FILE NO. A08-1525

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against CALANDRA FAYE HARRIS, a Minnesota Attorney, Registration No. 319910.	**AMENDED AND SUPPLEMENTARY 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 amended and supplementary petition for disciplinary action pursuant to Rules 10(e) and 12(a), Rules on Lawyers Professional Responsibility (RLPR).

Respondent is currently the subject of a September 2, 2008, petition for disciplinary action. The Director has investigated further allegations of unprofessional conduct against respondent.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Demetrius Winston Matter

Failure to Communicate

1. On January 8, 2005, Demetrius Winston retained respondent to represent him in a custody dispute pertaining to his son. Although the child's mother had primary physical custody, the child resided with Winston, who had joint legal custody of the child. Respondent's written agreement with Winston required a $3,500 non-refundable retainer, which was paid. Prior to commencing an action on Winston's behalf, respondent required Winston to provide certain documents.

2. During the month of January, Winston called respondent on multiple occasions, but was not able to speak with respondent. In early February 2005, Winston reached respondent and told her he had the necessary documents. Respondent told Winston that she would be out of the country from February 16-22, 2005, but that Winston could meet with attorney Wolanda Shelton, to prepare an affidavit. Winston met with Shelton for approximately two hours, covering much of the same information he had previously given to respondent.

3. On March 5, 2005, the mother of Winston's son died in an automobile accident. Within a few days of the accident, Winston called and informed respondent and Shelton about the accident.

4. Winston began calling respondent regarding return of the unused portion of his retainer. When respondent failed to respond, Winston wrote to respondent on at least three separate occasions. When respondent failed to respond to Winston's letters, Winston filed a complaint with the Director's Office.

5. Respondent indicated Winston called several times, including on her cellular telephone. Respondent indicated she did not answer many of Winston's calls because she does not allow family law clients to call her on her cellular telephone.

6. Respondent's failure to communicate with her client violated Rule 1.4(a), Minnesota Rules on Professional Conduct (MRPC), as that Rule existed prior to its amendment effective October 1, 2005.

Misrepresentations and Failure to Return Client Property

7. In her response to the Director, respondent stated she spoke with Winston on April 11, 2005, and told him a check would be ready for him on April 15. Respondent stated she again spoke with Winston in May and told him she needed to get a billing statement from Shelton prior to issuing Winston a refund check. Respondent stated she asked Winston if he wanted his check mailed to him or if he would be picking the refund check up. Respondent stated that Winston said he would

pick the refund check up. Respondent told the District Ethics Committee (DEC) investigator that Winston had failed to follow-up in getting his refund check. Winston denies respondent ever indicated a refund check was ready.

8. Respondent stated she called Winston on May 2 and told Winston to come pick up his refund check. On June 2, 2005, respondent indicates Winston again called and respondent told Winston that his "check has been ready to pick up."

9. Respondent further stated in her June 6, 2005, response, "Mr. Winston's refund has been available to him and he was entitled to a refund of $2,295.50," and "I have now spent approximately two hours responding to a complaint for a refund that has been ready for Mr. Winston to pick up."

10. Respondent's statements to the Director were not true. Respondent did not have a trust account and had only one business account which was at Wells Fargo. On April 15, 2005, when respondent stated the check was ready to be picked up, respondent did not have the requisite funds in her account as respondent only had $229 in her Wells Fargo checking account. On June 2, 2005, when respondent again claims she told Winston his check was ready to be picked up, respondent only had $579 in her checking account. In August 2005, respondent's checking account had a negative balance. Respondent did not refund any part of Winston's retainer until March 1, 2006.

11. Instead of refunding the $2,295.50 to which Winston was entitled, respondent refunded only $2,131.50. Respondent did not explain why the refund check was $164 less than what was stated in her answer to the complaint.

12. In response to the Director's inquiry regarding the lack of funds held in respondent's bank account on behalf of Winston, respondent, through counsel, provided bank statements from TCF account 3868131970 and stated, "Winston's $3,500 retainer check was deposited into the Harris Law Office Inc. TCF account, account number 3868131970." This statement was false. Respondent's TCF account number

3868131970 was not opened until February 27, 2006, a full year after respondent received the retainer check from Winston and after Winston had filed his complaint.

13. When respondent's representation ended, she acknowledged Winston was entitled to a refund. Respondent was required to return the funds held. Her failure to promptly pay Winston his requested funds violated Rule 1.16(d), MRPC, as that Rule existed both prior to and subsequent to its amendment on October 1, 2005. Respondent violated Rule 1.5(e), MRPC, as that Rule existed prior to its amendment on October 1, 2005, by charging her client for fees incurred by an attorney who was not in the same firm and without a written fee agreement. Respondent's misrepresentations to the DEC investigator, the Director and her client that a check was ready to be picked up when no check or funds were available violated Rules 8.1(a)(1) and (a)(2) and 8.4(c) and (d), MRPC, prior to the amendment of those Rules on October 1, 2005, and Rule 25, RLPR. By continuing the misrepresentations and providing unrelated bank statements violated Rules 8.1(a) and (b) and 8.4(c) and (d), MRPC, as those Rules existed subsequent to their amendment on October 1, 2005, and Rule 25, RLPR.

SECOND COUNT

Larry Williams Matter

14. Beginning in February 2004 respondent represented Larry Williams regarding state criminal matters. In August 2004, Williams was arrested on federal charges and incarcerated. Federal public defender, Lee Johnson, was appointed to represent Williams. The federal charges were a separate matter but were related to the state charges.

15. Williams filed a complaint with the Director's Office against respondent on June 10, 2005. The matter was sent to the DEC to investigate. The DEC investigator obtained copies of telephone conversations between respondent and Williams, as kept by Sherburne County.

Diligence and Failure to Communicate

16. In an August 27, 2004, telephone conference with respondent, Williams asked respondent if he retained her with regard to the federal matter, could respondent obtain his release. Respondent stated she would file a motion for another detainer hearing on Williams' behalf.

17. On or about September 25, 2004, Williams again spoke with respondent and told her he could pay her $7,000 immediately if she could arrange his release. Although respondent did not promise she could arrange Williams' release, Williams believed respondent would file the necessary motions to seek his release.

18. On or around October 1, 2004, Williams' mother, Linda Williams, paid respondent $7,000 by a cashier's check. Respondent then assumed the federal case from the public defender.

19. Despite respondent's conversations with Williams on August 27, 2004, and September 25, 2004, respondent did not request a detainer hearing on Williams' behalf nor did respondent explain to Williams why she could not or would not do so.

20. Williams' arrest was witnessed by Travis Mitchell, an Anoka County social worker. Respondent and Williams discussed the need to get a statement from Mitchell and also discussed hiring investigator Pat Robinson to obtain Mitchell's statement. Respondent told Williams she would need money to hire Robinson.

21. On or about December 10, 2004, Williams spoke with respondent. Respondent told Williams they needed to act quickly in that she was aware that Mitchell would soon be leaving town. Williams arranged for his mother to deliver $600 to respondent to hire Robinson in order to get Mitchell's statement. Respondent did not hire Robinson and did not obtain the necessary statement from Mitchell.

22. Instead of using the $600 to hire Robinson to get the Mitchell statement, respondent applied the money to the retainer. Respondent did not inform Williams that she would not be using the $600 as intended.

23. On February 7, 2005, Williams had a scheduled hearing. Respondent was not present for this hearing and sent Caroline Durham in her place. Although respondent and Williams had talked about possibly retaining Durham as co-counsel, Williams had not met or spoken with Durham prior to February 7, 2005. Respondent did not tell Williams she would not be attending the February 7, 2005, hearing nor did she indicate to Williams that Durham was acting as her replacement for this hearing. On the day of the hearing, Williams learned from Durham that respondent had a conflicting hearing.

24. Following the hearing, Williams made multiple, but unsuccessful attempts, to contact respondent. On February 15, 2005, Williams reached respondent on her cellular telephone.

25. On February 16, 2005, respondent wrote Williams a three sentence letter stating, "It looks like you've been indicted again. Enclosed, please find a copy of the indictment. You can call me when I get back from vacation on Wednesday, February 22, 2005."

26. Although Williams attempted to call respondent after receiving respondent's February 16, 2005, letter, she failed to return his calls. Williams had no telephone communication with respondent nor was he able to discuss his second superseding indictment with respondent prior to his trial on March 10, 2005. The second superseding indictment represented the criminal charges Williams would be expected to defend against in his upcoming trial.

27. Respondent's failure to pursue a detainer hearing or explain why a detainer hearing was not possible, to pursue obtaining the Mitchell statement, to communicate regarding her absence from the February 7, 2005, hearing, to consult with Williams regarding his second superseding indictment, and failure to return Williams' phone calls violated Rules 1.3 and 1.4, MRPC, as those Rules existed prior to their amendment on October 1, 2005.

Attorney's Fees and Retainer Agreement

28. On or around October 1, 2004, Linda Williams, Larry Williams' mother, provided respondent a cashier's check for $7,000 on behalf of Williams. Although respondent considered this payment toward a non-refundable retainer agreement, respondent did not have a written agreement signed by Williams and she did not put the money into an IOLTA account.

29. The DEC investigator asked respondent to produce a retainer agreement. Respondent could not produce a written fee agreement, but stated that Linda Williams had signed a fee agreement on October 4, 2004. Both Williams and his mother deny signing a retainer agreement pertaining to the federal matter.

30. During a telephone conversation in September 2004, respondent indicated to Williams that her fee would be $20,000. There was not a written agreement regarding the amount of respondent's fees. In a telephone conversation on January 19, 2005, respondent acknowledged the balance owed by Williams was $2,400. Respondent did not provide Williams with billing statements.

31. Although respondent discussed with Williams the possibility of retaining Caroline Durham as co-counsel, Durham is not employed at the same firm as respondent and maintained her own independent law practice. Williams was not opposed to retaining co-counsel, but wanted to meet Durham before retaining her. As Durham did not meet with Williams prior to the February 7, 2005, hearing, Williams did not retain Durham.

32. After Durham appeared on respondent's behalf at the February 7, 2005, hearing, Durham requested Williams pay her $5,000 for Durham's representation. Prior to the February 7, 2005, hearing, Durham had not been retained by Williams. A written agreement explaining the division of attorney's fees and labor between Durham and respondent had not been signed.

33. Respondent did not provide Williams with any sort of accounting regarding the use of the monies Williams provided for his representation.

34. Respondent's conduct in receiving non-refundable advance fee payments without a written fee agreement signed by her client violated Rule 1.15, MRPC, as that Rule existed prior to October 1, 2005, and further interpreted by Lawyers Professional Responsibility Board (LPRB) Opinion 15. Diverting $600 meant for an investigator but used for her outstanding balance violated Rule 1.15, MRPC, as that Rule existed prior to October 1, 2005. Respondent violated Rule 1.5(e), MRPC, as that Rule existed prior to October 1, 2005, by charging her client for fees incurred by an attorney who was not in the same firm and without a written agreement.

Misrepresentations

35. During Williams' trial, an issue arose before the court regarding potential witness, Quinn Tucker. Williams wanted to include Tucker as a witness. However, Tucker was a client of respondent's and respondent misled the court. The following exchange occurred:

Respondent:	That witness is my client, your Honor, and there would definitely be a potential conflict.
The Court:	Okay.
Respondent:	Would you like me to proceed, your Honor?
The Court:	Well, probably for the record you should name that person so it's clear who the defendant wants called.
Respondent:	[Williams] wants to call Quinn Tucker.
The Court:	All right. And that name was just given to you about an hour ago?
Respondent:	Yes.

36. A transcript of a telephone conversation between respondent and Williams documents that three months before respondent's statements to the court, on December 10, 2004, the following conversation took place:

Williams:	Alright. And did you talk to ah, ah Quinn as well?
Respondent:	He called me. He called me a few days ago and we were talking about somebody else and then he asked when I had talked to you. And he said that, you know, he'll still help you out.
Williams:	Yeah, alright.
Respondent:	I said okay.
Williams:	Yeah. I'm like, shouldn't have to ask once, you know? Considering the circumstances, you know what I'm saying? No other way to put it. You know what I'm saying? I do what I got to do as well. But hey, I just want to know is . . .
Respondent:	Yeah, he's cool, yeah. He said he's still wanting to help you out. And he wants you to get out. And he said whatever I need, just call him.
Williams:	Alright. Yeah. But, yeah alright. You know he's one of my witnesses as well, right?
Respondent:	Yep, yep. Oh he talked to me about it.
Williams:	Alright.
Respondent:	He talked to me about it, because he told me he's the one that did it.

37. Respondent was aware Williams wanted to call Tucker as a witness at least three months prior to trial, not one hour prior to trial as respondent told the court. Respondent represented Tucker and there would be a conflict of interest if Tucker testified on behalf of Williams.

38. During the investigation of this matter, respondent made numerous misrepresentations to the DEC investigator and to the Director as follows:

- On April 25, 2006, respondent testified in federal court that she had not appeared at Williams' February 7, 2005, hearing, because she had another trial on that date. Respondent stated in her answer to the Director that she was "out of the country." Respondent told the investigator that the reason she was unable to attend the February 7, 2005, hearing was because she was on a cruise. The investigator spoke with Durham who stated she did not recall where respondent was on that day. At the time the investigator interviewed respondent, respondent showed the investigator a picture of respondent and her fiancé during the cruise. The investigator wrote respondent on two occasions seeking verification of respondent's travel on February 7, 2005. When respondent replied to the investigator's inquiries, she told the investigator that the cruise was from February 3 through February 7, and that her fiancé had paid cash for the trip and therefore respondent had no receipts. After the investigator asked respondent for evidence of her flight from Minneapolis to Florida, respondent stated that she was not on a cruise, but had appeared in a state court matter on February 7.
- Respondent denied Williams' allegations that she had stated she would file another motion for a detainer hearing. That statement was false. Contrary to her denials, in a tape recorded telephone conversation between respondent and Williams, Williams asked if respondent could arrange for him to be released on a signature bond if he paid respondent $7,000 now and $3,000 later. In that conversation respondent stated she would "certainly file another motion for a detainer hearing."

- In her answer to the complaint, respondent denied that she had ever received a witness list from Williams. Telephone conversations between Williams and respondent indicate that Williams expected Travis Mitchell and Quinn Tucker would both be witnesses. Respondent did not inform Williams that Tucker was her client and thereby created a conflict of interest, nor did she inform Williams that she had not pursued obtaining testimony from Mitchell. Respondent did not convey to Williams that these men would not be called at trial. Further, respondent misrepresented to the court that she had only learned of Williams' wishes to call Tucker as a witness one hour prior to the start of trial, when in fact she learned of Tucker three months earlier.

39. Respondent's repeated misrepresentations, including to the court, the DEC investigator and her client violated Rules 3.3(a)(1), 4.1, 8.1(a)(1) and (a)(2) and 8.4(c) and (d), MRPC, and Rule 25, RLPR, as those Rules existed prior to October 1, 2005. Respondent's misrepresentations to the Director violated Rules 8.1(a) and (b) and 8.4(c) and (d), MRPC, and Rule 25, RLPR, as those Rules existed subsequent to October 1, 2005.

THIRD COUNT

Carlos Lattrell McAdory Matter

40. On June 29, 2004, Carlos McAdory retained respondent and Carolyn Durham to represent him in a criminal matter.

41. Beginning in early 2005, McAdory made multiple requests for a copy of his file. On June 7, 2005, McAdory wrote respondent stating: "I am writing this letter to you requesting a copy of my entire file. I have made numerous requests and have not received anything to date. I am requesting this information ASAP and require it before sentencing." McAdory sent a copy of his letter to Federal District Court Judge Joan

Ericksen, who was presiding over McAdory's criminal matter. McAdory's file was in the physical possession of respondent.

42. On June 16, 2005, Durham responded to McAdory's letter stating that his file was made available to him during his trial and that McAdory's girlfriend was welcome to go to respondent's office to make a copy. Durham stated that upon sentencing she would give McAdory his file. Durham copied respondent on this letter.

43. On June 22, 2005, McAdory wrote to respondent, again requesting a copy of his file. McAdory stated that he was aware of some discovery documents given to respondent three days prior to trial. McAdory stated he has never seen these documents and wanted a copy of his entire file. McAdory sent a copy of the letter to Judge Ericksen.

44. On June 24, 2005, respondent wrote McAdory stating in part: "You are not being denied your file."

45. On June 30, 2005, McAdory again wrote respondent requesting respondent provide him with an accounting and various documents. McAdory listed the documents he was requesting and asked that they be provided as soon as possible. McAdory sent Judge Ericksen a copy of this letter.

46. On July 6, 2005, Durham went to visit McAdory at Sherburne County jail. Prior to this visit, McAdory had spoken with respondent and asked that his file be brought to this visit. According to a report created by a Sherburne County correctional officer, on July 6, McAdory had a professional visitor. While the officer was escorting McAdory to the visiting area, McAdory told the officer, "If they don't have my file, I don't have anything to say to them." When McAdory entered the room, the officer heard McAdory ask, "Do you have my file?" The visitor said, "No." At that point McAdory turned around leaving the room, stating: "I don't care, I'm getting ready to fire you all anyway." The visitor shouted back to McAdory, "That would be just fine with me."

47. On July 7, 2005, McAdory wrote respondent stating that he had been asking respondent to provide him with a copy of his file for over two months. At the time of his initial request, respondent told McAdory she would be coming to Sherburne County the next day and would bring his file then. She failed to do so. McAdory sent Judge Ericksen a copy of his letter.

48. Also on July 7, 2005, Durham wrote McAdory, confirming that her services and respondent's services had been terminated. She further stated that McAdory's file is being "prepared and will be sent to you upon completion."

49. On July 15, 2005, respondent sent approximately 1,500 pages of documents to McAdory.

50. After receiving the package mailed to him on July 15, 2005, McAdory filed a *pro se* motion to request defense counsel to provide all documents to defendant. The motion contained both general and specific document requests. On August 4, 2005, Judge Ericksen granted McAdory's motion and ordered respondent and Durham to provide the documents to McAdory. Respondent failed to do so.

51. At a hearing held on September 6, 2005, McAdory indicated to the court he still did not have his complete file. Judge Ericksen assigned the task of obtaining McAdory's complete file from respondent to McAdory's stand-by counsel, Robert Davis.

52. On September 13, 2005, Davis sent McAdory a copy of the file maintained by respondent. Davis provided McAdory 3,916 pages from the file he retrieved from respondent.

53. Respondent's failure to promptly and fully comply with her client's reasonable request for a copy of his file violated Rules 1.15(c)(4) and 1.16(d), MRPC, as those Rules existed prior to October 1, 2005.

FOURTH COUNT

Henry Moore Matter

54. On August 25, 2004, Henry Moore's friend, Susan Watson, met with respondent to retain her to represent Moore in a criminal matter. Watson signed respondent's retainer agreement on Moore's behalf and paid respondent $2,000. The full retainer was for $15,000, non-refundable. Two days later respondent met with Moore. Respondent did not provide Moore with a copy of his retainer agreement nor did she obtain his signature on the agreement.

55. Without a copy of the retainer, Moore did not know what services were covered. Moore believed the $15,000 retainer was a flat fee and included a potential appeal.

56. Throughout respondent's representation of Moore, Moore had difficulty contacting respondent. Most of his contacts with her were in the courtroom. Moore left multiple messages on respondent's answering machine and with respondent's secretary. Respondent failed to return Moore's calls or write him letters to update him on the status of his matter. Respondent told Moore he was complaining when he asked questions about his case and told Moore she did not want to work for him.

57. At various times during his representation, Moore requested copies of file documents. In particular, he requested a copy of the retainer agreement, police reports and a power of attorney he signed for the purposes of providing respondent with additional funds from a personal injury settlement. Respondent failed to provide Moore with copies of these documents.

58. On September 19, 2005, Moore terminated respondent's representation. Respondent indicates on October 15, 2005, Moore's file was given to his public defender.

59. Respondent did not keep time records or any other billing records with regard to this matter. Respondent stated that she received approximately $5,200 in fees from Moore.

60. Respondent's failure to accept or return her client's telephone calls on multiple occasions, respondent's failure to comply with her client's reasonable requests for a copy of his retainer agreement, police reports and a copy of his power of attorney violated Rules 1.4 and 1.15(c)(4), MRPC, as those Rules existed prior to October 1, 2005. Respondent's failure to adequately convey the scope of her representation violated Rule 1.5(b), MRPC, as that Rule existed prior to October 1, 2005.

FIFTH COUNT

Julian Caprice and Vera Jackson Matter

61. In May 2005, Julian Caprice contacted respondent to represent him in matters pertaining to a less restrictive environment for his conditions of confinement. To that end, on or about May 31, 2005, Caprice's girlfriend, Vera Jackson, delivered a cashier's check to respondent in the amount of $10,000. Although respondent did not have a signed retainer agreement, the funds were deposited into respondent's business account.

62. In early July, respondent met with Caprice at Moose Lake. Prior to meeting with Caprice, respondent drafted and signed a retainer agreement for Caprice but forgot to bring the agreement with her for Caprice's signature.

63. At the meeting, respondent and Caprice discussed the representation and respondent obtained some documents from Caprice. Respondent told Caprice she would send a retainer agreement in the mail for him to review. Respondent mailed the partially executed agreement to Caprice on July 11, 2005. As of July 11, 2005, respondent had not done any substantial work on Caprice's file.

64. At the time respondent mailed Caprice the retainer agreement on July 11, 2005, respondent had depleted most of Caprice's $10,000 and held only $1,458.79 in her

bank account, of which purportedly $2,295.50 was in a check waiting for Winston to pick up. (*See* ¶¶ 10 and 11 above.)

65. After reviewing the partially executed retainer agreement, Caprice had several questions as the retainer agreement was not consistent with Caprice's understanding of his agreement with respondent. Once Caprice was able to speak with respondent about the retainer, respondent told him to just initial the sections he either did not understand or with which he was not in agreement, then execute the document and return it to respondent. Caprice told respondent he would not sign a document outlining terms he either did not understand, or with which he did not agree. Respondent did not fully explain the terms to Caprice, did not prepare a new retainer agreement and failed to obtain Caprice's signature on any retainer agreement.

66. Respondent was to review Caprice's documents and meet with Caprice again in August 2005. Respondent was also going to have Caprice review and sign the retainer agreement. However, respondent did not meet with Caprice in August.

67. Caprice had a difficult time communicating with respondent. He stated he called respondent on multiple occasions and left messages, but did not receive return calls. At times Caprice called and obtained a scheduled time to call respondent. Caprice would call at the given time and respondent would be unavailable.

68. Because of poor communication, Caprice decided to terminate respondent's representation and in early November 2005 he contacted respondent to inform her of the same. Respondent told Caprice she would refund a portion of his retainer, but that she had read some of the documents provided to her and she was entitled to some of the money.

69. On November 8, 2005, Jackson went to respondent's office to retrieve Caprice's file. Respondent's paralegal gave the file to Jackson.

70. Both Caprice and Jackson have asked respondent for an accounting of their funds and asked respondent to return $9,000, which they felt respondent had not earned. Respondent did not deny she owed Caprice/Jackson a refund.

71. When respondent failed to return any funds, Jackson filed for fee arbitration before the Ramsey County Bar Association. The arbitration panel convened on May 31, 2007. Respondent testified that she put over 75 hours into reviewing Caprice's file, or, in effect, she had earned $11,250. The panel determined that respondent had earned far less than she claimed and instructed respondent to return $4,750 to Caprice and Jackson. Respondent did not have the funds available to repay Jackson although the funds were supposed to be held in a trust account because of the lack of a signed retainer.

72. Respondent's failure to accept or return her client's telephone calls on multiple occasions violated Rule 1.4, MRPC. Respondent's conduct in depleting Caprice's funds before obtaining a written agreement and prior to performing any substantial work on the file, together with her failure to communicate the scope of her representation, violated Rule 1.5(a) and (b), MRPC, as further interpreted by LPRB Opinion 15, and Rule 1.15(a), MRPC, as further interpreted by LPRB Opinion 9, as those Rules and Opinions existed prior to October 1, 2005. Respondent's failure to promptly return funds to which Caprice/Jackson were entitled violated Rules 1.16(d) and 8.4(i), MRPC, as those Rules existed subsequent to October 1, 2005.

SIXTH COUNT

Melvin Williams Matter

73. In or about April 2003, Melvin Williams filed a motion to modify child support and to determine custody and visitation issues. A hearing took place in Ramsey County before Referee Mary E. McGinnis. The referee determined that Williams, who appeared *pro se*, was unable to afford an attorney in the family law

matter. On December 17, 2003, the referee appointed respondent to serve as counsel for Williams.

74. Williams had difficulty reaching respondent by telephone and talking to respondent in person. After one meeting and approximately two telephone conversations with respondent, respondent became unreachable to Williams until just prior to Williams' April 7, 2004, hearing. Because of respondent's failure to return Williams' telephone calls, Williams was not sure if respondent would be present at the April 7, 2004, hearing.

75. On the date of the Williams hearing, Williams arrived approximately one hour early, hoping to have some time to discuss the matter with respondent. Although respondent appeared, there was not time for Williams to discuss the proceeding with respondent.

76. The family court referee called counsel into chambers. When counsel emerged, respondent told Williams that the referee did not like him and if he wanted to contest the custody issue, he needed to first enter into an agreement. Williams consented to the agreement which was then read in open court.

77. Respondent did not explain the agreement to the extent necessary to enable Williams to understand the full ramifications of the agreement. As a result of respondent's failure to fully explain the agreement, Williams believed he had given up his parental rights.

78. Believing he had given up his parental rights, Williams terminated respondent's services.

79. Respondent's failure to communicate with her client violated Rule 1.4, MRPC, as that Rule existed prior to October 1, 2005.

SEVENTH COUNT

Marvin Pate Matter

80. In or about March 2006, Marvin Pate provided respondent with approximately $2,000 toward the retainer fee. However, Pate did not sign a fee agreement and was not clear regarding the extent of respondent's representation.

81. Respondent did not place Pate's fees into a trust account and failed to create any written record of the receipt of Pate's fees. Pate paid his fees in cash.

82. Respondent's conduct of not communicating the scope of her representation and in receiving non-refundable advance fee payments without a written fee agreement signed by her client violated Rule 1.5(b), MRPC. Respondent's failure to provide cash receipts countersigned by the payor violated Rule 1.15(h), MRPC, as interpreted by Appendix 1.

EIGHTH COUNT

Failure to Maintain Trust and Business Account Books and Records

Business Account

83. During the investigation of the above-referenced matters, the Director made various requests to respondent for her trust and business account books and records.

84. With each request, respondent sent some of the records requested and on August 1, 2007, respondent sent her original documents. Upon review of all documents provided, it is apparent that respondent has significantly failed to maintain the proper trust and business account books and records.

85. Respondent did not have any record in the form of a fees book or a file of copies of billing invoices reflecting all fees charged and other billing to clients. Respondent's records do not reflect any fees, pertaining to respondent's representation of the federal matter, received on behalf of Larry Williams; $10,000 received on behalf of Julian Caprice; $5,200 received on behalf of Henry Moore; or $2,000 received on behalf

of Marvin Pate. Respondent did provide a chart of various payments made from January 2004 through December 2006. However, information on the chart is not complete and appears to be a summary of the carbon receipt slips and/or bank deposits, but was clearly not a contemporaneous record.

86. The cash receipts respondent provided are not countersigned by the payor.

87. Respondent produced a limited check register, few canceled checks and no duplicate deposit slips. These records are not sufficient to establish the receipt of earned fee payments from clients or costs advanced on behalf of clients.

88. Respondent did not provide any periodic reconciliation of her checkbook balance and the bank statement balance. In fact, respondent's business account shows that on at least 48 occasions respondent wrote out checks when the balance in respondent's business account was insufficient to cover the checks and that respondent carried a negative balance in her bank account throughout the months of December 2004, March 2005 and January 2006. Although respondent did not provide the Director with her June 2006 bank statement, a letter from TCF Bank indicated respondent had overdrawn her business account by $1,196.48. Respondent did not provide the Director with any substantial business account records after May 2006.

Trust Account

89. In late February 2006, respondent opened an IOLTA account. The only trust account books and records provided to the Director were bank statements from March 2006 through July 2007. Entries on the bank statements show numerous transfers to respondent's personal account, together with withdrawals for Caribou Coffee, Hollywood Video, ATMs, Cash-N-Pawn and Old Navy to list a few. None of the itemizations appear to be client related, *i.e.* withdrawals to court administrations, transcript or copy services, process servers, etc.

90. Although respondent stated she maintained time and billing records, she has failed to produce any such records.

91. Respondent's failure to maintain proper business account books and records violated Rule 1.15(h), MRPC, as further interpreted by LPRB Opinion 9, as they existed prior to October 1, 2005. Respondent's failure to maintain proper trust account and business account books and records violated Rule 1.15, MRPC, as interpreted by Appendix 1, as they existed subsequent to October 1, 2005. Respondent's conduct in issuing non-sufficient funds checks violated Rule 8.4(c), MRPC.

Additional Books and Records Violations

92. In April and in July 2006, the Director provided respondent with copies of the MRPC and Appendix 1, pertaining to the proper maintenance of business and trust account books and records. During the initial investigation into respondent's business account and trust account, the records noted in paragraphs 84-91 above were received and were included in the Director's December 11, 2007, charges of unprofessional conduct.

93. On November 30, 2007, the Director's Office received notice from respondent's bank that respondent's trust account was overdrawn. The overdraft matter was handled by a department within the Director's Office that exclusively handles overdraft notifications.

94. On December 4, 2007, the Director's Office contacted respondent's counsel, notified him of the overdraft matter and requested certain documentation. On December 28, 2007, respondent's counsel provided the Director with pertinent bank statements for respondent's trust account. Those statements showed respondent continued to use her trust account as a personal and/or business account while holding client money in the account. In addition, respondent did not provide the required trust account books and records, such as client subsidiary ledgers, checkbook register and

monthly reconciliations. For these reasons, the Director's Office opened an investigation regarding respondent's trust account books and records.

95. On February 5, 2008, the Director sent respondent a notice of investigation, requesting additional trust account books and records. On February 22, 2008, the Director received respondent's response. Respondent, through counsel, stated she did not maintain client subsidiary ledgers, deposit slips or checkbook registers, and that she did not reconcile her trust account or keep trial balances.

96. The trust account records received by the Director showed an additional six overdraft charges, continued use of the trust account as a personal or business account and persistent use of ATMs to access the trust account. On at least two occasions, respondent did not have enough funds in her trust account to cover client funds. In addition, at least one trust account check was not signed by an attorney. On September 24, October 13 and October 21, 2008, the Director requested additional business and trust account books and records.

97. Given the entirety of all business account and trust account books and records provided to and inspected by the Director, both prior to the Director's February 5, 2008, notice of investigation and subsequent to the opening of his investigation, the records show the following:

Wells Fargo Business Account:

- In June 2004, respondent opened a Wells Fargo business account, with an initial deposit of $5,200. There is no checkbook register for this account, no deposit slips, no canceled checks and no documents have been provided showing reconciliation of the account.
- Respondent's Wells Fargo business account had a negative balance for a total of 193 days over a 14-month period.
- In December 2005, respondent challenged a $1,000 payment debited to her Wells Fargo account. Wells Fargo credited respondent $1,000 during its

investigation of respondent's claim. Wells Fargo determined the $1,000 payment from the account had been authorized by respondent and reversed its provisionary credit on the account. Although Wells Fargo credited respondent's account for the amount being challenged, respondent's account continued to remain overdrawn. The account was closed on February 1, 2006.

On February 25, 2006, respondent opened a TCF trust account and a TCF business account.

TCF Business Account #3868131970:

- For a five-month period, from February 25, 2006, through July 27, 2006, eighteen checks were written from the TCF business account for which there was an insufficient balance to cover the checks when presented. On July 6, 2006, respondent's TCF business account had a negative balance of $1,391.48. On July 27, 2006, TCF closed respondent's business account.
- There is no checkbook register for this account, no deposit slips, and no documents have been provided showing reconciliation of the account. Starting in April 2006, TCF included copies of cancelled checks with its monthly statements and respondent provided those copies to the Director.

TCF Trust Account #8868132044:

- There is no checkbook register for respondent's trust account, of the few deposit slips that were provided by respondent, none indicate the name of the client for whom the funds were being deposited. Respondent provided few canceled checks and no documents have been provided showing reconciliation of the account.
- Respondent's TCF trust account became overdrawn within ten days of its creation when respondent transferred the opening account balance of $100

to her personal TCF account without accounting for a $14.99 charge for check printing.

- From March 9, 2006, through December 8, 2008, respondent withdrew cash, transferred funds to her personal account, utilized an ATM or incurred fees for the use of ATMs on no fewer than 123 occasions.
- From August 16, 2007, through November 27, 2007, on no fewer than six occasions, the balance in respondent's trust account was not sufficient to cover checks presented to TCF on that account.
- As mentioned above, respondent used a check card or debit card to pay for charges on her trust account at retail stores, restaurants, hotels, beauty salons, etc.
- On or about August 17, 2007, respondent settled a no-fault matter for client Anthony Simmons in the amount of $3,000. The funds were deposited into respondent's trust account. There is no depositing instrument/record or checkbook entry documenting a $3,000 check being deposited on Simmons' behalf, nor was a client subsidiary ledger created. At the time respondent deposited Simmons' no-fault check into her trust account, her trust account had a negative balance of $76.80. Therefore, upon depositing Simmons' funds, respondent had insufficient funds in her trust account to cover client monies.
- On or about November 21, 2007, respondent settled Simmons' personal injury matter in the amount of $11,000. The funds were deposited into respondent's trust account. There is no depositing instrument/record or checkbook entry documenting an $11,000 check being deposited on Simmons' behalf, nor was a client subsidiary ledger created. Two checks were disbursed on Simmons' behalf totaling $11,000. Check number 3014, in the amount of $5,703.16, represented payment to Simmons for the

personal injury matter. Respondent received check number 3015 in the amount of $5,296.84. Check number 3015 included disbursements to respondent of $3,666.66 for attorney's fees, $430.18 for expenses and a $1,200 repayment to respondent for an advance to Simmons in the form of a personal loan.

- On or about November 3, 2007, respondent settled a personal injury matter for client Bianca Tebbs in the amount of $15,500. Funds were deposited into respondent's TCF trust account on November 5, 2007, and disbursed on November 9. There is no depositing instrument/record or checkbook entry documenting a $15,500 check being deposited on Tebbs' behalf, nor was a client subsidiary ledger created.
- On or about November 10, 2007, respondent settled a no-fault matter on behalf of client Wolanda Shelton in the amount of $1,452.98. The funds were deposited into respondent's TCF trust account. There is no depositing instrument/record or checkbook entry documenting a $1,452.98 check being deposited on Shelton's behalf, nor was a client subsidiary ledger created. On November 23, 2007, respondent withdrew $50 in cash from her trust account, bringing respondent's bank balance to $960.68. When Shelton cashed her check for her portion of the no-fault recovery, there were insufficient funds in the trust account to cover the amount of Shelton's check. Although TCF covered the full amount of Shelton's check, the bank charged respondent with an NSF fee and reported the deficiency to the Director.
- On or about March 22, 2008, respondent settled Shelton's personal injury matter in the amount of $6,000. Respondent deposited the settlement check into her trust account on April 7, 2008. There is no depositing

instrument/record or checkbook entry documenting a $6,000 check being deposited on Shelton's behalf, nor was a client subsidiary ledger created.

- Respondent deposited over $36,000 of other people's money into her trust account without making any record as to the ownership of those deposits. Respondent's trust account became basically dormant in May 2008, with a zero balance as of August 18, 2008.

Loan to a Client:

- On or about September 6, 2006, Anthony Simmons was involved in a motor vehicle accident. On September 11, 2006, Simmons retained respondent to represent him on a personal injury/no-fault matter. On August 3, 2007, respondent sent a demand letter to State Farm Insurance Company.
- In late September or early October 2007, Simmons asked respondent for a loan. When Simmons asked respondent for the loan, she "gave him $1,200 cash that [she] had on [her] person." Simmons was respondent's client when she made the loan to him.
- Respondent did not disclose the terms of the loan to Simmons in writing, did not advise Simmons in writing of the advisability to seek independent counsel and Simmons did not give respondent written informed consent to the terms of the loan transaction.
- Sometime prior to November 12, 2007, respondent and State Farm Insurance Company arrived at a settlement agreement and payment in the amount of $11,000. The settlement check and release were sent to respondent on November 12, 2007.
- On November 21, 2007, Simmons signed respondent's settlement statement indicating his repayment to her for "Advance on Settlement" in the amount of $1,200.

TCF Business Account Number 2870226447:

- On April 4, 2007, respondent opened another TCF business account. From May 4, 2007, through July 27, 2007, respondent maintained a checkbook register; however, no register has been provided beyond July 27, 2007. Copies of cancelled checks were provided from May 18, 2007, through July 30, 2007. However, no additional copies of cancelled checks have been provided on this account. A few deposit slips have been provided, but none indicate the name of the client for whom the funds are being deposited. Respondent provided no documents showing reconciliation of the account.
- From July 2007 through mid-October 2007, respondent incurred eleven NSF fees charged to her account. Although this business account was closed by TCF on October 16, 2007, the account was later reactivated with a deposit of $820 on October 29, 2007. Thereafter, respondent continued to write checks on her account that had insufficient funds to cover those checks.

98. Respondent's failure to maintain proper business account books and records violated Rule 1.15(h), MRPC, and as interpreted by LPRB Opinion 9(II), as they existed prior to their amendment on October 1, 2005, and Rule 1.15(h), MRPC, as interpreted by Appendix 1, as that Rule existed subsequent to October 1, 2005. Respondent's continued practice of writing checks from her business accounts when there are insufficient funds to cover the check violated Rule 8.4(c), MRPC.

99. Respondent violated Rule 1.8(a), MRPC, when she loaned money to her client without providing him with the proper disclosures.

100. Respondent's misuse of her trust account, failure to maintain proper trust account and business account books and records, allowing non-attorneys to sign trust

account checks, and failure to protect client funds held in her trust account violated Rule 1.15, MRPC, as interpreted by Appendix 1.

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: March 4, 2009.

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This amended and supplementary petition is approved for filing pursuant to Rule 10(e), RLPR, by the undersigned.

Dated: March 5, 2009.

KENT A. GERNANDER
CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD