

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against DAVID GRONBECK,
a Minnesota Attorney,
Registration No. 37990.

**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 September 16, 1974. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On December 5, 1983, respondent was issued an admonition for filing a lien for fees in an amount greatly in excess of the fees related to the property subject to the lien, in violation of DR 7-102(A)(1), Minnesota Code of Professional Responsibility (MCPR).

B. On September 3, 1986, respondent was issued an admonition for failing to promptly return a client's file upon request and requesting the client to sign a release of liability, in violation of DR 6-102(A) and 9-102(B)(4), MCPR.

C. On October 13, 1988, respondent was placed on two years of supervised private probation for failing to act with diligence in the representation of two clients, failing to adequately communicate with a client, and failing to refund an unearned fee, in violation of Rules 1.3, 1.4 and 1.16(d), Minnesota Rules of Professional Conduct (MRPC).

D. On February 27, 1995, respondent was suspended for a period of 30 days, to be followed by a two-year period of probation, for failing to timely file and pay the taxes due on his state and federal income tax returns for a number of years, failing to pay employer withholding taxes for at least five consecutive calendar quarters and failing to cooperate with the Director's investigation of those matters.

E. On August 20, 1996, respondent was issued an admonition for depositing client funds into his business account, failing to timely file a client's motion and failing to advise the client of the hearing date on the motion, in violation of Rules 1.3, 1.4 and 1.15(a), MRPC.

F. On July 26, 2001, respondent was publicly reprimanded and placed on two years of supervised probation for failing to timely file an appeal on behalf of his clients in a class action matter, failing to keep his clients advised of the status of that matter, failing to timely provide an accounting and refund of funds received from the class action clients and failing to cooperate with the disciplinary proceedings, in violation of Rules 1.3, 1.4, 1.15(c), 1.16(d) and 8.1(a)(3), MRPC, and Rule 25, RLPR.

FIRST COUNT

Misappropriation

1. At all times relevant, respondent has maintained First National Bank of the Lake trust account no. 8605901 (hereinafter "trust account").

2. During the periods June 26, 2006, to December 15, 2006, and February 6, 2007, to at least November 30, 2007, the balance in respondent's trust account was

continually less than that necessary to cover client balances. This shortage ranged in amount from \$972 (during the period February 6 to 26, 2007) to \$10,042 (during the period November 15 to December 13, 2006).

3. The shortages in respondent's trust account were caused by respondent's disbursement of funds from the account to himself to which he was not entitled.

Respondent made 12 such disbursements totaling \$12,930, as follows:

a. On June 26, 2006, respondent transferred \$1,000 from his trust account into his First National Bank of the Lakes business account no. 8605899 (hereinafter "business account") to cover a shortage in respondent's business account. The only funds in respondent's trust account at the time of the transfer belonged to respondent's client Jenkins, and respondent was not entitled to any portion of those funds.

b. On July 7, 2006, respondent deposited trust account check no. 1703, payable to himself in the amount of \$1,000, into his business account to cover a shortage. The only funds in respondent's trust account at the time check no. 1703 was paid belonged to respondent's client Jenkins, and respondent was not entitled to any portion of those funds.

c. On July 13, 2006, respondent deposited trust account check no. 1699, payable to himself in the amount of \$1,500, into his business account to cover a shortage. The only funds in respondent's trust account at the time check no. 1699 was paid belonged to respondent's client Jenkins, and respondent was not entitled to any portion of those funds.

d. On July 28, 2006, respondent deposited trust account check no. 1704, payable to himself in the amount of \$500, into his business account to cover a shortage. The only funds in respondent's trust account at the time check no.

1704 was paid belonged to respondent's client Jenkins, and respondent was not entitled to any portion of those funds.

e. On September 1, 2006, respondent deposited trust account check no. 1709, payable to himself in the amount of \$1,000, into his business account to cover a shortage. The only funds in respondent's trust account at the time check no. 1709 was paid belonged to respondent's clients, Joshi and Jenkins. Respondent was not entitled to any portion of the Jenkins funds and was entitled to only \$400 of the Joshi funds.

f. On September 7, 2006, respondent deposited trust account check no. 1711, payable to himself in the amount of \$500, into his business account to cover a shortage. The only funds in respondent's trust account at the time check no. 1711 was paid belonged to respondent's clients Joshi and Jenkins, and respondent was not entitled to any portion of these funds.

g. On September 14, 2006, respondent transferred \$1,000 from his trust account into his business account to cover a shortage and another \$100 from his trust account into his First National Bank of the Lakes personal account no. 851041 (hereinafter "personal account"). The only funds in respondent's trust account at the time of the transfers belonged to respondent's clients Joshi and Jenkins, and respondent was not entitled to any portion of those funds.

h. On October 3, 2006, respondent transferred \$500 from his trust account into his business account to cover a shortage and another \$500 from his trust account into his personal account. The only funds in respondent's trust account at the time of these transfers belonged to respondent's clients Joshi and Jenkins, and respondent was not entitled to any portion of those funds.

i. On October 27, 2006, respondent transferred \$2,300 from his trust account into his business account to cover a shortage and another \$200 from his

trust account into his personal account. The only funds in respondent's trust account at the time of these transfers belonged to respondent's client Jenkins, and respondent was not entitled to any portion of those funds.

j. On November 15, 2006, respondent transferred \$1,250 from his trust account into his business account to cover a shortage. The only funds in respondent's trust account at the time of these transfers belonged to respondent's client Jenkins, and respondent was not entitled to any portion of those funds.

k. On February 6, 2007, respondent transferred \$2,000 from his trust account into his business account to cover a shortage. The only funds in respondent's trust account at the time of the transfer belonged to respondent's clients Jenkins, Schibilla and Travis. Respondent was not entitled to any portion of the Jenkins or the Travis funds, and was entitled to only \$1,020 of the Schibilla funds.

l. On February 26, 2007, respondent transferred \$1,000 from his trust account into his personal account. The only funds in respondent's trust account at the time of the transfer belonged to respondent's clients Jenkins, Schibilla and Travis. Respondent was not entitled to any portion of these funds.

4. Respondent's actions as described above constituted misappropriation.

5. Respondent's conduct in misappropriating client funds from his trust account violated Rules 1.15(a) and 8.4(c), MRPC.

SECOND COUNT

Failure to Deposit Client Funds in Trust

6. Rita Schibilla died on January 27, 2006. On or about February 1, 2006, Kathleen ("Kay") Gerard and Theresa Schibilla, two of Rita's adult children, retained respondent to represent them in probating Rita's estate. Respondent did not enter into a written retainer agreement with Kay and/or Theresa.

7. On March 29, 2006, Kay and Theresa were appointed co-personal representatives of Rita's estate.

8. In April 2006, pursuant to the request of Hennepin County Human Services Department, which was a creditor of the Schibilla Estate, Kay and Theresa were directed to post a personal representative's bond. On August 31, 2006, respondent requested payment of the bond premium from Kay and Theresa. On or about September 7, 2006, Kay and Theresa each paid respondent \$160 for the bond premium. Respondent deposited these checks into his business account, rather than into his trust account.

9. On numerous occasions thereafter, the balance in respondent's business account fell below the \$320 necessary to cover Kay and Theresa's bond premium. In fact, on many occasions, the balance in respondent's business account was negative.

10. On March 2, 2007, respondent issued a business account check in payment of the personal representative's bond premium.

11. Respondent's conduct in failing to deposit the Schibilla bond premium advance into his trust account violated Rule 1.15(a), MRPC.

THIRD COUNT

Failure to Account for Client Funds and Failure to Refund an Unearned Retainer **Schibilla Estate**

12. On December 27, 2006, a \$100,078.13 check was issued to respondent for sale proceeds from Honeywell stock Rita Schibilla had owned at the time of her death. Respondent deposited the check into his trust account on December 28, 2007.

13. During the period January 8 to February 20, 2007, respondent issued to himself five trust account checks totaling \$5,270, drawn against the stock sale proceeds, for his legal fees in the Schibilla Estate matter. Respondent did not, prior to or at the

time of making these disbursements, provide Kay and Theresa with a billing statement or otherwise notify them of the withdrawals.

14. Respondent did not provide Kay and Theresa with a billing statement until March 23, 2007. Respondent's billing statement did not reflect Theresa's two \$250 payments or respondent's trust account withdrawals.

15. During the period after December 28, 2007, Kay and Theresa repeatedly requested that respondent provide an accounting of the stock sale proceeds. To date, respondent has failed to produce any accounting to Kay and/or Theresa.

Karen Sack

16. Karen Sack's father died in 2007. His will named Sack and Laurie Donaldson as co-personal representatives. Sack and Donaldson consulted with the lawyer who had represented Sack's father during his lifetime. That lawyer recommended that Sack and Donaldson each retain counsel.

17. On April 17, 2007, Sack retained respondent to represent her as co-personal representative of her father's estate. Sack paid respondent a \$1,000 retainer, which respondent deposited into his trust account. Respondent explained to Sack that he would draw against the retainer only as he earned it. Donaldson retained attorney Paul Motin to represent her.

18. Thereafter, Motin petitioned for appointment of Sack and Donaldson as co-personal representatives and obtained letters testamentary on their behalf. On July 7, 2007, Sack wrote to respondent and informed him that she no longer required his representation.

19. On July 27, 2007, respondent wrote to Sack encouraging her to allow him to continue with the representation. Respondent also withdrew from his trust account \$500 of Sack's \$1,000 retainer.

20. On August 15, 2007, Sack spoke with respondent by telephone. Sack repeated that she no longer wanted respondent to represent her and requested that respondent provide her with a final bill and a refund of the unearned portion of her retainer. Respondent failed to do so.

21. On October 11, October 31 and November 5, 2007, Sack unsuccessfully attempted to reach respondent by telephone. On each occasion, Sack left a message for respondent, but respondent failed to return Sack's calls.

22. On November 27, 2007, Sack wrote to respondent by certified mail to again request an invoice and refund. Respondent failed to respond.

23. To date, respondent has failed to provide Sack with an invoice or any refund of her retainer.

24. Respondent's conduct in failing to provide an accounting of the Schibilla estate to Theresa Schibilla and Kay Gerard and to Karen Sack regarding the funds respondent was holding for them in his trust account, failing to refund Sack's unearned retainer, failing respond to Sack's requests for an accounting and a refund, and failing to inform the Theresa Schibilla and Kay Gerard of his disbursements of Schibilla estate funds to pay his legal fees violated Rules 1.4(a)(4), 1.15(b), 1.15(c)(3), and 1.16(d), MRPC.

FOURTH COUNT

Neglect and Inadequate Client Communication

Schibilla Estate

25. As further described in the paragraphs below, respondent has failed to diligently pursue completion of Schibilla Estate matters since at least September 2006.

26. As described above, Kay and Theresa advanced to respondent the funds with which to pay the personal representative's bond premium in September 2006. Respondent did not timely pay the bond premium.

27. On August 30, 2006, November 6, 2006, December 6, 2006, and February 27, 2007, the bonding agency billed the Schibilla Estate for the premium due on Kay and Theresa's personal representative's bond. In its February 26, 2007, invoice, the bonding agency threatened to file a claim against the Schibilla Estate if the premium was not paid immediately. Respondent did not pay the bond premium until March 2, 2007, six months after he received the funds to cover it.

28. On February 23, 2007, Theresa wrote to respondent and directed him to withdraw as attorney for the Schibilla Estate, "due to the fact that this has taken over a year and you have not done what I requested you to do for me."

29. On February 27, 2007, respondent wrote to Theresa refusing to withdraw until such time as Kay corroborated Theresa's request that he do so. Also on February 27, 2007, respondent wrote to Kay, stating "My position is that I intend to finish administering this Estate in a fair and balanced manner until such time as both of you discharge me or the matter is resolved."

30. Respondent failed to file 2006 tax returns for Rita Schibilla and/or her estate or to seek an extension of the filing deadline. On information and belief, Rita and her estate's tax returns were due April 15, 2007.

31. At the time they retained him, Kay and/or Theresa informed respondent that Rita had a bank account at US Bank. Kay and Theresa understood that respondent would close the account and arrange for receipt of the account proceeds. In fact, respondent took no substantive action with regard to Rita's US Bank account. On May 11, 2007, respondent informed Kay and Theresa for the first time that they should pursue closure of Rita's US Bank account on their own. By that time, the bank had closed the account with a negative balance caused by automatic withdrawals and bank charges.

32. On May 17, 2007, Kay wrote to respondent regarding the US Bank account and related matters. Kay also requested a final accounting of the estate by June 15, 2007.

33. Respondent responded to Kay's letter on May 31, 2007, stating, among other things, that he would "have the accounting completed shortly." Even though Kay stated in her letter that she and Theresa had decided not to withhold funds for a headstone, respondent asked, "Do we want to hold a sum to pay for a headstone or what? Steps should be taken."

34. Since at least March 2007, respondent has failed to adequately communicate with Kay and Theresa regarding the status of estate matters and has failed to return numerous telephone messages they left for him.

Williams

35. Michael and Kristin Williams retained respondent on December 7, 2006, to bring a child support modification motion on behalf of Michael Williams.

36. During a December 7, 2006, meeting, respondent informed the Williamses that he would prepare an initial draft of Michael's motion for modification of child support and a supporting affidavit within approximately two weeks and that he anticipated the motion would be heard by the court in January 2007.

37. Respondent was ill and unable to work during the approximate period December 7 to 14, 2006. By late December 2006, the Williamses had not heard further from respondent or received the draft motion or affidavit. On eight occasions between December 26, 2006, and January 12, 2007, Kristin unsuccessfully attempted to reach respondent by telephone to discuss the status of the motion and affidavit. Kristin left a message for respondent on each such occasion, but respondent failed to return her calls.

38. Respondent did not begin drafting the motion and affidavit until a few days before January 11, 2007. On that day, respondent mailed an initial draft of the

motion and affidavit to Michael for his review. Michael received these materials on January 13, 2007. On January 16, 17 and 18, 2007, Kristin unsuccessfully attempted to contact respondent regarding changes that were necessary to the affidavit. On each of these dates, Kristin left a message for respondent, but respondent failed to return her calls.

39. On January 23, 2007, Kristin left another telephone message for respondent. Respondent returned Kristin's call at 2:08 p.m. that day, telling Kristin that it would take "a couple of days" for him to make the requested changes, at which point he would be ready to file the motion and affidavit with the court.

40. Kristin unsuccessfully attempted to reach respondent by telephone on February 6, 2007, and on two occasions on February 8, 2007, because the Williamses had not heard anything further from respondent or received the revised motion and affidavit. Kristin left a message for respondent on each occasion. Respondent did not return Kristin's calls, but mailed a revised draft of the motion and affidavit to Michael.

41. The Williamses received the revised motion and affidavit on February 10, 2007. Michael made additional changes and delivered the documents to respondent's office. On 13 occasions between February 13 and 26, 2007, Kristin unsuccessfully attempted to reach respondent by telephone to discuss the status of the motion and affidavit. On each occasion, Kristin left a message for respondent, but respondent failed to return her calls.

42. On or just before March 1, 2007, the Williamses spoke with respondent by telephone. The Williamses requested a meeting with respondent to discuss respondent's lack of diligence and communication. Respondent agreed to meet with the Williamses and suggested that the Williamses select a meeting date and time. The Williamses later telephoned respondent and left him a message indicating they wished to meet with him at 2:00 p.m. on March 1, 2007. The Williamses asked respondent to

inform them if he was not available at that time. Respondent neither contacted the Williamses to indicate that he was not available, nor appeared for the meeting.

43. On March 7, 2007, respondent wrote to the Williamses and asked whether they wished to have him continue representing Michael or have their retainer fee refunded to them. Kristin unsuccessfully attempted to reach respondent by telephone in response to his letter. Kristin left a message for respondent indicating that they wished to terminate respondent's representation and requesting a refund of their retainer. On March 28, 2007, respondent refunded \$600 of the Williamses' \$800 retainer.

44. Respondent's conduct in neglecting the Schibilla estate and Williams matters and failing to adequately communicate with the clients in those matters violated Rules 1.3 and 1.4, MRPC.

FIFTH COUNT

Failure to Pay Professionally Incurred Indebtedness

45. In or about November 2004, respondent enlisted Executeam Legal Brief Printing (hereinafter "Executeam") to assist him in preparing and filing an appellate brief on behalf of one of his clients. Executeam provided the services respondent requested and, on November 19, 2004, billed respondent \$404.83 for those services. Respondent failed to pay Executeam's bill.

46. Executeam thereafter made numerous attempts to contact respondent by telephone regarding its bill. Respondent did not respond to Executeam and did not pay its bill.

47. On October 27, 2005, Executeam wrote to respondent to again request payment of its bill. Respondent did not respond to Executeam and did not pay its bill.

48. On May 25, 2006, Executeam commenced a conciliation court action against respondent for the amount of its November 19, 2004, bill. The conciliation court hearing on Executeam's claim was scheduled for August 18, 2006.

49. Respondent failed to respond to Executeam's claim or to appear at the August 18, 2006, hearing. As a result, on August 21, 2006, judgment in the amount of \$459.93 was entered against respondent. Respondent failed to pay the judgment.

50. Executeam retained an attorney to collect on its judgment. On June 18, 2007, Executeam's attorney filed an affidavit of identification with the district court, requested that the court docket Executeam's judgment and requested that the court issue a writ of execution. Executeam's attorney paid the district court \$70 for the fees related to the filing.

51. On June 20, 2007, Executeam submitted a complaint to the Director regarding respondent's failure to pay its bill and judgment.

52. On August 21, 2007, almost three years after Executeam provided respondent with the relevant services, respondent issued Executeam a check for \$487.42 (\$459.83 plus interest as calculated by respondent). Executeam has accepted respondent's check as full payment and the judgment has been satisfied.

SIXTH COUNT

Failure to Cooperate with the Director

Schibilla

53. On October 3, 2007, respondent met with representatives of the Director to discuss the Schibilla Estate matter. During the meeting, the Director requested that respondent produce various documents and information regarding the Schibilla Estate matter, including certain of his trust and business account books and records and an accounting of the Schibilla Estate funds. The Director confirmed these requests in an October 4, 2007, letter to respondent. Respondent failed to produce the requested documents and information or to otherwise communicate with the Director regarding these materials.

54. On November 1, 2007, the Director wrote to respondent and requested that within one week, respondent either produce the requested documents and information or call to request an extension. Respondent failed to produce the documents and information and did not contact the Director regarding an extension.

55. On November 14, 2007, the Director wrote to respondent and requested that (a) by November 28, 2007, respondent produce the documents and information requested in the Director's October 4, 2007, letter, and (b) respondent appear in the Director's Office on November 28, 2007, to discuss the various complaints pending against respondent.

56. On November 15, 2007, the Director received from respondent a letter dated November 13, 2007. In his letter, respondent stated that he would "have the response for additional information in your hands before the end of this week."

57. Respondent failed to produce any of the requested materials and failed to appear in the Director's Office as requested.

58. As a result of respondent's noncooperation with the Director's investigation, the Director was required to obtain an investigatory subpoena pursuant to Rule 8(c), RLPR, and to obtain respondent's trust and business account records from the bank.

Karen Sack

59. The Director received Karen Sack's complaint against respondent on December 19, 2007.

60. On December 21, 2007, the Director mailed respondent a notice of investigation of Sack's complaint, together with a copy of the complaint, and requested respondent's written response within 14 days. Respondent failed to respond.

61. On January 11, 2008, the Director wrote again to respond to request his written response to the Sack complaint. Again, respondent failed to respond.

62. To date, respondent has not produced a written response to the Sack complaint or otherwise communicated with the Director regarding the matter.

63. Respondent's conduct in failing to cooperate in the Director's investigation of the Schibilla Estate and Sack complaints violated Rule 8.1(b)(3), MRPC, and Rule 25, RLPR.

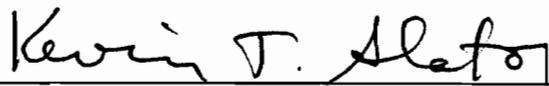
WHEREFORE, the Director respectfully prays for an order of this Court suspending or disbaring respondent from the practice of law, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: April 18, 2008.



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