FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against MARK HOWARD GARDNER,
a Minnesota Attorney,
Registration No. 228801.

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 (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 23, 1992. Respondent currently practices law in St. Louis Park, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On February 9, 1996, respondent signed a stipulation for a two-year private probation which resulted from his failure to maintain required trust account books and records, receipt of fees from his trust account before earned, withdrawal of fees from his trust account without providing written notice or an accounting to the client, and issuing checks on behalf of clients which exceeded the amount of the client's funds in the trust account in violation of Rule 1.15, Minnesota Rules of Professional Conduct (MRPC).

B. On February 8, 1998, respondent signed a stipulation to extend the private probation to February 27, 1999, after he had failed to complete recommended therapy programs, in violation of the terms of his probation.

C. On November 30, 1999, respondent signed a second stipulation for private probation after entering into a business transaction with a client without providing the client an opportunity to seek independent counsel regarding the transaction, failing to fully disclose the terms of the transaction in writing, and disclosing client confidences to a third party in violation of Rules 1.6(a) and 1.8(a), MRPC.

FIRST COUNT

Roger Meyer Matter

1. Respondent represented EBM in a domestic abuse/divorce matter. Roger Meyer represented EBM's spouse.

2. On November 3, 2004, a hearing was held regarding the spouse's counter petition alleging domestic abuse. Both respondent and Meyer appeared on behalf of their clients.

3. On the day of the November 3, 2004, hearing, Meyer approached respondent on the first floor of the Family Justice Center to discuss a possible settlement proposal in the matter. Respondent stated that his client was not interested in a settlement.

4. Meyer informed respondent of his belief that respondent had an obligation to hear Meyer's proposal and present it to his client.

5. In response to Meyer's statement, respondent raised his voice and used a graphic expletive to assert his position to Meyer. Respondent's outburst was much more than merely unprofessional, and it went well beyond what might occasionally occur between litigating attorneys, even in a heated exchange over a contentious matter.

6. Shortly after the conversation between Meyer and respondent and while waiting for their case to be heard, the presiding referee met with Meyer and respondent. Meyer reiterated his desire for respondent to extend the settlement offer he had proposed earlier that day to respondent's client. The referee directed counsel to bring their clients into the courtroom to begin the trial.

7. When respondent and Meyer stepped into the hallway to get their clients, Meyer again asked respondent to inform his client of the settlement offer. At this point,

respondent loudly and angrily made a statement to Meyer in front of Meyer's client and other persons that was similar to the statement in paragraph 5, including the use of profanity.

8. Respondent's conduct violated Rules 4.4 and 8.4(d), MRPC.

SECOND COUNT

Eric and Kim Wetteland Matter

9. Respondent represented Eric Wetteland in a paternity matter. During the course of the representation, Eric and his wife Kim Wetteland met with respondent several times at his office.

10. On more than one occasion during the above-mentioned meetings with the Wettelands, respondent revealed confidential information about current and former clients to the Wettelands.

11. Respondent's conduct violated Rule 1.6(a)(1), MRPC.

THIRD COUNT

Susan Brambilla Matter

12. In June 2004, Susan Brambilla retained respondent to represent her in a post-dissolution matter involving custody, child support, and her ex-husband's attorney fees. On July 30, 2004, the presiding judge granted Brambilla's ex-husband's request for an evidentiary hearing but encouraged the parties to attempt to settle out of court.

13. In October 2004, a guardian ad litem was appointed in the matter.

14. In early December 2004, opposing counsel sent a proposed stipulation in the matter. In early January 2005, respondent met with Brambilla to discuss the proposal. During the meeting, Brambilla suggested a counteroffer that respondent did not believe the opposing side would consider.

15. On January 12, 2005, opposing counsel wrote respondent, requesting they move the matter forward immediately, as she had received no response to the proposed stipulation sent to respondent six weeks prior. Brambilla received a copy of opposing counsel's January 12 letter.

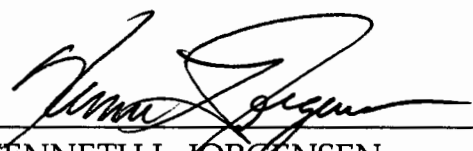
16. Between January 12, 2005, and March 4, 2005, Brambilla called respondent several times inquiring whether respondent had sent Brambilla's counteroffer to opposing counsel. In response to Brambilla's inquiries, respondent informed her that he had not yet sent the counteroffer, but that he would do so soon.

17. Despite respondent's statements to Brambilla, he did not send the counteroffer to opposing counsel for several weeks. In fact, between January 12 and March 4 2005, respondent had made a strategic decision not to send the counteroffer, partly in hope that Brambilla would change her mind. Respondent failed to inform Brambilla that he did not intend to send the counteroffer. Instead, he repeatedly advised Brambilla that he would forward the counteroffer to opposing counsel. Respondent finally sent the counteroffer on March 4th, and it was immediately rejected.

18. Respondent's conduct violated Rules 1.2(a) and 1.4(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: December 6, 2005.



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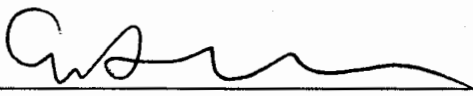

THOMAS F. ASCHER
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