

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against DONALD L. DeVAUGHN,
a Minnesota Attorney,
Registration No. 22391.

**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. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 17, 1969. Respondent currently practices law in Plainview, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Misappropriation

1. In 2003 respondent represented L.B. regarding the sale of her home and the land on which it was situated. L.B. is an elderly woman with limited capacity who resides in a nursing home. L.B.'s granddaughter has power of attorney over L.B.'s affairs, including matters related to the sale of her real estate. Respondent dealt with L.B.'s granddaughter regarding the real estate sale and disposition of the proceeds.

2. On May 16, 2003, respondent deposited \$12,135 into his Peoples State Bank trust account number 202219 from the sale of the L.B. real estate. Respondent thereafter made \$1,481.43 in legitimate and authorized disbursements from the funds, leaving a \$10,653.57 balance.

3. L.B.'s granddaughter directed respondent to hold the remaining \$10,653.57 balance in his trust account until further notice.

4. Contrary to the granddaughter's directive, respondent made the following trust account disbursements to himself from the L.B. funds:

<u>DATE</u>	<u>CHECK</u>	<u>AMOUNT</u>
November 7, 2003	Check no. 8604	\$ 2,000.00
November 17, 2003	Check no. 8624	\$ 2,000.00
June 30, 2005	Check no. 9311	\$ 2,000.00
July 11, 2005	Check no. 9315	<u>\$ 1,750.00</u>
Total		\$ 7,750.00

5. In making these disbursements, respondent knowingly misappropriated L.B. funds for his own use and benefit.

6. By July 29, 2005, respondent had fully restored the funds he misappropriated from L.B. to his trust account.

7. Respondent's conduct in misappropriating L.B. funds violated Rules 1.15(a), and 8.4(c) and (d), Minnesota Rules of Professional Conduct (MRPC).¹

SECOND COUNT

Trust Account Shortages and Failure to Maintain Required Trust Account Books

8. The Director audited respondent's trust account for the period February 2003 through June 2005. The Director's audit disclosed that as of February 3, 2003, the

¹ All references to the MRPC and/or opinions of the Lawyers Professional Responsibility Board are those that were in effect at the time of the misconduct alleged.

start of the audit period, the balance in respondent's trust account was \$6,259.24 short of covering aggregate client balances.

9. The shortage in respondent's trust account thereafter increased as a result of his misappropriation of L.B. funds as described above. In addition, the following trust account transactions further increased the shortage:

a. Excess Disbursements – Client #0134-1: On July 2, 2003, respondent issued trust account check no. 8431 for \$185 to himself in client matter 0134-1. Check no. 8431 cleared respondent's trust account on July 8, 2003. At that time, the balance of client 0134-1 funds in respondent's trust account was only \$95.33. Payment of check no. 8431 thus created an \$89.67 shortage in the client 0134-1 ledger (\$95.33 minus \$185) and increased the overall shortage in respondent's trust account by the same amount.

b. Respondent issued the following additional trust account checks on July 2, 2003, on behalf of client 0134-1, further increasing the shortage in the client 0134-1 ledger and the overall shortage in respondent's trust account:

<u>DATE PAID</u>	<u>CHECK</u>	<u>AMOUNT</u>	<u>0134-1 SHORTAGE</u>
July 9, 2003	Check no. 8428	\$ 100.00	\$ 189.67
July 15, 2003	Check no. 8432	\$ 44.95	\$ 234.62
July 31, 2003	Check no. 8429	\$ 169.38	\$ 404.00

c. Excess Disbursement – #02114-1: On July 30, 2003, respondent issued trust account check no. 8470 for \$365 to himself in client matter 02114-1. Check no. 8470 cleared respondent's trust account on August 1, 2003. At that time, the balance of client 02114-1 funds in respondent's trust account was only \$230. Payment of check no. 8470 thus created a \$135 shortage in the client 02114-1 ledger (\$230 minus \$365) and increased the overall shortage in respondent's trust account by the same amount.

d. Excess Disbursements - #0345-3: On October 31, 2003, respondent issued trust account check no. 8595 for \$191.95 to himself in client matter 0345-3. Check no. 8595 cleared respondent's trust account on November 4, 2003. At that time, the balance of client 0345-3 funds in respondent's trust account was only \$107.95. Payment of check no. 8595 thus created an \$84 shortage in the client 0345-3 ledger (\$107.95 minus \$191.95) and increased the overall shortage in respondent's trust account by the same amount.

e. Also on October 31, 2003, respondent issued trust account check no. 8594 for \$101 on behalf client 0345-3. Check no. 8594 cleared respondent's trust account on November 5, 2003. As a result of check no. 8595, the balance of client 0345-3 funds in respondent's trust account was, at that time, negative. Payment of check no. 8594 thus further increased the shortage in the client 0345-3 ledger and the overall shortage in respondent's trust account by \$101.

f. Excess Disbursement - #02125-2: In June and August 2003 respondent deposited funds totaling \$2,486.38 into his trust account on behalf in client matter 02125-2. During the period June to November 2003, however, respondent disbursed \$2,588.38 in client 02125-2 funds from his trust account, \$102 more than had been deposited, thus creating a \$102 negative balance in the client 02125-2 ledger and increasing the overall shortage in respondent's trust account by the same amount.

g. Disbursements Without Deposit - #9917-1: On February 4, 2004, respondent issued his trust account check nos. 8708 through 8710, in the total amount of \$337.50, in client matter 9917-1. However, because respondent had not deposited any funds into his trust account on behalf of client 9917-1, payment of check nos. 8708 through 8710 created a \$337.50 negative balance in the client 9917-1 ledger and increased the overall shortage in respondent's trust account by the same amount.

h. Excess Disbursement – #9749-1: On October 16, 2003, respondent deposited \$12,449.18 into his trust account in client matter 9749-1. During the period October 2003 to February 2004, however, respondent disbursed \$12,555.68 in client 9749-1 funds from his trust account, \$106.50 more than had been deposited, thus creating a \$106.50 negative balance in the client 9749-1 ledger and increasing the overall shortage in respondent's trust account by the same amount.

i. Unknown Disbursement: On November 2, 2004, respondent issued trust account check no. 9036 for \$235 to himself. (Check no. 9036 cleared respondent's trust account on November 4, 2004.) Respondent did not attribute check no. 9036 to any client in his trust account books and records. As a result, payment of check no. 9036 increased the overall shortage in respondent's trust account by \$235.

j. Excess Disbursement – 0372-1: On October 20, 2004, respondent issued trust account check no. 9015 for \$162.38 in client matter 0372-1. Check no. 9015 cleared respondent's trust account on December 7, 2004. At that time, the balance of client 0372-1 funds in respondent's trust account was only \$147.88. Payment of check no. 9015 thus created a \$14.50 shortage in the client 0372-1 ledger (\$147.88 minus \$162.38) and increased the overall shortage in respondent's trust account by the same amount.

k. Excess Disbursement – #0443-1: On February 11, 2005, respondent issued trust account check no. 9156 for \$10 in client matter 0443-1. Check no. 9156 cleared respondent's trust account on February 18, 2005. At that time, the balance of funds in respondent's trust account on behalf of client 0443-1 was only \$2.02. Payment of check no. 9156 thus created a \$7.98 shortage in the client 0443-1 ledger (\$2.02 minus \$10) and increased the overall shortage in respondent's trust account by the same amount.

l. Disbursement Without Deposit – #9827-1: On June 8, 2005, respondent issued his trust account check no. 9278 for \$169.75 to himself in client matter 9827-1. Because respondent had not deposited any funds into his trust account on behalf of client 9827-1, payment of check no. 9278 on June 10, 2005, created a \$169.75 negative balance in the client 9827-1 ledger and increased the overall shortage in respondent's trust account by the same amount.

m. Disbursement Without Deposit – #9915-1: On June 8, 2005, respondent issued his trust account check no. 9279 for \$59 to himself in client matter 9915-1. Because respondent had not deposited any funds into his trust account on behalf of client 9915-1, payment of check no. 9279 on June 10, 2005, created a \$59 negative balance in the client 9915-1 ledger and increased the overall shortage in respondent's trust account by the same amount.

n. Disbursement Without Deposit – #9935-1: On June 8, 2005, respondent issued his trust account check no. 9280 for \$100 to himself in client matter 9935-1. Because respondent had not deposited any funds into his trust account on behalf of client 9935-1, payment of check no. 9280 on June 10, 2005, created a \$100 negative balance in the client 9935-1 ledger and increased the overall shortage in respondent's trust account by the same amount.

o. Disbursement Without Deposit – #9977-1: On June 8, 2005, respondent issued his trust account check no. 9282 for \$108 to himself in client matter 9977-1. Because respondent had not deposited any funds into his trust account on behalf of client 9977-1, payment of check no. 9282 on June 10, 2005, created a \$108 negative balance in the client 9977-1 ledger and increased the overall shortage in respondent's trust account by the same amount.

10. As a result of the above transactions, the balance in respondent's trust account was continuously less than that necessary to cover aggregate client balances

during the entire audit period, in amounts ranging from \$6,057 (in May 2003) to at least \$15,786 (in July 2005).

11. During the period from at least February 2003 to at least June 2005, respondent failed to maintain the trust account books required by Rule 1.15, MRPC, as interpreted by Lawyers Professional Responsibility Board (LPRB) Opinion No. 9, including monthly trial balances and reconciliations.

12. Respondent's conduct in disbursing funds from his trust account that created shortages in individual client ledgers and increased the overall shortage in his trust account, and failing to perform the required trial balances and reconciliations, violated Rules 1.15(a) and (h), and 8.4(c) and (d), MRPC.

DISCIPLINARY HISTORY

13. Respondent has the following disciplinary history, which may be considered in determining the level of discipline to be imposed, pursuant to Rule 19(b)(4), RLPR.

a. On December 8, 1992, respondent was issued a Panel admonition for issuing trust account checks on behalf of clients in excess of the balance in his trust account for those clients, allowing the shortages caused by these excess disbursements and unreimbursed check and service charges to exist in his trust account and failing to maintain the required trust account books and records, in violation of Rule 1.15(b), (g) and (h), MRPC, and LPRB Opinion No. 9.

b. On May 6, 1996, respondent was issued an admonition for disbursing \$400 from funds escrowed in his trust account contrary to the terms of the escrow agreement covering the funds, in violation of Rules 1.15(b) and 1.7(b), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court disbarring respondent, 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: January 16, 2006.



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