

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against TUCKER JOSEPH HUMMEL,
a Minnesota Attorney,
Registration No. 286230.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 30, 1998. Respondent currently practices law in Edina, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Failure to Maintain Required Trust Account Books and Records

1. On January 20, 2011, respondent's TCF Bank trust account no. xxxxxx3601 ("respondent's trust account") became overdrawn. Pursuant to Rule 1.15(j) through (o), Minnesota Rules of Professional Conduct (MRPC), the bank reported the overdraft to the Director.

2. On February 1, 2011, the Director wrote to respondent and requested an explanation for, and trust account books and records related to, the overdraft.

3. Respondent provided his substantive response to the Director's February 1, 2011, letter on February 23, 2011. In his letter, respondent stated that the

trust account check causing the overdraft "was drafted out of the funds available account (TJH cash) and were earned funds that have been transferred to this account but not distributed out of the Trust account." Respondent further explained:

The reason the Trust account went negative for a short period of time is directly related to my lack of completely understanding my accounting program and the failure on my end to be diligent as it relates to the account.

4. Respondent enclosed with his February 23, 2011, letter copies of his December 17, 2010, January 19, 2011, and February 17, 2011, trust account bank statements, the cancelled checks reflected on those statements, and client subsidiary ledgers for the period November 1, 2010, to February 23, 2011.

5. The trust account books and records respondent enclosed with his February 23, 2011, letter reflected that during the period from November 17, 2010, to February 17, 2011, the balance in respondent's trust account was continuously short of that necessary to cover aggregate client balances. The shortage reflected by these materials ranged in amount from \$2,643 to \$4,250.

6. On March 24, 2011, the Director wrote to respondent and informed him of the shortage in his trust account.

7. On June 13, 2011, respondent stated that he "vigorously disagree[d]" with the Director's finding of a shortage in his trust account, but acknowledged that his trust account records were in "disarray" and that he had been unable to "patch up the Trust Account records given that my computer that held the information prior to August 2010 was destroyed."

8. As is more fully detailed in the section below, in his subsequent communications with the Director, respondent repeatedly stated that, although he did not believe his trust account balance was short of that necessary to cover aggregate client balances, he was unable to either explain why the trust account books and records he produced on February 23, 2011, reflected such a shortage, or to produce any corrected trust account books.

9. During the period from at least November 17, 2010, to the present, respondent failed to maintain a proper trust account check register, client subsidiary ledgers, trial balances or reconciliations.

10. Respondent's conduct in failing to maintain the required trust account books and records, resulting in an apparent shortage in his trust account, violated Rule 1.15(c)(3) and (h), MRPC, as interpreted by Appendix 1 thereto.

SECOND COUNT

Failure to Cooperate in the Director's Investigation

11. As noted above, the Director wrote to respondent on March 24, 2011, regarding the shortages that appeared to exist in his trust account. The Director's March 24, 2011, letter requested respondent to provide (a) a description of the nature of the client funds in respondent's trust account during the period November 17, 2010, to February 17, 2011; (b) copies of respondent's written fee agreements with the clients with funds in his trust account during that period, together with any billing statements respondent issued to those clients; (c) clarification of discrepancies between certain information reflected on respondent's client subsidiary ledgers and that reflected on his monthly trust account bank statements; and (d) identification of the account into which respondent's bank statements indicated he was transferring funds from his trust account.

12. On April 1, 2011, respondent requested a 60-day extension to respond to the Director's March 24, 2011, letter. By letter dated April 5, 2011, the Director granted this extension. Respondent failed to respond to the Director by the extended deadline.

13. On April 29, 2011, the Director received notice of an April 22, 2011, overdraft on respondent's trust account.

14. On May 2, 2011, the Director wrote to respondent to request an explanation for, and trust account books and records related to, the overdraft. Respondent failed to timely respond to the Director's letter.

15. On June 9, 2011, the Director wrote to respondent to request his response to the Director's March 24 and May 2, 2011, letters.

16. On June 13, 2011, respondent wrote to the Director and stated that he had been unable to reconstruct his trust account books. Respondent further stated that the April 22, 2011, overdraft was "completely an issue with TCF related to withdrawing fees and a mistake in communications between the bank and myself when I withdrew these fees." Respondent failed to enclose any of the trust account books and records that had been requested in the Director's March 24 and May 2, 2011, letters.

17. In a July 7, 2011, telephone conversation with a paralegal in the Director's Office, respondent again stated that he had been unable to reconstruct his trust account books. Respondent attributed the errors in his trust account books, and the eventual overdraft, to an August 2010 computer crash and "inputting errors." Despite these errors, respondent stated that since the overdraft he had made no changes to his trust accounting practices.

18. The Director then converted the overdraft inquiry into a formal disciplinary investigation. On July 18, 2011, the Director sent respondent a notice of investigation requesting respondent's complete January 15 to July 15, 2011, trust account books and records.

19. On July 19, 2011, respondent spoke with a Senior Assistant Director in the Director's Office. Respondent again stated that he had been unable to reconstruct his trust account books, which he said were "in shambles." The Senior Assistant Director suggested, and respondent agreed, that respondent should consult with an accountant to assist him in correcting the problems with his trust account books and records. Respondent and the Senior Assistant Director also agreed that respondent would report back within 14 days (*i.e.*, by August 2, 2011) with an update on his efforts. The Director confirmed their agreements in a July 22, 2011, letter to respondent.

20. Respondent did not contact the Director's Office by the agreed upon date, so on August 8, 2011, the Senior Assistant Director telephoned respondent's office

again. Respondent was not available and the Senior Assistant Director left a message for respondent to contact him. In a letter dated August 8, 2011 (although not postmarked until August 10), respondent requested an additional 30 days to provide the requested records. Respondent provided no records with his letter, nor did he identify anyone who was to be assisting him in correcting the problems with his books and records.

21. Respondent's conduct in failing to cooperate with the Director's investigation violated Rule 8.1(b), MRPC, and Rule 25, Rules on Lawyers Professional Responsibility.

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: October 19, 2011.



MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and



CRAIG D. KLAUSING
SENIOR ASSISTANT DIRECTOR
Attorney No. 202873