorized Credit Card Transactions

#### **Ana Canela Matter**

7. In August 2009, Ana Canela retained respondent to represent her in dissolution proceedings. Canela signed a written retainer agreement that provided for an initial \$5,000 retainer and thereafter an hourly rate of \$250 for attorney's fees. Canela paid the \$5,000 retainer by credit card and made additional payments for fees incurred by use of the same credit card.

8. On November 27, 2009, Canela emailed respondent and discharged him from representation. Canela disputed some of respondent's attorney's fees. Respondent requested that Martin Melang, an associate in the Burns' law firm, review Canela's billing statements.

9. By letter dated December 11, 2009, Melang wrote Canela that the total amount billed in her case was \$11,488.50 of which only \$11,302.61 was actually charged due to various discounts. Melang further stated:

After reviewing the bills, I believe you are owed an additional discount of One Thousand Dollars. As you currently owe \$651.88 for work completed on your file, we have attached a check in the amount of \$348.12 to settle the matter.

Melang attached a check in that amount made out to Canela, which Canela subsequently cashed. The Burns' law firm also returned the client file to Canela and filed a motion of withdrawal with the court that same month.

10. Despite the fact that Canela had no outstanding balance, she received a December 30, 2009, billing statement incorrectly claiming that she owed \$740.07 in attorney's fees and costs. On January 8, 2010, Canela emailed respondent regarding the charges. That same day, respondent emailed Joanne Burns, his mother, who also worked as a non-lawyer assistant in the Burns' law firm, to correct the mistake. The billing error was not corrected. On February 2, 2010, Canela again received a second bill claiming that she owed the Burns' law firm \$740.07.

11. On February 11, 2010, the Burns' law firm charged Canela's credit card \$629.06, without her authorization, as payment for the outstanding balance. Upon discovering the unauthorized charge, Canela emailed respondent demanding that the charge be reversed, which respondent subsequently ensured took place.

#### **Carol Palmer Matter**

12. In November 2007 Carol Palmer retained respondent to handle a probate dispute involving the estate of her mother. The parties' fee agreement was an hourly rate for attorney's fees. Palmer provided respondent with a credit card and authorization to charge her credit card over the course of the representation.

13. Palmer became dissatisfied with respondent's legal services and sent him a letter terminating the representation on or about July 1, 2009. On July 8, 2009, respondent sent Palmer a copy of her client file and acknowledged the termination of the representation.

14. On July 1, 2009, respondent also sent Palmer a billing invoice indicating that she owed \$561.80. Palmer did not pay the bill. On August 3, 2009, respondent sent Palmer a second billing invoice again indicating that she owed \$616.75.

15. On August 6, 2009, respondent charged Palmer's credit card \$524.24 as payment for attorney's fees without Palmer's authorization or knowledge.<sup>1</sup> Palmer did not discover the credit card charge to her account until she received respondent's

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<sup>1</sup> Respondent discounted the \$616.75 in attorney's fees by 15 percent as a discount for "payment in full via credit card."

August 6, 2009, billing statement showing the \$524.24 charge to her credit card account and the resulting zero balance due.

16. On August 12, 2009, Palmer faxed respondent demanding that the unauthorized charge to her credit card be refunded. Palmer noted that the charge was made without her knowledge or authorization. Respondent refunded the \$524.24 back to Palmer's credit card.

17. On September 1, 2009, respondent sent Palmer a billing invoice claiming that she owed \$718, which was comprised of the \$524.24 credit card reversal, \$92.51 for the 15 percent discount that had been applied for paying the bill in full, and \$101.25 that was described as "removal of discount for payment in full as amount was refunded per request from client." The \$101.25 is an improper duplicate charge. Respondent's August 3, 2009, billing invoice showed that Palmer owed \$616.75. Respondent discounted this payment by 15 percent, which is accounted for by the \$92.51 credit to Palmer's account. When respondent refunded the \$524.24 back to Palmer's credit card, he also removed the previous discount of 15 percent. Thus, respondent's September 2009 billing statement should only show that respondent was owed \$616.75 and not \$718, because the \$101.24 is an improper duplicate charge.

18. Respondent's conduct in failing to maintain complete and accurate billing records, charging clients' credit cards without authorization and after the representation had been terminated, and charging duplicate fees in the Canela and Palmer matters violated Rules 1.5(a) and 1.15(c)(3), MRPC.

### THIRD COUNT

#### Improper Service of a Subpoena and Obtaining Documents in Violation of the Rights of Others

19. In 2009, Thomas Carlson and his wife were involved in a contentious divorce. Respondent represented Carlson's wife, who had made allegations that Carlson had sexually abused the parties' children. As a result, Carlson completed a voluntary psycho-sexual evaluation (hereinafter "evaluation") that was provided to the

court and the court-appointed guardian ad litem (GAL). Respondent unsuccessfully attempted to obtain a copy of the evaluation from both opposing counsel and the GAL.

20. Respondent directed Rachel Pierce, a non-lawyer assistant in the Burns' law firm, to prepare subpoenas to be served on the medical providers that had completed Carlson's evaluation. Respondent directed his staff to also prepare cover letters to opposing counsel, Kim Bonuomo, but did not verify that Pierce had followed through on this request. Pierce subsequently served the subpoenas, but notification was not sent to Bonuomo as required under Minn. R. Civ. P. 45.01.

21. On or about March 25, 2010, one of the medical providers provided a copy of Carlson's evaluation in response to respondent's subpoena. Respondent's failure to comply with the notice requirements for service of a subpoena thus deprived the opposing party the opportunity to move to quash the subpoenas. As a result, respondent obtained evidence in violation of the opposing party's procedural rights.

22. Upon learning that respondent had obtained the evaluation, Bonuomo filed a motion with the district court seeking sanctions. The district court issued an order requiring the parties to agree to a protective order to address the concerns raised by Bonuomo. The district court did not otherwise sanction respondent.

23. Respondent's conduct in failing to comply with the notice requirements for serving a subpoena and obtaining evidence in violation of the rights of another in the Carlson matter violated Rules 1.1, 1.3, 3.4(a), 4.4(a) and 8.4(d), MRPC.

#### FOURTH COUNT

##### Failure to Supervise and Related Misconduct

##### **Failure to Supervise an Associate Attorney**

24. In or about May 2009, Lyn Denny contacted the Burns' law firm to discuss challenging her ex-husband's attempt to discharge in bankruptcy a property settlement that she had been awarded in their divorce. The amount of the settlement was substantial at \$106,066.42. The settlement award was not a spousal maintenance award.

25. Denny initially spoke with Nathan Hobbs, an associate in the Burns' law firm who had recently developed a bankruptcy practice within the firm in the fall of 2008. Hobbs had little to no prior experience in bankruptcy law. The Burns' law firm hoped to develop bankruptcy as an area of specialization within the firm. Shortly after meeting with Hobbs, Denny also discussed her ex-husband's Chapter 13 petition and her creditor claim with respondent. On June 6, 2009, Denny retained the Burns' law firm and paid a \$1000 retainer. Hobbs was assigned to handle Denny's creditor claim. Respondent was the supervising attorney for Hobbs.

26. Hobbs failed to diligently pursue Denny's creditor claim. Most significantly, Hobbs failed to timely file a proof of claim pursuant to section 501(a) of the bankruptcy code which likely made Denny ineligible for distribution as an unsecured creditor in her ex-husband's Chapter 13 bankruptcy proceeding. In addition, in November 2009, Hobbs began failing to return Denny's communications. Hobbs was subsequently terminated from the Burns' law firm for neglect of client matters and other misconduct on December 21, 2009. The Burns' law firm did not send Denny a letter notifying her of Hobbs' departure.<sup>2</sup> Denny remained under the belief that Hobbs was still handling her creditor claim albeit unresponsive to her communications.

27. Frustrated with the manner in which her case was being handled, Denny emailed respondent on January 5, 2010, setting forth Hobbs' failure to return her phone calls, stating her fears that her claim had been negatively impacted by neglect, and requesting respondent's assistance with getting Hobbs to contact her. By email dated January 5, 2010, respondent told Denny that Hobbs had been terminated. That same day, Denny emailed respondent asking when Hobbs had been terminated, who would be taking over her case, and emphasizing the urgency of her creditor claim in the bankruptcy proceeding. By email dated January 7, 2010, respondent stated that he

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<sup>2</sup> Respondent provided a copy of a letter, dated December 18, 2009, that he claims was sent to Denny notifying her of Hobbs' departure. It does not appear that Denny received this communication as evidenced by her January 5, 2010, email to respondent, as discussed in paragraph 27, above.

would schedule a conference call with her for that day and "I have reviewed your file, and we are going to move aggressively on it shortly. Don't worry, we are going to get this taken care of." The conference call did not occur.

28. Denny next emailed respondent on February 3, 2010, and indicated that her last communication with the Burns' law firm was January 7, 2010, and asked, "Patrick [respondent] will you update me please?" Respondent did not respond.

29. On February 8, 2010, Denny again emailed respondent and asked him to confirm that certain work had been done on her case. Denny further stated that her ex-husband's bankruptcy filing was complete and that respondent should contact her "ASAP."

30. Unable to elicit a response from respondent about the status of her bankruptcy case, Denny filed an ethics complaint with the Director on March 16, 2010. Only after the ethics complaint was filed, did respondent proceed to take remedial action on Denny's creditor claim by filing an adversarial claim in Denny's ex-husband's Chapter 13 proceeding on April 21, 2010.

31. The Burns' law firm also refunded charges for all legal services provided by Hobbs. The Burns' law firm withdrew from representation in Denny's matter by discharge order of the bankruptcy court on November 23, 2010, due to Denny's failure to pay overdue attorney's fees.

32. Respondent's conduct in failing to diligently take remedial action to mitigate known neglect caused by an associate attorney over whom respondent had direct supervisory authority, and to diligently pursue a client matter or respond to client communications in the Denny matter violated Rules 1.3, 1.4 and 5.1(c)(2), MRPC.

#### FIFTH COUNT

##### Failure to Supervise Non-Lawyer Staff

33. In the Canela matter, respondent directed a non-lawyer assistant to correct a previous billing error but did not follow through to confirm the billing error was in

fact corrected, which resulted in an unauthorized charge to Canela's credit card. See paragraphs 10-11, above.

34. In the Carlson matter, respondent failed to supervise a non-lawyer assistant's preparation and service of a subpoena. Respondent did not verify that his non-lawyer assistant had prepared cover letters to opposing counsel and the subpoenas were served without the required notice. See paragraph 20, above.

35. Respondent's conduct in failing to supervise non-lawyer staff violated Rule 5.3(b) and (c)(2), MRPC.

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: May 11, 2012.



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