FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against JONATHAN JAY FOGEL, a Minnesota Attorney, Registration No. 257862.	**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 27, 1995. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On January 14, 2009, respondent was issued an admonition for seeking modification of a court order without notice to his client of his intent to seek modification and obtaining his client's informed consent, confirmed in writing, in violation of Rules 1.4(a)(1) and 1.7(a)(2), Minnesota Rules of Professional Conduct (MRPC).

FIRST COUNT

1. At all times relevant, respondent has maintained M&I Marshall & Ilsley Bank (M&I Bank) trust account number xxxx6055.

2. On April 16, 2009, respondent's trust account became overdrawn. Pursuant to Rule 1.15(j) through (o), MRPC, M&I Bank reported the overdraft to the Director.

3. On April 23, 2009, the Director wrote to respondent and requested an explanation for, and various trust account books and records related to, the overdraft.

4. In response, respondent provided various trust account books and records and explained that the overdraft resulted from a delay in transferring the unearned portion of client credit card payments from respondent's operating account to respondent's trust account.

5. Respondent's explanation and the trust account books and records he produced indicated that, among other things, respondent was not reconciling his trust account and that, for some period of time, the balance in respondent's trust account may not have been sufficient to cover aggregate client balances.

6. For these reasons, the Director converted the informal overdraft inquiry into a formal disciplinary investigation and requested respondent produce his trust account books and records for a more expansive period of time. The Director audited respondent's trust account for the period of January 1, 2008, through December 31, 2010, hereinafter, review period.

7. The Director's audit identified deficiencies in respondent's trust accounting. Most significantly, respondent withdrew, one or more times each month, earned fees and client costs from multiple client subsidiary ledgers by way of electronic transfers out of the trust account to his business account. Respondent did not confirm that sufficient funds were held in trust for each involved client prior to completing these transactions resulting in shortages in numerous individual client subsidiary ledgers and an ongoing aggregate shortage in the trust account.

8. As of January 1, 2008, respondent's trust account was short $22,464.10. On February 7, 2008, respondent deposited $23,910.37 to correct a duplicate October 2007 billing and reduce the aggregate trust account shortage to $18,867.82. Respondent's

continued unfunded or underfunded fee withdrawals in the succeeding months caused the aggregate trust account shortage to increase to $16,784.73 by December 31, 2008.

9. On January 22 and July 16, 2008, respondent mistakenly withdrew trust monies to fund employee flexible spending transactions. Since respondent did not on January 22 and July 16, 2008, hold any personal funds in the trust account, respondent's erroneous employee flexible spending withdrawals increased the overall trust account shortage and constituted negligent misappropriation of client funds.

10. Between January 1, 2009, and April 14, 2009, the aggregate shortage in respondent's trust account continued to increase. By April 14, 2009, respondent's client subsidiary ledgers totaled $82,567.01 when respondent held only $44,187.17 in the trust account, creating a $38,379.84 aggregate shortage in the trust account.

11. On April 16, 2009, respondent depleted all funds held in the trust account by disbursing check no. 1503 in the amount of $24,090.36 to a client and then electronically transferring to his business account $24,912.04 in earned attorney fees and client costs, among other transactions. As a result, M&I Bank reported a negative balance of $3,653.37, issued an overdraft notice to respondent, and notified the Director's Office of the overdraft. *See* ¶ 2 above.

12. On May 20, 2009, respondent deposited $48,628.87 to cure the shortage and create an $11,329.05 surplus in the trust account. On that same date, respondent also processed two electronic transfers ($19,823.74 and $15,430.03) of earned attorney fees and client costs from multiple individual client subsidiary ledgers to his business account. Because respondent did not have sufficient funds on deposit for all involved clients on May 20, 2009, respondent caused or increased existing negative balances in multiple client subsidiary ledgers. As of the end of business on May 20, 2009, respondent's trust account was short $3,430.57.

13. From May 21, 2009, through at least December 27, 2010, respondent continued to electronically transfer earned attorney fees and client costs to his business account when he did not hold in his trust account client funds sufficient to fully fund each client transaction. Respondent's failure, over the course of the review period, to

fully fund all electronic client trust account transfers constituted negligent misappropriation of other client funds.

14. In addition to the above described electronic transfers, respondent also disbursed multiple trust account checks to pay client costs and client refunds which were not fully funded. Respondent's issuance of unfunded or underfunded trust account checks constituted negligent misappropriation of client funds.

15. As of December 31, 2010, respondent's trust account was short $58,110.27. On April 29, 2011, May 12, 2011, and January 31, 2012, respondent deposited personal funds totaling $58,110.27 to fully cure the aggregate trust account shortage.

16. For the period of at least January 1, 2008, through July 31, 2010, respondent failed to maintain all trust account books and records required by Rule 1.15, MRPC, as interpreted by Appendix 1 thereto. In particular, respondent failed to maintain a complete and accurate check register, complete and accurate client subsidiary ledgers, monthly subsidiary ledger trial balances and monthly reconciliations of his checkbook balance, the subsidiary ledger trial balance total and the adjusted bank statement balance.

17. Respondent's conduct from at least January 1, 2008, through December 27, 2010, of allowing shortages to exist in the trust account, resulting in negligent misappropriation of client funds, violated Rule 1.15(a), MRPC.

18. Respondent's use of his client trust account to process non-client employee flexible spending expenses violated Rule 1.15(a)(1), MRPC.

19. Respondent's conduct in failing to maintain the required trust account books and records, violated Rule 1.15(c)(3), MRPC, and Appendix 1 thereto.

SECOND COUNT

20. From at least January 1, 2008, through December 27, 2010, respondent failed to make reasonable efforts to ensure his firm had adequate measures in effect giving reasonable assurance that his nonlawyer assistants' conduct was compatible with his professional obligations. Respondent's failure to ensure the trust account was

maintained pursuant to Rule 1.15, MRPC, and Appendix 1 thereto, resulted in the negligent misappropriation described above.

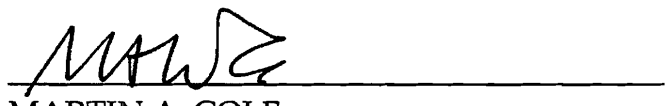
21. By letter dated March 11, 2011, respondent stated that he suspected his prior bookkeeper forged client signatures on certain trust account checks, failed to deposit all client funds into the trust account, and made incorrect or false entries to his business and trust account books and records to conceal theft of client funds from at least twelve different client accounts.

22. Respondent terminated his bookkeeper, but did not implement procedures or otherwise prevent further negligent misappropriation during the review period.

23. Respondent's failure to adequately supervise his nonlawyer trust accounting staff violated Rule 5.3(a) and (b), MRPC.

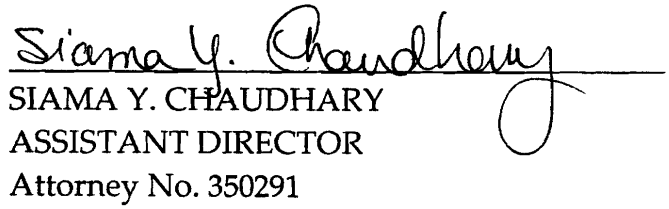
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: February 6, 2012.



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



SIAMA Y. CHAUDHARY
ASSISTANT DIRECTOR
Attorney No. 350291