

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against TRACY R. EICHHORN-HICKS,  
a Minnesota Attorney,  
Registration No. 26128.  
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**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 September 26, 1975. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On May 19, 2005, respondent received an admonition for holding himself out as a licensed attorney from January 10, 2003, until February 20, 2003, and from January 11, 2004, until January 27, 2004, during which periods of time respondent was suspended by the Minnesota Supreme Court for failing to pay his lawyer registration fees, in violation of Rule 5.5, Minnesota Rules of Professional Conduct (MRPC).

B. On April 13, 2005, respondent received an admonition for failing to clearly communicate the basis and rate of his fee charged to his client, in violation of Rule 1.5,

MRPC, and for failing to diligently pursue his client's case and keep his client informed about the status of it in violation of Rules 1.3 and 1.4, MRPC.

C. On February 20, 2004, respondent received an admonition for failing to communicate the basis or rate of his fee charged to his client, who had retained respondent to represent the client's daughter in a criminal matter, in violation of Rule 1.5(b), MRPC.

D. On August 21, 2000, respondent was ordered suspended for one year by the Minnesota Supreme Court based upon his misuse of his trust account, failure to maintain proper trust account records, temporary misappropriation of funds, false certification on his lawyer registration statements and false statements to the Director in violation of Rules 1.15(a), (c), (h) and (i), 8.1(a)(1), 8.4(c), and 8.4(d), MRPC. *In re Eichhorn-Hicks*, 615 N.W.2d 356 (Minn. 2000). Respondent was reinstated by order of the Court on February 8, 2002, and placed on probation for three years.

E. On June 3, 1994, respondent received an admonition based upon his conduct in failing to pay a client's bill from his settlement proceeds and appropriating the funds to his own use for a period of time in violation of Rules 1.15(b)(4) and 8.4(c), MRPC.

F. On June 5, 1992, respondent was placed on private probation based upon violations of Rules 8.4(b) and (c), MRPC.

#### FIRST COUNT

##### Thomas Paul Smith Matter

1. In May 2005, Thomas Paul Smith ("Smith") pled guilty in Minnesota state court to illegally manufacturing methamphetamines. In July 2005, Smith was sentenced to 81 months in prison.

2. Respondent practices almost exclusively in the area of criminal law. In or about September 2006, Smith contacted respondent about several legal matters related

to his conviction, including Smith's wish to either withdraw his guilty plea or reduce his sentence. Respondent had not previously represented Smith.

3. Respondent told Smith that, for a nonrefundable fee of \$5,000 payable in advance, he would review his criminal conviction and provide an opinion about whether a petition for post-conviction relief had merit. Smith told respondent that he wished to retain him.

4. Smith borrowed \$5,000 from his friend, Larry Woodbury ("Woodbury"), to pay respondent's retainer fee. Woodbury delivered a \$5,000 check to respondent on October 6, 2006. Respondent did not prepare a written retainer agreement or other writing for Smith. Respondent did not deposit the \$5,000 into a trust account.

5. Smith arranged with another friend, Guy Peterson ("Peterson"), to deliver to respondent several bankers boxes of materials containing transcripts and other materials from Smith's criminal case. In late 2006, respondent told Smith that he had reviewed the materials and did not recommend filing a post-conviction petition because it had little merit and probably would not succeed.

6. Smith also requested respondent's assistance in several other matters related to his conviction and incarceration, including his dismissal from the "Challenge Incarceration Program" ("CIP") for disciplinary reasons, his wish to participate in chemical dependency and other early release programs, and the loss of his property in a forfeiture proceeding brought by Ramsey County. Respondent agreed to represent Smith in these other matters and began contacting officials with Ramsey County and the State of Minnesota.

7. In summer 2007, respondent told Smith that, in order to continue working on his case, he required an additional nonrefundable retainer fee of \$2,500. Smith agreed, and borrowed \$2,500 from Woodbury which Woodbury delivered to respondent. Respondent did not prepare a written retainer agreement or other writing for Smith. Respondent did not deposit the \$2,500 into a trust account.

8. Smith consented to respondent discussing his case with Peterson. In late 2007 or early 2008, respondent told Peterson that he needed an additional \$5,000 in order to continue representing Smith. Peterson offered to pay respondent \$2,500.

9. Because Peterson did not have \$2,500 at that time, he offered to allow respondent to take, as security for payment of the \$2,500, temporary possession of the title to a car that was owned by someone who owed Peterson money. Peterson told respondent that the car was going to be sold and respondent would be paid from the sale proceeds. Respondent agreed, and took possession of the title.

10. In or about April 2008, the car was sold. Peterson did not have \$2,500, however, and offered respondent \$1,800 as full payment. Respondent agreed, and accepted \$1,800 from Peterson.

11. On March 24, 2008, Smith submitted a complaint against respondent to the Director's Office. Smith's allegations included that he was dissatisfied with the volume and quality of work for which respondent had charged him \$7,500.

12. Smith attached to his complaint several letters respondent had exchanged with Ramsey County and the State of Minnesota regarding forfeiture proceedings and Smith's wish to be reinstated into the CIP program or placed into another early release program.

13. Respondent submitted a response dated May 8, 2008, to Smith's complaint. Respondent disclosed that he had received a nonrefundable fee of \$5,000 to review Smith's case and provide an opinion about whether Smith had grounds to file a post-conviction relief petition. Respondent's response also included the following statement:

Some time in the summer of 2007, I indicated to Mr. Smith that if I were to keep working for him I would need another \$2,500.00 non refundable [sic] retainer to look at the matters of the forfeiture and time already spent on his ouster from the boot camp program.

Respondent failed to mention that he received an additional \$1,800 from Peterson on Smith's behalf.

14. Smith's complaint was forwarded to the Fourth District Ethics Committee (DEC) for investigation. On August 4, 2008, the DEC completed its report. The report references the \$5,000 and \$2,500 payments respondent received for representing Smith, but not the \$1,800 payment. The DEC recommended that respondent receive an admonition based on violations of Rule 1.5(b), MRPC, relating to his failure to communicate in writing his agreement with Smith to receive a nonrefundable retainer fee.

15. A copy of the DEC's report was forwarded to respondent and he was invited to respond to it. Respondent did not respond or notify the Director's Office that, contrary to the findings of the report, he actually received \$9,300 for representing Smith, not \$7,500.

16. On September 16, 2008, the Director wrote to respondent regarding the DEC's conclusion that respondent violated Rule 1.5(b), MRPC. Respondent was requested to provide copies of his retainer agreements with Smith, if any, and copies of all correspondence and notes of phone conversations or meetings with Smith "in which the scope of [respondent's] representation and the basis of [respondent's] attorney fees and expenses were discussed or mentioned."

17. By letter dated September 24, 2008, respondent responded to the Director's September 16, 2008, letter. Respondent discussed the \$5,000 and \$2,500 payments that he received in Smith's case, but failed to mention the \$1,800 payment.

18. By letter dated October 22, 2008, the Director asked respondent to explain the \$1,800 payment from Peterson and why it was not previously disclosed during the disciplinary investigation. In a response dated October 29, 2008, respondent acknowledged, for the first time, receiving the payment and added that it was only a partial payment toward the full \$2,500 and not a compromised payment. Respondent

stated that he had not previously disclosed the payment because Smith's complaint "makes reference to events occurring around the initial \$7,500.00 payments," and that respondent "responded to all the issues which Mr. Smith chose to raise."

19. Respondent's conduct in receiving advance fee payments in Smith's case on two occasions without depositing the funds in a trust account violated Rules 1.5(b) and 1.15(c)(5), MRPC.

20. Respondent's conduct in failing to disclose receipt of an \$1,800 payment from Peterson on behalf of Smith during the disciplinary investigation violated Rule 8.1(b), 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: March 12, 2009.



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