

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against CAROLE JEAN HALVERSON,
a Minnesota Attorney,
Registration No. 198754.

**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 May 12, 1989. Respondent currently resides in Long Lake, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

False Statements, Defrauding Creditors in a Bankruptcy Proceeding, and
Deposit and Retention of Personal Funds In Client Trust Account

1. In or before May 2002, respondent and her husband, Jack Halverson, entered into a contract for deed to purchase real estate located at 1088 Laurel Avenue in St. Paul, Minnesota (hereafter "Laurel Avenue property"). The vendors on the contract for deed were Eugene and Marianne Misukanis.

2. In or before May 2002, respondent and her husband entered into a contract for deed to purchase real estate located at 4610 Highway 61, White Bear Lake,

Minnesota (hereinafter "White Bear Lake property"). The contract for deed vendors were the Misukanises.

3. On or about July 1, 2004, respondent's husband borrowed \$50,000 from the Misukanises. Respondent was aware of the loan.

4. On or about March 23, 2005, respondent filed a Chapter 7 bankruptcy petition on behalf of herself and her husband that she had prepared. Respondent signed the petition under penalty of perjury.

5. Respondent prepared schedules and a statement of financial affairs that she filed with the petition. Respondent signed the schedules and statements of financial affairs under penalty of perjury. The schedules and statement of financial affairs failed to identify as an asset the vendees' interest respondent and her husband had in the Laurel Avenue property. The schedules and statement of financial affairs failed to identify as an asset the vendees' interest respondent and her husband had in the White Bear Lake property. The schedules, statement of financial affairs and matrix of creditors failed to identify the \$50,000 obligation to the Misukanises and failed to otherwise identify the Misukanises as creditors.

6. As a result, neither the Misukanises nor their counsel had any knowledge that the bankruptcy case had been commenced, and the Chapter 7 Trustee ("Trustee") had no knowledge of the interests respondent and her spouse had in the Laurel Avenue and White Bear Lake properties.

7. On February 2, 2005, the Misukanises had served statutory notices of cancellation of the contracts for deed on the Laurel Avenue and White Bear Lake properties. The deadline for respondent and her husband to cure the defaults and stop the cancellation of the contracts for deed was April 4, 2005. Pursuant to 11 U.S.C. 108(a), the commencement of the bankruptcy proceeding extended the cure period for 60 days.

8. After the bankruptcy proceeding was commenced, respondent and her husband undertook substantial efforts to cure the defaults of the contracts for deed. At no time during these efforts did respondent advise the Misukanises or their counsel that respondent had commenced a bankruptcy proceeding.

9. As part of the efforts to cure, respondent's husband received \$40,000 from his family. On April 1, 2005, respondent deposited these funds, which were in the form of a check in the amount of \$40,000, into her Interest on Lawyers Trust Accounts (IOLTA) account. The payee on the check was Josephine M. Beckenbach. Beckenbach endorsed the back of the check as payable to respondent's husband, who then endorsed the check as payable to respondent.

10. Bank records show that between April 4, 2005, and June 7, 2005, the funds were disbursed from respondent's IOLTA account, in part, as follows:

- Thirteen checks were made payable to respondent's husband totaling \$12,105. At least one of these trust account checks was not signed by respondent, but instead bears a signature stamp.
- Two \$7,837 non-check withdrawals (totaling \$15,674) identified on the bank statements as "Mortgage JIT payment" and "Jack D. Halverson."
- One check made payable to Counselor Realty for \$3,356.26 and annotated "Office Rent/Exp."
- One check made payable to Avon State Bank for \$2,000 and annotated "Pelican Lake - 6 month extension."
- Four checks made payable to respondent totaling \$1,850.
- Two \$735.22 disbursements (totaling \$1,470.44) for automobile payments.
- One check made payable to Diamond State Insurance for \$1,388 and annotated "4610 Hwy 61 WBL- Insurance binder."

11. The schedules and statement of affairs that respondent prepared, signed under penalty of perjury and filed, did not identify this account or the \$40,000 deposit into it.

12. During the week of April 9 through 17, 2005, respondent's husband arranged for multiple fixtures to be removed from the Laurel Avenue property.

13. On April 27, 2005, the Misukanises and their counsel first learned of the bankruptcy proceeding. On that date, the Misukanises' counsel discovered, through an asset search of respondent and her spouse, that the bankruptcy proceeding had been commenced.

14. A joint meeting of creditors (Section 341 meeting) was scheduled for May 3, 2005. On or about May 2, 2005, respondent and her spouse requested, and the Trustee granted, a continuance. The Trustee rescheduled the Section 341 meeting to May 20, 2005.

15. On or about May 9, 2005, the Trustee contacted attorney D.G., whom respondent had approached about representing her and her husband. The Trustee advised D.G. of his knowledge of the vendees' interests in the contracts for deed held by respondent and her husband.

16. On May 20, 2005, the Section 341 meeting was conducted. During the Section 341 meeting, respondent testified under oath that neither she nor her husband removed fixtures from the Laurel Avenue property. This statement was false.

17. On June 9, 2005, respondent and her husband, through retained counsel D.G., filed amended schedules. Respondent signed the amended schedules under penalty of perjury. Those amended documents were the first time in the bankruptcy proceeding that respondent identified the vendees' interests respondent and her husband had in the Laurel Avenue and White Bear Lake properties at the time the bankruptcy was commenced.

18. On or about June 30, 2005, the United States Bankruptcy Trustee commenced an adversary proceeding against respondent and her husband to deny respondent and her husband a bankruptcy discharge because of, among other things, their multiple false statements and failures to disclose.

19. On November 8, 2005, respondent had her deposition taken in the adversary proceeding. During the deposition, respondent was presented with a copy of the \$50,000 check from the Misukanises, bearing her husband's endorsement. Only then did respondent for the first time admit the existence of this obligation to the Misukanises.

20. On or about January 27, 2006, the United States Bankruptcy Trustee served and filed a motion for summary judgment in the adversary proceeding. The motion was based on 11 U.S.C. § 727(a). This statute provides in pertinent part:

§ 727. Discharge

(a) The court shall grant the debtor a discharge, unless—

* * *

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

* * *

(4) the debtor knowingly and fraudulently, in or in connection with the case—

(A) made a false oath or account.

21. A hearing on the motion was conducted on March 1, 2006. From the bench, the court found that there was no genuine issue of material fact on the claims against respondent and her spouse, granted the motion for summary judgment and denied respondent and her husband a discharge.

22. The Bankruptcy Judge found:

On May 20, 2005, the Debtors [respondent and her husband] testified at the meeting of creditors that they had not removed from the Laurel Avenue property any fixtures, pillars, columns, furnace, windows, or other components of the house. In addition, they testified that they did not receive \$50,000 from Mr. Misukanis and did not owe him any money as a result of a loan. Eugene and Marianne Misukanis are not listed as creditors anywhere on the Debtors' original Bankruptcy Schedules, but they were in fact indebted to them for at least \$50,000 on the date they filed. Not until the Debtors' deposition, when confronted with a copy of the check from Misukanis bearing Jack Halverson's signature, did they essentially come clean with respect to that. She [respondent] testified at her deposition on November 8th that she knew about the \$50,000 check received on July 1st by Jack from Eugene and Marianne.

* * *

The United States Trustee has shown by what I think is extensive, undisputed evidentiary record that at the time of the bankruptcy filings Debtor had a contract for deed vendee's interest in two pieces of real estate which were undisclosed on their Bankruptcy Schedules.

* * *

Now, with respect to the nondisclosure of the two interests in the contracts for deed -- that's Counts One and Counts Two. In this case, the United States Trustee has established that the Debtor concealed the existence of their equitable interests in the two parcels of real property with more -- those properties actually had more than \$260,000 in equity, equity which at the time of the commencement of the Debtors' case exceeded the amount of their scheduled unsecured debt. * * * What the debtor is going to say and what these Debtors have said is, 'We didn't

intend to do anything bad.' But every piece of evidence in this case suggests otherwise. Again, sophisticated real estate purchasers. That was item 1. Item 2: everything they did between the time they filed the bankruptcy case and thereafter suggests that they knew that they had an interest in that property, that they -- those properties -- that they concealed that interest both from the Trustee in this Chapter 7 case by not disclosing it and from the attorneys and contract vendors -- that is established by affidavits in this file -- and that what they tried to do was to cure those defaults until they finally were unsuccessful in doing so. They actually thought they had it done. And if somebody hadn't squealed on them, they might have been able to do it. In other words, the whole scenario suggests that if they had been successful on turning over the money, curing the defaults, the bankruptcy trustee never would have heard about that.

* * *

The two statements -- the two counts are Counts Four and Five. Count Four says that essentially they fraudulently and falsely testified at the 341 meeting on May 20th that they had not removed property from the Laurel Avenue Property. There is an affidavit in the -- they actually now admit that they did. * * * It was a lie. It was just false.

* * *

And then with respect to the \$50,000, the failure to disclose that -- similarly, the allegation is that the complaint that they knowingly and fraudulently made false oaths at the 341 meeting which was held on May 20th of 2005, when they testified that they did not receive \$50,000 from Mr. Misukanis and didn't owe him any money as a result of that loan. They clearly testified that they did not receive that money. They clearly did not disclose that they had received it or list the Misukanises as creditors. The Zisla affidavit shows that at the time of their bankruptcy case the Defendants were indebted to the Misukanises by at least \$50,000. Finally, at their deposition, the Defendants were confronted with a copy of it, and I actually have already found what they said then. Their motivation for keeping the Misukanises' claim against them secret appears to have been to allow them to cure the contracts for deed and to run off with the property, and once it became clear that wasn't going to happen, they trashed it.

23. Respondent's multiple false statements and omissions to hide assets and of hiding personal funds in a client trust account to defraud creditors; and deposit, retention and disbursement of personal funds in a client trust account violated Rules 1.15(a), 3.3(a)(1), 3.4(c), and 8.4(c) and (d), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Non-Cooperation

24. By letter dated May 4, 2006, the Director requested respondent to provide no later than May 18, 2006, all documents served and/or filed by any party in conjunction with the March 1, 2006, summary judgment hearing (*see* ¶¶ 20-22, above). Respondent failed to respond.

25. By letter dated May 19, 2006, the Director advised respondent that the Director had received no response to that May 4 letter and requested respondent to provide at that time the requested documents. On May 25, 2006, respondent spoke with an Assistant Director, stated she had been in the hospital and requested an additional week to respond. Respondent and the Assistant Director agreed upon an extension until June 2, 2006.

26. By letter dated May 26, 2006, the Director requested that no later than June 9, 2006, respondent explain in detail why funds received from Jack Halverson's family were placed into respondent's IOLTA (*see* ¶¶ 9-10, above) and provide her trust account books and records for the period of April 2005 through May 2006.

27. On June 6, 2006, Jack Halverson spoke with an Assistant Director and stated that due to respondent's medical condition, respondent needed an extension to respond to the Director's May 4 and May 26, 2006, letters. The Director granted an extension until June 16, 2006. Respondent did not respond until June 21, 2006.

28. On June 21, 2006, the Director received an affidavit from respondent. Respondent failed to provide any of the requested documents.

29. By letter dated June 21, 2006, the Director requested respondent to provide the requested documents at that time. Respondent failed to respond.

30. By letter dated June 29, 2006, the Director advised respondent that the Director had received none of the requested documents and requested respondent to provide the documents at that time. The Director also advised respondent that if she did not provide the documents on or before July 7, 2006, the Director intended to procure an investigatory subpoena to obtain the records directly from the bank. Respondent failed to respond.

31. On July 13, 2006, the Director received a letter from respondent. However, none of the requested documents were enclosed. Respondent's letter gave no indication that the documents would be forthcoming.

32. Pursuant to Rule 8(c), Rules on Lawyers Professional Responsibility (RLPR), the Director obtained an investigatory subpoena and requested Wells Fargo Bank to produce documents regarding respondent's IOLTA account. On August 28, 2006, the Director served on respondent notice of the deposition of Wells Fargo. On September 21, 2006, the Director received the responsive documents from Wells Fargo. On September 22, 2006, the Director sent the documents to respondent.

33. By letter dated October 4, 2006, the Director requested respondent to provide no later than October 18, 2006, information regarding the transactions reflected in the bank documents, which include the transactions referenced in ¶¶ 9 & 10, above. Respondent failed to respond.

34. To date, respondent has not provided all the information and documents requested in the Director's May 4, May 26 and October 4, 2006, letters.

35. Respondent's failure to cooperate with the Director's investigation violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

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, 2007.



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



TIMOTHY M. BURKE
SENIOR ASSISTANT DIRECTOR
Attorney No. 19248x