

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against MICHAEL L. KIEFER,  
a Minnesota Attorney,  
Registration No. 5558x.  
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**PETITION FOR  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 17, 1963. Respondent currently practices law in St. Louis Park, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent has the following disciplinary history, which may be considered in determining the appropriate level of discipline, pursuant to Rule 19(b)(4), RLPR.

A. On April 23, 1985, respondent was placed on private probation for failing to deposit client funds into his trust account and failing to notify the client of his receipt of client funds.

B. On April 7, 1992, respondent was suspended from the practice of law for a period of 12 months. *In re Kiefer*, 482 N.W.2d 484 (Minn. 1992). The Supreme Court summarized respondent's misconduct as follows:

[R]espondent was the lawyer and principal in a transaction in which two of respondent's clients loaned \$75,000 to another of respondent's clients, Murray Evans; that respondent misrepresented the purpose of the loan and failed to disclose Evans' financial condition, all the terms of the transaction, and the conflicting interests of the parties to the transaction; that respondent did not obtain the informed consent of the clients who had loaned the money; that respondent falsely represented that he would loan an additional \$25,000 from his own family trust to Evans as part of the same transaction; that respondent never loaned the \$25,000 to Evans, but used the money to pay his own debts; that Evans defaulted on the loan; that respondent continued to advise the clients who had loaned the money as well as Evans for several months after Evans had defaulted on loan; and that respondent did not advise the clients who had loaned the money to obtain independent counsel until after Evans was indicted by a federal grand jury for fraud.

On October 26, 1993, respondent was reinstated. *In re Kiefer*, 507 N.W.2d 613 (Minn. 1993).

C. On January 30, 2004, respondent was issued an admonition for missing a client's trial date.

#### FIRST COUNT

##### Misappropriation of Client Funds and Resulting Trust Account Shortages

1. Respondent represented the Grunewald Trust. The two trustees of the Trust, who were brothers, resided in Wyoming and California, respectively.

2. One of respondent's responsibilities for the Grunewald Trust was to transfer a piece of real property that had been sold at auction.

3. On May 25, 2006, respondent received a \$2,402.22 check from the Grunewald Trust. Respondent retained \$1,000 of this amount for his fees and deposited

the remaining \$1,402.22 into his US Bank trust account no. 1-160-2903-1907 (hereinafter "trust account") to pay anticipated costs related to the sale.

4. Without the advance knowledge or authorization of the Grunewald trustees, respondent issued trust account checks to himself totaling \$950 from the Grunewald cost advance, as follows:

DATE	CHECK NUMBER	AMOUNT
09/05/06	4365	\$300
09/20/06	4366	\$100
09/22/06	4363	\$450
09/25/06	4367	\$100

5. Respondent's disbursement of the funds set forth above constituted misappropriation.

6. On October 26, 2006, respondent's trust account check no. 4372 in the amount of \$55, which respondent issued to the District Court Administrator on behalf of his client Bannerman, was paid by the bank. Prior to payment of check no. 4372, respondent had not deposited Bannerman funds into his trust account to cover the check. The only client funds in the trust account on this date belonged to the Grunewald Trust. Accordingly, payment of that check on behalf of Bannerman constituted the misappropriation of Grunewald Trust funds.

7. As of October 26, 2006, the balance in respondent's trust account was \$1,113.98 short of that necessary to cover client balances. This shortage was the result of respondent's misappropriation of Grunewald Trust funds to his own benefit and to that of his client Bannerman, and overdraft fees resulting from the misappropriation.

8. On October 26, 2006, respondent deposited the sum of \$850 into his trust account as and for partial restitution for the misappropriated Grunewald Trust funds and the resulting overdraft charges. This deposit reduced the shortage in respondent's trust account to \$263.98.

9. During the period October 26 to November 1, 2006, additional overdraft charges were assessed to respondent's trust account, increasing the shortage in the account to \$343.98. On November 2, 2006, respondent deposited the sum of \$300 to his trust account as and for additional restitution for the misappropriated Grunewald Trust funds and the resulting overdraft charges. This deposit reduced the shortage in respondent's trust account to \$43.98.

10. On January 22, 2007, respondent deposited the sum of \$36 into his trust account as and for additional restitution for the misappropriated Grunewald Trust funds and the resulting overdraft charges. This deposit reduced the shortage in respondent's trust account to \$7.98. Respondent has not made any additional restitution deposits into his trust account.

11. Respondent's misappropriation of client funds from his trust account violated Rules 1.15(a) and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

## SECOND COUNT

### Non-Cooperation and False Statements to the Director

12. Beginning on October 19, 2006, pursuant to Rule 1.15(j)-(o), MRPC, the Director began to receive notices of overdraft on respondent's trust account. These overdrafts were the result of respondent's misappropriation of Grunewald Trust funds as described above.

13. On October 24, 2006, the Director requested respondent to provide (1) a written explanation for the overdraft and (2) various trust account books and records related to the overdraft. Respondent failed to respond.

14. On November 9, 2006, the Director again requested respondent to provide the information and documents originally requested on October 24.

15. Respondent responded to the Director's letters on November 14, 2006. Respondent failed to provide a substantive explanation for the overdraft and failed to provide any of the requested trust account books and records. Rather, respondent

stated that a heart procedure had delayed his ability to respond. Respondent stated that he would try to produce his substantive response by November 17, 2006. Respondent further stated that he was leaving town for four to eight weeks on November 18, 2006, and provided the email address and telephone number at which he could be reached in his absence.

16. On December 6, 2006, the Director wrote to respondent at his office address, renewing the request for a written explanation and for documents related to the overdraft. On December 7, 2006, the Director emailed the December 6 letter to respondent at the email address he provided in his November 14 letter. Respondent failed to respond.

17. On January 5, 2007, a representative of the Director telephoned respondent at the telephone number provided in his November 14, 2006, letter. Respondent explained that the overdraft had been caused by the combination of (1) respondent's disbursement of real estate recording costs on behalf of a client that exceeded the funds that had been deposited for that client and (2) an insufficient funds check that had been given to respondent by a client. Respondent stated that he was returning to Minnesota on January 17, 2007.

18. Respondent's explanation was false. As set forth above, the overdraft was caused by respondent's misappropriation of client funds in the trust account. The insufficient funds check was never deposited into the trust account.

19. By letter dated January 5, 2007, the Director confirmed respondent's verbal explanation of the overdraft and requested respondent to provide his written response regarding the overdraft and all of the requested trust account books and records no later than January 26, 2007.

20. On January 26, 2007, the Director received respondent's written response. The response disclosed respondent's disbursement of funds from the Grunewald Trust to himself and demonstrated that these disbursements were the seminal and the

primary cause of the overdrafts in respondent's trust account. In his response, respondent stated:

I took checks for some of the work which I should not have done but I had had a conversation with both trustee's [sic] and they understood that it was snow balling and I thought they would be okay with my taking some additional fees out. I was going to put the additional fees I took back in the account the day after I wrote the checks in Isanti County but I forgot and the next day I left town for a week. I did return \$1,150 to the account which was \$200.00 more than I took in fees to cover the overdraft charges I caused which were \$191.00.

21. Respondent's explanation was inconsistent and irreconcilable with his prior explanation (*see* ¶ 17, above) and was false. The trustees had not authorized respondent to pay fees to himself from the trust account. If not for respondent's misappropriation, the recording and other costs respondent expended from his trust account on behalf of the Grunewald Trust would not have resulted in an overdraft. The insufficient funds check respondent alluded to in his January 5, 2007, telephone conversation with the Director's representative was actually in the amount of \$55 and, in fact, was never deposited to respondent's trust account in the first place.

22. Respondent's misrepresentations to the Director regarding the cause of the overdrafts in his trust account and failure to cooperate fully with the Director's investigation violated Rules 8.1(a) and (b) and 8.4(c), MRPC, and Rule 25, RLPR.

### THIRD COUNT

#### Failure to Maintain Trust Account Books and Records

23. During the period from at least January 2006 through at least February 2007, respondent failed to maintain all the trust account books required by Rule 1.15, MRPC, and Appendix 1 thereto. In particular, respondent failed to maintain a checkbook register, client subsidiary ledgers, trial balances or reconciliations.

24. Respondent's failure to maintain required trust account books and records violated Rule 1.15(c)(3) and (h), MRPC, and Appendix 1 to the MRPC.

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: August 29, 2007.



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