

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against BRUCE ANTHONY KUNZ,  
a Minnesota Attorney,  
Registration No. 225289.  
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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. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 8, 1992. Respondent currently practices law in Perham, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's history of prior discipline consists of a June 23, 2008, private probation for (a) commingling personal funds with client funds in his trust account, (b) failing to maintain proper trust account books and records, (c) using his trust account to process funds received from a personal real estate transaction, (d) failing to deposit a client's unearned retainer into a trust account, (e) failing to diligently and promptly respond to discovery requests and undertake other actions on behalf of a client, (f) failing to adequately communicate with a bankruptcy trustee and opposing

counsel in a client matter, and (g) entering into business transactions with a client, but failing to transmit the terms of the transactions to the client in writing, failing to advise the client in writing of the desirability of seeking independent legal counsel with regard to the transactions and failing to obtain the client's informed, written consent to the transactions.

## FIRST COUNT

### Business Transactions with Clients and Related Conflicts of Interest

1. Beginning in 2001 Roger Bryniarski conducted farming operations under the name B&B Feeders. The operations of B&B Feeders were conducted on 100.91 acres of property known as the "Krueger real estate," which Roger and his wife, Kathryn, had purchased on a contract for deed.

2. In 2003 B&B Feeders became incorporated as B&B Feeders, Inc. Jamie Bryniarski, the son of Roger and Kathryn, was named as the owner of B&B Feeders, Inc.

3. On April 13, 2004, Roger and Kathryn were divorced. As part of the divorce Roger was awarded the Krueger real estate, subject to the contract for deed.

4. In approximately May 2004, Roger was served with notice that the contract for deed on the Krueger real estate was being cancelled. On September 10, 2004, Jamie entered into a purchase agreement to purchase the Krueger real estate for \$68,000. By trustee's deed dated March 8, 2005, the Krueger real estate was transferred to Jamie.

5. In September 2007 Jamie transferred the 100.91 acres of the Krueger real estate to Kathryn.

6. In November 2007 South View Feeders, Inc. ("South View") was formed and the assets of B&B Feeders, Inc. transferred to South View. Kathryn was named as the owner of South View.

7. During the period 2001 to 2010, respondent provided continuous legal representation to B&B Feeders, Inc., South View and/or individual members of the Bryniarski family in a number of matters, including the following:

- a. During the periods August 2001 to February 2003 and February to October 2004, respondent represented Roger in a criminal matter.
- b. In April 2003 respondent represented Jamie in the preparation of the B&B Feeders, Inc. incorporation documents.
- c. Beginning in December 2003, respondent represented Jaime in a criminal matter.
- d. In February 2004 respondent represented B&B Feeders, Inc. in the drafting of a quit claim deed for property transferred to B&B Feeders, Inc. by Colin Jackson.
- e. Beginning in May 2004, respondent represented Roger regarding a harassment restraining order.
- f. In September 2004 respondent represented Jamie in the preparation of the purchase agreement by which Jamie acquired the Krueger real estate.
- g. Beginning in October 2004, respondent represented B&B Feeders, Inc. in civil litigation brought against it by Ace Realty.
- h. During the period March 2005 to approximately September 2006, respondent represented Roger and Kathryn concerning the wrongful death of their daughter.
- i. In May 2005 respondent represented B&B Feeders, Inc. in the purchase of real estate and farm equipment from Colin Jackson.
- j. During the period July 2005 to September 2006, respondent represented Roger in a criminal matter involving an alleged failure to obtain certain permits.

- k. Beginning in August 2005, respondent represented Roger regarding the incorporation of C&M Dairy, Inc.
- l. During the period September 2005 to September 2006, respondent represented Roger regarding an alleged violation of a harassment order.
- m. Beginning in September 2005, respondent represented B&B Feeders, Inc. in civil litigation against Pierz Fabrication.
- n. Beginning in November 2005, respondent represented B&B Feeders, Inc. in a collection matter brought against it by Ziegler, Inc.
- o. Beginning in April 2006 and during the period August 2006 to August 2007, respondent represented B&B Feeders, Inc. in a collection matter brought against it by Brunkows, Inc.
- p. Beginning in December 2006, respondent represented Roger in a real estate matter.
- q. In March 2007 respondent represented B&B Feeders, Inc. regarding a letter of credit from Land O'Lakes.
- r. During the period April to June 2007, respondent represented B&B Feeders, Inc. in a replevin matter brought by William Bushelle.
- s. During the period April 2007 to January 2010, respondent represented B&B Feeders, Inc. and Roger in civil litigation against Maverick Feeders.
- t. In June 2007 respondent represented B&B Feeders, Inc. in the preparation of transactional documents relating to Colin Jackson and the Gabler property.
- u. During the period June to July 2007, respondent represented Kathryn regarding a judgment against her by Golden LYK, LLC.
- v. During the period June to July 2007, respondent represented Jamie in a civil matter involving Joseph Varner.

- w. In September 2007 respondent represented Kathryn in the drafting of documents by which Jamie transferred to her the 87.27 acres of Krueger real estate.
  - x. In October 2007 respondent represented Kathryn in the preparation of the South View incorporation and asset transfer documents.
  - y. During the period October 2007 to August 2008, respondent represented South View regarding corporate matters.
  - z. In the spring of 2008, respondent represented South View in the preparation of a crop lease with Kevin Eckel.
  - aa. During the period March 2008 to February 2010, respondent represented Roger in a bankruptcy matter.
  - bb. During the period June 2008 to February 2009, respondent represented Kathryn in a criminal matter.
  - cc. During the period May 2009 to January 2010, respondent represented South View in a collection matter brought against it by Master Transfer.
  - dd. During the period June 2009 to January 2010, respondent represented Roger in a criminal matter relating to a returned check.
8. Between 2003 and 2010, respondent entered into a series of improper business transactions with his clients B&B Feeders, Inc., South View and individual members of the Bryniarski family, as follows.

### **Gabler Property**

9. On March 8, 2007, Jamie signed an agreement to purchase 62.52 acres of property known as the "Gabler property" for \$36,000. The closing on the purchase was to occur on May 7, 2007.

10. Jamie did not have sufficient funds to purchase the Gabler property. On May 7, 2007, at Jamie's request, respondent paid the \$36,000 on Jamie's behalf, with the

understanding that Jamie and/or B&B Feeders, Inc. would lease the Gabler property from him. On June 11, 2007, the Gabler property was transferred to Jamie.

11. On September 14, 2007, Jamie and his wife signed a quit claim deed transferring the Gabler property to respondent. Respondent drafted the quit claim deed.

12. On February 1, 2008, respondent signed a "Land Lease Agreement." This agreement, which respondent completed, provided that South View was leasing the Gabler property from respondent.<sup>1</sup> South View did not make any of the payments on the lease.

13. In connection with his purchase of the Gabler property on Jamie's behalf and his agreement to lease the property to Jamie and/or B&B Feeders, Inc., respondent failed to (a) fully disclose and transmit the terms of the transaction in writing to Jamie and/or B&B Feeders, Inc., (b) advise Jamie and/or B&B Feeders, Inc. in writing of the desirability of seeking the advice of independent legal counsel regarding the transaction, and (c) obtain from Jamie and/or B&B Feeders, Inc. written, informed consent to the essential terms of the transaction and respondent's role in the transaction, including whether respondent was representing Jamie and/or B&B Feeders, Inc. in the transaction, as required by Rule 1.8(a), Minnesota Rules of Professional Conduct (MRPC).

14. In connection with the "Land Lease Agreement" with South View regarding the Gabler property, respondent failed to (a) fully disclose and transmit the terms of the transaction in writing to South View, (b) advise South View in writing of the desirability of seeking the advice of independent legal counsel regarding the transaction, and (c) obtain from South View written, informed consent to the essential terms of the transaction and respondent's role in the transaction, including whether

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<sup>1</sup> The only available copy of this agreement is not signed by a representative of South View. Respondent has stated, however, that Kathryn did, in fact, sign the original agreement on behalf of South View.

respondent was representing South View in the transaction, as required by Rule 1.8(a), MRPC.

15. Respondent's business transaction with Jamie regarding the Gabler property further created impermissible conflicts of interest in his representation of (a) Jamie regarding the civil matter involving Joseph Varner; and (b) B&B Feeders, Inc. regarding the replevin matter brought by William Bushelle, the civil litigation against Maverick Feeders and preparation of the transactional documents relating to Colin Jackson and the Gabler property. Neither Jamie nor B&B Feeders, Inc. provided written, informed consent to respondent's representation of them in these matters despite his conflicts of interest.

16. Respondent's business transaction with South View regarding the Gabler property further created impermissible conflicts of interest in his representation of (a) Kathryn regarding a criminal matter; and (b) South View regarding the corporate matters, the crop lease with Kevin Eckel, and the collection matter brought by Master Transfer. Neither Kathryn nor South View provided written, informed consent to respondent's representation of them in these matters despite his conflicts of interest.

### **Krueger Real Estate**

17. On November 7, 2007, Kathryn signed a quit claim deed by which she transferred 87.27 acres of the Krueger real estate to respondent as security for respondent's loans to South View (*see* paragraphs 20 and 21 below) and a potential additional loan.

18. On October 31, 2008, at the directive of South View, respondent transferred the 87.27 acres to Reis Farms.

19. With respect to the transfer of the Krueger real estate from Kathryn, respondent failed to (a) fully disclose and transmit the terms of the transaction in writing to Kathryn, (b) advise Kathryn in writing of the desirability of seeking the

advice of independent legal counsel regarding the transaction, and (c) obtain from Kathryn written, informed consent to the essential terms of the transaction and respondent's role in the transaction, including whether respondent was representing Kathryn in the transaction, as required by Rule 1.8(a), MRPC.

#### **Loans to South View**

20. On December 21, 2007, respondent borrowed \$15,000 from a bank and, in turn, loaned those funds to South View. Respondent's oral agreement with South View required South View to repay the loan at an interest rate that was two percent above the interest rate on respondent's bank loan. South View did not repay any portion of this loan.

21. On March 27, 2008, respondent loaned an additional \$20,000 to South View. Again, respondent's oral agreement with South View required South View to repay the loan at an interest rate that was two percent above the interest rate that respondent's bank would have charged. South View did not repay any portion of this loan.

22. With respect to his December 21, 2007, and March 27, 2008, loans to, and related agreements with, South View, respondent failed to (a) fully disclose and transmit the terms of the transaction in writing to South View, (b) advise South View in writing of the desirability of seeking the advice of independent legal counsel regarding the transaction, and (c) obtain from South View written, informed consent to the essential terms of the transaction and respondent's role in the transaction, including whether respondent was representing South View in the transaction, as required by Rule 1.8(a), MRPC.

23. Respondent's business transactions with Kathryn and South View regarding the Krueger real estate, and the December 21, 2007, and March 27, 2008, loans to South View further created impermissible conflicts of interest in his representation of

(a) Kathryn regarding a criminal matter; and (b) South View regarding the corporate matters, the crop lease with Kevin Eckel, and the collection matter brought by Master Transfer. Neither Kathryn nor South View provided written, informed consent to respondent's representation of them in these matters despite his conflicts of interest.

### **Truck**

24. On February 15, 2008, respondent obtained a bank loan, and purchased a truck, for \$26,000. Respondent leased the truck to South View for its use. Respondent's oral agreement with South View required it to make the payments on the bank loan and to pay all maintenance, license and insurance expenses. South View made most, but not all, of the payments on the bank loan. Respondent made occasional payments on the bank loan on South View's behalf.

25. With respect to his lease agreement with South View regarding the truck, respondent failed to (a) fully disclose and transmit the terms of the transaction in writing to South View, (b) advise South View in writing of the desirability of seeking the advice of independent legal counsel regarding the transaction, and (c) obtain from South View written, informed consent to the essential terms of the transaction and respondent's role in the transaction, including whether respondent was representing South View in the transaction, as required by Rule 1.8(a), MRPC.

26. Respondent's business transactions with South View regarding the truck further created impermissible conflicts of interest in his representation of (a) Kathryn regarding a criminal matter; and (b) South View regarding the corporate matters, the crop lease with Kevin Eckel, and the collection matter brought by Master Transfer. Neither Kathryn nor South View provided written, informed consent to respondent's representation of them in these matters despite his conflict of interest.

## **DBR Cattle**

27. In December 2007 respondent entered into a joint venture arrangement called "DBR Cattle" with Roger, Deb Jirava and Gerald Jirava. A "Feeder Cattle Agreement" memorialized the arrangement, under which the profits of the joint venture would be split among respondent, Roger and the Jiravas, and Roger would receive compensation for feeding and caring for the joint venture's cattle. Respondent drafted the Feeder Cattle Agreement.

28. Included in the Feeder Cattle Agreement was a section entitled "Waiver," which read as follows:

The undersigned hereby acknowledge that Bruce A. Kunz has represented them in previous matters and wish to waive any conflict, either real or perceived, that may be present due to his past or present association with the undersigned. Based upon the foregoing, your undersigned hereby waives any conflict that may stem from the execution or participation in this business endeavor and the parties do so knowingly and involuntarily with full reflection and understanding.

29. The DBR Cattle joint venture was completed in July 2008. At that time, South View received payment of more than \$95,000 and profits of more than \$13,000 were distributed to respondent, Roger and the Jiravas.

30. With respect to the DBR Cattle joint venture, respondent failed to (a) fully disclose and transmit the terms of the transaction in writing to Roger, (b) advise Roger in writing of the desirability of seeking the advice of independent legal counsel regarding the transaction, and (c) obtain from Roger written, informed consent to the essential terms of the transaction and respondent's role in the transaction, including whether respondent was representing Roger in the transaction, as required by Rule 1.8(a), MRPC.

31. Respondent's business transaction with Roger regarding the DBR Cattle joint venture further created an impermissible conflict of interest in his representation of Roger in the bankruptcy proceeding. Further, the "Waiver" quoted above was not

sufficient to permit the representation to proceed despite the conflict because (a) it was drafted prior to respondent's representation of Roger in the bankruptcy proceeding, (b) respondent could not have reasonably believed that he would be able to provide competent and diligent representation to Roger in the bankruptcy proceeding despite the conflict, and (c) the "Waiver" quoted above failed to include an explanation about the material risks of and reasonably available alternatives to the transaction, as required by Rule 1.8(a), MRPC.

32. Respondent's conduct in entering into the business transactions detailed above, and failing to (a) fully disclose and transmit the terms of the transaction in writing to the client, (b) advise the client in writing of the desirability of seeking the advice of independent legal counsel regarding the transaction, and (c) obtaining from the client written, informed consent to the essential terms of the transaction and respondent's role in the transaction, including whether respondent was representing the client in the transaction, violated Rule 1.8(a), MRPC.

33. Respondent's conduct as described above in representing clients with whom he had ongoing business transactions without proper waivers, and, in particular, representing Roger, with whom he had various ongoing business dealings, in filing for bankruptcy, a matter in which respondent had a personal financial interest, violated Rules 1.7(a)(2) and 8.4(d), MRPC.

## SECOND COUNT

### Lack of Candor in Bankruptcy

34. As noted above, beginning in April 2008, respondent represented Roger in a bankruptcy. The bankruptcy petition respondent drafted and filed on Roger's behalf failed to disclose Roger's interest in and potential income from the DBR Cattle joint venture.

35. On May 21, 2008, respondent attended the first meeting of creditors with Roger. During that meeting, Roger testified that he worked as an independent

contractor to South View overseeing and feeding cattle. Roger did not disclose his involvement in the DBR Cattle joint venture. Respondent failed to disclose or to ensure that Roger disclosed his involvement in the joint venture.

36. Also during the May 21, 2008, first meeting of creditors, the trustee asked Roger to identify the owners of the cattle he oversaw and fed on behalf of South View. Roger gave the following answer:

There's [sic] different owners in there. There's [sic] several different owners and I don't get into the owner part of it. There's one man called John Meyer, Gerald Jirava, is the two owners that I know are in there.

37. The trustee asked, "You say there's [sic] other individuals that own some of these cattle?" Roger responded, "That's the only two individuals that I'm aware of." Later, the trustee again asked whether Meyer and Jirava were the only two individuals that owned cattle Roger cared for and fed. Roger responded, "Yes." The trustee then asked, "Do you have any knowledge if anybody else owns any of the cattle?" Roger responded, "No, I do not."

38. In fact, under the DBR Cattle joint venture, respondent also had an interest in the cattle for which Roger was caring and feeding. Respondent failed to disclose or ensure Roger disclosed that fact, and failed to otherwise disclose or ensure that Roger disclosed Roger's involvement in the DBR Cattle joint venture during the meeting.

39. During the May 21, 2008, first meeting of creditors, the trustee also asked Roger whether anyone owed him any money. Roger responded, "No."

40. In fact, at that time, Roger was or soon would be due funds under the DBR Cattle joint venture. Respondent failed to disclose or to ensure that Roger disclosed that fact in response to the trustee's question.

41. During the May 21, 2008, first meeting of creditors, the trustee asked Roger whether he had "done any other type of self-employment" during the last two

years. Roger responded, "No." Later, the trustee asked Roger whether he had any sources of income other than South View. Roger responded, "No, I do not."

42. In fact, at that time, Roger was providing services under the DBR Cattle joint venture and was or would be receiving income from that joint venture. Respondent failed to disclose or to ensure that Roger disclosed that fact in response to the trustee's question.

43. On May 22, 2008, respondent wrote to the trustee to clarify "a couple points . . . from yesterdays [sic] hearing." Respondent proceeded to disclose that he owned cattle that South View was feeding on property it leased from respondent. Respondent did not, however, disclose his or Roger's involvement in the DBR Cattle joint venture.

44. In July 2008, when respondent and Roger received payment from the DBR Cattle joint venture (*see* paragraph 29 above), respondent failed to disclose that fact to the bankruptcy court or the trustee.

45. On December 4, 2008, respondent attended the continuation of the first meeting of creditors with Roger. During that hearing, neither respondent nor Roger disclosed the DBR Cattle joint venture or the funds that were paid to Roger from that venture in July 2008.

46. On January 15, 2009, based on his belief that Roger had provided false statements and information regarding his interest and involvement in B&B Feeders, Inc. and South View, the bankruptcy trustee brought an action to deny Roger's discharge. Neither respondent nor Roger responded to the trustee's action and, on March 9, 2009, Roger's discharge was denied.

47. On January 11, 2010, the bankruptcy trustee commenced an action against Roger, Kathryn, South View and respondent alleging that the transfers of B&B Feeders, Inc. ownership to Jamie, the transfer of South View ownership and assets to Kathryn,

and the related transfers of real estate were fraudulent, and seeking to recover, among other things, the assets of South View as assets of Roger's bankruptcy estate.

48. Respondent requested to withdraw as Roger's attorney and, on February 4, 2010, the bankruptcy court granted respondent's motion in that regard.

49. On October 8, 2010, the trustee served discovery requests on respondent. Respondent responded to the discovery requests, through counsel, on approximately November 8, 2010. Respondent's discovery responses objected to the vast majority of the discovery requests as irrelevant or privileged.

50. The trustee brought a motion to compel respondent to respond more fully to the discovery requests. On January 13, 2011, the court granted the trustee's motion to compel and sanctioned respondent \$750. Respondent paid the sanction on February 4, 2011.

51. On January 28, 2011, respondent provided supplemental discovery responses. These responses did not disclose the DBR Cattle joint venture.

52. On February 4, 2011, respondent provided "third" supplemental discovery responses, which, for the first time, disclosed and provided documents relating to the DBR Cattle joint venture.

53. On April 28, 2011, the trustee amended his complaint to include a request for recovery of the proceeds of the DBR Cattle joint venture from Roger and respondent.

54. The parties entered into mediated settlements regarding the trustee's lawsuit. The terms of respondent's settlement required respondent to (a) transfer the Gabler property to Roger's bankruptcy estate, (b) forego any claim to the \$36,000 he had paid for the Gabler property, and (c) pay \$20,000 to Roger's bankruptcy estate.

55. In September 2011, respondent paid the \$20,000, and provided a quit claim deed for the Gabler property, to the bankruptcy trustee.

56. Respondent's conduct in failing to disclose Roger's interest in and income from the DBR Cattle joint venture to the bankruptcy court or trustee violated Rules 3.3(a), 4.1 and 8.4(c), 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: March 13, 2014.



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