

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against JEREMY THOMAS KRAMER,
a Minnesota Attorney,
Registration No. 0282480.

**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 May 8, 1998. Respondent is currently suspended from the practice of law.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On January 15, 2014, respondent was indefinitely suspended from the practice of law for a minimum period of five years for misappropriating client funds and interest due under the IOLTA program, failing to properly reconcile his trust account, allowing a non-lawyer signatory on his trust account and failing to cooperate with the Director in violation of Rules 1.15(a), (c)(3), (h) and (j), 8.1(b) and 8.4(c), Minnesota Rules of Professional Conduct (MRPC), and Rule 25, RLPR.

FIRST COUNT

Misappropriation of Client Funds

1. Respondent represented B.J. and C.J. ("the clients") regarding the sale of real estate. The closing on the sale occurred on or about October 1, 2013.

2. By the time of the closing, respondent had deposited \$27,500 into his Wells Federal Bank trust account no. -4437 ("respondent's trust account") on behalf of the clients. During and/or following the closing, respondent disbursed all but \$2,156.17 of these proceeds to the clients or in payment of expenses related to the sale of their real estate. Among these disbursements was a total of \$1,180 to respondent for the following services: (a) \$250 for "Settlement or Closing Fee"; (b) \$750 for attorney's fees; (c) \$90 for preparation of an easement agreement; and (d) \$90 for preparation of a well disclosure statement.¹ Respondent was to disburse the \$2,156.17 balance in payment of real estate taxes and recording fees.

3. On November 27, 2013, respondent mailed to the county recorder a warranty deed, easement agreement and trust account checks totaling \$2,239.75 in payment of the real estate taxes, recording fees, and a late payment penalty on the real estate taxes. The county recorder received these materials on December 2, 2013, but returned them to respondent because certain necessary documents and/or information, including the well disclosure statement, were missing.

4. Respondent did not, at that time, prepare the missing materials or submit them to the county recorder along with the warranty deed, easement agreement and trust account checks. Respondent also did not inform the clients that the warranty deed, easement agreement and well disclosure statement had not been recorded or that the real estate taxes had not been paid.

¹ For reasons that are not clear, respondent paid himself a total of \$1,430 from the clients' closing proceeds.

5. During the period December 9, 2013, to January 29, 2014, respondent disbursed to himself the entire balance in his trust account and closed the account.² Included in the funds respondent so disbursed was the \$2,156.17 balance of B.J. and C.J.'s funds. Respondent's conduct in this regard constituted the intentional misappropriation of client funds.

6. In late December 2013, the clients discovered that respondent had not recorded the necessary documents or paid the real estate taxes. At that time, the clients paid the real estate taxes and late payment penalty with their own funds. The clients also retained and paid another lawyer to prepare and file the warranty deed, easement agreement and well disclosure statement and paid the recording fees for those documents with their own funds.

7. The clients submitted a complaint to the Director. On March 28, 2014, after receiving notice of the clients' complaint, respondent wrote to the clients and, for the first time, explained that their warranty deed and easement agreement had been rejected by the county recorder and that he had not resubmitted those materials. Respondent enclosed with his letter his November 27, 2013, letter to the county recorder, with its enclosures, and the county recorder's memorandum explaining why it was rejecting those materials. Respondent also enclosed a \$1,070.33 money order payable to him, which he had received for a purpose unrelated to the clients and had endorsed to the clients in partial restitution of their \$2,156.17 trust balance. After this partial restitution payment, \$1,085.84 (\$2,156.17 minus \$1,070.33) remained due the clients for their trust balance.

² On November 26, 2013, respondent signed a stipulation for discipline agreeing to be suspended from the practice of law for a period of five years for misconduct unrelated to that alleged in these charges. By order dated January 15, 2014, the Supreme Court imposed respondent's five-year suspension, effective January 29, 2014.

8. In early April 2015, the clients received an additional \$400 from respondent in partial restitution of their trust balance. After this partial restitution payment, \$684.84 (\$1,085.84 minus \$400) remained due the clients for their trust balance. Later in April 2015, the clients received an additional \$686 from respondent in restitution of their trust balance. This restitution payment fully repaid the clients for their trust balance.

9. Respondent's conduct in failing to resubmit the clients' warranty deed and other materials to the county recorder, failing to inform the clients that their warranty deed and other materials had not been recorded and intentional misappropriation of the clients' trust balance violated Rules 1.3, 1.4(a)(3) and (b), 1.15(a), 1.15(c)(4) and 8.4(c), MRPC.

SECOND COUNT

Pattern of Neglecting Client Matters, Failing to Communicate with Clients, Failing to Deposit Client Funds in Trust, Misappropriating Filing Fee Advances and Failing to Timely Return Client Property

10. As is more fully described below, during the period from approximately September 2011 to January 2014, respondent engaged in a pattern of failing to diligently handle client matters, failing to communicate with clients, entering into improper non-refundable retainer agreements, failing to deposit client funds into a trust account, misappropriating filing fee advances and failing to timely return client property.

W.P. Matter

11. On March 13, 2012, W.P. and his wife retained respondent to represent them in filing bankruptcy. At the time, W.P. had received notification that Wells Fargo Bank was foreclosing on the mortgage on his home. W.P. paid respondent a \$1,593 retainer, of which \$375 constituted an advance on the bankruptcy court's filing fee and other anticipated costs. Respondent did not deposit W.P.'s filing fee and cost advance

into a trust account. Respondent's conduct in this regard constituted misappropriation of client funds.

12. Respondent's "NONREFUNDABLE RETAINER AGREEMENT" with W.P. included the following provision:

Client understands that this is nonrefundable, is fully earned upon receipt, will not be kept in a trust account, and will be deposited into the attorneys [sic] business account. Client also understands that the client may not receive a refund of any portion of this nonrefundable retainer if the client later chooses not to hire the attorney or chooses to terminate the attorney's services before the case is concluded.

13. Respondent advised W.P. to cease paying his bills, including his monthly mortgage payments to Wells Fargo Bank. Respondent also requested W.P. to provide certain information and documents relevant to his bankruptcy and the foreclosure proceeding. W.P. provided the requested information and documents to respondent shortly thereafter.

14. During 2012 and 2013, W.P. contacted respondent on multiple occasions regarding the status of his bankruptcy and to ask whether respondent needed any additional information or documents. On many such occasions, respondent requested, and W.P. soon thereafter provided, additional information and/or documents.

15. During 2012 and 2013, respondent failed to work diligently on W.P.'s bankruptcy. Respondent did not file, or even finalize, a bankruptcy petition or any other documents on W.P.'s behalf.

16. During the period March to July 2012, W.P. received a series of additional documents advising that he was in default on his mortgage and that Wells Fargo Bank was undertaking foreclosure proceedings. W.P. promptly delivered all such documents to respondent. Respondent took no action regarding the foreclosure and did not, at that time or any other, complete W.P.'s bankruptcy.

17. The sheriff's sale of W.P.'s home was held on June 27, 2012. On July 26, 2012, the Rice County district court issued findings of fact, conclusions of law and order reducing the mortgage redemption period from six months to five weeks. W.P. was thereafter unable to redeem the mortgage and his home was lost.

18. On May 28, 2013, W.P. sent an email to respondent and Chris Kramer, respondent's wife and legal assistant, requesting to schedule a date and time to meet to discuss his bankruptcy and to provide any other necessary information or documents. Respondent did not respond. W.P. sent additional email communications to respondent and Ms. Kramer on May 30 and June 4, 2013.

19. On June 5, 2013, Ms. Kramer sent an email to W.P. in which she stated that the next steps in W.P.'s bankruptcy "are to really meet again and review your file." Ms. Kramer requested W.P. to provide his 2012 income tax return and seven months of paystubs. W.P. responded with a June 17, 2013, email stating, "You should have all of our information by now," and proposing dates and times to meet.

20. On July 24, 2013, W.P. sent an email to respondent and Ms. Kramer stating that he and his wife "really want to get this behind us; we have concerns that you have not got back to us the last few week [sic] on a meeting date Please let us know your available dates and times." Ms. Kramer responded on July 29, 2013, stating that she would "review your file the early part of this week and email you what information I am needing updated for your petition Once the file is complete, then we can set up a time for you to come in to review everything."

21. As noted above, respondent did not thereafter finalize a bankruptcy petition on W.P.'s behalf or further communicate with W.P. regarding his bankruptcy.

22. On September 13, 2013, Ms. Kramer sent an email to W.P. stating "[W]e still have some of your original paperwork from you [sic] bankruptcy file We are closing our law office and need for you to come in to pick up your paperwork. We will

have your paperwork available for pick-up from now until September 30, 2013. After that date, the documents will be destroyed.” W.P. traveled to respondent’s office that same day and retrieved his file.

23. To date, respondent has not refunded to W.P. any portion of his retainer.

T.B. Matter

24. In June 2013, T.B. retained respondent to represent her in filing bankruptcy. T.B. paid respondent a \$1,674 retainer. Some portion of T.B.’s retainer constituted an advance on the bankruptcy court’s filing fee and other anticipated costs. Respondent did not deposit T.B.’s filing fee and cost advance into a trust account. Respondent’s conduct in this regard constituted misappropriation of client funds.

25. During the period June 2013 to January 2014, respondent did little or no work on T.B.’s bankruptcy case. Respondent did not file, or even finalize, a bankruptcy petition or any other documents on T.B.’s behalf.

26. In and during the months following June 2013, T.B. attempted to reach respondent by telephone on multiple occasions to discuss and learn the status of her bankruptcy case. Respondent failed to return T.B.’s calls.

27. At some point, T.B. determined to hire a new attorney. T.B. attempted to reach respondent by telephone on multiple occasions to request her file and a refund of her retainer. Respondent failed to return T.B.’s calls.

28. In early January 2014, T.B.’s new attorney contacted respondent, leaving him a voicemail message. In his voicemail message, the new attorney requested respondent to provide T.B.’s file and a refund of her retainer. By January 21, 2014, respondent had provided T.B. with her file and a complete refund of her retainer.

M.C. Matter

29. On August 18, 2010, M.C. retained respondent to represent him in filing bankruptcy. Because of a prior bankruptcy filing, M.C. could not file the bankruptcy for which he retained respondent until June or July 2013.

30. In March 2013, M.C. paid respondent a \$1,693 retainer, of which \$367 constituted an advance on the bankruptcy court's filing fee and other anticipated costs. Respondent did not deposit M.C.'s filing fee and cost advance into a trust account. Respondent's conduct in this regard constituted misappropriation of client funds.

31. Respondent's "NONREFUNDABLE RETAINER AGREEMENT" with M.C. included the following provision:

Client understands that this is nonrefundable, is fully earned upon receipt, will not be kept in a trust account, and will be deposited into the attorneys [sic] business account. Client also understands that the client may not receive a refund of any portion of this nonrefundable retainer if the client later chooses not to hire the attorney or chooses to terminate the attorney's services before the case is concluded.

32. In approximately mid-August 2013, not having heard from respondent, M.C. sent respondent an email requesting information regarding the status of his bankruptcy. Respondent failed to respond.

33. In approximately mid-September 2013, M.C. sent another email to respondent requesting an update on the status of his bankruptcy. Respondent again failed to respond.

34. During this period, M.C. also sent at least two text messages to respondent to which respondent failed to respond.

35. At some point, M.C. attempted to reach respondent by telephone, leaving him at least five voicemail messages. Respondent failed to respond to M.C.'s voicemail messages.

36. In mid-December 2013, Ms. Kramer telephoned M.C., leaving him a voicemail message. That day and the next, M.C. attempted to return Ms. Kramer's message, leaving voicemail messages for her. Neither respondent nor Ms. Kramer returned M.C.'s messages.

37. On January 8, 2014, M.C. visited respondent's office and discovered that respondent had vacated the office and removed all of his signage. Respondent had not previously informed M.C. that he was closing his office. In addition, when M.C. attempted to contact respondent at his office telephone number, he reached a recording stating that the number was no longer in service.

38. In February 2014, M.C. received a letter from respondent in which he advised that he had been suspended from the practice of law and stated that he had arranged for another attorney to complete M.C.'s bankruptcy. Respondent stated that M.C. would not be required to pay any additional fees. M.C. retained the other attorney, but, as of the date of these charges, his bankruptcy has not yet been completed.

R.J. Matter

39. On September 28, 2012, R.J. retained respondent to represent him in filing bankruptcy. Respondent required R.J. to pay a retainer of \$1,674 before proceeding with the bankruptcy. This retainer included \$374 as an advance on the bankruptcy court's filing fee and other anticipated costs. By December 2012, R.J. had paid respondent the full \$1,674 retainer he required. Respondent did not deposit R.J.'s filing fee and cost advance into a trust account. Respondent's conduct in this regard constituted misappropriation of client funds.

40. Respondent's "NONREFUNDABLE RETAINER AGREEMENT" with R.J. included the following provision:

Client understands that this is nonrefundable, is fully earned upon receipt, will not be kept in a trust account, and will be deposited into the attorneys [sic] business account. Client also understands that the client may not receive a refund of any portion of this nonrefundable retainer if the client later chooses not to hire the attorney or chooses to terminate the attorney's services before the case is concluded.

41. In May 2013, Ms. Kramer contacted R.J. and requested additional information relative to his bankruptcy filing. R.J. provided the requested information. Ms. Kramer told R.J. that respondent would proceed with R.J.'s bankruptcy. Respondent did not do so.

42. Respondent did not file a bankruptcy petition or any other documents on R.J.'s behalf.

43. In the months following May 2013, R.J. attempted to reach respondent by telephone on multiple occasions to discuss and learn the status of his bankruptcy case. Respondent failed to return R.J.'s calls.

44. In November 2013, R.J. visited respondent's office and discovered that respondent had vacated the office. Respondent had not previously informed R.J. that he was closing his office. R.J. again attempted to contact respondent by telephone regarding his bankruptcy.

45. In early December 2013, Ms. Kramer telephoned R.J. and stated that respondent would complete his bankruptcy within one week. Respondent did not do so.

46. During the period January to approximately April 2014, R.J. attempted to contact respondent by telephone on multiple occasions, but was unable to reach him.

47. In February 2014, R.J. received a letter from respondent in which he stated that, if R.J. wished, he would arrange for another attorney to complete his bankruptcy at no additional cost to R.J. R.J. telephoned and spoke with respondent following receipt of this letter.

48. In early April 2014, Ms. Kramer telephoned R.J. and stated that respondent had arranged for an attorney to complete his bankruptcy at no additional cost to R.J. R.J. thereafter retained the attorney to complete his bankruptcy.

49. In September 2014, prior to the filing of his bankruptcy, R.J. relocated to Nebraska. R.J. is now working with a Nebraska attorney on a bankruptcy filing.

J.D. Matter

50. In approximately September 2011, J.D. retained respondent to represent him in filing bankruptcy. J.D. paid respondent a \$1,700 retainer. Some portion of J.D.'s retainer constituted an advance on the bankruptcy court's filing fee and other anticipated costs. Respondent did not deposit J.D.'s filing fee and cost advance into a trust account. Respondent's conduct in this regard constituted misappropriation of client funds.

51. Respondent did not file a bankruptcy petition or any other documents on J.D.'s behalf.

52. During the years 2012 and 2013, J.D. visited respondent's office on at least two occasions to inquire about the status of his bankruptcy. On each of these occasions, J.D. spoke with Ms. Kramer, who told him that respondent was working on his bankruptcy.

53. During the years 2012 and 2013, J.D. also called respondent's office on at least two occasions to inquire about the status of his bankruptcy. Again, on each of these occasions, J.D. spoke with Ms. Kramer, who told him that respondent was working on his bankruptcy.

54. In approximately December 2013, respondent or Ms. Kramer contacted J.D. and stated that respondent intended to finalize his bankruptcy filing in the near future. Respondent failed to do so.

55. On February 12, 2014, respondent sent a letter to J.D. advising him that he had been suspended from the practice of law. In that letter, respondent also stated that, if J.D. wished, he would arrange for another attorney to complete his bankruptcy. J.D. declined to pursue this option and, instead, retained attorney J.H. to represent him.

56. On February 25, 2014, J.H. wrote to respondent at the address appearing on his February 12, 2014, letter to J.D. to request J.D.'s file and a refund of his retainer. The postal service returned J.H.'s letter as undeliverable.

57. In early March 2014, J.H. attempted to contact respondent at the telephone number appearing on his February 12, 2014, letter to J.D., leaving a voicemail message.

58. On March 28, 2014, respondent provided J.H. with J.D.'s file. While respondent acknowledged in his letter to J.H. that J.D. was entitled to a refund of some portion of his retainer, to date, he has not made any refund to J.D.

59. Respondent's conduct in engaging in a pattern of failing to diligently handle client matters, failing to communicate with clients, failing to deposit client funds into a trust account, entering into improper non-refundable retainer agreements, misappropriating filing fee/cost advances and failing to timely return client property violated Rules 1.3, 1.4(a)(3) and (4), 1.5(b)(3), 1.15(a), 1.16(d) and 8.4(c), MRPC.

THIRD COUNT

Failure to Cooperate with the Director

60. On April 30, 2015, the Director wrote to respondent and requested that he provide information and documents concerning the retainers in the W.P., T.B., M.C., R.J. and J.D. matters within two weeks. Respondent failed to respond.

61. On May 19, 2015, the Director wrote again to respondent to request a response to the Director's April 30, 2015, letter within one week. Respondent again failed to respond.

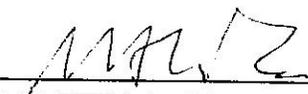
62. On June 2, 2015, the Director wrote again to respondent to request a response to the Director's April 30, 2015, letter within one week.

63. On June 22, 2015, the Director received from respondent some of the information and documents requested in the Director's April 30, 2015, letter.

64. Respondent's conduct in failing to timely respond to the Director's reasonable requests for information violated Rule 8.1(b), 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: August 10, 2015.



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