

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against MATTHEW HARVEY JONES,  
a Minnesota Attorney,  
Registration No. 286412.  
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**PETITION FOR  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

Upon the approval of a Lawyers Professional Responsibility Board Panel Chair, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rules 10(d) 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 30, 1998. Respondent currently practices law in Chanhassen, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Pattern of Lack of Diligence in the Handling of Client Matters,  
Inadequate Communication with Clients, Failure to Deposit Client Funds in Trust,  
and Failure to Promptly Account for and Return Client Property

**Buffie Matter**

1. On August 16, 2012, Jill Buffie retained respondent to represent her regarding a real estate partition action. Buffie paid respondent a \$1,000 retainer and provided respondent with documents relevant to the matter.

2. Respondent and Buffie entered into a retainer agreement providing that the retainer would be “applied toward our hourly charges and for reimbursement of expenses advanced on your behalf.” The retainer agreement further provided that “[a]ny unused portion of your retainer will be refunded to you upon completion of your case.”

3. Respondent failed to deposit Buffie’s retainer into a trust account.

4. Respondent thereafter failed to take any action regarding Buffie’s partition action and failed to communicate with Buffie regarding the status of the matter.

5. On October 8, 2012, Buffie emailed respondent and inquired about the status of the partition matter. Respondent responded by email later that date, stating, “I will get you an update tonight or tomorrow morning.” Respondent failed to provide the promised update.

6. On October 10, 2012, Buffie emailed respondent and stated that she was “cancelling our contract for services effective immediately.” Buffie requested that respondent refund her \$1,000 retainer and return the documents she had provided to him.

7. On October 18, 2012, respondent emailed Buffie and asked whether she was “around tomorrow to talk.” Buffie stated in response that she had “already tried several times to talk with you” and repeated her request for a refund. Respondent stated that he would mail a refund check to Buffie that day. Respondent failed to do so.

8. During the period October 23 to 25, 2012, Buffie and respondent exchanged email messages regarding the refund and return of Buffie’s documents.

9. On or about October 26, 2012, Buffie received a \$1,000 refund check and her documents from respondent. The refund check was drawn on respondent’s U.S. Bank business account.

10. On October 29 and 30, 2012, U.S. Bank refused payment on respondent’s refund check due to an insufficiency of funds in the account on which it was issued.

11. On November 5, 2012, respondent issued to Buffie a \$1,000 cashier's check in refund of her retainer and a \$175 U.S. Bank business account check in reimbursement of the bank fees Buffie incurred as a result of respondent's insufficient funds check and interest.

### **Brastad Matter**

12. In approximately June 1972, under threat of condemnation, Jerome Brastad sold a parcel of property to the City of Burnsville, Minnesota ("the City"), to enable the City to construct a road. The City thereafter constructed the road, but did not utilize the entire parcel of property in so doing.

13. In February 2012 Brastad retained respondent to represent him in compelling the City to sell to him the unused portion of the property. Brastad paid respondent a \$3,500 cash retainer.

14. Respondent drafted for Brastad's signature a February 16, 2012, letter to the City in which Brastad requested that the City agree to sell to him the unused portion of the property. The letter stated that if the City refused Brastad's request, "I will be forced to start a lawsuit to force the City to offer the property to me for sale." By letter dated March 1, 2012, the City refused Brastad's request.

15. Respondent agreed to commence a lawsuit against the City. Pursuant to Minn. Stat. § 541.023, the statute of limitations applicable to such a lawsuit is 40 years from the date on which the property was sold. In other words, a lawsuit had to be initiated on Brastad's behalf by June 2012 or he would forever lose the right to pursue it.

16. Respondent thereafter failed to initiate a lawsuit against the City or to take any other meaningful action on Brastad's behalf.

17. Respondent also failed to adequately communicate with Brastad. Specifically, respondent failed to respond to numerous email communications he received from Brastad, failed to comply with Brastad's multiple requests to meet with respondent or to speak by telephone with respondent, and failed to appear for at least two meetings he scheduled with Brastad.

18. By email dated May 1, 2013, respondent provided Brastad with a billing invoice for the month of April 2013. This invoice reflected respondent's provision of \$940 in services. This is the only billing statement Brastad ever received from respondent.

19. In early October 2013 Brastad terminated his professional relationship with respondent and requested that respondent provide him with his file.

20. On October 22, 2013, respondent emailed Brastad that he would arrange for Brastad's original file to be delivered to Brastad's home on October 24 and would provide an accounting of Brastad's retainer.

21. To date, respondent has failed to provide Brastad with either his file or an accounting of his retainer.

#### **Turon Matter**

22. On August 30, 2012, Tobias Turon retained respondent to represent him regarding a potential dispute with his landlord. Specifically, Turon had built a fence around his rental property, was moving from the property and desired to take the fence with him, and anticipated that his landlord would object to his removal of the fence and refuse to return his damage deposit. Turon paid respondent a \$400 retainer.

23. Respondent and Turon entered into a retainer agreement providing that the retainer would be "applied toward our hourly charges and for reimbursement of expenses advanced on your behalf." The retainer agreement further provided that "[a]ny unused portion of your retainer will be refunded to you upon completion of your case."

24. Respondent failed to deposit Turon's retainer into a trust account.

25. In fact, it developed that Turon did not require any of respondent's services. The landlord had no objection to Turon's removal of the fence and refunded Turon's damage deposit in full.

26. By letter dated November 15, 2012, Turon informed respondent that he no longer required his services and requested an accounting of his retainer. Respondent failed to respond.

27. By letter dated April 26, 2013, Turon again requested that respondent provide an accounting of his retainer and refund to him the unearned portion of the retainer.

28. Respondent responded to Turon's April 26, 2013, letter by way of a May 9, 2013, email. Respondent stated, "I received your letter regarding the return of your retainer. I will send the Check out tomorrow." Respondent failed to do so.

29. By certified letter dated June 4, 2013, Turon again requested respondent to refund the unearned portion of his retainer. Despite four attempts, the postal service was not able to deliver Turon's June 4 certified letter to respondent.

30. On June 17, 2013, Turon emailed respondent and again requested a refund of his retainer. Turon attached his June 4, 2013, letter to the email. Respondent failed to respond or to provide Turon with a refund.

31. By certified letter dated August 15, 2013, Turon again requested respondent to refund the unearned portion of his retainer. Respondent failed to claim Turon's August 15 certified letter from the post office.

32. In approximately December 2013, Turon received from respondent a \$250 check drawn on respondent's business account in partial refund of his retainer.

#### **Hickman Matter**

33. In June 2013 Nelson Hickman retained respondent to identify, create a list of and contact his son's student loan creditors, determine the amount claimed by each such creditor and attempt to negotiate a reduction of the amount claimed by each creditor. Hickman paid respondent a \$600 retainer.

34. Respondent thereafter failed to diligently pursue the matters for which Hickman retained him.

35. In addition, respondent thereafter failed to adequately communicate with Hickman. Specifically, respondent failed to affirmatively contact Hickman or to return his many telephone messages and failed to appear for three meetings he scheduled with Hickman.

36. Respondent's conduct in the Buffie, Brastad, Turon and Hickman matters violated Rules 1.3, 1.4(a)(3) and (4), 1.15(a), (c)(4) and (5), and 1.16(d), Minnesota Rules of Professional Conduct (MRPC).

### SECOND COUNT

#### Repeated False Statements to a Client to Conceal Lack of Diligence

37. In a June 3, 2012, email to respondent, Jerome Brastad stated, "I would like to know for sure that [Burnsville's mayor] was served and what her response was." In his June 3, 2012, responsive email, respondent stated, "[Y]es service was accomplished I need to check the date but it is coming up soon on the default date."

38. Respondent's statements to Brastad were false. As noted above, respondent never initiated a lawsuit against the City on Brastad's behalf.

39. On an unknown date subsequent to the expiration of the statute of limitations applicable to Brastad's claim against the City, respondent stated to Brastad that he was preparing and would file documents with the court requesting a writ of mandamus. Respondent's statements were false.

40. In a November 16, 2012, email to Brastad, respondent stated, "Your case is going fine." Respondent's statement was false.

41. On December 14, 2012, respondent stated to Brastad that he had written a letter to the City and had requested the City to respond within ten days. Respondent's statements were false. The only letter respondent ever wrote to the City was the letter signed by Brastad and dated February 16, 2012, to which the City responded on March 1, 2012. *See* paragraph 14, above.

42. Brastad repeatedly asked respondent to provide him with copies of the papers he served on the City, the writ of mandamus he had prepared and the letters he

subsequently exchanged with the City. In response, respondent repeatedly agreed to provide Brastad with copies of those documents. For example, in a January 17, 2013, email to Brastad, respondent stated, “[T]he writ and memorandums are on the way to you. Because of size it is in two separate envelopes.” In agreeing to provide such documents, respondent falsely implied to Brastad that such documents existed, when they did not.

43. Respondent’s May 1, 2013, billing statement to Brastad included an April 2, 2013, entry for “Work on Memorandum of Law.” Respondent’s statement was false.

44. Respondent’s conduct in making false statements to Brastad to conceal his lack of diligence in the handling of Brastad’s matter violated Rules 4.1 and 8.4(c), MRPC.

### THIRD COUNT

#### Pattern of False and Misleading Solicitation and Solicitation After Requests for the Solicitation to Stop

**M.S.**

45. In early June 2013, M.S., who had no prior personal or professional affiliation with respondent, received from respondent by U.S. Mail a document bearing the title “FORECLOSURE DEFENSE ADVISORY” (“solicitation”). The solicitation stated that M.S.’s mortgage loan was at “RISK OF FORECLOSURE” and urged M.S. to “contact us immediately.” The solicitation was upsetting to M.S.

46. In fact, M.S.’s mortgage was not actually at risk of foreclosure. Respondent’s statements to the contrary in the solicitation were therefore false.

47. Respondent’s solicitation further reflected a “File Review #” and a “Program” designation, and indicated that it had been issued by “Home Retention Department Program Director.” These statements were misleading.

48. At the bottom of the solicitation, in a font much smaller than that appearing on the balance of the solicitation, was the following language:

Information was obtained from publicly available record sources. This legal advertisement is provided courtesy of Matthew H. Jones . . . . Rates and terms subject to change without notice. Any expression of potential reduction in principal or payments does not constitute a guarantee of specific results. This product or service has not been endorsed by a government agency and this offer is not being made by any agency of the government. Do not delay, this situation requires swift action.

49. The solicitation did not clearly and conspicuously include the words "Advertising Material."

50. On June 11, 2013, M.S. forwarded the solicitation to the Minnesota Attorney General's Office ("Attorney General"). By letter dated June 21, 2013, the Attorney General informed respondent that M.S. wanted to be removed from respondent's mailing list and did not want to receive from him any further solicitation requests. The Attorney General further requested respondent to, within ten days, provide the source of his determination that M.S.'s loan was at risk of foreclosure. Respondent did not respond to the Attorney General.

51. In July 2013, despite the Attorney General's letter, M.S. received from respondent a second solicitation that was nearly identical to the first.

**T.K.**

52. Beginning in approximately 2011, T.K., who had no prior personal or professional affiliation with respondent, began receiving solicitation requests from respondent by U.S. Mail. The solicitation requests were in varying versions, but all implied the impending foreclosure of her home. These solicitation requests were upsetting to T.K.

53. T.K. contacted the Attorney General, who wrote to respondent on June 25 and July 15, 2013. By letter dated June 25, 2013, the Attorney General informed respondent that T.K. wanted to be removed from respondent's mailing list and did not want to receive from him any further solicitation requests.

54. On July 31, 2013, despite the Attorney General's letter, T.K. received from respondent by U.S. Mail a solicitation that was nearly identical to that received by M.S.

The solicitation bore the title "FORECLOSURE DEFENSE ADVISORY," stated that T.K.'s mortgage loan was at "RISK OF FORECLOSURE" and urged T.K. to "contact us immediately."

55. T.K.'s mortgage was not actually at risk of foreclosure. Respondent's statements to the contrary in the solicitation were therefore false.

56. The solicitation received by T.K. also reflected a "File Review #" and a "Program" designation, and indicated that it had been issued by "Home Retention Department Program Director." These statements were misleading.

57. The solicitation received by T.K. also reflected at the bottom, in a font much smaller than that appearing on the balance of the solicitation, the same language quoted in paragraph 46, above.

58. The solicitation received by T.K. did not clearly and conspicuously include the words "Advertising Material."

59. Respondent's conduct in disseminating solicitation requests to M.S. and T.K. that contained false and misleading statements and failed to clearly and conspicuously state that they were "Advertising Material," violated Rules 7.1 and 7.3(c), MRPC.

60. Respondent's conduct in disseminating solicitation requests to M.S. and T.K. after respondent had been informed by the Minnesota Attorney General's Office that M.S. and T.K. wanted the solicitation requests to stop violated Rule 7.3(b)(1), MRPC.

#### FOURTH COUNT

##### Failure to Cooperate

61. On October 15 and 25, 2012, the Director received from Jill Buffie her complaint against respondent and documents in support of the complaint. By notice of investigation dated November 2, 2012, the Director forwarded these materials to respondent, informed him that the matter was being referred for investigation to the

Eighth District Ethics Committee ("DEC") and requested respondent to provide to the DEC investigator his written response to Buffie's complaint.

62. On November 7, 2012, the DEC investigator wrote to respondent and requested respondent to provide his written response to Buffie's complaint by November 30, 2012. Respondent failed to do so.

63. On December 5, 2012, the DEC investigator wrote again to respondent to request his written response to Buffie's complaint.

64. On December 11, 2012, respondent provided the DEC investigator with his written response to the Buffie complaint.

65. On March 15, 2013, the DEC forwarded its investigative report in the Buffie matter to the Director.

66. By letter dated April 22, 2013, the Director informed respondent that the DEC had completed its investigation of the Buffie matter and forwarded its report to the Director. The Director requested respondent to provide certain additional information and documents in that matter by May 2, 2013. Among other things, the Director asked respondent to state whether or not he had deposited Buffie's retainer into a trust account. Respondent failed to respond.

67. By letters dated May 13 and 31, 2013, the Director again requested respondent to respond to the Director's April 22, 2013, letter in the Buffie matter.

68. On June 19, 2013, respondent telephoned the Director. Respondent confirmed that he had received the Director's letters in the Buffie matter and stated that he would provide the requested information and documents by courier on June 21. Respondent failed to do so.

69. By letter dated July 1, 2013, the Director again requested respondent to provide the information and documents requested in the Buffie matter. The Director also requested respondent to appear for a meeting in the Director's office on July 16, 2013. Respondent failed to provide the requested materials and failed to appear for the meeting.

70. By letter dated July 16, 2013, the Director confirmed respondent's failure to provide the requested materials in the Buffie matter or to appear for the July 16 meeting. The Director requested respondent to provide the requested materials "immediately," and requested respondent's signature on an authorization that would enable the Director to obtain certain of respondent's trust account records directly from U.S. Bank, where respondent maintained his trust account. Respondent failed to respond.

71. On June 28 and July 9, 2013, the Director received a complaint and supporting documents against respondent from G.S., M.S.'s husband. By notice of investigation dated July 10, 2013, the Director forwarded these materials to respondent and requested his written response to G.S.'s complaint within 14 days. Respondent failed to respond.

72. On July 22, 2013, as a result of respondent's failure to provide the requested information or trust account authorization regarding his handling of Buffie's retainer, the Director requested the Lawyers Professional Responsibility Board Chair to approve the issuance of an investigatory subpoena directed to U.S. Bank pursuant to Rule 8(c), RLPR. The Chair approved the subpoena on July 25, 2013. The Director thereafter obtained a subpoena, served the subpoena on U.S. Bank and received the records covered by the subpoena from U.S. Bank.

73. By letter dated July 29, 2013, the Director again requested respondent to provide his written response to the complaint of G.S. The Director requested respondent's response by August 12, 2013. Respondent failed to respond.

74. Respondent's U.S. Bank trust account became overdrawn on July 22, 2013. Pursuant to Rule 1.15(j) through (o), MRPC, U.S. Bank reported the overdraft to the Director. By letter dated July 31, 2013, the Director forwarded the overdraft notice to respondent and requested respondent to provide within ten days an explanation for, and certain trust account books and records related to, the overdraft. Respondent failed to respond.

75. On August 5, 2013, the Director received from T.K. her complaint against respondent. By notice of investigation dated August 14, 2013, the Director provided T.K.'s complaint to respondent and requested his written response to the complaint within 14 days. Respondent failed to respond.

76. By letter dated August 15, 2013, the Director again requested respondent's explanation for the July 22 overdraft on his U.S. Bank trust account and the related trust account books and records. The Director requested respondent to provide these materials within five days. Respondent failed to respond.

77. On August 15, 2013, respondent telephoned the Director's Office and spoke with an Assistant Director. Respondent stated that he had received the Director's subpoena to U.S. Bank and was aware that his responses to the Director were overdue. At respondent's request, the Assistant Director summarized for him the requests that were overdue. Respondent stated that he would provide his responses as soon as possible. The Assistant Director asked respondent what had prevented him from responding sooner. Respondent stated that he was depressed, but that he had contacted his doctor, who changed and/or increased his medications. Respondent stated that he was doing better and was now able to respond to the complaints against him. The Assistant Director suggested to respondent that he contact Lawyers Concerned for Lawyers ("LCL") and respondent stated that he would do so.

78. On August 13 and 16, 2013, the Director received from Jerome Brastad his complaint against respondent and documents in support of the complaint. By notice of investigation dated August 27, 2013, the Director forwarded these materials to respondent and requested respondent's written response to Brastad's complaint within 14 days. Respondent failed to respond.

79. By letter dated August 26, 2013, the Director again requested respondent's explanation for the July 22 overdraft on his U.S. Bank trust account and the related trust account books and records. The Director requested respondent to provide these materials by September 4, 2013. Respondent failed to respond.

80. On September 3, 2013, the Director received Tobias Turon's complaint against respondent. By notice of investigation dated September 6, 2013, the Director forwarded Turon's complaint to respondent and requested his written response to the complaint within 14 days. Respondent failed to respond.

81. By letters dated September 12, 2013, the Director again requested respondent's written responses to the complaints of G.S., T.K. and Brastad. The Director requested respondent's responses by September 26, 2013. Respondent failed to respond.

82. On September 23, 2013, the Director provided respondent with copies of the trust account records obtained from U.S. Bank pursuant to the investigatory subpoena and requested additional information and documents regarding those records. The Director also noted respondent's prior claim that he was suffering from depression, which had adversely impacted his ability to respond to the Director's requests. The Director enclosed blank medical authorizations and stated that, if respondent wished the Director to consider his depression, respondent had to complete the medical authorizations to be directed to the providers who had treated respondent for his depression, sign and date the authorizations and return them to the Director. The Director requested that respondent provide the trust account materials and authorizations within two weeks. Respondent failed to respond.

83. On September 26, 2013, as a result of respondent's failure to provide an explanation for the July 22, 2013, overdraft on his U.S. Bank trust account and related trust account books and records, the Director issued to respondent a notice of investigation. The notice requested respondent to provide within 14 days his complete trust account books and records for the period May 1, 2013, to the present. Respondent failed to respond.

84. On October 1, 2013, respondent telephoned the Director. Respondent stated that he had contacted LCL, that he had prepared responses to the complaints

against him, but needed them to be "perfect," and that he would sign and return the Director's medical authorizations. Respondent failed to do so.

85. By letters dated October 2, 2013, the Director again requested respondent's written responses to the complaints of G.S., T.K. and Turon. The Director requested respondent's responses by October 16, 2013. Respondent failed to respond.

86. By letter dated October 25, 2013, the Director requested respondent to respond to all outstanding requests for information and documents regarding the Buffie, G.S., T.K., Brastad, Turon and trust account matters by November 1, 2013. Respondent failed to respond.

87. By letter dated November 7, 2013, the Director again requested respondent to provide his written response to the Brastad complaint. The Director requested respondent's response by November 12, 2013. Respondent failed to respond.

88. On January 2, 2014, the Director received Hickman's complaint against respondent. By notice of investigation dated January 2, 2014, the Director provided Hickman's complaint to respondent and requested his written response to the complaint within 14 days. Respondent failed to respond.

89. By letter dated January 17, 2014, the Director again requested respondent to provide his written response to the Hickman complaint. The Director requested respondent's response by January 31, 2014. Respondent failed to respond.

90. To date, respondent has failed to provide (a) the information and documents requested in the Director's April 22, 2013, letter in the Buffie matter, and (b) any written responses whatsoever in the G.S., T.K., Brastad, Turon, Hickman and trust account matters.

91. On February 3, 2014, the Director served charges on unprofessional conduct on respondent ("charges"). Pursuant to Rule 9(a)(1), RLPR, respondent's answer to the charges was due to the Director and Panel Chair by February 20, 2014. Respondent not provide an answer or otherwise communicate with the Director regarding the charges.

92. Respondent's conduct in failing to cooperate in the Director's investigation of the various complaints against him violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

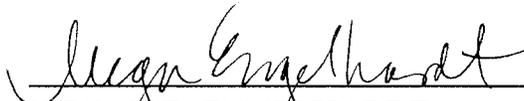
WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent or imposing otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: Feb. 20, 2014.



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



MEGAN D. ENGELHARDT  
SENIOR ASSISTANT DIRECTOR  
Attorney No. 329642

This petition is approved for filing pursuant to Rules 10(d) and 12(a), RLPR, by the undersigned Panel Chair.

Dated: March 8, 2014.



STACY L. VINBERG  
PANEL CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD