

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against MARC G. KURZMAN,
a Minnesota Attorney,
Registration No. 59080.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 20, 1972. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

a. On July 29, 1994, respondent was issued an admonition for knowingly making a false statement in a telephone conversation and recording the telephone conversation without the prior knowledge or consent of the other party to the conversation, in violation of Rules 4.1 and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

b. On November 4, 1996, respondent was issued an admonition for, on two separate occasions, communicating with a court in writing without delivering a copy of the writing to opposing counsel, in violation of Rules 3.5(g) and 8.4(d), MRPC.

c. On December 3, 1996, a Panel of the Lawyers Professional Responsibility Board affirmed that portion of a June 24, 1996, admonition issued to respondent for

failing to provide a client with a written contingent fee agreement within a reasonable time after commencing the representation, failing to inform his client of his agreement to share his fee in the client's matter with another attorney, and failing to adequately communicate with a client, in violation of Rules 1.4(a) and 1.5(c) and (e), MRPC.

d. On April 23, 2001, respondent was issued an admonition for failing to place client funds in his trust account, in violation of Rule 1.15, MRPC.

e. On June 16, 2003, respondent was issued an admonition for falsely stating to a court that he was a pharmacist admitted to practice in the state of Minnesota and other states, in violation of Rule 3.3(a)(1), MRPC.

f. On June 16, 2003, respondent was issued an admonition for failing to act with reasonable diligence and promptness in pursuing a client's employment discrimination claims, failing to clarify with the client whether he was undertaking to represent the client in her claims, and failing to promptly comply with the client's requests for information regarding her claims, in violation of Rules 1.3 and 1.4, MRPC.

g. On June 12, 2007, respondent was placed on private probation for offering evidence that respondent's client had obtained through illegal means, bringing a motion that resulted in the assessment of a sanction and billing his client for the amount of the sanction and misstating evidence in a written final argument and an appellate brief, in violation of Rules 3.4(c), 4.4, 5.1(c)(2) and 8.4(d), MRPC.

FIRST COUNT

1. Respondent maintained trust account number x-xxx-xxxx-8652 at US Bank. On October 9, 2008, respondent's US Bank trust account became overdrawn. The bank reported the overdraft to the Director pursuant to Rule 1.15(j)-(o), MRPC.

2. The overdraft in respondent's US Bank trust account resulted from the following series of events:

a. On or about September 26, 2008, respondent became concerned that US Bank would take into account the more than \$200,000 balance in his trust account in applying the \$100,000 limit in FDIC coverage.

b. On that date, respondent transferred the sum of \$100,000 from his US Bank trust account into another trust account he maintained in Wisconsin, and transferred another \$100,000 from his US Bank trust account into a newly opened account at TCF Bank. The TCF Bank account was not opened as a trust account. The TCF Bank branch location in Wisconsin was also not a financial institution that had been approved as a depository for Minnesota client funds pursuant to Rule 1.15(j), MRPC.

c. On October 8, 2008, respondent's bookkeeper attempted to transfer the fees respondent had earned during the month of September 2008 from his US Bank trust account to an operating account. As a result of the \$200,000 in transfers from the US Bank account, however, the balance in that account was not sufficient to cover the transfer and an overdraft resulted.

d. On October 20, 2008, respondent transferred the sum of \$100,000 from his Wisconsin trust account back into his US Bank trust account. Respondent also attempted to transfer the sum of \$100,000 from the recently opened TCF Bank account into his US Bank trust account. Respondent used the wrong TCF Bank account number in directing the transfer, however, and the transfer was unsuccessful. Respondent completed the transfer from the TCF Bank account on October 30, 2008.

3. For a period of approximately 2 1/2 years prior to the October 9, 2008, overdraft in his US Bank trust account, respondent was not performing the trial balances and reconciliations required by Rule 1.15, MRPC, as interpreted by Appendix 1 thereto. As a result, respondent's client subsidiary ledgers contained a number of client balance errors.

4. Also as a result, for the period from at least October 2008 to April 2009, respondent's US Bank trust account contained approximately \$10,000 to \$12,000 in funds respondent had earned and should have withdrawn from the account. Thus, during that period, respondent commingled the sum of \$10,000 to \$12,000 of his own funds with client funds in his US Bank trust account.

5. Following the overdraft, respondent corrected the errors in his client subsidiary ledgers, withdrew the commingled balance of his own funds and reconstructed trial balances and reconciliations for the period October 2008 through April 2009. Since April 2009 respondent has consistently maintained compliant client subsidiary ledgers, trial balances and reconciliations for his US Bank trust account.

6. Respondent's conduct in transferring \$200,000 in client funds into financial institutions that had not been approved as depositories for Minnesota client funds, failing to ensure that the balance in his US Bank trust account was sufficient to cover a transfer of earned fees, failing to maintain the required trust account trial balances and reconciliations and commingling \$10,000 to \$12,000 of his own funds with client funds, violated Rules 1.15(a), (b), (c)(3), (d) and (f), MRPC, and Appendix 1 thereto.

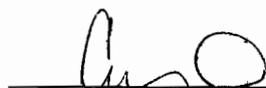
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: May 27, 2010.



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



CASSIE HANSON
SENIOR ASSISTANT DIRECTOR
Attorney No. 303422