FILE NO. A09-877

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against ALBERT A. GARCIA, JR., a Minnesota Attorney, Registration No. 219472.	**AMENDED PETITION FOR REVOCATION OF PROBATION AND FOR FURTHER 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 pursuant to Rule 12(a), Rules on Lawyers Professional Responsibility (RLPR), and pursuant to the Court's January 23, 2008, order in the above matter.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 25, 1991. Respondent currently practices law in Minneapolis, Minnesota.

DISCIPLINARY HISTORY

A. On February 8, 2006, respondent was suspended from the practice of law, effective February 22, 2006, for a period of 30 days for failure to supervise a non-lawyer employee resulting in a forged signature on a document being filed with the district court and failure to refund the unearned portion of a client retainer in violation of Rules 1.15(c)(4), 1.16(d), 3.4(b), 5.3(b) and (c), and 8.4(c) and (d), Minnesota Rules of Professional Conduct (MRPC).

B. On March 22, 2006, respondent received an admonition for failing to place an advance fee payment into his client trust account and failing to comply with the requirements for a nonrefundable fee agreement, in violation of Rule 1.15, MRPC.

C. On January 23, 2008, this Court publicly reprimanded respondent and placed him on two years of probation, for inclusion of unethical terms in a fee agreement, failure to promptly return a substitution of counsel form following his suspension in 2006, and making an unauthorized charge to a client's credit card in violation of Rules 1.4, 1.5(a) and (b), 1.16(d) and 8.4(c) and (d), MRPC. *In re Garcia*, 746 N.W.2d 126 (Minn. 2008). A copy of the Court's order is attached as Exhibit 1.

INTRODUCTION

Among the conditions of respondent's January 23, 2008, probation were the following:

a. Respondent shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation and promptly respond to the Director's correspondence by the due date. Respondent shall provide to the Director a current mailing address and shall immediately notify the Director of any change of address. Respondent shall cooperate with the Director's investigation of any allegations of unprofessional conduct which may come to the Director's attention. Upon the Director's request, respondent shall provide authorization for release of information and documentation to verify compliance with the terms of this probation; and

b. Respondent shall abide by the Minnesota Rules of Professional Conduct.

Respondent has committed the following unprofessional conduct warranting revocation of his probation and further public discipline:

FIRST COUNT

Misappropriation, False Statements to a Client and Non-Lawyer Trust Account Signatory

1. For many years, respondent represented Thomas Rodrigue in a variety of personal and business matters, both as a lawyer and a lobbyist.

2. In November 2007, Rodrigue received a $27,000 inheritance check from the estate of a deceased relative. Rodrigue wanted to ensure the availability of the funds for possible investment in a biodiesel operation so he asked respondent to hold the funds in respondent's trust account.

3. On November 13, 2007, respondent deposited Rodrigue's $27,000 inheritance check into his trust account at US Bank. On that date, and at Rodrigue's direction, respondent issued his trust account check no. 2578 in the amount of $5,000 to Gary Rodrigue, Thomas Rodrigue's brother, in repayment of a loan.

4. Respondent issued the following additional trust account checks that were paid with the proceeds of Rodrigue's inheritance check:

DATE ISSUED	CHECK NO.	AMOUNT	PAYEE
11/14/2007	2577	$ 19,759.95	Golden Valley Country Club
11/15/2007	2579	$ 973.00	Lena Garcia (respondent's daughter)
11/20/2007	2580	$ 1,400.00	Lena Garcia

5. These checks were not issued on Rodrigue's behalf. Rodrigue was not aware of these checks and did not authorize respondent to issue them. Respondent's issuance of the above checks constituted misappropriation of Rodrigue's funds.

6. On several occasions during the years 2006 and 2007, respondent allowed a non-lawyer to sign his name to checks issued on his trust account, including at least one of the checks identified above.

7. Respondent did not return any portion of the Rodrigue funds to his trust account at any time during the period through at least February 2009.

8. Rodrigue was involved in a legal dispute with Q.R. In late 2007 or early 2008, Rodrigue settled his dispute with Q.R. and directed respondent to issue a $7,000 check to Q.R. against the proceeds of his inheritance. After repeated requests by

Rodrigue, respondent eventually made a $7,000 payment to Q.R. Respondent did not make this disbursement from his trust account because, as noted above, he had misappropriated the Rodrigue funds. The account from which respondent made the payment and the source of the funds constituting the payment are unknown.

9. Thereafter, Rodrigue made repeated requests to respondent to distribute to him the inheritance funds he understood respondent was holding in his trust account.

10. In response to some of Rodrigue's requests, respondent stated that he had invested Rodrigue's funds and that it would take a month to retrieve them. In response to other of Rodrigue's requests, respondent told Rodrigue that he was working on a drug case with the United States government and that he expected compensation for those services, from which he would repay Rodrigue. Respondent's statements in these regards were false and were made to conceal respondent's misappropriation of Rodrigue's funds.

11. On August 1, 2008, respondent sent Rodrigue a letter claiming to have invested $17,000 of Rodrigue's inheritance funds in "American Funds Growth Fund of America" (hereinafter "American Funds"). Respondent stated that if the funds were released they would be captured by the IRS due to a July 10, 2008, tax lien. Respondent told Rodrigue that the IRS had agreed to sign a release and that the funds would be available in ten working days. Finally, respondent further claimed that he had advanced Rodrigue $1,200 leaving $15,800 to be repaid from the American Funds account.

12. Respondent's statements that he had invested Rodrigue's funds in American Funds and that he was unable to access the funds because they would be captured by the IRS were false and made with the purpose of concealing respondent's misappropriation of Rodrigue's funds.

13. In late August 2008, Rodrigue filed a complaint against respondent with the Director. Thereafter, respondent made a series of payments to Rodrigue totaling approximately $9,500, primarily in the form of cash.

14. Respondent's conduct violated Rules 1.15(c)(4) and (j), and 8.4(c) and (d), MRPC, and the Court's January 23, 2008, order.

SECOND COUNT

False Statements to the Director and Coercing a Witness to Give False Testimony

15. On September 10, 2008, the Director sent respondent a notice of investigation of Rodrigue's complaint. The notice of investigation requested respondent's written response to Rodrigue's complaint.

16. On October 27, 2008, respondent faxed the Director his response to the notice of investigation. The response contained no substantive response to Rodrigue's complaint. Instead respondent stated, "I never represented Mr. Rodrigue in any personal matter so there is no file to forward to your office." Respondent also stated, "I join Mr. Rodrigue in asking that said matter be dismissed."

17. Respondent's statement that he never represented Rodrigue in any personal matters is false. In fact, Rodrigue had a long-standing attorney/client relationship with both Rodrigue and his business, Cedar Towing Company. Rodrigue paid respondent a monthly retainer, usually $1,500, to represent Cedar Towing Company on legal and business matters. Respondent also represented Rodrigue on multiple personal legal matters over the years, including the dispute with Q.R. referenced in paragraph 20 above and a lawsuit involving a credit card debt.

18. Respondent's October 27, 2008, fax transmission to the Director also included an affidavit of Thomas A. Rodrigue. The affidavit was signed by Rodrigue on October 27, 2008, and was purportedly notarized by respondent's daughter that same day. The affidavit contained the following statements:

a. Rodrigue wished to withdraw the complaint he filed against respondent.

b. Rodrigue received funds from a family settlement in July 2006.

c. Rodrigue did not want to tell his wife that he had used the family settlement funds to start a biodiesel operation, so he instead told his wife that he had given the funds to respondent.

d. In August 2008, Rodrigue asked respondent to give him "something" to prove to his wife that he had not used personal funds to start the biodiesel operation.

e. In August 2008, Rodrigue told his wife that he would have to file a complaint in order to get back the personal funds entrusted to respondent.

f. Rodrigue's complaint was taken from his desk and faxed to the Director without Rodrigue's knowledge or permission.

g. Rodrigue first learned of the complaint being filed after receiving a September 12, 2008, telephone call from respondent. Rodrigue became upset after learning the Director received the complaint.

h. Rodrigue wanted the complaint dismissed and that respondent had never received any of the funds in question.

19. The above statements are false and were contrived by respondent to conceal his misappropriation of Rodrigue's funds. In fact:

a. Paragraph 1 is false. Rodrigue purposefully drafted and faxed the complaint against respondent to the Director.

b. Paragraph 2 is false. Rodrigue did not want to withdraw his complaint but did so under duress and coercion by respondent. Rodrigue needed the funds respondent had misappropriated to settle a business liability.

c. Paragraphs 4 and 5-9 are false. As described in paragraph 14 above, Rodrigue gave respondent the $27,000 to hold in trust. Rodrigue's wife was aware of the estate distribution and also knowledgeable and supportive of Rodrigue's business plan for a biodiesel operation. Rodrigue never solicited respondent's complicity in hiding the operation or any personal funds from his wife.

d. Paragraph 10 is false. Rodrigue filed the complaint with the Director.

e. Paragraph 12 is false. Rodrigue filed the complaint; therefore, he did not first learn about it in September 2008 after respondent allegedly called him.

f. Paragraph 13 is false. Rodrigue gave respondent $27,000 to hold in trust, which respondent misappropriated.

20. Respondent had appeared at Cedar Towing Company with the October 27, 2008, affidavit for Rodrigue to sign. The affidavit was already drafted by respondent. Rodrigue had no part in drafting the affidavit. The affidavit was already notarized by respondent's daughter, Lena Garcia, when respondent brought it to Rodrigue to sign. Respondent told Rodrigue that if he signed the affidavit, respondent would repay the balance of his inheritance funds. Respondent also told Rodrigue that the Director could now prosecute him for lying because Rodrigue had committed perjury. Respondent coerced Rodrigue into requesting withdrawal of his complaint and signing the affidavit. Michael Condon, another Cedar Towing Company employee, was present during the meeting with respondent and witnessed this discussion.

21. On October 28, 2008, the Director sent respondent a letter pointing out the following inconsistencies in Rodrigue's affidavit:

a. Rodrigue's complaint attached respondent's handwritten letter claiming the funds were invested in American Funds. The letter also acknowledged that respondent owed Rodrigue approximately $15,800. The letter also stated the funds could not be released due to an IRS tax lien. All of these statements directly conflicted with the claim in Rodrigue's affidavit that respondent had never received any funds from Rodrigue.

b. Respondent stated that he did no legal work for Rodrigue but Rodrigue's affidavit claimed that he was a "lobbyist" for Cedar Towing.

22. The Director's letter further requested a response to the original complaint, responses for the apparent inconsistencies in Rodrigue's affidavit, a full accounting of the funds and trust account books and records, and a description of the circumstances giving rise to Rodrigue's affidavit. Finally, the Director indicated that Rodrigue would not be permitted to withdraw his complaint.

23. On November 6, 2008, respondent faxed a letter to the Director containing additional false statements in order to conceal his misappropriation of Rodrigue's funds. Respondent made the following false statements:

a. Rodrigue gave no funds to him.

b. Respondent was awaiting documentation from American Funds and would provide such statements upon receipt. Respondent indicated the balance of the funds was minimal.

c. Respondent stated that Rodrigue drafted his affidavit and his staff made minimal changes.

d. Rodrigue never intended to file a complaint.

e. Respondent claimed that no promises were made to Rodrigue in order to get him to withdraw his complaint.

24. Respondent further stated that if Rodrigue was interviewed or deposed by the Director, respondent wanted to be present and have counsel present "to avoid any confusion that a lay person [Rodrigue] may have regarding issues that your office may raise in said interview."

25. On November 28, 2008, respondent sent the Director another letter containing additional false statements made to conceal his misappropriation of Rodrigue's funds. Respondent made the following false statements:

a. Respondent stated he had difficulty reaching American Funds personnel to get an accounting.

b. Respondent asked his local agent to get said statements and was assured he would receive them as soon as possible.

26. Respondent also attached an amended affidavit of Thomas A. Rodrigue that also contained false statements. Respondent stated in his letter:

> [W]hen I first submitted my October 27, 2008 response to the above complaint, I dictated it over the phone after Mr. Rodrigue read his October 27, 2008 affidavit. He specifically referenced me that the date in question was July 2008 not July 2006. Prior to the October 27, 2008, submission I was able to return to the office to sign the original submission. I did not feel the need to proof the submission. My November 6, 2008 submission was made over my signature.

27. Thus, respondent amended Rodrigue's affidavit to reflect that he had received the family settlement funds in July 2008, rather than July 2006. Respondent made this amendment to conceal respondent's misappropriation of Rodrigue's funds in November 2007. It appears respondent believed the amendment would cause the Director to abandon the request for respondent's July 2006 through June 2008 trust account books and records, which is the period of time encompassing respondent's misappropriation. *See* paragraph 41, below.

28. On December 4, 2008, the Director sent respondent a letter again requesting the following:

a. All original files maintained on behalf of Cedar Towing while employed as a "lobbyist" by Rodrigue.

b. Documentation regarding Rodrigue's claim in the affidavit that the complaint against respondent was a "ruse" to mislead his wife, including the contact information for the individual who mistakenly faxed the complaint; documentation of Rodrigue's receipt of the family settlement funds; and verification the funds were invested into a biodiesel operation.

c. An explanation for respondent's false statement that he never represented Rodrigue in any personal matters.

d. Statements and an accounting regarding respondent's claim that Rodrigue's funds were invested in American Funds.

e. Respondent's trust account books records for the period July 2006 through present.

29. Respondent failed to respond to the Director's December 4, 2008, letter. Respondent retained counsel and then successor counsel to represent him in this matter. Successor counsel eventually produced documents and information responsive to the requests in the Director's December 4, 2008, letter.

30. In a letter to the Director dated May 1, 2009, respondent, through counsel, stated, "Mr. Rodrigue has currently retained Mr. Garcia with respect to representation on a personal legal matter." In fact, Rodrigue had retained and paid respondent to resolve the legal matter to which respondent's counsel referred years prior to 2009. Respondent had failed to resolve the matter, resulting in the entry of a default judgment against Rodrigue. In or about April 2009, Rodrigue directed respondent to take steps to have the judgment vacated. Rodrigue specifically told respondent that he had no intention of paying respondent additional fees for those services.

31. Respondent's conduct violated Rules 4.1, 8.1(b), and 8.4(c) and (d), MRPC, and the Court's January 23, 2008, order.

THIRD COUNT

Non-Cooperation for Purposes of Concealing Misappropriation

32. On September 24, 2008, the Director sent respondent a letter requesting (a) his trust account books and records, including bank statements, for the period beginning with the deposit of Rodrigue's funds, (b) books and records for any other account into which he deposited Rodrigue's funds, and (c) his entire Rodrigue file. Respondent failed to provide a substantive response.

33. On October 16, 2008, the Director sent respondent a letter denying respondent's request for an extension of time to respond to the Director's September 24 letter and requesting respondent's response by October 27, 2008. Respondent responded by providing the October 27, 2008, affidavit of Thomas A. Rodrigue. *See* paragraphs 18 through 20, above. Respondent failed to include any of the books and records or client files requested by the Director.

34. On October 28, 2008, the Director sent respondent a letter requesting, among other things, an accounting of the Rodrigue funds and July 2006 through September 2008 books and records for the account into which respondent had deposited the Rodrigue funds, including proof of deposits and bank statements.

35. On November 6, 2008, respondent provided the Director with only his July 2008 through October 2008 trust account bank statements. Respondent claimed, "Given the balance of $80.00 there exist no client funds held in trust."

36. On November 7, 2008, the Director sent respondent a fourth request for respondent's trust account books and records. The Director specifically requested

respondent's trust account bank statements, cancelled checks, deposit slips, checkbook register, client subsidiary ledgers, trial balances and reconciliations for July 2006 to the present. Respondent was given three weeks to respond.

37. On November 28, 2008, respondent sent the Director a letter enclosing the amended affidavit of Thomas A. Rodrigue. *See* paragraphs 25 through 27, above.

38. On December 4, 2008, the Director sent respondent a fifth request for respondent's trust account books and records for the period June 2006 through the present. Respondent was given two weeks to respond.

39. On December 19, 2008, respondent sent the Director a letter stating that he was unable to respond due to a busy court schedule and that he intended to seek counsel.

40. In early February 2009 respondent retained counsel to represent him. The Director advised respondent's counsel of the Director's outstanding requests, including the trust account books and records.

41. In light of respondent's continued failure to produce trust account books and records and his false and misleading statements, the Director obtained an investigatory subpoena on February 18, 2009, pursuant to Rule 8(c), RLPR, in order to obtain respondent's trust account books and records directly from the bank. Those books and records reflected that respondent had received Rodrigue's inheritance funds, deposited them into his trust account and misappropriated those funds as described in paragraphs 2 through 5 above.

42. Respondent's conduct violated Rules 8.1(b) and 8.4(d), MRPC, Rule 25, RLPR, and the Court's January 23, 2008, order.

FOURTH COUNT

Failure to File and Pay Employer Withholding Taxes

43. Despite having employees and an obligation to do so, respondent failed to timely file and/or pay employer withholding taxes for every quarter during the years 2002 through 2004.

44. **1st Quarter 2002.** The filing deadline for respondent's first quarter 2002 federal employer withholding tax return was April 30, 2002. Respondent did not file his return until June 16, 2002, or 47 days late. Late filing and payment penalties and interest totaling $908 were assessed against respondent. Respondent made a $2,000 tax deposit on May 14, 2002, which was applied to and fully satisfied his first quarter 2002 taxes, penalties, and interest even before he filed the underlying return.

45. **2nd Quarter 2002.** The filing deadline for respondent's second quarter 2002 federal employer withholding tax return was July 31, 2002. Respondent did not file his return until September 6, 2002, or 37 days late. The return reflected $3,229 in employer withholding taxes, over and above the tax deposits respondent had made through the filing deadline, due from respondent. Respondent remitted $1,547 with the return, leaving a tax balance due of $1,682. Late filing and payment penalties and interest totaling $1,118 were assessed against respondent. Respondent paid the tax, penalties and interest in full on December 30, 2002.

46. **3rd Quarter 2002.** The filing deadline for respondent's third quarter 2002 federal employer withholding tax return was October 31, 2002. Respondent timely filed his return on that date. The return reflected $4,199 in employer withholding taxes, over and above the tax deposits respondent had made through the filing deadline, due from respondent. Respondent remitted $3,449 with the return and paid the $750 tax balance on November 4, 2002. A late payment penalty of $430 was assessed against respondent. Respondent paid this penalty on December 30, 2002. Respondent's check was,

however, returned for insufficient funds, resulting in the assessment of interest. Respondent paid the penalty and interest in full on February 10, 2003.

47. **4th Quarter 2002.** The filing deadline for respondent's fourth quarter 2002 employer withholding tax return was January 31, 2003. Respondent did not file his return until October 14, 2005, or almost three years late. The return reflected $4,303 in employer withholding taxes, over and above the tax deposits respondent had made through the filing deadline, due from respondent. Respondent remitted payment of $500 with the return, resulting in a $3,803 tax balance. Late filing and payment penalties and interest totaling $3,133 were assessed against respondent. Respondent thereafter made the following payments: (a) January 3, 2006 - $500; (b) May 30, 2006 - $425; and (c) January 31, 2007 - $3,802. The check by which respondent made the January 31, 2007, payment was, however, returned for insufficient funds. Currently, at least $5,526 in tax, penalties and interest remains due from respondent.

48. **1st Quarter 2003.** The filing deadline for respondent's first quarter employer withholding tax return was April 30, 2003. Respondent did not file his return until May 9, 2005, or more than two years late. The return reflected $7,361 in employer withholding taxes, over and above the tax deposit respondent had made through the filing deadline, due from respondent, which respondent remitted in full with the return. Late filing and payment penalties and interest totaling $1,516 were assessed against respondent. Respondent paid these penalties and interest in full on May 30, 2006.

49. **2nd Quarter 2003.** The filing deadline for respondent's second quarter 2003 employer withholding tax return was July 31, 2003. Respondent did not file his return until May 9, 2005, or almost two years late. The return reflected $1,162 in employer withholding taxes due from respondent, which respondent remitted in full with the return. Late filing and payment penalties and interest totaling $572 were assessed against respondent. Respondent paid these penalties and interest in full on

December 18, 2006. Respondent's check was, however, returned for insufficient funds. Respondent paid the late filing and payment penalties and interest in full on April 18, 2007.

50. **3rd Quarter 2003.** The filing deadline for respondent's third quarter 2003 employer withholding tax return was October 31, 2003. Respondent did not file his return until May 9, 2005, or more than a year-and-a-half late. The return reflected $2,286 in employer withholding taxes due from respondent, which respondent remitted with the return. Late filing and payment penalties and interest totaling $1,076 were assessed against respondent. Respondent paid these penalties and interest in full on April 18, 2007.

51. **4th Quarter 2003.** The filing deadline for respondent's fourth quarter 2003 employer withholding tax return was January 31, 2004. Respondent did not file his return until May 9, 2005, or more than a year late. The return reflected $5,168 in employer withholding taxes due from respondent, which respondent remitted in full with the return. Late filing and payment penalties and interest totaling $2,498 were assessed against respondent. On June 7, 2007, respondent was credited with a $540 payment against these penalties and interest. To date, however, at least $1,958 in penalties and interest remain due from respondent.

52. **1st Quarter 2004.** The filing deadline for respondent's first quarter 2004 employer withholding tax return was April 30, 2004. Respondent did not file his return until May 9, 2005, or more than a year late. The return reflected $4,305 in employer withholding taxes due from respondent, which respondent remitted with the return. Late filing and payment penalties and interest totaling at least $1,956 were assessed against respondent. To date, respondent has not paid these penalties and interest.

53. **2nd Quarter 2004.** The filing deadline for respondent's second quarter 2004 employer withholding tax return was July 31, 2004. Respondent did not file his return

until May 9, 2005, or almost a year late. The return reflected $2,260 in employer withholding taxes due from respondent, which respondent remitted with the return. Late filing and payment penalties and interest totaling $733 were assessed against respondent. On December 18, 2006, respondent paid $315 check against these penalties and interest. Respondent's check was, however, returned for insufficient funds. Respondent paid the penalties and interest in full on April 18, 2007.

54. **3rd Quarter 2004.** The filing deadline for respondent's third quarter 2004 employer withholding tax return was October 31, 2004. Respondent did not file his return until May 9, 2005, or more than six months late. The return reflected $3,046 in employer withholding taxes due from respondent, which respondent remitted with the return. Late filing and payment penalties and interest totaling $1,205 were assessed against respondent. Respondent paid these penalties and interest in full on April 18, 2007.

55. **4th Quarter 2004.** The filing deadline for respondent's fourth quarter 2004 employer withholding tax return was January 31, 2005. Respondent did not file his return until May 9, 2005, or more than three months late. The return reflected $2,098 in employer withholding taxes due from respondent, which respondent remitted with the return. Late filing and payment penalties and interest totaling $459 were assessed against respondent. Respondent paid these penalties and interest in full April 18, 2007.

56. Respondent's conduct violated Rules 8.4(c) and (d), MRPC, and the Court's January 23, 2008, order.

FIFTH COUNT

Charging an Unreasonable Fee and Failing to Timely Comply with a Binding Fee Arbitration Determination

57. In January 2007, Antoine Scarver was charged with several probation violations and additional criminal charges in Ramsey County, Minnesota. Scarver was initially represented by attorney Calandra Harris, who arranged for a plea agreement.

58. After entering a plea of guilty, Scarver consulted with respondent about withdrawing his plea and seeking a more favorable plea bargain. On or about July 29, 2007, Scarver retained respondent to withdraw his guilty plea. Scarver signed a written fee agreement providing for a $10,000 non-refundable retainer. Scarver paid respondent $4,500 of the retainer.

59. On July 30, 2007, respondent signed and filed a substitution of counsel and certificate of representation with the district court. Respondent also filed a one-page motion to withdraw guilty plea on behalf of Scarver along with a brief request for discovery. Respondent submitted no written memoranda or case law in support thereof. Scarver was scheduled to be sentenced on August 3, 2007, but the hearing was continued to August 15, 2007.

60. The parties appeared at the sentencing hearing. Respondent's motion to withdraw guilty plea was denied and Scarver was subsequently sentenced pursuant to the terms of the original plea agreement.

61. On August 17, 2007, respondent filed a one-page motion for reconsideration which was also denied. Respondent did not submit any written memoranda or case law in support of the motion for reconsideration.

62. After sentencing, Scarver contacted respondent about a refund of the $4,500 paid to him. Scarver stated that respondent did not obtain a withdrawal of his guilty plea and that respondent did not perform sufficient work to retain the entire $4,500.

63. In March 2008, Scarver and respondent agreed to submit the fee dispute to the Hennepin County Bar Association Legal Fee Arbitration Board (hereinafter "Fee Arbitration Board").

64. On October 17, 2008, the Fee Arbitration Board held a hearing on Scarver's claim that respondent charged an unreasonable fee. On October 24, 2008, the Fee

Arbitration Board issued a written determination that respondent had charged an unreasonable fee and should refund the entire $4,500 to Scarver.

65. Over the next six months both the Director and Scarver made multiple requests for respondent to comply with the binding fee arbitration determination.

66. Eventually, Scarver commenced a lawsuit against respondent to confirm the fee arbitration award. A hearing in the matter was scheduled for April 17, 2009. At that hearing, respondent issued a $4,500 check to Scarver, post-dated for April 24, 2009. Based on respondent's payment, the court issued an order dismissing Scarver's lawsuit.

67. Scarver attempted to negotiate respondent's check on April 24, 2009, but the check was returned for insufficient funds. Scarver has informed the court of the bounced check and has scheduled another hearing for May 19, 2009.

68. Respondent's conduct violated Rules 1.5(a) and 8.4(d) and (i), MRPC, and the Court's January 23, 2008, order.

SIXTH COUNT

Dismissing a Client's Case without Client Permission, Charging an Unreasonable Fee and Non-Communication

69. Steven Bohler carries a restricted driver's license due to previous alcohol-related driving infractions. Bohler carries what is known as a "B Card," which is issued by the Commissioner of Public Safety pursuant to Minn. Stat. § 171.09 to a driver upon meeting certain conditions for reinstating driving privileges after serial DWI or DUI violations. In order to be issued a B Card, Bohler signed a sworn statement to never again consume alcohol.

70. In 2006 Bohler was stopped by law enforcement walking in a bar parking lot. A breathyzer was administered, which tested positive for alcohol. As a result, Bohler's B Card was cancelled immediately. Bohler hired respondent to seek judicial review of the cancellation of his B Card. On or about September 25, 2006, Bohler signed

a written fee agreement and provided respondent with a $1,000 retainer and paid him $250 in cash for the filing fee.

71. On December 1, 2006, respondent filed a brief petition for judicial review for reinstatement, an affidavit of service and an affidavit of counsel on behalf of Bohler with the Ramsey County Court Administrator. Respondent did not file any memorandum of law in support of his petition for review.

72. After several telephone calls to respondent about his case progression, respondent sent Bohler a letter dated January 2, 2007, informing him that a hearing was scheduled for February 5, 2007. Bohler contacted respondent about the hearing and respondent advised Bohler that it was not necessary for him to attend the hearing. Respondent stated that he would attend on behalf of Bohler.

73. On January 17, 2007, respondent received the Commissioner of Public Safety's response to Bohler's petition for review.

74. Unbeknownst to Bohler and without Bohler's permission, respondent cancelled Bohler's request for judicial review on February 2, 2007. Respondent did not inform Bohler of the dismissal.

75. Bohler called respondent several times to find out the outcome of the hearing he believed to have taken place on February 5, 2007. Respondent failed to respond to Bohler's calls. Finally, Bohler contacted respondent using a friend's phone and was able to speak with respondent, who informed him that the case had to be dismissed.

76. Later that year, Bohler read that respondent had lost his license prior to his having retained him to represent him. Bohler then contacted the Ramsey County Court Administrator to check on the status of his case and discovered that respondent had dismissed his case.

77. Bohler then contacted respondent and requested a refund of the $1,000 paid to him in attorney's fees. Respondent refused to refund any portion of the fees. Respondent's retention of the $1,000 constitutes an unreasonable fee in light of the fact that respondent dismissed Bohler's case without his permission and did not perform the legal services for which he was hired.

78. Respondent's conduct violated Rules 1.2, 1.3, 1.4, 1.5(a), and 8.4(d), MRPC, and the Court's January 23, 2008, order.

WHEREFORE, the Director respectfully prays for an order of this Court revoking respondent's probation, suspending or disbarring 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: June 12, 2009.

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