

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against MELANIE ANNE FLORES,
a Minnesota Attorney,
Registration No. 290865.

**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 May 7, 1999. Respondent currently practices law in Roseville, Minnesota. Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Misappropriation of Firm Funds

1. In March 2001 the law firm of Smith, Paulson, O'Donnell & Associates (hereinafter "SPO") hired respondent as an associate to handle its family law practice. Respondent's employment agreement with SPO limited her compensation to a percentage of the fees collected on her files. The agreement further obligated respondent to "devote her full time to the clients of [SPO]," and prohibited respondent from "seek[ing] employment outside of [SPO]." Finally, the agreement provided that, "All files and accounts receivable belong to [SPO]."

2. In December 2001 Dianne O'Neill (hereinafter "O'Neill") telephoned SPO to inquire about the cost of preparing Qualified Domestic Relations Orders (QDROs). (O'Neill was already divorced from John Sjolander (hereinafter "Sjolander") and

wished to effectuate the division of Sjolander's pension and retirement benefits.) Either respondent or the firm receptionist quoted O'Neill a \$1,000 flat fee and scheduled a December 12, 2001, meeting to further discuss the matter.

3. Both O'Neill and Sjolander attended the December 12, 2001, meeting. They explained to respondent that there were three pension/retirement plans at issue: a Cummins Engine Company, Inc., retirement/savings plan (hereinafter "Cummins plan"); an Onan Corporation pension plan (hereinafter "Onan plan"); and a Phoenix Investment IRA (hereinafter "Phoenix IRA").

4. During the December 12, 2001, meeting, O'Neill signed an SPO "Flat Fee Legal Fee Agreement" that required a \$1,000 flat fee for preparation of the three QDROs believed at that time to be necessary (Exhibit 1). The fee agreement did not specify that the flat fee was earned upon receipt. SPO policy required that it be deposited into the firm's trust account. Sjolander gave respondent his \$1,000 check, leaving the payee line blank for respondent to fill in the firm name.

5. At some point after O'Neill and Sjolander left her office, respondent filled in the payee line on Sjolander's check to read, "Melanie A. Flores Esquire, SPO" (Exhibit 2). Respondent then deposited the check into her personal account, thus misappropriating the proceeds.

6. SPO policy requires its lawyers to forward client intake information to a staff member for assignment of a file number and entry to the firm's file tracking system. Respondent did not, at that time, forward O'Neill's intake information or otherwise request the opening of a file in her name in the firm's file tracking system.

7. Thereafter, respondent performed the following work on the O'Neill/Sjolander QDROs:

a. On January 29, 2002, respondent sent a proposed QDRO to the Cummins plan administrator.

b. On February 1, 2002, respondent sent a proposed QDRO to the Onan plan administrator.

c. On February 12, 2002, Cummins wrote to respondent indicating its approval of the proposed QDRO.

d. On February 18, 2002, respondent sent a proposed QDRO to the Phoenix IRA plan administrator.

e. On March 4, 2002, respondent signed a pleading entitled "Confidential Information Form."

f. On March 4, 2002, respondent submitted the Cummins plan QDRO to the Sherburne County District Court for review and approval. The court apparently approved the QDRO on March 8, 2002.

g. On March 26, 2002, Phoenix Investment wrote to respondent and advised that a QDRO was not required to transfer Sjolander's IRA. On April 1, 2002, respondent forwarded Phoenix Investment's letter to O'Neill.

8. Respondent used SPO letterhead for all of the letters referenced above; she used an SPO signature block on each pleading. In addition, respondent worked on the letters and pleadings during regular business hours using SPO resources.

9. On March 13, 2002, respondent was hospitalized as a result of complications related to her pregnancy. Following her hospitalization, respondent's doctor placed her on bed-rest, and recommended that she not return to work for the duration of her pregnancy. (Respondent's baby was born on April 20, 2002.)

10. At or about the time of her hospitalization, SPO printed a list of respondent's files from its file-tracking system, identified on the list the firm lawyer who would be handling the matter in respondent's absence and faxed the list to respondent for review. Respondent reviewed the list and faxed it to SPO with her notations concerning the cases. Respondent stated, "I have also indicated which files I currently have with me at home and which files I would like to draft upcoming

documents on, if this is okay with the new holder of the file." The O'Neill matter did not appear on the list printed by SPO and respondent made no mention of it in her responsive fax transmission.

11. Sometime during the weekend of March 16 and 17, 2002, respondent visited the SPO offices. At that time, respondent completed an intake form for the O'Neill matter (Exhibit 3). Respondent did not inform the firm that she had received a \$1,000 flat fee for the O'Neill/Sjolander QDROs or provide the firm with a copy of the retainer agreement. Instead, respondent wrote an ambiguous note on the intake form implying that \$500 was due from the clients. Respondent also removed materials regarding various client matters, including the O'Neill matter, on which she intended to work at home.

12. On approximately March 18, 2002, an SPO staff member discovered the O'Neill intake form, noted the date and assigned file number and entered the matter into the SPO file-tracking system. *See* Exhibit 3. No O'Neill file materials were discovered at that time.

13. In the days and weeks that followed, respondent continued to work on various client files at home and an SPO paralegal shuttled file materials to and from respondent's home. In or about late April 2002, some materials related to the O'Neill file were returned to the firm and were united with the client intake form. All of these materials were forwarded to SPO partner, Gerald Paulson.

14. Because the file materials he received were incomplete, it was very difficult for Paulson to determine the exact nature and status of the O'Neill/Sjolander matter. Paulson eventually discovered that the district court had approved the Cummins QDRO, but had mistakenly mailed it to O'Neill's former counsel. At Paulson's request, the court faxed him a copy of the approved QDRO on April 26, 2002. Paulson received a certified copy of the QDRO on May 23, 2002, and promptly forwarded it to Cummins.

15. During the period April to June 2002, after receiving telephone inquiries from O'Neill and Sjolander, who themselves had been unable to reach respondent, and finding the O'Neill file materials to be incomplete, SPO partners, including Paulson and Patrick O'Donnell, attempted to reach respondent by telephone to discuss the matter. Respondent did not return Paulson's and O'Donnell's calls. Only after messages were left with respondent's husband did Paulson/O'Donnell receive a response from respondent. At that time, a June 27, 2002, meeting with respondent was scheduled.

16. On June 27, 2002, respondent visited SPO and met with Paulson. Respondent acknowledged that materials were missing from the O'Neill file and stated that she would attempt to locate them at her home. Respondent removed her personal effects from the SPO office and indicated that she likely would not be returning to work.

17. At approximately 2:00 a.m. on or about June 28, 2002, respondent left a voicemail message for Paulson. Respondent stated that she had "really screwed up" the O'Neill matter and would mail to him the additional O'Neill file materials she had found at her home.

18. On July 3, 2002, SPO received from respondent the additional O'Neill file materials and a \$1,000 cashier's check dated July 1, 2002, drawn on respondent's Honeywell Federal Credit Union. Respondent had blacked out the remitter's name and address on the cashier's check.

19. On July 16, 2002, SPO informed respondent that it considered her employment to have been terminated on June 27. With respect to the O'Neill/Sjolander matter, SPO stated:

... we are still trying to sort through your original agreement with the client as to the charges and work to be done, whether that initial agreement was modified and how. Toward that end, please send us any original retainer agreement you had signed with the client in this case, as well as your written recollection of what the initial agreement was, if that agreement changed, and why the initial client retainer (sic) deposited in your personal checking account.

Respondent did not respond.

20. Respondent's conduct in misappropriating the O'Neill retainer violated Rules 1.15(a) and 8.4(c) and (d), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

False Statements to Conceal Misappropriation

21. In an effort to conceal her misappropriation of the O'Neill retainer respondent made a series of false statements in her written response to the complaint herein, during a February 6, 2003, interview with the District Ethics Committee (DEC) investigator and during a July 8, 2003, sworn statement in the Director's Office, including the following:

From December 3, 2002, Written Response:

Respondent represented that during her December 12, 2001, meeting with O'Neill and Sjolander:

- "[Respondent] . . . quoted her usual hourly rate to the [sic] Ms. O'Neill. Ms. O'Neill was unable to pay [respondent's] established rates and Mr. Sjolander agreed to help her with the fee, but was also unable to pay the firm's established rates."
- "After discussing the matter, [respondent] agreed to do the necessary work to prepare and obtain necessary approvals of the QDROs for a flat fee of \$500 per QDRO, personally, outside of the law firm."
- "Because it was a flat fee matter, [respondent] agreed with Mr. Sjolander that the payment would be made directly to her."
- "Mr. Sjolander wrote his check to [respondent] for \$1,000 to cover the first two QDROs."

From February 6, 2003, Interview with DEC Investigator:

- "[Respondent] stated that no written retainer agreement was entered into."
- "[Respondent] verified the statement in Finch's letter that based on cost of the firm hourly, which O'Neill could not afford, she [respondent] agreed with O'Neill to take the case personally at a flat rate."

- “[Respondent] said she did not recall who filled out the Sjolander check to her, but she said that it was definitely not her who did so.”

From July 8, 2003, Sworn Statement of Respondent:

- Page 12, beginning at line 19:
 - Q. Any particular reason why you would take a private case rather than go through the firm at that point?
 - A. Well, only because when I talked to Dianne and Jack, who is her – her ex-husband but they came together when I met with them, and she didn’t have any money and couldn’t pay and he didn’t have – he was – I think he was just retiring and was going to be on a fixed income, and he really pushed to have a lower amount than the standard retainer fee.
- Page 15, beginning at line 23:
 - A. . . . I remember it wasn’t Dianne. It was Jack saying, ‘That’s too much. We can’t do that, and she doesn’t have any money and I have to pay for this, and what can we do, and can’t you – you know, can’t you come down on this and give us a deal? I mean, couldn’t you do this?’ and things of that nature, so I remember that
- Page 22, line 24:
 - Q. And did you work on it during ordinary business hours?
 - A. No, I did not.

* * *

 - A. -- that I think I may have made a phone call or two to a plan administrator and that’s when I started saying, ‘This isn’t working. This doesn’t make any sense. This is crazy,’ but I did do all the drafting and wrote the letters and everything like that on my home computer in the evening, and I have those documents on my home computer still, and I don’t believe that they’re even on the system at the firm.

22. Respondent’s false statements to the Director violated Rules 8.1(a) and 8.4(c) and (d), MRPC.

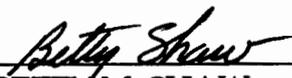
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: December 29, 2007



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