

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against TRACY R. EICHHORN-HICKS,  
an Attorney at Law of the  
State of Minnesota.  
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**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:

1. Tracy R. Eichhorn-Hicks, hereinafter respondent, was admitted to practice law in Minnesota on September 26, 1975. Respondent currently practices law in Edina, Minnesota. Respondent's history of prior discipline includes:

a. A two-year private probation imposed June 5, 1992, for violating Rules 8.4(b) and 8.4(c), Minnesota Rules of Professional Conduct (MRPC), based on respondent's convictions for two acts of shoplifting.

b. An admonition issued May 13, 1994, for failing to pay costs of \$400 on behalf of a client for seven months and appropriating those funds for respondent's own use during that period of time, in violation of Rules 1.15(b)(4) and 8.4(c), MRPC.

FIRST COUNT

A. Misuse of Trust Account

2. The Director received multiple notices of overdrafts in respondent's trust account in late January and early February 1998. Over a period of almost one month, 17

separate checks were presented against insufficient funds. All of the checks were paid by the bank. At its lowest point, respondent's trust account had a negative bank balance on January 31, 1998, of \$836.42.

3. In response to the Director's several letters of inquiry regarding the overdrafts, respondent contacted the Director by telephone and asked for an extension of time to respond. Respondent wrote to the Director on February 21, 1998, and stated that there had been no client funds in the trust account since December 20, 1997. Respondent further stated, "I now recognize that I used the trust account as a general business account which I shouldn't have done." Nevertheless, between February 10 and February 21, 1998, respondent issued at least 18 checks from his trust account for his personal expenses. Respondent funded these checks by depositing earned fees in his trust account.

4. The Director wrote to respondent on February 24, 1998, and directed him to cease using his trust account for personal and business use immediately. The Director further instructed respondent to remove any personal or business funds that remained in the account except for a nominal balance to cover routine bank charges and check printing fees, and instructed respondent not to deposit earned fees to his trust account.

5. Respondent wrote to the Director on March 17, 1998, and stated that his trust account "is being used only for trust account business." To explain why he began using his trust account for his personal expenses, respondent stated that after leaving a position as an associate at a small firm in 1997, "I got sloppy and in the fall of 1997 began to extend the use of my trust account rather than my personal account for business and personal reasons." In fact, respondent had been using his trust account for personal expenses since July 1996. Respondent further stated, "This practice has ceased and I will be reopening a business account with one of several banks I have recently spoken with." In an additional letter dated April 16, 1998, respondent again

stated, "Needless to say I am now using the account for strictly interpreted 'trust' business."

6. Respondent deposited earned fees to his trust account on February 23, 1998 (\$800.00), March 5, 1998 (\$3,000.00), March 19, 1998 (\$900.00), and March 23, 1998 (\$652.50). Respondent also deposited no-fault settlements for clients Smith and Bolstad on March 5, 1998. Although both the earned fees and the client funds were distributed by March 21, 1998, respondent used the trust account to issue checks for personal expenses to Norwest Bank and his office landlord. Respondent continued to use his trust account as a personal checking account at least through May 19, 1998.

7. Based on the overdrafts and further investigation, including an audit of respondent's trust account for the period from January 1996 through February 1999, the Director determined that respondent had improperly used his trust account in the following ways:

a. At least as early as January 1996 respondent retained attorney's fees earned from personal injury settlements in his trust account for extended periods of time and commingled those fees with other client funds. Respondent also deposited in his trust account retainers that were earned upon receipt for representing clients in criminal matters.

b. Beginning in July 1996 respondent used his trust account for both personal and business uses, despite having access to a separate business account through December 1996. Respondent used his trust account to advance costs in client matters, to pay for business expenses, and to pay for a variety of personal expenses, including mortgage and contract for deed payments, utility bills, groceries, and other personal needs. Respondent also cashed trust account checks at grocery stores and other retail businesses.

c. Although respondent maintained a personal checking account from June 1997 through December 1997, respondent continued to use his trust account for personal expenses during this period.

8. Respondent was motivated to use his trust account for personal and business expenses because of his history of credit problems and threat of garnishment actions by creditors. Evidence of respondent's financial difficulties includes:

a. Respondent's personal account with Norwest Bank was closed in late 1997 because of overdrafts caused by repeated automatic debits without sufficient funds in the account to cover them.

b. Respondent's car was repossessed in February 1998 for respondent's failure to timely make payments.

c. Respondent's landlord forced respondent to pay his office rent by certified check in March 1998 because of respondent's failure to pay his rent when due in the past.

d. Respondent's consumer credit report, which respondent obtained from Experian in October 1998 pursuant to the Director's request, shows several delinquent credit accounts between 1995 and 1998.

e. Respondent was unable to open a separate checking account in May 1998 to accommodate his earned fees. At the Director's insistence, respondent opened a savings account in September 1998 to allow him to remove earned fees from his trust account.

9. In his April 16, 1998, letter to the Director, respondent stated:

In [the Director's March 20, 1998, letter] you indicate the Director believes I was using the account to avoid creditors. Please be advised I have no judgments against me, don't believe I've ever had judgments against me, have never had funds in any of my accounts attached for any reason and was not using the account to avoid creditors.

In fact, respondent did have judgments and liens filed against him:

f. Marquette Bank obtained a judgment against respondent in October 1992 for \$16,205.70, based on a promissory note on which respondent defaulted. Respondent satisfied the judgment in April 1993.

g. Larkin, Hoffman, Daly & Lindgren obtained a judgment against respondent by default in February 1993 based on costs the law firm had advanced on respondent's behalf for his work as a partition referee. Respondent satisfied the judgment in July 1993.

h. Respondent's credit report revealed two state tax liens filed in Hennepin County. The first lien, for \$4,400, was filed September 1992 and released April 1993. The second lien, for \$1,746, was filed February 29, 1996, and released June 6, 1996.

#### B. Misappropriation

10. Daniels Matter. Respondent deposited \$2,700 on behalf of his client Daniels on July 10, 1996. At least \$2,400 of these funds were designated for payment to Link Enterprises. Between July 10 and July 18, 1996, respondent disbursed 11 checks, payable to himself or in payment of personal expenses, which reduced the balance in respondent's trust account to \$5.17. Respondent deposited and retained earned fees on behalf of other clients on July 19 and 23, 1996, restoring the Daniels funds. Respondent issued a check to Link Enterprises on August 9, 1996.

a. In the check register respondent provided to the Director, respondent entered the two deposits made later in July as having been made on July 9, 1996, the same date entered for the Daniels deposit. The improperly dated deposits give the false impression that respondent held sufficient funds in his trust account throughout July 1996 to account for Daniels' funds.

11. Vang Her Matter. Respondent deposited a personal injury settlement of \$5,000 in his trust account on March 21, 1997, on behalf of client Vang Her. Of Her's two-thirds of the settlement, \$3,333.33, respondent promptly disbursed \$2,333.33 to Her. Respondent agreed to forward the remaining \$1,000 of the settlement to Her's doctor, Dr. Dan Boling.

a. Respondent did not promptly issue the check to Boling. Instead, respondent issued five consecutive checks to himself or for personal expenses

between March 27 and April 16, 1997, reducing the trust account balance to \$153.84. On April 28, 1997, respondent deposited funds on behalf of another client and used the fees earned on behalf of that client to issue a check to Dr. Boling on April 30, 1997, for \$1,000.

b. In the check register respondent provided to the Director's office, respondent entered an undated deposit for \$1,450. Respondent's trust account bank statement does not reflect such a deposit, nor does respondent's business checking account statement reflect a deposit in that amount. The deposit entry gives the false impression that there were sufficient funds in respondent's trust account to accommodate the payment to Dr. Boling and the checks respondent issued to himself for fees.

12. Smith Matter. Respondent deposited in his trust account a personal injury settlement on behalf of client Smith for \$7,500 on March 23, 1998. In his check register, respondent attributed \$4,700 to his client and the remainder, \$2,800.00, as firm funds. According to the register, the only other funds in the account on this date should have been nominal funds of \$67.82.

a. Between March 24 and March 27, 1998, respondent issued four consecutive checks, nos. 1670 through 1673, to himself for a total of \$5,000. All four of these checks cleared respondent's trust account by March 27, 1998. As a result, respondent's March 31, 1998, balance of \$2,505.02 was insufficient to account for client Smith's funds of \$4,700.00, which respondent had not yet disbursed.

b. Respondent used part or all of the funds he received from the last check in the series, no. 1673 for \$2,500, to finance a week-long family vacation to Mexico.

c. Respondent received and deposited on April 6, 1998, settlements for other personal injury clients totaling \$10,000. Respondent issued checks to client Smith and the other clients on April 9, 1998. Respondent distributed only

an additional \$200.00 to himself out of the April settlements, which had the effect of curing the misappropriation. Respondent continued to retain in his trust account, however, \$2,171.19 designated as firm funds.

d. On the check register that respondent provided to the Director's Office, respondent dated the entry for check no. 1673 as April 9, 1998, instead of the actual date, March 27, 1998. On respondent's register, the trust account balance does not fall below \$4,700, the amount owed to client Smith. Respondent created the ledger to give the Director the false impression that he held Smith's funds in the trust account throughout this period.

### C. Failure to Maintain Trust Account Books and Records

13. The Director's audit of respondent's trust account revealed the following deficiencies in respondent's trust account recordkeeping:

a. From January 1996 through July 1998, respondent failed to maintain client subsidiary ledgers, monthly trial balances of his subsidiary ledgers, or monthly reconciliations of his subsidiary ledgers and check register with the bank balance. Respondent also failed to annotate his checks and deposit slips with client names or the purposes of the checks. Because of the lack of ledgers and annotations and the numerous checks respondent issued for personal and business expenses, the Director could not determine whether respondent properly distributed funds to his clients during the audit period.

b. Between August 1998 and February 1999 respondent maintained client subsidiary ledgers, but did not create trial balances or conduct reconciliations. Many of respondent's subsidiary ledgers reflect missing dates, check numbers, payee information for disbursements, and source information for deposits. Two subsidiary ledgers reflect nominal overdisbursements, one ledger shows a nominal underdisbursement, and one fails to show any correction for a nominal bank error. Respondent's check register throughout the audit period reflects similar deficiencies.

14. Respondent falsely certified on his 1995, 1996, 1997 and 1998 attorney registration statements that he properly maintained his trust account.

15. Respondent's misuse of his trust account, failure to maintain proper trust account records, temporary misappropriation of funds, false certification on his attorney registration statements, and false statements to the Director violated Rules 1.15(a), (c), (h), and (i) (as renumbered August 1, 1999), 8.1(a)(1), 8.4(c) and 8.4(d), MRPC, and Lawyers Professional Responsibility Board Opinion Nos. 9 and 15.

WHEREFORE, the Director respectfully prays for an order of this Court disbarring or 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.

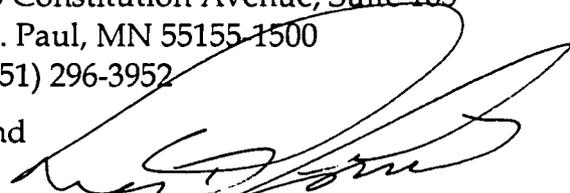
Dated: February 2, 2000.



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EDWARD J. CLEARY  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY  
Attorney No. 17267  
25 Constitution Avenue, Suite 105  
St. Paul, MN 55155-1500  
(651) 296-3952

and



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ERIC T. COOPERSTEIN  
SENIOR ASSISTANT DIRECTOR  
Attorney No. 210201

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

Dated: Feb. 23, 2000.



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JOHN G. BRIAN, III  
PANEL CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD