FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against STEPHEN VINCENT GRIGSBY,
a Minnesota Attorney,
Registration No. 291973.

PETITION FOR DISCIPLINARY ACTION

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 21, 1999. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Failure to File Individual Income Tax Returns and Failure to Report Income

1. Respondent had sufficient gross income in 1999, 2000, 2001 and 2002 to require him to file federal individual income tax returns (1040). Respondent failed to file his 1999, 2000, 2001 and 2002, federal income tax returns until April 13, 2004. Any and all extensions respondent received to file the returns expired before respondent filed the returns.

2. Respondent did not file any of these federal income tax returns until after the Director requested respondent to provide copies to the Director.

3. Respondent's 2002 IRS Form 1040, Schedule C, reflected gross receipts of $18,068. On April 26, 2005, respondent advised the Director that he received client retainers during 2002 totaling $47,100.

4. Respondent's 2003 IRS Form 1040, Schedule C, reflected gross receipts of $77,934.50. On April 26, 2005, respondent advised the Director that he received client retainers during 2003 totaling $127,050.

5. Respondent had sufficient gross income in 1999, 2000, 2001 and 2002 to require him to file state individual income tax returns. Respondent failed to file his 1999, 2000 and 2001 state income tax returns until April 27, 2004. Respondent failed to file his 2002 state individual income tax return until June 8, 2004. Any and all extensions respondent received to file the returns had expired.

6. Respondent did not file any of these returns until after the Director requested respondent to provide copies of the returns to the Director's Office.

7. Respondent's 2002 and 2003 Minnesota individual income tax returns, respectively, incorporated the information respondent reported in his 2002 and 2003 federal individual income tax returns (¶¶ 4 and 5, above).

8. Respondent's failure to timely file state and federal tax returns violated Rule 8.4(b) and (d), Minnesota Rules of Professional Conduct (MRPC).

9. Respondent's failure to report income violated Rule 8.4(c), MRPC.

SECOND COUNT

Failure to Maintain Books and Records

10. Pursuant to Rule 1.15(h), Minnesota Rules of Professional Conduct (MRPC), as further interpreted by Lawyers Professional Responsibility Board Opinion No. 9, all as effective before October 1, 2005, respondent was required to maintain business account books and records.

11. As set forth in paragraphs 18 and 21, below, respondent failed to maintain records regarding his receipt of the retainers in the Jose Maldonado and Robert Roberson matters.

12. Before 2005 respondent failed to maintain the following required business account books and records:

a. A fees book, or file of copies of billing invoices reflecting all fees charged and other billing to clients.

b. Copies of receipts, countersigned by the payor, for cash fee payments.

c. Check registers, canceled checks, and duplicate deposit slips sufficient to establish the receipt of earned fee payments from clients, and similar receipts and disbursements.

d. A periodic reconciliation of the checkbook balance and the bank statement balance.

13. Respondent's failure to maintain books and records violated Rule 1.15(h), MRPC.

THIRD COUNT

Failure to Use Written Retainer Agreements – Martinez, Maldonado and Roberson Matters

14. In or about February 2002, Euglio Martinez was arrested. On February 21, 2002, an Order of Detention Pending Trial was filed. Thereafter, Martinez remained incarcerated.

15. In or about March 2002, Martinez, through his brother, Neftali Birrueta, who resided in Oregon, retained respondent to represent Martinez in the criminal matter.

16. Respondent requested a $10,000 retainer fee. There was no written retainer agreement. On or about February 19, 2002, $10,000 was wire transferred and

deposited into Bottema's business checking account. Respondent did not deposit the money into a client trust account.

17. On May 29, 2002, Martinez pled guilty to one count of the indictment. The sentencing hearing was pending. On November 21, 2002, respondent issued a $2,000 partial refund of fees to Martinez's sister-in-law, Patricia Birrueta.

18. In February 2002, Jose M. Maldonado retained respondent to defend him in a criminal matter.

19. The total fee for the representation was to be $20,000. There was no written retainer agreement. Respondent was paid $10,000. Respondent deposited the funds into his personal account. Respondent did not deposit the funds into a client trust account.

20. Respondent states that Maldonado's father paid an unknown portion of the retainer. Respondent has no record of who paid the balance of the fee.

21. In or about October 2003, Robert Roberson retained respondent to represent him in a criminal matter.

22. Respondent received at least a $10,000 cash retainer on behalf of Roberson. There was no written retainer agreement. Respondent did not deposit the retainer into a client trust account.

23. Respondent did not provide Roberson with a receipt evidencing the retainer payment. Respondent admits he has no records regarding the cash retainer payment.

24. Respondent's failure to utilize a written retainer agreement in the Martinez, Maldonado and Roberson matters violated Rule 1.15, MRPC, as further interpreted by Lawyers Professional Responsibility Board Opinion No. 15.

FOURTH COUNT

Misrepresentations to the Director and Non-Cooperation

25. By letter dated May 1, 2003, the Director requested respondent to provide no later than May 15, 2003, the information and documents requested in that letter regarding the Martinez matter. Respondent failed to respond.

26. By letters dated May 16 and 19, 2003, the Director advised respondent that the Director had received no response to that May 1 letter and requested respondent to provide at that time the requested information and documents. Respondent failed to respond until May 21, 2003.

27. By letter dated July 1, 2003, the Director requested respondent to provide no later than July 15, 2003, the information and documents requested in that letter regarding the Martinez matter. The Director requested respondent to provide, among other things, copies of the wire transfer document(s) and of respondent's fees book, cash receipts journal, bank statements, check registers and cancelled checks sufficient to establish receipt of the payment, which was made by wire transfer (*see* ¶ 16, above). Respondent failed to respond.

28. By letters dated July 16 and 30, 2003, the Director advised respondent that the Director had received no response to that July 1 letter and requested respondent to respond. Respondent failed to respond until August 1, 2003.

29. Respondent responded through his counsel's August 1, 2003, letter. Respondent stated, "Mr. Grigsby deposited the $10,000 in his business checking account at Wells Fargo." This statement was false. Respondent did not have a business account at that time. Additionally, respondent had deposited the funds into Bottema's Wells Fargo account.

30. Together with that August 1 letter, respondent also provided a copy of a redacted online bank statement for Wells Fargo business checking account number 200-0649xxx for the period ending April 9, 2002. The redacted statement reflected only

the February 19, 2002, $10,000 wire transfer. All other transactions and the identity of the accountholder were redacted.

31. Respondent failed to advise the Director that Bottema was the accountholder of the Wells Fargo business checking account number 200-0649xxx. Coupled with respondent's statement that, "Mr. Grigsby deposited the $10,000 in his business checking account at Wells Fargo," this was misleading, for it led to the belief that the bank statement was for respondent's account. Respondent failed to provide any of the other books and records requested in the Director's July 1 letter and failed to advise the Director that he did not maintain those documents.

32. By letter dated August 5, 2003, the Director advised respondent that the redacted online bank statement was insufficient because it did not identify an accountholder and requested respondent to provide no later than August 15, 2003, the original bank statements and other documents requested in the Director's July 1, 2003, letter that respondent had not yet provided. Respondent failed to respond.

33. By letter dated August 26, 2003, the Director advised respondent that the Director had received no response to the Director's August 5 letter and requested respondent to provide at that time the original documents requested in that August 5 letter.

34. By letter dated August 28, 2003, respondent's counsel stated he was in the process of locating the original documents requested in the Director's August 26 letter.

35. By letter dated September 11, 2003, the Director again advised respondent that the Director had received no response to the Director's August 5 letter and requested respondent to provide at that time the original documents requested in that August 5 letter. Respondent failed to respond until his counsel's letter to the Director dated September 29, 2003.

36. By letter dated November 10, 2003, the Director requested respondent to provide information and documents regarding the Maldonado matter.

a. The Director requested respondent to "identify the account(s) into which Mr. Grigsby deposited the retainer fee and provide copies of Mr. Grigsby's fees book, cash receipts journal and deposit slip reflecting the deposit."

b. The Director also requested, "If Mr. Grigsby asserts that the retainer fee was earned upon receipt, please provide Mr. Grigsby's bank statements, check registers and cancelled checks sufficient to establish the receipt of the earned fee payment."

37. Respondent responded through his counsel's November 24, 2003, letter.

a. Regarding the deposit of the retainer fee respondent stated, "Mr. Grigsby does not recall if it was deposited or not. He does not believe it was."

b. Respondent also stated, "There are no bank statements, check registers or cancelled checks in Mr. Grigsby's possession regarding this transaction."

Respondent failed to state that he did not maintain any of the required bank statements, check registers, or cancelled checks.

38. By letter dated March 29, 2004, the Director requested respondent to provide additional information and documents regarding respondent's books and records.

a. The Director requested respondent to "state whether Mr. Grigsby maintained a cash receipts journal for the years 2002 and/or 2003 and, if so, provide those documents . . . ."

b. The Director requested respondent to "state whether Mr. Grigsby maintained a fees book for the years 2002 and/or 2003 and, if so, provide those documents."

c. "If Mr. Grigsby did not maintain both a cash receipts journal and a fees book for all periods during the years 2002 and 2003, please provide a copy of Mr. Grigsby's state and federal business and individual income tax returns, including all schedules and supporting documents, for those years . . . ."

d. The Director requested respondent to, "Provide the account number(s) for Mr. Grigsby's law office business account(s) at Wells Fargo or any other financial institution."

e. The Director requested respondent to, "Please provide all documents that evidence, memorialize, or refer or relate to, Mr. Grigsby's receipt of the retainer fee [in the Maldonado matter] and explain in detail why Mr. Grigsby does not have these records."

Respondent failed to respond.

39. By letter dated April 14, 2004, the Director advised respondent that the Director had received no response to the Director's March 29 letter and requested respondent to provide at that time the information and documents requested in that letter.

40. Respondent replied through his counsel's April 20, 2004, letter.

a. Respondent stated, "Mr. Grigsby maintained a log of payments he received during 2002 which is the time period relevant to the Martinez complaint." Respondent did not provide a copy of the log with this letter. In fact, this statement was false. Respondent did not maintain a log of payments during 2002.

b. Respondent did not provide any of the requested documents regarding the Maldonado matter.

c. Respondent did not provide any 2002 or 2003 state or federal tax returns.

41. By letter dated September 14, 2004, the Director requested respondent to provide no later than September 24, 2004, the information and documents requested in the Director's March 29 letter that respondent had not provided. Specifically, the Director requested respondent to provide his 2002 and 2003 state and federal individual and business tax returns and all supporting tax documentation, and to provide original books and records for the period January 2001 to September 2004. Respondent failed to respond.

42. By letter dated September 28, 2004, the Director again requested respondent to provide the outstanding information and documents, much of which was originally requested in March 2004.

43. On October 4, 2004, respondent provided the Director with copies of his 2002 and 2003 state and federal individual tax returns. Respondent did not provide any of the requested books and records.

44. By letter dated October 12, 2004, the Director requested respondent to provide information and documents regarding the Roberson matter. On October 19, 2004, respondent provided the court docket in the Roberson matter. The Director had not requested the docket. Respondent did not provide any of the requested information and documents.

45. By letter dated October 27, 2004, the Director requested respondent to provide the requested information and documents regarding the Roberson matter. On October 28, 2004, respondent provided some, but not all, of the requested information.

46. By letter dated October 29, 2004, the Director again requested respondent to provide the balance of the information initially requested in the Director's October 12 letter. On November 12, 2004, respondent provided the remaining information and documents.

47. Respondent's misrepresentations to the Director and non-cooperation with the Director's investigation violated Rules 8.1(a)(1) and (3), and 8.4(c) and (d), MRPC, and Rule 25, RLPR.

FIFTH COUNT

Pattern Charge

48. Respondent's conduct, all as set forth above, constitutes a pattern of misconduct.

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 28, 2007.

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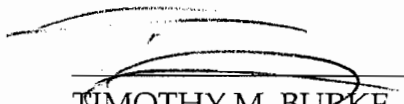

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