

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary  
Action against JAMES T. HANVIK,  
an Attorney at Law of the  
State of Minnesota.  
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**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:

FIRST COUNT

Conrad Estate

1. James T. Hanvik, hereinafter respondent, was admitted to practice law in Minnesota on October 17, 1984. Respondent currently practices law in Edina, Minnesota.

2. Sharon Henke retained respondent in December 1994 to represent her as the personal representative of the estate of her adult son, Kevin Conrad, who died in November 1994 in an accident after leaving a bar. Henke directed respondent to administer the estate and to pursue a dram shop action against the bar.

3. Conrad's employer drafted a final payroll check for \$887.78, payable to Conrad, and forwarded it to Henke. Henke gave the check to respondent during their first meeting. Respondent wrote to the employer and requested a new check, made out to Henke as the personal representative of Conrad's estate.

4. The employer issued a new check on or about February 1, 1995, and forwarded it to respondent. Respondent endorsed the check by signing Henke's name, and deposited it in his trust account on February 8, 1995. On that same date, respondent issued a trust account check to himself for the full amount of Conrad's last paycheck.

5. Respondent wrote to Henke on February 15, 1995. The letter began, "As we discussed, I will place Kevin's last check in my trust account, and I will withdraw monies from that account as fees and costs accrue in probating Kevin's estate." Respondent's statement was false. Respondent knew by this date that he had not accrued sufficient fees and costs to earn the \$887.78 and that he had already withdrawn the funds from his trust account.

6. Respondent performed little work on the estate and the dram shop action between March and September 1995. During this period of time, Henke inquired several times about the disposition of Conrad's last paycheck but could not get a direct response from respondent.

7. Respondent sent a demand letter to the insurance adjuster for the bar in October 1995 and settled the claim soon thereafter, with Henke's consent, for \$8,500. Respondent received the settlement check and deposited it to his trust account on December 14, 1995. Respondent's records indicate that he issued three previous checks to himself, for \$1,000 on November 14, 1995, \$500 on November 20, 1995, and \$500 on December 1, 1995, all attributed to the Conrad settlement. As further detailed below, respondent misappropriated other clients' funds to distribute these fees to himself.

8. Respondent sent a settlement statement to Henke. From the \$8,500 settlement, respondent deducted \$2,833.33 for attorney's fees and \$337.70 for costs incurred. Respondent charged the estate for two filing fees even though the dram shop action was not filed. Respondent issued a trust account check to himself on December 14, 1995, for \$1,171.03 which represented his fees and costs less the \$2,000 he previously

distributed to himself. Of the net proceeds to the estate of \$5,328.97, respondent forwarded \$5,000 directly to Henke on December 23, 1995, to reimburse Henke for burial costs she expended. Respondent wrote to Henke that he had retained \$328.97 from the settlement "to take care of any final expenses that might arise as we wind up the administration."

9. Between December 1995 and November 1996, Henke inquired several more times about Conrad's last paycheck but could not get a response from respondent.

10. Respondent decided to withdraw from representing Henke. In his December 9, 1996, closing letter to Henke, respondent acknowledged Henke's concern regarding the final paycheck. Respondent wrote, "First, your vague accusations regarding some sort of ethical lapse are entirely unfounded. These accusations apparently stem from claims that Kevin's final paycheck was used by me for improper purposes." Respondent went on to state "Notwithstanding the fact that we had, and have, every right to pay out those funds for services and costs, in reviewing my trust account records, I discovered that I have not expended any funds from the deposit of Kevin's check." Respondent's statements regarding his trust account records were false. Respondent enclosed a check for \$1,216.75, which included both the Conrad paycheck of \$887.78 and the \$328.97 retained from the dram shop recovery. Henke filed her complaint with the Director's Office a few days before receiving respondent's check.

11. During the investigation by the district ethics committee, respondent produced a subsidiary ledger for the Henke representation which recorded only the deposit of the payroll check, the deposit of the retained funds from the dram shop recovery, and the disbursement of those funds to Sharon Henke. The ledger does not comport with respondent's other trust account records, was not prepared contemporaneously as the transactions occurred, and was submitted to mislead the investigator regarding the funds respondent retained in his trust account.

12. Respondent's conduct in representing the Conrad estate violated Rules 1.3, 1.4, 1.15(b), 1.15(g), 4.1, 8.1(a)(1) and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT  
J.B. Personal Injury Settlement

13. Respondent represented client J.B. in a personal injury action. Respondent settled the claim with J.B.'s consent in November 1994 for \$5,000. Respondent was aware that Medicare held a subrogation claim of \$3,090.80 on J.B.'s settlement. Respondent falsely told the Medicare claims agent, Karen Holst, that the case was settled for \$3,500. On that basis, Medicare agreed to reduce its claims to one-third of the purported settlement amount, \$1,166.67.

14. Respondent gave J.B. a settlement statement that reflected a deduction of \$1,166.67 for the Medicare subrogation payment and a separate deduction for litigation expenses of \$208.75. J.B. signed the statement on November 25, 1994, and received her distribution.

15. Respondent did not forward the subrogation amount to Medicare. On August 3, 1995, Holst wrote to respondent to inquire regarding the status of J.B.'s settlement. Respondent replied with an August 10, 1995, letter in which he stated that he had been unable to contact J.B. and could not provide Holst with any information regarding the status of the case. Respondent's statement was false. Respondent had no reason to contact J.B. at this time and there was no reason why he could not inform Holst that the personal injury action had been settled.

16. On March 1, 1996, respondent issued a trust account check to himself for \$250, with the notation "[B] Cost Reimburse." Respondent knew that he had already reimbursed himself for the costs in J.B.'s case, that there had been no activity on the file during the preceding 15 months, and that all of the funds remaining in his trust account for the J.B. case were owed to Medicare. On March 10, 1996, respondent issued a trust

account check to himself for \$500, with the notation "Blum fees." Respondent knew he was not entitled to any additional fees from the J.B. case. Respondent used the funds from the two checks, totaling \$750, for his own business and personal needs.

17. Holst wrote to respondent again on January 29, 1997, to determine the status of J.B.'s personal injury action. Respondent did not contact Holst until April 1997, when he telephoned her to discuss payment of the subrogation claim. Respondent followed up with an April 22, 1997, letter to Holst, in which respondent stated that the delay was caused by "unexpected expenses" and respondent's inability to communicate with J.B. regarding settlement of the subrogation claim. Respondent's statements were false. In fact, no such expenses had occurred and respondent had neither attempted to communicate with J.B. nor was any communication necessary.

18. In the April 22, 1997, letter, respondent deducted from Medicare's subrogation claim \$150 for a knee brace purchased by J.B. and \$104.38 for one-half of the costs of the lawsuit. Based on those deductions, respondent sent Medicare a check for \$912.29. Respondent knew that J.B. had paid for the knee brace out-of-pocket in 1993. Respondent did not forward the \$150 to J.B., nor has he ever held those funds in his trust account in anticipation of forwarding them to J.B. Respondent also knew that he had already been reimbursed for his litigation expenses by J.B., as noted on her settlement statement. In fact, respondent only paid Medicare \$912.29 because he did not have sufficient funds in his trust account to pay the complete amount of the subrogation claim. Of the \$912.29, only \$416.67 remained from J.B.'s settlement funds. The remainder of the funds were either held on behalf of other clients or were earned funds respondent failed to withdraw from the trust account. See ¶ 25, *infra*.

19. Respondent's conduct in the J.B. matter violated Rules 1.15(a), 4.1, 8.4(c), and 8.4(d), MRPC.

THIRD COUNT  
T.K. Dissolution Matter

20. Respondent met with client T.K. on May 8, 1996, to discuss representing T.K. in his divorce. The meeting lasted between 10 and 15 minutes. T.K. gave respondent \$500 as a retainer for the matter but was not sure he wanted to proceed with the divorce. T.K. instructed respondent to hold the retainer and not perform any work until T.K. contacted him again.

21. T.K. did not contact respondent again. Respondent drafted a form retainer letter which he placed in his file but did not send to T.K. because T.K. did not want mail sent to his home. Respondent also prepared a billing statement dated June 15, 1996, which stated that respondent had met with T.K. and prepared "all necessary documents including summons, petitioner [sic] and acknowledgment of service." Respondent had not in fact prepared these documents. The statement suggests that respondent had earned T.K.'s \$500 retainer. The statement was never sent to T.K.

22. In reviewing respondent's trust account, the Director determined that respondent deposited in his trust account \$500 attributed to T.K., and that there were no withdrawals corresponding to T.K.'s funds during the audit period. Respondent's account balance fell to \$108.23 in April 1998 and there were no further deposits. In response to the Director's inquiry regarding T.K.'s funds, respondent stated in a July 14, 1998, letter that he had earned all of T.K.'s retainer and that no funds were owed to his client. Respondent's statement was false.

23. Respondent's conduct in representing client T.K. violated Rules 1.15(a), 8.1(a)(1) and 8.4(c), MRPC.

FOURTH COUNT  
Failure to Maintain Trust Account Books and Records and Misappropriation

24. Respondent certified on his 1995, 1996, 1997 and 1998 attorney registration statements that he properly maintained his trust account books and records. Between

November 1994 and August 1998, respondent failed to maintain subsidiary client ledgers and performed no reconciliations of his trust account with his bank statements.

25. The Director conducted an audit of respondent's trust account at Park National Bank for the period November 1994 through August 1998. The audit revealed the following discrepancies:

a. Of the account balance at the beginning of the audit period, the Director was able to attribute all but \$297.71 to specific client transactions. According to respondent's files, respondent's trust account should have had a minimum balance of \$2,000 corresponding to funds received in June 1993 on behalf of Land Office Realty, Inc. (LORI), a client of respondent's associate. In June 1995 these funds became part of the subject of an action in bankruptcy court, *Lundquist v. The Land Office Realty, Inc.*, BKY 93-43864-NCD. At all relevant times during this lawsuit, respondent, through his associate, maintained that the \$2,000 was held in the trust account. In fact, from at least November 1994 through May 1996 no more than \$297.71 remained in trust of the original \$2,000. After a trial on the merits in March 1996, the bankruptcy court determined that the \$2,000 belonged to LORI. Respondent issued a check to LORI for \$2,000 on May 17, 1996.

b. Respondent over-disbursed funds to himself of \$75 from client Gamble by issuing two checks for \$50 each on November 18 and 20, 1996. The amount of the checks exceeded the funds deposited on behalf of the client and resulted in the misappropriation of other client funds.

c. Respondent received payments over several years from a judgment debtor on behalf of client T.H. In April 1998 respondent issued a check to T.H. for \$950. Respondent's records show that he should have paid T.H. \$1,025.

d. Respondent earned but failed to withdraw retainers for the following clients:

<u>Client</u>	<u>Amount</u>	<u>Deposit Date</u>	<u>Earned Date</u>
Hoffer	\$125.00	4/24/96	May 1996
Kotzen	700.00	6/23/95	Unknown
McDaniel	500.00	12/20/96	Unknown
Pyles	500.00	10/29/96	February 1, 1997
Sando	25.00	8/22/96	Prior to Sept. 1996
Stensrud	475.00	3/25/96	May 1996
Woodwards	93.75	9/5/96	January 1997

Respondent also deposited earned fees of \$275 to his trust account on January 17, 1997. In calculating the shortages in respondent's trust account, the Director has credited these earned fees at the earliest dates respondent could have earned them.

e. Respondent used the earned fees identified above, and the unearned retainer of client T.K., to issue checks to Henke (\$1,216.75), Medicare (\$912.29) and T.H. (\$950) between December 1997 and April 1998, as set forth in paragraphs 10, 18 and 25(a), *supra*.

f. The shortage in respondent's trust account, after applying earned fees, existed continuously from November 1994 through August 1998. The shortage began at \$1,702.29 in November 1994, and totaled \$466.94 at the end of the audit period. During the audit period, the shortages were reduced only because respondent retained earned fees in his trust account; respondent never deposited his own funds for the express purpose of reducing the shortage.

26. During the course of the Director's investigation of respondent's trust account, respondent wrote a letter to the Director on April 13, 1998. In that letter respondent falsely stated that he had never deliberately taken money from the trust account when it was not actually owing, that he was aware at all relevant times of what the balance of the account should be, and that the closing balance was what he expected it to be.



27. Respondent replied on July 14, 1998, to other information requests from the Director. Respondent repeated several false statements from his April 13, 1998, letter regarding the balance in his trust account, falsely stated that he had reviewed the balances of all clients for whom he had held funds in his trust account, and falsely described the delay in payment of Medicare in the J.B. matter.

28. Respondent ceased using his Park National Bank trust account in April 1998 and opened a new trust account at Norwest Bank.

29. Respondent's failure to maintain proper books and records and providing false information to the Director violated Rules 1.15(a), 1.15(b), 1.15(g), 1.15(h), 8.1(a)(1) and 8.4(c), MRPC, and Lawyers Professional Responsibility Board Opinions Nos. 9 and 15.

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: May 13, 1999.



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EDWARD J. CLEARY  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY  
Attorney No. 17267  
25 Constitution Avenue, Suite 105  
St. Paul, MN 55155-1500  
(651) 296-3952

and



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ERIC T. COOPERSTEIN  
SENIOR ASSISTANT DIRECTOR  
Attorney No. 210201