

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against NATHANIEL PATRICK HOBBS,
a Minnesota Attorney,
Registration No. 336932.

**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 October 29, 2004. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Misappropriation and Trust Account Shortages

Julie Nepper Matter

1. At all times relevant, respondent has maintained trust account no. XXXX-XXXX-XXXX-2471 at US Bank (hereinafter, "respondent's trust account"). Upon information and belief, respondent's trust account was opened sometime in the winter of 2010 when respondent opened a solo practice.

2. During 2011, respondent represented Julie Nepper in civil litigation involving a business dispute. Lawrence Ulanowski was the other party involved in the litigation.

3. On June 1, 2011, a wire transfer from Anchor Bank was deposited into respondent's trust account in the amount of \$148,500. Upon information and belief, this amount constituted proceeds from the sale of a jointly owned business in the Nepper matter. Respondent was holding these funds on behalf of third parties. Prior to the deposit of these funds, the balance in respondent's trust account was zero.

4. On June 6, 2011, respondent deposited \$500 on behalf of Diane Rudd, a client who had given him a check in the amount of \$500 on June 3, 2011. *See* ¶¶ 45-48 below. Respondent received cash from the deposit in the amount of \$186.78. The remaining \$313.22 was deposited into respondent's trust account; however, respondent had previously issued himself a check in the amount of \$313.22 on June 4, 2011, which cleared respondent's trust account on June 6, 2011. Thus, the balance in respondent's trust account on June 6, 2011, consisted solely of the \$148,500 that respondent was holding in the Nepper matter.

5. On June 7, 2011, two checks in the amounts of \$12,015.51 and \$32,470.95 payable to the Hennepin County Sheriff's Office (HCSO) cleared respondent's trust account. Upon information and belief, these payments were related to the Nepper matter.

6. Also, on June 7, 2011, respondent misappropriated third party funds from his trust account by making a \$1,000 counter withdrawal in the name of his law firm. The \$1,000 was deducted from the balance of the third party funds respondent was holding in trust in the Nepper matter. After respondent's counter withdrawal, the balance in respondent's trust account was \$103,013.54 at the close of June 7, 2011.

7. On June 9, 2011, a check in the amount of \$104,013.54 that respondent had issued to Ulanowski was presented to US Bank for payment. Because respondent had

misappropriated \$1,000 two days earlier, the balance in respondent's trust account was only \$103,013.54 and was insufficient to cover the check to Ulanowski. US Bank honored the check to Ulanowski, but an overdraft in the amount of \$1,000 occurred on respondent's trust account.

8. Also on June 9, 2011, US Bank returned two unknown checks presented that same day totaling \$634.24. US bank assessed \$66 to respondent in overdraft/NSF fees. At the end of the day on June 9, respondent's trust account balance was short \$1,066.00. Respondent failed to deposit funds to cover the shortages in his trust account and US Bank continued to assess overdraft fees between June and July 2011.

9. On July 22, 2011, respondent attempted to issue himself a check in the amount of \$500 despite the fact that his trust account had a negative balance of \$1,312.50. On July 25, 2011, US Bank forced a closure of respondent's trust account and charged-off the negative balance of \$1,342.50.¹

10. Respondent has not repaid US Bank for covering the \$1,000 shortage caused by his misappropriation.

Ronald Barthel Matter

11. Respondent represented Ronald Barthel and other family members in a bankruptcy proceeding, as further set forth in paragraphs 49-57 below.

12. On January 6, 2011, the bankruptcy court issued an order that required Barthel and his wife to pay the trustee \$1,500 for costs associated in bringing a motion to compel. Barthel was supposed to pay the \$1,500 on or before January 16, 2011.

13. Barthel provided respondent with two checks, a January 25, 2011, check in the amount of \$500 and a February 26, 2011, check in the amount of \$1,100, which respondent was to pay to the trustee. Respondent misappropriated the funds and

¹ A charge-off is the declaration by a creditor or bank that an amount of debt is unlikely to be collected. This occurs when a consumer becomes severely delinquent on a debt.

thereby caused the Barthels to incur substantial additional sanctions, as set forth in paragraphs 49-57 below.

14. Respondent's misappropriation and resulting trust account shortages violated Rules 1.15(a) and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Failure to Keep Required Trust Account Records

15. In January 2010, respondent opened a solo law practice focusing on bankruptcy law. Respondent admittedly failed to maintain the trust account books and records required by Rule 1.15, MRPC, as interpreted by Appendix 1 thereto. In particular, respondent failed to maintain a trust account checkbook register, client subsidiary ledgers, trial balances or reconciliations.

16. Respondent's failure to maintain required trust account books and records violated Rule 1.15(h), MRPC, and Appendix 1 thereto.

THIRD COUNT

Abandonment of Respondent's Solo Practice

Carrigan Curtis Matter

17. Carrigan Curtis retained respondent to represent her in a Chapter 7 bankruptcy proceeding. On March 15, 2011, Curtis signed a written fee agreement providing for attorney's fees of \$2,201 along with a filing fee of \$299 for a total amount of \$2,500. That same day, Curtis issued respondent a check in the amount of \$1,250. On April 4, 2011, Curtis issued respondent a second check in the amount of \$1,250. Respondent's trust account records show that respondent failed to deposit the filing fee into a client trust account as required by Rule 1.15(a) and (c)(5), MRPC.

18. From March to mid-April 2011, Curtis emailed respondent financial information and documentation necessary to prepare her bankruptcy petition and schedules. On April 12, 2011, respondent emailed Curtis copies of the bankruptcy petition and schedules, which Curtis reviewed and then suggested various changes.

19. On April 13, 2011, Curtis emailed respondent that she had been contacted by Wells Fargo Bank, which administered the mortgage on her home, and reported that respondent had failed to return three of their phone calls. Curtis was in arrears on her mortgage payments and was seeking to discharge this debt as part of her Chapter 7 bankruptcy filing. Curtis provided respondent with the number for Wells Fargo and asked him to contact them.

20. On April 17, 2011, Curtis emailed respondent that she wanted to discuss options for keeping her home. On April 19, 2011, respondent emailed Curtis that he had not yet filed the bankruptcy petition. Respondent opined he could pursue a reaffirmation agreement with the bank, but that it would be insufficient to resolve Curtis' financial problems with her mortgage. Curtis emailed that same day that she wanted to pursue a reaffirmation.

21. On April 21, 2011, Curtis emailed respondent that Wells Fargo had informed her again that respondent still would not return calls. Curtis asked respondent to contact Wells Fargo and also asked whether the bankruptcy petition had been filed yet. Receiving no response, Curtis emailed respondent again on April 26 and 28, 2011.

22. On April 29, 2011, respondent emailed Curtis that his cell phone had been damaged and he had only just replaced it. Respondent stated that he intended to file Curtis' bankruptcy petition that day. Respondent also denied having been contacted by Wells Fargo. That same day, Curtis again provided respondent with the Wells Fargo contact information along with contact information for other creditors. Curtis requested a copy of her bankruptcy petition once it was filed.

23. Curtis emailed respondent on May 3, 9, and 12, 2011, inquiring whether her bankruptcy petition had been filed, informing respondent that Wells Fargo had initiated foreclosure on her home, and asking that respondent contact her. Respondent failed to respond.

24. On May 12, 2011, Curtis contacted attorney Jason Prochnow, who had referred her to respondent, to express her frustration with respondent's non-communication. Curtis emailed respondent that she had contacted Prochnow. As a result, respondent emailed Curtis apologizing for his non-communication, stated that he would file her bankruptcy petition the next day, and that he would provide her with a court file number upon doing so.

25. On May 13, 2011, Curtis emailed respondent to see if he had followed through on the bankruptcy filing. Respondent failed to respond. Curtis again emailed respondent on May 14 and 17, 2011, requesting a status update.

26. On May 17, 2011, respondent sent Curtis an email again apologizing for the delay and stating that he would provide her with a court file number and other information later that day. Respondent failed to do so.

27. On May 18, 2011, Curtis emailed respondent again asking that he file her bankruptcy petition. On May 19, 2011, respondent texted Curtis stating that his son was hospitalized and that he would finalize her bankruptcy soon.

28. On May 20, 2011, Curtis emailed respondent to inform him that various creditors continued to contact her and requested that respondent contact them. Respondent failed to respond to Curtis' May 20, 2011, email or her follow-up emails of May 23 and 26, 2011.

29. On May 27, 2011, Curtis emailed respondent requesting a refund so that she could retain another attorney. Respondent continued to disregard Curtis' emails, dated May 31 and June 1, 2011.

30. On June 20, 2011, Curtis sent respondent a letter summarizing her frustration with respondent's lack of diligence and stating that if respondent was not going to pursue her bankruptcy that she would proceed *pro se* or hire another attorney. Respondent failed to respond.

31. On July 20, 2011, Curtis filed an ethics complaint. Curtis has had no further communication with respondent after the May 19, 2011, text message. Curtis' bankruptcy proceeding was further delayed because Curtis had to save up money to hire a new lawyer to represent her.

32. Respondent ultimately abandoned Curtis' bankruptcy and has not refunded any portion of the \$2,100 retainer or the \$299 filing fee that Curtis paid despite repeated requests for a refund. Respondent's retention of the entire \$2,100 for attorney's fees constitutes conversion since respondent did little, if any, legal work for Curtis. Respondent's failure to refund the \$299 filing fee also constitutes conversion.

Catherine Lyfoung Matter

33. Catherine Lyfoung and her husband were facing financial difficulties. Lyfoung contacted a friend, Fue Vue, who was also an attorney, and was referred to respondent. On April 7, 2010, Lyfoung met with respondent at Vue's law offices to discuss filing for bankruptcy.

34. That same day, Lyfoung signed a written fee agreement providing for a \$2,000 retainer consisting of \$1,701 in attorney's fees and a \$299 filing fee. On April 21, 2010, Lyfoung provided respondent with two money orders each in the amount of \$500.

35. Also on April 21, 2010, Lyfoung emailed respondent that a creditor had served her with a summons and complaint and that she had answered. Lyfoung indicated that she had until the end of the month to accept the creditor's offer of settlement. Respondent emailed back that filing for bankruptcy prior to the filing of default or summary judgment was preferable and that he intended to start on Lyfoung's bankruptcy filings over the weekend.

36. For the next several weeks, respondent and Lyfoung emailed and exchanged financial information. On May 27, 2010, respondent emailed Lyfoung and asked when she would provide the remaining \$1,000 so that he could file her bankruptcy. On May 28, 2010, respondent met Lyfoung at her workplace and she paid

him the remaining \$1,000 in cash. Respondent failed to provide Lyfoung with a cash receipt.

37. Over the summer, respondent and Lyfoung emailed intermittently about whether respondent had filed Lyfoung's bankruptcy. On September 17, 2010, Lyfoung emailed respondent that another creditor had filed suit against her. Respondent emailed that he would "take care of it." Respondent did not answer the creditor's summons and complaint or otherwise inform the creditor of Lyfoung's bankruptcy.

38. In October 2010, Lyfoung texted respondent repeatedly seeking guidance about a hearing that was scheduled in the creditor matter for October 20, 2010. The day of the hearing, respondent emailed Lyfoung that she did not have to attend the hearing and that it was "100% irrelevant." Default judgment was entered against Lyfoung who sent a copy to respondent.

39. In November 2010, Lyfoung began receiving letters from a debt collector related to the October 2010 default judgment. Lyfoung informed respondent about her concerns. After additional follow-up text messages by Lyfoung, respondent sent a November 19, 2010, email apologizing for the delay and non-communication. Respondent further agreed to work with creditors to remove any judgments affecting Lyfoung.

40. Thereafter, respondent ignored Lyfoung's emails and text messages. Lyfoung asked Vue to contact respondent on her behalf but respondent failed to respond to Vue's calls. Respondent abandoned Lyfoung's bankruptcy matter and ignored her requests for a refund. Respondent's retention of the \$1,701 in attorney's fees constitutes conversion since respondent performed little, if any, legal services on behalf of Lyfoung. Respondent's failure to refund the \$299 filing fee also constitutes conversion.

Chee Thao Matter

41. On August 4, 2011, respondent met with Chee Thao to discuss filing for bankruptcy. During the meeting, Thao informed respondent that she had very limited income due to her disability status.

42. On August 5, 2011, Thao signed a written fee agreement retaining respondent. Thao provided respondent with a \$1,500 retainer, which consisted of \$1,201 in attorney's fees and a \$299 filing fee. Since US Bank had closed respondent's trust account in July 2011, respondent did not deposit the filing fee into his trust account as required by Rule 1.15(a) and (c), MRPC. The written retainer agreement also did not inform Thao that she had the right to terminate the client-lawyer relationship and that she would be entitled to a refund of all or a portion of the fee if the agreed-upon legal services were not provided as required by Rule 1.5(b), MRPC.

43. On August 30, 2011, and September 6, 2011, Thao emailed respondent seeking a status update on her bankruptcy petition. Thao indicated that she continued to receive communications from debt collectors. Respondent failed to respond.

44. On September 13, 2011, Thao was subsequently notified by respondent's counsel that respondent was no longer practicing law and could not continue to represent her. Thao unsuccessfully tried to retrieve the \$1,500 retainer that she had provided to respondent. Respondent performed no legal services on behalf of Thao; therefore, his retention of the \$1,201 in attorney's fees and \$299 filing fee constitutes conversion.

Diane Rudd Matter

45. On June 1, 2011, Diane Rudd met with respondent to discuss filing for bankruptcy. That same day, Rudd signed a written fee agreement providing for a \$1,500 retainer consisting of \$1,201 in attorney's fees and a \$299 filing fee. The written retainer agreement did not inform Rudd that she had the right to terminate the client-lawyer relationship and that she would be entitled to a refund of all or a portion

of the fee if the agreed-upon legal services were not provided as required by Rule 1.5(b), MRPC.

46. On June 3, 2011, Rudd issued respondent check no. 3029 in the amount of \$500. On June 23, 2011, Rudd issued respondent check no. 3030 in the amount of \$500.

47. Shortly after cashing the checks, respondent abandoned Rudd's bankruptcy matter. Respondent failed to respond to Rudd's communications regarding the status of her bankruptcy filing or her requests for a refund.

48. On September 13, 2011, Rudd received a letter from respondent's counsel indicating that respondent had stopped practicing law. Respondent performed no legal services on behalf of Rudd; therefore, his retention of the \$1,000 that Rudd paid to him constitutes conversion.

Ronald Barthel Matter

49. In 2009, Ronald Barthel and his family retained Patrick Burns and Associates (hereinafter "Burns law firm") to handle a bankruptcy matter. At the time, respondent was employed as an associate within the Burns law firm. Respondent initially handled the Barthels' bankruptcy until his departure from the Burns law firm in late December 2009. Thereafter, various other attorneys in the Burns law firm continued to represent Barthel in his bankruptcy proceedings.

50. In December 2010, the trustee filed a motion to compel discovery and thereafter a motion for contempt based on discovery non-compliance. Barthel alleged that the Burns law firm had failed to timely provide documents requested by the trustee. Barthel decided to terminate the Burns law firm in January 2011.²

51. After firing the Burns law firm, Barthel consulted with respondent, who was then practicing as a solo practitioner. On January 24, 2011, Barthel signed a written

² On March 22, 2011, the bankruptcy court granted the trustee's motion for contempt.

fee agreement retaining respondent to represent him in the Chapter 7 bankruptcy proceedings.

52. Respondent sent Barthel emails on January 24 and 26, 2011, requesting that Barthel provide him with the retainer. January 28, 2011, Barthel sent respondent a \$3,500 retainer, which respondent acknowledged receiving by email dated January 28, 2011.

53. During January and early February 2011, Barthel and respondent communicated by email and telephone. Sometime in mid-February 2011, respondent informed Barthel that he was making an offer to the trustee to settle various creditors' claims. In addition, Barthel provided respondent with checks in the total amount of \$1,600 that respondent was to pay to the trustee per the bankruptcy court's January 6, 2010, sanction order. *See* ¶¶ 12-13 above.

54. On February 1, 2011, Patrick Hennessy, attorney for the trustee, emailed respondent a letter, which among other things, noted the Barthels' failure to pay \$1,500 to the trustee. Hennessy stated that if the Barthels did not provide, among other things, payment of the \$1,500, the trustee would file for sanctions.

55. On February 16, 2011, the trustee filed a notice of motion and motion to hold the Barthels in civil contempt. Barthel received a copy of the motion in the mail. On February 28, 2011, Barthel emailed respondent indicating that he had not heard anything from respondent and seeking an update. Upon information and belief, respondent failed to respond. On March 15, 2011, Barthel emailed respondent stating:

I need to know what is going on. I received paperwork from Hennessy [attorney for the trustee] requesting the court to issue a contemp[t] of court against me. And in the paperwork it say you have not responded to him [attorney for trustee]. Have you made the offer yet?

Respondent failed to respond. Barthel texted and called respondent several times but never received a response.

56. On March 22, 2011, the hearing on the trustee's motion to hold the Barthels in civil contempt occurred. Respondent did not attend the hearing or turn over the \$1,600 the Barthels had given him to pay the trustee. See ¶¶ 12-13 above. The bankruptcy court issued an order that same day holding the Barthels in contempt for failing to comply with the January 6, 2011, order. The bankruptcy court sanctioned Barthel and his wife \$1,000 each and ordered them to pay the trustee's costs of \$1,125.

57. Thereafter, respondent abandoned the Barthels' bankruptcy case. Respondent performed little to no legal services on behalf of the Barthels; therefore, his retention of the entire \$3,500 retainer constitutes conversion. Respondent has also not refunded the \$1,600 he misappropriated from the Barthels.

58. Respondent's abandonment of five client matters after opening a solo practice, together with conversion of multiple client retainers and filing fees, failure to deposit client funds into trust, failure to comply with the written fee requirements for charging an advance fee that would not be held in trust, and failure to appear at a court hearing, violated Rules 1.1, 1.3, 1.4, 1.5(a) and (b), 1.15(a) and (c)(5), 3.2, 3.4(c), and 8.4(d), MRPC.

FOURTH COUNT

Other Client-Related Neglect, Including Fabrication of Documents and Dishonest Conduct

Lyn Denny Matter

59. In May 2009, Lyn Denny contacted the Burns law firm to discuss challenging her ex-husband's attempt to discharge in bankruptcy a property settlement that she had been awarded in their divorce. At the time, respondent was employed as an associate in the Burns law firm. The amount of the settlement was substantial at \$106,066.42. The settlement award was not a spousal maintenance award.

60. Denny initially spoke with respondent about her claim. Respondent had recently developed a bankruptcy practice within the Burns law firm in the fall of 2008.

Respondent had little to no prior experience in bankruptcy law. The Burns law firm hoped to develop bankruptcy as an area of specialization within the firm. Shortly after speaking with respondent, Denny also discussed her ex-husband's Chapter 13 petition and her creditor claim with Patrick Burns (Burns).

61. On June 6, 2009, Denny retained the Burns law firm and paid a \$1,000 retainer. Respondent was assigned to handle Denny's creditor claim. Respondent failed to diligently pursue Denny's creditor claim. Most significantly, respondent failed to timely file a proof of claim pursuant to section 501(a) of the bankruptcy code which likely made Denny ineligible for distribution as an unsecured creditor in her ex-husband's Chapter 13 bankruptcy proceeding.

62. In November 2009, respondent also began failing to respond to Denny's communications. Respondent was subsequently terminated from the Burns law firm on December 21, 2009. The Burns law firm did not send Denny a letter notifying her of respondent's departure. Denny remained under the belief that respondent was still handling her creditor claim albeit unresponsive to her communications.

63. Frustrated with the manner in which her case was being handled, Denny emailed Burns on January 5, 2010, setting forth respondent's failure to return her phone calls, stating her fears that her claim had been negatively impacted by neglect, and requesting Burns' assistance with getting respondent to contact her. By email dated January 5, 2010, Burns told Denny that respondent had been terminated. The Burns law firm continued to represent Denny in the bankruptcy matter until she later terminated the representation.

Patrice Zimmerly Matter

64. In August 2009, Patrice Zimmerly and her husband met with the Burns law firm to discuss filing for bankruptcy. Zimmerly retained the Burns law firm and provided a \$3,000 retainer consisting of \$2,726 for attorney's fees and a \$274 filing fee.

Zimmerly did not sign a written fee agreement. Respondent was assigned to handle Zimmerly's bankruptcy, which was filed under Chapter 13.

65. In November 2009, Zimmerly was notified that a creditor had filed a summons and complaint and a hearing was set for December 21, 2009. Respondent told Zimmerly not to worry about the hearing because he would file her bankruptcy prior to the hearing. Respondent did not answer the complaint or advise Zimmerly to do so.

66. On December 4, 2009, a notice of a hearing was mailed to Zimmerly, who mailed a copy to respondent. The notice indicated a hearing was scheduled for January 10, 2010. Respondent did not inform the creditor or the court that Zimmerly had filed for bankruptcy. On January 13, 2010, default judgment was entered against Zimmerly. Thereafter, respondent failed to respond to Zimmerly's multiple emails about the judgment or offer any guidance. When the judgment was docketed, Zimmerly contacted the court and informed the judge about her pending bankruptcy petition. As a result, the court vacated the order for judgment.

67. On December 17, 2009, respondent filed Zimmerly's bankruptcy petition and plan of repayment. The next day, respondent was terminated from the Burns law firm. Respondent opened a solo practice immediately thereafter.

68. By letter dated December 21, 2009, respondent notified Zimmerly of his departure from the Burns law firm and his willingness to continue representing her. Zimmerly retained respondent and signed and returned a substitution of counsel form on December 26, 2009. Respondent never obtained Zimmerly's bankruptcy file from the Burns law firm. Zimmerly did not sign a written fee agreement with respondent or provide additional funds beyond the original \$3,000 retainer given to the Burns law firm.

69. On January 15, 2010, a meeting of creditors occurred. The trustee directed respondent to submit a current statement of Zimmerly's 401k plan and to modify the

repayment plan to include an increase in the payment to the trustee when a 401k loan was paid off. A confirmation hearing date was also set for February 18, 2010.

70. Under the submitted plan of repayment, Zimmerly's first payment was due on January 15, 2010. Respondent failed to stop automatic monthly payments on a Jeep owned by Zimmerly by the time the first plan payment was due. Respondent wrongly advised Zimmerly that it was okay to reduce the first plan payment by the amount of her Jeep payment. As a result, the trustee later notified Zimmerly that she was delinquent. Respondent failed to rectify the mistake.

71. Zimmerly's bank account continued to be automatically debited bi-weekly for payments owed on the Jeep. In addition, Zimmerly continued to make full payments under the repayment plan. Between January and April 2010, respondent disregarded numerous emails from Zimmerly asking that the automatic Jeep payments be stopped. In April 2010, Zimmerly resorted to arranging for a stop payment with her bank.

72. By email dated January 18, 2010, Zimmerly provided respondent with an on-line snapshot of her 401k account, which showed the loan payoff date and other information sought by the trustee. Respondent did not forward Zimmerly's 401k information or submit a modified plan to the trustee. As a result, the confirmation hearing date on Zimmerly's bankruptcy was moved from February 18, 2010, to March 18, 2010. Zimmerly also began to receive non-confirmation notices.

73. On February 11, 2010, the trustee emailed respondent outlining the deficiencies in Zimmerly's plan, noted the continued hearing date, and warned respondent that the outstanding issues with Zimmerly's 401k needed to be addressed along with submission of a modified plan or else the trustee would move for dismissal.

74. On February 22, 2010, respondent emailed Zimmerly and requested that she provide him with her husband's 401k information. Respondent told Zimmerly that the February hearing date had been pushed back to March in order to permit him more

time to “sort out the jeep and plan repayments.” Respondent made no mention of the trustee’s February 11, 2010, email.

75. Respondent failed to provide the trustee with the requested information or submit a modified plan. As a result, the trustee filed an objection to confirmation and motion to dismiss to be heard at the March 18, 2010, hearing.

76. On March 12, 2010, respondent filed a response to the trustee’s motion to dismiss. Respondent claimed that a modified plan had been submitted when in fact respondent had not done so. Respondent also emailed the trustee a copy of Zimmerly’s 401k statement but attached the wrong IRA information. Respondent also sent the email to the wrong trustee. Respondent provided the accurate 401k information on March 18, 2010, over three months after Zimmerly first provided the information and it had been requested by the trustee. At respondent’s request, the bankruptcy court continued the March 18, 2010, hearing date to April 22, 2010.

77. On April 19, 2010, the trustee again emailed respondent indicating that if a modified plan was not submitted, the trustee would again object to confirmation and file another motion to dismiss.

78. Respondent failed to appear at the April 22, 2010, hearing date. On April 23, 2010, the bankruptcy court entered an order denying confirmation of Zimmerly’s bankruptcy plan. Zimmerly remained unaware of respondent’s failure to appear. In addition, the trustee filed a second motion to dismiss on April 27, 2010.

79. After receiving the trustee’s motion to dismiss, Zimmerly texted respondent on May 11, 2010. Respondent falsely claimed that he had submitted a modified plan when in fact he had failed to do so.

80. On May 13, 2010, respondent submitted a modified plan and a hearing was scheduled for May 18, 2010. The modified plan still failed to address the trustee’s earlier request for a payment increase once Zimmerly’s 401k loan was paid in full. As a result, the trustee objected to confirmation and filed a third motion to dismiss.

81. On the morning of the May 18, 2010, hearing, respondent emailed the trustee less than fifteen minutes before the hearing was scheduled to begin inquiring whether the modified plan was deficient and whether the trustee planned to still seek dismissal. The trustee immediately emailed back "yes." Respondent did not attend the May 18, 2010, hearing. An order was entered by default, denying confirmation and dismissing Zimmerly's bankruptcy petition.

82. Zimmerly did not learn about the dismissal until she received the bankruptcy court's order on May 24, 2010. Zimmerly contacted respondent for an explanation and refund. Respondent left Zimmerly a message stating that a refund was inappropriate since he had not received any portion of the retainer Zimmerly had paid to the Burns law firm. Zimmerly subsequently retained new counsel.

83. On June 7, 2010, the trustee brought a motion for sanctions contending that the attorney's fees paid by Zimmerly were unreasonable. Respondent signed a stipulation, which was approved by the bankruptcy court by order dated June 30, 2010, agreeing that the attorney's fees paid by Zimmerly were unreasonable. The Burns law firm refunded \$2,726 to Zimmerly.

John Musgjerd Matter

84. In April 2008, John Musgjerd met with Burns and respondent about pursuing an age discrimination case against his former employer, Atrium Companies (hereinafter "Atrium"). Atrium's main offices were located in Texas and North Carolina. Musgjerd retained the Burns law firm and Burns and respondent were listed as attorneys of record, but the case was assigned to respondent.

85. On July 11, 2008, respondent filed a charge of discrimination with the Minnesota Department of Human Rights (MDHR) and Atrium responded on August 11, 2008. Both the MDHR and the Equal Employment Opportunity Commission (EEOC) sent notices, dated August 14, 2008, requiring a rebuttal of

Atrium's answer within thirty days. Respondent failed to timely send a rebuttal, but MDHR accepted the rebuttal that respondent filed on October 2, 2008.

86. By decision dated October 15, 2008, MDHR dismissed Musgjerd's discrimination claim. A similar dismissal was issued by the EEOC on November 10, 2008. The dismissal by the MDHR made it clear that any suit by Musgjerd against Atrium under the Minnesota Human Rights Act had to be brought within 45 days of the MDHR dismissal letter, which was December 1, 2008. Similarly, the dismissal by the EEOC required that any federal lawsuit be brought within 90 days of receipt of the dismissal letter, which was February 9, 2009.

87. In October 2008, respondent drafted a civil complaint to be filed in civil court, but did not file the complaint. Respondent completed no further work on Musgjerd's case until February 10, 2009, when he attempted to file the lawsuit in federal court, one day after the expiration of Musgjerd's federal claim. Respondent did not include the filing fee so it was not accepted. Respondent, with the assistance of another associate at the Burns law firm, filed the complaint on February 11, 2009, but the claim was still untimely.

88. Despite the claim being time-barred, the federal court issued a summons sometime after February 11, 2009, but respondent did not take any steps to serve it. Respondent did no further work on Musgjerd's claim until he began drafting discovery in March 2009.

89. In June 2009, Musgjerd began demanding a status update on his case. When Musgjerd did not receive a satisfactory response from respondent, he stopped by the Burns law firm and met briefly with Burns and then longer with another associate who reported Musgjerd's complaints to Burns.

90. On July 6, 2009, Burns and respondent met with Musgjerd, and Burns stated that he would take greater responsibility for Musgjerd's case. Over the course of the summer and fall of 2009, Burns emailed respondent several times about whether

Atrium had been served. Respondent falsely stated that service had been accomplished and that he was awaiting verification thereof. Burns accepted respondent's statements as true and did not request verification thereof.

91. In the fall of 2009, respondent began forging documents and making false statements regarding the progress of Musgjerd's case. Respondent forged an internal file memorandum, dated September 18, 2009, falsely claiming that Atrium had been served and that he had requested a default hearing with the federal district court. Respondent also made false statements to Musgjerd to conceal his neglect. For example, respondent misrepresented in a November 2009 email to Musgjerd that he was waiting for an affidavit of service from Atrium that was "weeks or months overdue" and implied that a default hearing was being sought for December 2009.

92. Musgjerd continued to press for status updates and documentation. On December 4, 2009, Burns conducted an internal investigation, which revealed respondent's neglect and other dishonest conduct. After it was determined that Musgjerd's claim was time-barred, the Burns law firm refunded Musgjerd's retainer and advised him that he may wish to consult with independent counsel about a malpractice claim, which Musgjerd subsequently did. Respondent was terminated as a result of his conduct in the Musgjerd matter.

93. Respondent's other client-related misconduct while practicing as an associate in a law firm, including incompetently handling client legal matters, neglect and non-communication, failure to respond to requests from a trustee in a bankruptcy matter, failure to attend court hearings, and making false statements and fabricating documents in order to conceal respondent's neglect, violated Rules 1.1, 1.3, 1.4, 3.2, 3.4(c), 4.1, 8.4(c) and (d), MRPC.

FIFTH COUNT

Non-Cooperation

Trust Account Overdraft

94. On June 9, 2011, respondent's US Bank trust account became overdrawn, a fact that US Bank reported to the Director pursuant to Rule 1.15(j)-(o), MRPC. On June 21, 2011, the Director received a notice of overdraft from US Bank. On June 22, 2011, the Director sent respondent a letter requesting a written explanation for the overdraft along with trust account books and records and bank statements. Respondent failed to respond.

95. As a result, the Director undertook a disciplinary investigation and mailed respondent a notice of investigation on July 19, 2011, requesting respondent's bank statements and trust account books and records for the period of April to June 2011. Respondent's response was due within fourteen days of the notice of investigation. Respondent failed to respond.

96. On August 9, 2011, the Director sent respondent a third request for trust account books and records. Respondent failed to respond. Respondent's non-cooperation necessitated that the Director obtain an investigatory subpoena. On August 30, 2011, the Director served an investigatory subpoena on US Bank, which provided respondent's bank records on September 7, 2011.

97. After respondent obtained counsel in late August 2011, respondent's counsel indicated that respondent did not maintain required trust account books and records; therefore, he was unable to submit documents in response to the Director's request.

Lyn Denny Matter

98. On March 12, 2010, Denny filed an ethics complaint against respondent. On March 24, 2010, the Director sent respondent a notice of investigation. Respondent failed to respond.

99. On April 14, 2010, the Director sent respondent a letter requesting his response by no later than April 23, 2010. In addition, the Director scheduled a meeting for April 27, 2010. Respondent provided a response by letter dated April 21, 2010. Respondent further requested a continuance of the April 27, 2010, meeting.

100. On April 26, 2010, the Director sent respondent a letter continuing the meeting to May 12, 2010. Respondent attended the meeting and asserted a claim of depression as mitigation. The Director provided respondent with medical authorizations, which respondent failed to return despite multiple written requests by the Director. Respondent later provided signed medical authorizations after he retained counsel in late August 2011.

Patrice Zimmerly Matter

101. On September 26, 2010, Patrice Zimmerly filed an ethics complaint against respondent. On October 6, 2010, the Director sent respondent a notice of investigation. Respondent's response was due within fourteen days of the notice of investigation. Respondent failed to respond.

102. On October 28, 2010, the Director sent respondent a second letter requesting his response within ten days. Respondent failed to respond.

103. The Director sent respondent letters dated December 22, 2010, April 13, May 13, and August 9, 2011, again requesting respondent's response to the notice of investigation. Respondent failed to respond.

104. In late August 2011, respondent retained counsel. On August 26, 2011, the Director sent respondent's counsel a copy of the Zimmerly complaint. On October 12, 2011, respondent submitted a response admitting his misconduct.

Catherine Lyfoung Matter

105. On January 27, 2011, Lyfoung filed an ethics complaint against respondent. On February 8, 2011, the Director sent respondent a notice of investigation.

Respondent's response was due within fourteen days of the notice of investigation. Respondent failed to respond.

106. Respondent failed to respond to the Director's letters of April 13, May 13, and August 9, 2011, requesting a response to Lyfoung's complaint. In late August 2011, respondent obtained counsel. On August 26, 2011, the Director forwarded a copy of Lyfoung's complaint to respondent's counsel. Respondent submitted a response on October 14, 2011, admitting his mishandling of Lyfoung's bankruptcy case.

Ronald Barthel Matter

107. On April 18, 2011, Ronald Barthel filed an ethics complaint against respondent. On April 20, 2011, the Director sent respondent a notice of investigation. Respondent failed to respond. Respondent also failed to respond to the Director's letters of May 13 and August 9, 2011.

108. In late August 2011, respondent obtained counsel. On August 26, 2011, the Director forwarded a copy of Barthel's complaint to respondent's counsel, who later responded on behalf of respondent by email in September and October 2011.

Carrigan Curtis Matter

109. On July 20, 2011, Curtis filed an ethics complaint against respondent. On July 29, 2011, the Director sent respondent a notice of investigation. Respondent failed to respond.

110. In late August 2011, respondent retained counsel. On August 26, 2011, the Director sent respondent's counsel a copy of the Curtis complaint. On October 12, 2011, respondent submitted a response admitting his misconduct in the Curtis matter.

111. Respondent's non-cooperation in the Director's investigation violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

SIXTH COUNT

Unauthorized Practice of Law and Non-Cooperation

112. Respondent failed to pay his lawyer registration fee, which was due on April 1, 2011. Respondent continued to practice law, including the Nepper and Curtis matters, while fee-suspended throughout the month of April 2011. Respondent also failed to respond to the Director's letters of April 20 and May 13, 2011, requesting proof of payment of his registration fee and an affidavit of his practice while fee-suspended. Respondent eventually paid his lawyer registration fee on April 28, 2011.

113. Respondent's practice of law while fee-suspended and failure to respond to the Director's inquiries thereto violated Rules 5.5(a), 8.1(b), and 8.4(d), MRPC, and Rule 25, RLPR.

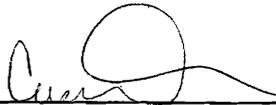
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: Nov. 7, 2011.



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