

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against JEREMY THOMAS KRAMER,  
a Minnesota Attorney,  
Registration No. 282480.  
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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 May 8, 1998. Respondent currently practices law in Owatonna, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Failure to Cooperate

1. On February 27, 2012, respondent's trust account at Community Bank Owatonna became overdrawn, a fact that the bank reported to the Director pursuant to Rule 1.15(j) through (o), Minnesota Rules of Professional Conduct (MRPC).

2. On March 6, 2012, the Director wrote to respondent and requested an explanation for the overdraft and copies of his complete December 2011 through February 2012 trust account books and records. Respondent failed to respond.

3. On March 23, 2012, the Director wrote again to respondent and requested the information and documents that had previously been requested in the Director's March 6 letter.

4. Respondent responded to the Director by letters dated March 28 and 29, 2012. In his letters, respondent provided the following explanation for the overdraft. In mid-2011, respondent transferred \$1,187.50 in funds belonging to two clients from his trust account into his business account, with the intention of paying those funds to attorney T.K., respondent's father, for expenses related to title work. In late May and early June 2011, however, one of respondent's staff members erroneously prepared *trust account* checks to T.K. in payment of those expenses, and respondent signed the checks. The checks were presented for payment from respondent's trust account in February 2012.<sup>1</sup> At that time, because the underlying funds had been transferred into respondent's business account, the overdraft in respondent's trust account resulted.

5. With his March 28 and 29, 2012, letters, respondent provided copies of his December 2011 through February 2012 trust account bank statements and reconciliation reports (all of which reports were dated March 30, 2012) and his billing statements to the two clients at issue. Respondent did not provide the trust account check register, client subsidiary ledgers or trial balances requested in the Director's March 6 and 23, 2012, letters.

6. On June 25, 2012, the Director wrote to respondent and requested (a) an explanation for his transfer of funds from his trust account into his business account in order to pay client-related expenses, (b) an indication as to whether or not the funds transferred remained at all times in his business account and copies of his May 2011 through February 2012 business account bank statements, (c) an explanation for a January 2012 transfer from respondent's business account into his trust account, and

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<sup>1</sup> Respondent has offered no explanation for why checks dated May and June 2011 were not presented for payment until February 2012.

(d) respondent's complete March through June 2012 trust account books and records, i.e., bank statements, check register, client subsidiary ledgers, trial balances and reconciliations.

7. In the June 25, 2012, letter, the Director also noted that respondent's failures to (a) discover the outstanding trust account checks issued to T.K. in May and June 2011 until after the overdraft occurred in February 2012, and (b) prepare trust account reconciliation reports on a monthly, contemporaneous basis, indicated that respondent had not been reconciling the account in the manner required by Rule 1.15, MRPC, as interpreted by Appendix 1 thereto.

8. Respondent failed to respond to the Director's June 25, 2012, letter.

9. On July 20 and August 2, 2012, the Director wrote again to respondent and requested his response to the Director's June 25, 2012, letter. Respondent failed to respond.

10. Based on respondent's failure to respond, the Director converted the overdraft inquiry into a formal disciplinary investigation. On August 22, 2012, the Director issued to respondent a notice of investigation, which requested his complete May 2011 through August 2012 trust account books and records, responses to the questions posed in the Director's June 25, 2012, letter, and an explanation for respondent's failure to respond. Respondent failed to respond to the notice of investigation.

11. On September 20 and October 4, 2012, the Director wrote again to respondent and requested his response to the notice of investigation. The Director's letters informed respondent that his cooperation was required by Rule 8.1(b), MRPC, and Rule 25, RLPR, and that failure to cooperate could constitute an independent basis for professional discipline. Respondent failed to respond.

12. On March 20, 2013, after the Director had contacted T.K. to discuss the two client matters with respect to which he had received payment from respondent,

respondent telephoned the Director. During that conversation, respondent confirmed that the address used by the Director on the June 25, July 20, August 2, August 22, September 20 and October 4, 2012, mailings to respondent was correct, but denied receiving any of those mailings.

13. On March 20, 2013, using an email address provided by respondent, the Director emailed the letters identified above to respondent and requested his immediate response to the notice of investigation. Respondent confirmed his receipt of these materials in a responsive email.

14. On March 27, 2013, respondent provided to the Director by facsimile transmission the following trust account materials: (a) May 2011 through August 2012 bank statements, cancelled checks and deposit slips; (b) May 2011 through August 2012 reconciliation reports; and (c) subsidiary ledgers for seven clients and for the interest activity in the account. In the cover sheet to his facsimile transmission, respondent stated, "Originals and a letter of explanation will follow via US Mail."

15. On April 9, 2013, after conducting only a preliminary review of the materials provided by respondent, the Director wrote to respondent. The Director noted that respondent had not, in fact, provided the "originals and a letter of explanation" by mail and requested that he do so. The Director also noted that it appeared respondent's non-lawyer wife had been signing trust account checks in violation of Rule 1.15(j), MRPC, and directed that that practice be discontinued. Finally, the Director noted that a trust account he opened in November 2011 at Wells Federal Bank, presumably to replace the Community Bank Owatonna trust account, was in the name of "C & J Kramer, Inc.," but that neither the Director nor the Secretary of State's Office had any record of such a professional entity. The Director also questioned whether respondent was allowing a non-lawyer to own an interest in, or possess any governance or other authority over, his law firm in violation of Rule 5.4, MRPC. The

Director's April 9, 2013, letter was delivered to respondent by both email and U.S. Mail. Respondent failed to respond.

16. On April 23, 2013, the Director wrote again to respondent to request a response to the April 9, 2013, letter. The Director's April 23, 2013, letter was delivered to respondent by both email and U.S. Mail.

17. Respondent responded to the Director by letters dated April 29 and May 6, 2013. In those letters, respondent stated that he was taking steps to change the name on his Wells Federal Bank trust account from "C & J Kramer, Inc." to that of his law firm and was "filing with Wells Federal a new form indicating that I am the sole person who can sign checks on this account." Respondent also stated that he was placing "in today's mail" the originals of the materials he faxed to the Director on March 27, 2013.<sup>2</sup> With regard to the transfer of client funds from his trust account into his business account which caused the overdraft, respondent stated, "I am not certain as to why the funds for payment to my father related to those closings were transferred into my business account." Respondent did not provide the business account records requested by the Director in the August 22, 2012, notice of investigation. Finally, respondent explained that a \$155.66 deposit into his trust account in January 2012 was "to cover the IOLTA payment."

18. On June 5, 2013, after completing a comprehensive review of the trust account books and records respondent had faxed to the Director on March 27, 2013, the Director wrote to respondent. The Director's June 5, 2013, letter was delivered to respondent by both email and U.S. Mail.

19. In the June 5, 2013, letter, the Director requested (a) a more complete explanation for the transfer of client funds from respondent's trust account into his business account that caused the overdraft; (b) respondent's business account bank statements, cancelled checks and check register for the period May 2011 through

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<sup>2</sup> In fact, the Director has never received the originals.

February 2012; (c) respondent's May 2011 through August 2012 trust account trial balances or an indication that he did not contemporaneously maintain trial balances during that period; (d) subsidiary ledgers and other information for several clients on whose behalf there appeared to be trust account activity, but for whom respondent had not previously provided subsidiary ledgers; (e) client attribution and other information for several checks drawn on, and transfers from, the trust account<sup>3</sup>; and (f) client attribution information for the May 1, 2011, trust account balance. The Director's June 5, 2013, letter was delivered to respondent by both email and U.S. Mail.

20. The Director's June 5, 2013, letter requested respondent to provide the documents and information identified above by the close of business on June 26, 2013, and to appear for a meeting in the Director's Office on July 10, 2013. Respondent failed to provide the documents and information requested by the Director by June 26, 2013.

21. On June 27, 2013, the Director wrote to respondent noting that failure and requesting those documents and information within five days. The Director's June 27, 2013, letter was delivered to respondent by both email and U.S. Mail. Respondent failed to respond.

22. Respondent failed to appear for the July 10, 2013, meeting in the Director's Office. On July 11, 2013, the Director wrote to respondent noting his failures to provide the documents and information requested in the Director's June 5, 2013, letter and to appear for the July 10, 2013, meeting. The Director stated that charges of unprofessional conduct were being finalized, but invited respondent to provide any information he wished the Director to have before the charges were issued. The Director's July 11, 2013, letter was delivered to respondent by both email and U.S. Mail.

23. Respondent failed to respond. In fact, the Director has received no communication from respondent since his April 29 and May 3, 2013, letters.

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<sup>3</sup> Each of the checks listed was payable to respondent and each of the transfers listed was to respondent's business account. All but one of these checks and transfers were in large, round dollar amounts and none were attributed to any client in any of the trust account books and records provided by respondent.

24. On July 29, 2013, the Director issued charges of unprofessional conduct against respondent. Pursuant to Rule 9(a)(1), RLPR, respondent's answer to the charges was due to the Director and Panel Chair by August 15, 2013. Respondent failed to provide an answer to the charges.

25. Respondent's conduct in failing to cooperate in the Director's inquiry regarding the overdraft in respondent's trust account and the formal disciplinary investigation that followed violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

## SECOND COUNT

### Misappropriation of Client Funds and Interest

26. As noted in paragraph 4 above, in explaining the cause of the February 27, 2012, overdraft in his trust account, respondent acknowledged that he transferred \$1,187.50 in funds belonging to two clients from his trust account into his business account in mid-2011.

27. These client funds were disbursed to T.K. from respondent's business account in February 2012.<sup>4</sup>

28. Respondent's conduct in transferring \$1,187.50 in client funds from his trust account into his business account constituted the misappropriation of client funds.

29. On December 16, 2011, respondent transferred \$350 from his trust account into his business account, leaving a \$28.14 balance in the trust account.

30. Of the \$350 respondent transferred into his business account, \$155.66 was interest paid into the account and due pursuant to the Interest on Lawyers Trust Accounts ("IOLTA") program. Respondent's conduct in transferring these funds into his business account constituted misappropriation.

31. On January 19, 2012, respondent restored the \$155.66 into his trust account and, on January 23, 2012, the bank disbursed it pursuant to the IOLTA program.

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<sup>4</sup> As noted above, respondent has failed to provide business account records requested by the Director that would reflect the disposition of the funds during the period mid-2011 to February 2012.

32. Respondent's conduct in misappropriating \$1,187.50 in client funds and \$155.66 in interest due under the IOLTA program violated Rules 1.15(a) and 8.4(c) and (d), MRPC.

### THIRD COUNT

#### Failure to Properly Reconcile Trust Account and Allowing a Non-Lawyer Trust Account Signatory

33. As noted in paragraph 4 above, respondent's explanation for the February 27, 2012, overdraft in his trust account was that in May and June 2011 a staff member erroneously issued checks on his trust account against funds that had been transferred into his business account.

34. In his March 28, 2012, letter to the Director, respondent stated that the staff member's erroneous issuance of the trust account checks "did not come to my attention until the two trust account checks overdrafted" in February 2012. "At that time, I immediately transferred funds to the trust account to cover the error."

35. Had respondent been preparing the trial balances and reconciliations required by Rule 1.15, MRPC, as interpreted by Appendix 1 thereto, he would have discovered, and presumably corrected, the erroneous issuance of the trust account checks well before the overdraft.

36. On information and belief, during the period from at least May 2011 to February 2012, respondent was not preparing the required trial balances and reconciliations.

37. During the period from at least May 2011 to May 2013, respondent allowed his non-lawyer wife to be the sole signatory on numerous trust account checks issued during that period.

38. Respondent's conduct in failing to properly reconcile his trust account during the period from at least May 2011 to February 2012 and allowing a non-lawyer

signatory on his trust account during the period from at least May 2011 to May 2013, violated Rule 1.15(c)(3), (h) and (j), MRPC, as interpreted by Appendix 1 thereto.

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: August 19, 2013.

  
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and

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

Dated: September 3, 2013.

  
CASSANDRA WARD BROWN  
PANEL CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD