FILE NO. ____________

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against SHANNON M. FITZPATRICK,
a Minnesota Attorney,
Registration No. 345349.

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 18, 2005. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Trust Account Shortages, Commingling and Failure to Maintain Required Books and Records

1. On June 19, 2009, respondent's Wells Fargo Bank trust account number xxx-xxx1325 ("respondent's trust account") became overdrawn. Wells Fargo Bank reported the overdraft to the Director pursuant to Rule 1.15(j) through (o), Minnesota Rules of Professional Conduct (MRPC).

2. In a July 7, 2009, response to the Director's inquiry regarding the overdraft, respondent explained that the overdraft had been the result of her failure to

transfer four unearned retainers totaling $4,100 from her business account into her trust account. Respondent deposited the retainers into her business account after banking hours via an automated teller machine ("ATM"), intending to transfer the funds electronically into her trust account the next day during business hours. Respondent neglected to transfer the funds to her trust account. Respondent also acknowledged unknowingly making various duplicate transfers of earned retainers from her trust account into her business account, which she later corrected. In fact, the Director's review of the March to June 2009 trust account books and records respondent enclosed with her response reflected significant shortages in the account and indicated that respondent had not been reconciling the account in the required manner.

3. On October 1, 2009, the Director wrote to respondent. The Director identified the shortages in respondent's trust account and asked respondent to produce her complete July through September 2009 trust account books and records, including monthly trial balances and reconciliations. At the time of the Director's October 1, 2009, letter, or shortly thereafter, the Director provided respondent with a brochure describing and illustrating the trust account bookkeeping and other requirements of Rule 1.15, MRPC, as interpreted by Appendix 1 thereto.

4. Respondent responded by letter dated October 7, 2009. Respondent candidly admitted that she had made a number of errors and made note of the errors in the materials she submitted. The July through September 2009 trust account books and records respondent enclosed with her letter continued to reflect shortages in the account and a failure to properly reconcile the account. The Director converted the trust account overdraft inquiry into a formal disciplinary investigation.

5. On October 22, 2009, the Director issued to respondent a notice of investigation requesting her complete June 2008 through March 2009 trust account books and records.

6. Based on the trust account books and records respondent produced in response to the Director's notice of investigation, and the trust account books and records respondent had produced in the context of the overdraft inquiry, the Director prepared an audit of respondent's trust account for the period December 2007 to November 2009. The Director's audit reflected the following shortages and deficiencies:

a. During the period July to September 2008, the balance in respondent's trust account was continuously short of that necessary to cover aggregate client balances. This shortage ranged in amount from $659 to $7,505 and was the result of respondent's transfer of funds from her trust account into her business account in amounts that exceeded the funds she had deposited into her trust account for clients. For example, on July 2, 2008, respondent's trust account balance included $1,315 for respondent's client Tran. On that date, respondent transferred $6,315 from her trust account into her business account, attributing the transfer to Tran. Because the amount of the transfer exceeded by $5,000 the amount of Tran funds in the account, a negative balance was created in the Tran account and an overall shortage in respondent's trust account resulted.

b. In early September 2008, respondent eliminated the shortage in her trust account, primarily through the deposit and retention of earned fees in the account.

c. For approximately one month following her elimination of the trust account shortage, respondent maintained a balance in her trust account that was appropriate, given the amount of aggregate client funds in the account.

d. During the period October 17, 2008, to July 7, 2009, however, the balance in respondent's trust account was once again continuously short of that necessary to cover aggregate client balances. This shortage ranged in amount from $1,095 to $4,573 and was primarily the result of an error stemming from unfamiliarity with how to handle a settlement in a contingency fee matter. This resulted in respondent's transfer of funds from her trust account into her business account in amounts that exceeded the funds she had deposited into her trust account for clients.

e. As a result of this shortage, and as noted above, respondent's trust account became overdrawn on June 19, 2009.

f. By July 7, 2009, respondent had eliminated both the overdraft and the shortage in her trust account through the transfer of retainers she had deposited into her business account and failed to transfer into her trust account and the retention of earned fees in the trust account.

g. During the period July 20 to October 5, 2009, however, the balance in respondent's trust account was once again continuously short of that necessary to cover aggregate client balances. This shortage, which ranged in amount from $396 to $749, was the result of another bookkeeping error related to a contingency fee matter. Respondent issued a check to a third party on behalf of a client from her trust account, and the amount of that check exceeded the amount of funds held in the client's subsidiary account.

h. On October 5, 2009, respondent transferred funds from her business account into her trust account to eliminate the shortage.

i. During the period October to November 2009, the end of the Director's audit period, the balance in respondent's trust account was appropriate, given the aggregate balance of client funds in the account.

7. On May 19, 2011, the Director asked respondent to produce her complete trust account books and records for the period December 2009 to May 2011, including monthly trial balances and reconciliations, to enable the Director to confirm that she had been properly maintaining those books and records during the pendency of the Director's investigation.

8. Respondent produced her December 2009 to May 2011 trust account books and records to the Director on June 17, 2011. Respondent did not, however, include monthly trial balances with her submission.

9. On June 21, 2011, the Director wrote again to respondent and requested her December 2009 to May 2011 monthly trial balances. Respondent produced the requested trial balances on June 27, 2011.

10. Based on the trust account books and records responded submitted on June 17 and 27, 2011, the Director audited respondent's trust account for the period December 2009 to June 2011. The Director's audit reflected that, during the period December 2009 to March 2011, the balance in respondent's trust account was appropriate, given the aggregate client balances in the account. On March 2, 2011, however, respondent transferred the sum of $120 from her trust account into her business account in payment of fees she had earned in the Teigen matter. As of March 2, 2011, however, there were no Teigen funds in respondent's trust account and the transfer created a negative $120 balance in the Teigen subsidiary ledger and a $95 overall trust account shortage. Respondent deposited funds to correct this shortage on June 27, 2011.

11. In addition, on May 20, 2011, respondent prematurely transferred $3,584 from her trust account into her business account, attributing the transfer to her client Parson. On May 20, 2011, however, respondent had not deposited any Parson funds into her trust account and the transfer created a $3,584 negative balance in the Parson subsidiary ledger and increased the overall shortage in respondent's trust account by that amount. On May 25, 2011, respondent deposited $4,000 in Parson funds into her trust account, thus eliminating the negative balance in the Parson subsidiary ledger and that portion of the overall trust account shortage caused by the Parson transfer.

12. During the period from at least December 2007 to June 2011, respondent failed to contemporaneously maintain the trust account books and records required by

Rule 1.15, MRPC, as interpreted by Appendix 1 thereto. In particular, respondent failed to maintain contemporaneous trial balances and reconciliations.

13. The trust account shortages described in paragraphs 6, 11 and 12 above constituted the misappropriation of client funds. Respondent's misappropriation was not intentional, but, rather, the result of her failure to properly reconcile her trust account.

14. The Director has reviewed respondent's July and August 2011 trust account books and records. Those materials reflect elimination of the shortage caused by the Teigen transfer and that respondent's trust account was in proper balance during that period. In addition, respondent states that she has hired a bookkeeper to assist her in maintaining her trust account books and records in the future.

15. Respondent's conduct in failing to maintain the required trust account books, resulting in shortages in her trust account and the unintentional misappropriation of client funds, violated Rule 1.15(c)(3) and (h), MRPC, as interpreted by Appendix 1 thereto.

<u>SECOND COUNT</u>

<u>Deposit of Client Funds into Business Account/Failure to Transfer Client Funds from Business Account</u>

16. On multiple occasions during the period covered by the Director's audit, i.e., December 2007 to June 2011, respondent deposited client funds into her business account and subsequently transferred the funds from her business account into her trust account.

17. On some of these occasions, respondent failed to promptly transfer these client funds into her trust account. For example, on or about March 18, 2009, respondent received $1,000 in client funds from her client Johnson and deposited those funds into her business account. (Respondent did so because her bank was closed, making it necessary for her to make the deposit via an ATM, and she did not have ATM

access to her trust account.) Respondent failed to transfer the Johnson funds into her trust account until June 24, 2009.

18. Respondent's conduct in depositing client funds into her business account and, on occasion, failing to transfer those funds into her trust account, violated Rule 1.15(a) and (c)(5), 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: Nov. 3, 2011.

MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and

ROBIN J. CRABB
ASSISTANT DIRECTOR
Attorney No. 387303