

FILE NO. A04-636  
STATE OF MINNESOTA  
IN SUPREME COURT

RECEIVED  
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OFFICE OF LAWYERS  
PROF. RESP.

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In Re Petition for Disciplinary Action  
against DANIEL MARTIN LIEBER,  
a Minnesota Attorney,  
Registration No. 207731.  
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COPY

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND RECOMMENDATION**

The above-entitled matter came on for hearing on March 31 and April 1, 2005, before the undersigned Judge of District Court, acting as Referee by appointment of the Minnesota Supreme Court.

Patrick R. Burns appeared on behalf of the Office of the Director of Lawyers Professional Responsibility.

Daniel Martin Lieber (hereinafter referred to as respondent) appeared in person and with his attorney, William J. Wernz.

Received into evidence during the hearing were Exhibits 1 – 46 offered by the Director and Exhibits 100 – 176 offered by the respondent.

The Court having considered the testimony adduced at hearing, on consideration of the exhibits, arguments of counsel, and briefs submitted, and upon all of the files and records herein, the undersigned referee does hereby make the following:

**FINDINGS OF FACT**

**Disciplinary History**

Respondent's disciplinary history, including admonitions is as follows: On August 23, 2002, respondent was issued an admonition for causing a client's signature on a release to be notarized when, in fact, the client had not appeared before the notary in violation of Rules 5.3, 8.4(c) and 8.4(d), Minnesota Rules of Professional Conduct (MRPC). An admonition is issued

for conduct that “was unprofessional but of an isolated and non-serious nature.” Rule 8(d)(2), Rules on Lawyers Professional Responsibility.

### First Count

#### A. Josie Barnett

1. In November 1998 Josie Barnett retained respondent to represent her in a personal injury action arising out of a November 6, 1998, automobile accident.

2. In October 1999 Barnett asked respondent if he could loan her some money pending settlement of her claim.

3. On October 22, 1999, respondent gave Barnett a check for \$250. It was intended that the \$250 was to be a loan to be paid out of the proceeds of Barnett’s personal injury action.

4. At the time respondent delivered the \$250 to Barnett, respondent did not disclose and transmit to Barnett in writing the terms of the loan transaction, did not notify Barnett in writing that independent counsel should be considered, and did not obtain a written consent from Barnett to the transaction in light of the conflict of interest created thereby.

5. In November 1999 Barnett again asked respondent if he could loan her additional monies pending settlement of her claim. Respondent told Barnett that he could loan her additional funds.

6. On November 11, 1999, respondent and Barnett met in respondent’s office. Respondent gave Barnett a check for \$1,750 drawn on respondent’s business account. At that same meeting, respondent had Barnett initial and sign a series of documents entitled, “Transfer and Conveyance of Proceeds and Security Agreement” (hereinafter referred to as the transfer documents). The transfer documents reflected a total of \$2,000 advanced to Barnett. The \$2,000 advance consisted of the \$250 given to Barnett on October 22, 1999, and the \$1,750 given to Barnett on November 11, 1999.

7. The transaction was not fair and reasonable as to its interest rate. The transfer documents obligated Barnett to pay an entity entitled, “Pre-Settlement Funding (PSF) a

Minnesota company" (hereinafter PSF) the \$2,000 advanced, plus an increased amount calculated at the rate of 15 percent per month on the \$2,000 advanced. Although there are many commercial providers of pre-settlement funding, and some of them charge 15% interest per month, and although Ms. Barnett had no obligation to repay Mr. Lieber if there was no settlement, Mr. Lieber acknowledged at hearing that it was not reasonable for a lawyer to charge a client interest at 15% a month.

8. The terms on which respondent acquired his interest in the \$2,000 advance to Barnett were not fully disclosed and transmitted in writing to Barnett. The transfer documents falsely listed PSF as the entity advancing the full \$2,000 to Barnett. In fact, all of the funds were paid from respondent's business account, not from PSF. Although respondent maintains that Paul Ruud, on behalf of PSF, reimbursed him for \$1,750 of the funds advanced, he acknowledges that \$250 of the total advanced to Barnett came from him personally.

9. Prior to execution of the transfer documents respondent did not notify Barnett in writing that independent counsel should be considered nor did he give her a reasonable opportunity to seek the advice of independent counsel.

10. Respondent did not, in a document separate from the transaction documents, obtain a written consent from Barnett to the transaction in light of the conflict of interest created thereby.

11. Although the transfer documents purport to memorialize a transaction between Barnett and PSF, the transaction was actually primarily between respondent and Barnett. Ms. Barnett's memory of the transaction is poor and much of Ms. Barnett's testimony is not credible. Her capacity to understand the proceedings appeared to be very limited.

12. On January 24, 2000, Barnett discharged respondent as her attorney and retained new counsel. In March 2000 respondent asserted an attorney's lien in the amount of \$2,266.66 for fees and \$279.75 for costs.

13. In January 2003 respondent accepted payment of \$2,279.75 as full satisfaction of his claim for attorney's fees and expenses in Barnett's personal injury claim and in repayment of

the PSF advance. The agreement specifically called for \$2,000 of the \$2,279.75 payment to be applied to the PSF claim.

14. None of the \$2,279.75 paid to respondent by Barnett was paid to Ruud or PSF. Respondent retained all of the \$2,279.75.

B. Charles Garner

15. In December 1998 Charles Garner retained respondent to represent him in a personal injury action arising out of a December 17, 1998, automobile accident.

16. On December 1, 1999, respondent gave Garner a check for \$1,000 drawn on respondent's business account as an advance against settlement of his personal injury claim. That same day, respondent had Garner initial and sign a series of documents entitled, "Transfer and Conveyance of Proceeds and Security Agreement" (hereinafter referred to as the transfer documents). The transfer documents reflected a total of \$1,000 advanced to Garner, allegedly by PSF.

17. The transaction was not fair and reasonable as to its interest rate. The transfer documents obligated Garner to pay PSF the \$1,000 advanced, plus an increased amount calculated at the rate of 15 percent per month on the \$1,000 advanced.

18. The terms on which respondent acquired his interest in the \$1,000 advance to Garner were not fully disclosed and transmitted in writing to Garner. The transfer documents falsely listed PSF as the entity advancing the \$1,000 to Garner. In fact, all of the funds were paid from respondent's business account, not from PSF. PSF had no interest in the transaction.

19. The transfer documents included written notice to Garner that independent counsel should be considered. Ex. 4, para. 13. However, Mr. Lieber acknowledged that he did not give Garner a reasonable opportunity to seek the advice of independent counsel.

20. Respondent did not, in a document separate from the transaction documents, obtain a written consent from Garner to the transaction in light of the conflict of interest created thereby.

21. In September 2000 respondent negotiated a settlement of Garner's personal injury claim for a total of \$7,750. Out of that settlement, in addition to deducting \$2,583.33 in attorney's fees, respondent paid himself \$1,589.78 in satisfaction of the Garner/PSF advance. This represents a return to respondent of 74 percent per annum on the amount advanced.

C. Dora Sanders

22. On March 26, 1998, Dora Sanders retained respondent to represent her in a personal injury action arising out of a March 2, 1998, automobile accident.

23. On December 22, 1999, respondent gave Sanders a check for \$1,000 drawn on respondent's business account as an advance against the settlement of her personal injury claim. That same day, respondent had Sanders initial and sign a series of documents entitled, "Transfer and Conveyance of Proceeds and Security Agreement" (hereinafter referred to as the transfer documents). The transfer documents reflected a total of \$1,000 advanced to Sanders, allegedly by PSF.

24. The transaction was not fair and reasonable *as to interest rates*. The transfer documents obligated Sanders to pay PSF the \$1,000 advanced, plus an increased amount calculated at the rate of 15 percent per month on the \$1,000 advanced.

25. The terms on which respondent acquired his interest in the \$1,000 advance to Sanders were not fully disclosed and transmitted in writing to Sanders. The transfer documents falsely listed PSF as the entity advancing the \$1,000 to Sanders. In fact, although respondent claims that Ruud provided \$500 of the advance to Sanders, all of the funds were paid from respondent's business account, not from PSF.

26. The transfer documents included written notice to Sanders that independent counsel should be considered. Ex. 4, para. 13. However, Mr. Lieber acknowledged that he did not give Sanders a reasonable opportunity to seek the advice of independent counsel.

27. Respondent did not, in a document separate from the transaction documents, obtain a written consent from Sanders to the transaction in light of the conflict of interest created thereby.

28. In May 2000 respondent negotiated a settlement of Sanders' personal injury claim for a total of \$14,965.10. Out of that settlement, in addition to deducting \$4,988.36 in attorney's fees, respondent paid himself \$1,900 in satisfaction of the Sanders/PSF advance. This represents a return to respondent of 202 percent per annum on the amount advanced. Respondent did credit Sanders with a \$250 "courtesy law office discount" against the total claimed owed to him. *On March 18, 2005, Mr. Lieber paid Ms. Sanders \$650. Ex. 106B.*

29. On December 20, 2000, seven months after distribution of the Sanders settlement proceeds, respondent paid Ruud \$500 as his share of the Sanders/PSF transaction. This was only paid because Ruud asked for a return of his money.

D. Mark Gaston

30. On May 7, 1999, Mark Gaston retained respondent to represent him in a personal injury action arising out of an April 30, 1999, automobile accident.

31. On February 11, 2000, respondent gave Gaston a check for \$1,500 drawn on respondent's business account as an advance against the settlement of his personal injury claim. That same day, respondent had Gaston initial and sign a series of documents entitled, "Transfer and Conveyance of Proceeds and Security Agreement" (hereinafter referred to as the transfer documents). The transfer documents reflected a total of \$1,500 advanced to Gaston, allegedly by PSF.

32. The transaction was not fair and reasonable. The transfer documents obligated Gaston to pay PSF the \$1,500 advanced, plus an increased amount calculated at the rate of 15 percent per month on the \$1,500 advanced.

33. The terms on which respondent acquired his interest in the \$1,500 advance to Gaston were not fully disclosed and transmitted in writing to Gaston. The transfer documents falsely listed PSF as the entity advancing the \$1,500 to Gaston. In fact, all of the funds were paid from respondent's business account, not from PSF. PSF had no interest in the transaction.

34. The transfer documents included written notice to Gaston that independent counsel should be considered. Ex. 4, para. 13. However, Mr. Lieber acknowledged that he did not give Gaston a reasonable opportunity to seek the advice of independent counsel.

35. Respondent did not, in a document separate from the transaction documents, obtain a written consent from Gaston to the transaction in light of the conflict of interest created thereby.

36. In June 2000 respondent negotiated a settlement of Gaston's personal injury claim for a total of \$6,000. Out of that settlement, in addition to deducting \$2,000 in attorney's fees, respondent paid himself \$2,625 in satisfaction of the Gaston/PSF advance. This represents a return to respondent of 198 percent per annum on the amount advanced. Respondent did credit Gaston with a \$246.46 "law office courtesy discount" against the total claimed owed to him.

37. Respondent actively and intentionally hid his involvement in the PSF transactions by making it appear that PSF was a separate entity and that Paul Ruud was a principal of PSF. In fact, Ruud was only a minor participant in the PSF transactions conducted by respondent. Ruud never profited from any of the PSF advances and never met with any of the clients who received the advances. The only time Ruud's signature appears in any documents pertaining to PSF, it is a forged signature placed there by respondent.

#### Second Count

##### A. Barnett Matter

38. Prior to and during the course of the disciplinary investigation in the Barnett matter, respondent made false statements regarding the Barnett transaction, some under oath, to the Director and others, and allowed Paul Rudd to testify falsely under oath regarding the transaction, and later ratified the false sworn testimony.

39. On October 29, 2003, the Director took the sworn statement of Paul Ruud. Respondent was present throughout the questioning of Ruud. Prior to the sworn statement, Ruud reviewed for use in formulating his testimony the letters respondent had submitted to the Director in the Barnett matter.

40. At the October 29, 2003, sworn statement, with respondent's knowledge, Ruud falsely testified under oath that:

- a. On November 11, 1999, he gave Barnett \$250 in cash as part of the \$2,000 advance.
- b. He advanced the full \$2,000 to Barnett.
- c. He personally signed the transaction documents.
- d. He personally met with Barnett on November 11, 1999.
- e. He received nothing in return for the \$2,000 advanced to Barnett.

In fact, Ruud did not give Barnett \$250 in cash, the \$250 portion of the advance to Barnett came from a check drawn by respondent on his business account; Ruud did not meet with Barnett on November 11, 1999; respondent, not Ruud, signed Ruud's name to the transaction documents; and respondent paid Ruud at least a partial reimbursement of the funds advanced.

41. On January 22, 2004, the Director took respondent's sworn statement. At that sworn statement respondent falsely testified under oath that:

- a. He told Barnett that he would not be able to loan her money against her case.
- b. Ruud gave Barnett \$250 in cash on November 11, 1999.
- c. John Farr, another of respondent's employees, told him that he [Farr] had signed Ruud's name to the transaction documents.
- d. Farr told him that he [Farr] signed Ruud's name to a June 13, 2000, letter to Kristi Paulson, Barnett's successor counsel.
- e. He and Ruud, during the period November 1999 to January 2002, did not engage in any sort of business activities together.
- f. He told Ruud on or after January 21, 2003, that he would not be receiving back any of the money advanced to Barnett.

In fact, respondent did loan Barnett money against her case; Ruud did not give Barnett \$250 on November 11, 1999; respondent signed Ruud's name to the transaction documents and to the

June 13, 2000, letter; respondent and Ruud jointly participated in the Barnett/PSF and Sanders/PSF transactions.

42. On June 13, 2000, in response to an inquiry from Kristi Paulson, respondent falsely told Paulson, "Ms. Barnett was issued a cash advance of \$2,000 and the current balance owed is \$4,400." In fact, the funds advanced to Barnett were not in the form of a "cash advance." Further, the letter, although purportedly from and signed by Ruud, was composed in part by respondent and respondent signed Ruud's name to the letter.

43. On May 29, 2001, Charles T. Hvass, Jr. wrote to respondent on behalf of Barnett. In that letter, Hvass asked respondent about the whereabouts of the check evidencing the "loan" to Josie Barnett.

44. On June 1, 2001, respondent wrote back to Hvass falsely stating, "I wish to advise that the funds advanced to Ms. Josie Barnett where [sic] in the form of cash." In fact, as set forth above, respondent advanced all of the funds by checks drawn on his business account. Respondent intentionally made this false statement to Hvass to conceal the fact that the funds advanced were in the form of checks drawn on his business account.

45. On September 3, 2003, the Director wrote to respondent inquiring about his representation to Hvass that the funds advanced were in the form of cash.

46. On September 9, 2003, respondent replied to the Director's inquiry, failing to disclose in his response that he intentionally misled Hvass as to the source of the funds. Instead, respondent falsely stated, "I wrote that the funds were advanced in the form of cash because I recalled cash."

47. On February 19, 2003, in a letter to the Director, respondent falsely stated:  
I did not make a loan to Ms. Barnett.

\* \* \*

When Ms. Barnett pleaded with me for a loan, I put her in contact with Mr. Ruud, and Mr. Ruud advanced funds to Ms. Barnett through his company, Pre-settlement Funding.

\* \* \*

I did not make the loan, nor did I guarantee the loan.

\* \* \*

As I never loaned money to a client, I would appreciate your dismissing this complaint.

On May 14, 2003, in a letter to the Director, respondent falsely stated:

When Ms. Barnett pleaded with me for a loan, I put her in contact with Mr. Ruud and Mr. Ruud advanced funds to Ms. Barnett through his company, Pre-settlement Funding (PSF). There were a few other companies doing the same type of business and she chose Mr. Ruud as he was local, had better rates, and could get her the money faster than the company in Duluth, New Jersey, or Las Vegas.

\* \* \*

I did not make the loan, nor did I guarantee the loan. . . When Ms. Paulson contacted me to satisfy my attorney lien, I said I would talk to Mr. Ruud about his interest, which he agreed to drop.

As I never loaned money to a client, I would appreciate your dismissing this complaint.

On June 2, 2003, in a letter to the Director, respondent falsely stated:

Per your recent request, I wish to advise that at the end of the transfer and conveyance of proceeds and security agreement signed by Ms. Barnett and Mr. Ruud are a number of my handwritten notations clearly explaining to Ms. Barnett her obligation.

Apparently, Ms. Barnett was scheduled to come into my office on 11/12/99, to obtain a cash advance from PSF. When the client arrived a day early, Mr. Ruud happened to be here. Unfortunately, Mr. Ruud had only \$250.00 with him and I advanced him the balance. . . . Mr. Ruud states that this was his one and only advance. I did not make the loan, nor did I guarantee the loan.

On September 9, 2003, in a letter to the Director, respondent falsely stated:

That with the exception of Ms. Barnett's initials and signature, and the signature of Mr. Ruud, all other notations on Exhibit B, were made by me.

In fact, respondent personally advanced funds to Barnett; Ruud had no contact of any sort with Barnett regarding the advance prior to November 11, 1999; respondent had loaned money to other clients; Ruud did not drop his interest in the Barnett/PSF transaction but rather had been reimbursed by respondent for a portion of the funds advanced; Ruud did not advance Barnett

\$250 cash on November 11, 1999; and respondent placed Ruud's signature on the transaction documents.

B. Trust Account Matter

48. On July 7, 2004, the Director wrote to respondent's attorney requesting, among other things, that respondent provide a copy of his trust account books and records for the months of March through June 2004.

49. On July 20, 2004, respondent provided to the Director copies of his trust account books and records as requested for only one of three trust accounts he maintained, Citizens Independent Bank account number 1037050. Respondent did not then disclose that he maintained two additional trust accounts. It would be possible to construe the Director's letter of July 7, 2004 as a request for only the trust account books and records of the account on which the Percy Black check was written.

50. On August 18, 2004, having learned from a source other than respondent that respondent maintained an additional trust account at Wells Fargo Bank, the Director wrote to respondent's attorney requesting copies of the books and records pertaining to that account and asking that respondent identify and provide books and records for any other client trust accounts he maintained during the period March through June 2004.

51. On August 31, 2004, respondent's attorney wrote to the Director forwarding the requested books and records regarding the Wells Fargo account and identifying a second client trust account maintained at Citizens Independent Bank, account number 1035112. No books and records pertaining to Citizens Bank account 1035112 were provided with the August 31 letter.

52. The August 31 letter to the Director stated that Citizens Bank account 1035112 "had been inactive and is closed." No books and records pertaining to Citizens Bank account 1035112 were provided with the August 31 letter.

53. In fact, bank statements for Citizens Bank account 1035112, ultimately provided by respondent on October 18, 2004, reveal that the account was not inactive during the period

March through June 2004 and that over \$16,000 was held in, and disbursed from, that account during that period.

54. Respondent maintains pooled client trust accounts at Citizens Independent Bank, account numbers 1037050 and 1035112, and at Wells Fargo Bank, account number 365-6537804, hereinafter referred to as "the accounts."

#### Third Count

55. Respondent maintains pooled client trust accounts at Citizens Independent Bank, account numbers 1037050 and 1035112, and at Wells Fargo Bank, account number 365-6537804, hereinafter referred to as "the accounts."

56. The Director audited the accounts for the period March 1, 2004, through June 30, 2004 (the audit period).

57. Throughout the audit period respondent commingled large amounts of his own funds with client funds in the accounts in the amounts shown on the Director's accounting, Exhibit 44. The testimony at hearing indicated that respondent continued to commingle personal and client funds in his trust account through at least December 2004.

58. Respondent, throughout the audit period, regularly made disbursements to himself, to clients, and to others on behalf of clients before depositing client funds to the accounts in support of those disbursements. This resulted in the misappropriation of other clients' funds from the accounts to temporarily cover these disbursements. Testimony at hearing indicated that only a handful of these shortages resulted in Mr. Lieber's disbursements to himself of fees and that the dominant pattern was shortages caused by disbursements to clients before corresponding deposits had been made or had cleared.

59. Despite the commingling of his own funds in the trust accounts, there were times during the audit period when insufficient funds existed in the accounts to cover amounts owed to clients.

60. The shortages in respondent's trust accounts occurred as follows:

a. From March 17, 2004, through March 25, 2004, the total held in the accounts ranged from \$2,873.81 to \$35,831.62 less than the total of all client funds that should have been held in trust. These shortages were cured when respondent deposited funds on March 19 and March 26, 2004, in support of disbursements previously made on behalf of various clients.

b. From April 6, 2004, through April 25, 2004, the total held in the accounts ranged from \$1,469.02 to \$41,354.45 less than the total of all client funds that should have been held in trust. These shortages were cured when respondent deposited funds on April 20 and April 26 in support of disbursements previously made on behalf of various clients.

c. From April 27, 2004, through May 3, 2004, the total held in the accounts ranged from \$4,469.45 to \$12,794.45 less than the total of all client funds that should have been held in trust. These shortages were cured when respondent deposited funds on May 4, 2004, in support of disbursements previously made on behalf of various clients.

d. From May 25, 2004, through to the end of the audit period on June 30, 2004, the total held in the accounts ranged from \$2,304.84 to \$46,656.08 less than the total of all client funds that should have been held in trust. *These shortages have been cured.*

e. Shortages in respondent's trust account continued beyond the end of the audit period and existed, at least periodically, through September 2004.

61. At the end of the audit period, on June 30, 2004, the total held in the accounts was \$14,821.00 less than the total of all client funds that should have been held in trust. At the end of the audit period, on June 30, 2004, the total held in the accounts was, according to the Director's accounting, \$14,821.00 less than the total of all client funds that should have been held in trust. According to the accounting of Mr. Lieber's accounting, the shortage on July 1, 2004 was \$1,146. Exhs. 44, 104.

After the Petition and Answer were filed, further review of Mr. Lieber's trust account books and records was undertaken by his accountants, Mahoney, Ulbricht, Christiansen Russ P.A. Mr. Christiansen testified at hearing and presented his firm's accounting summary and detail for the period July through December 2004. These records show that Mr. Lieber continued in July 2004 to make premature disbursements to clients, resulting in temporary shortages. Exh. 104. However, these records show that in August and September 2004, Mr. Lieber substantially rectified these problems with only one day of shortage in August and four days of shortage in September, in amounts substantially less than during the prior audit period. These records also show that there were no shortages in October, November, and December 2004 in Mr. Lieber's trust accounts.

62. Respondent failed to maintain the trust account books and records required by Rule 1.15, MRPC, as interpreted by Lawyers Professional Responsibility Board Opinion No. 9. Specifically, respondent failed to properly annotate checks and deposit tickets with the identity of the client on whose behalf the check was issued or deposit made and failed to perform monthly reconciliations of the checkbook balance, adjusted bank statement balance, and subsidiary ledger trial balance.

63. On June 22, 2004, respondent falsely certified to the Minnesota Supreme Court that he maintained trust account books and records as required by the MRPC. In that certification, respondent also failed to identify the account numbers for all pooled IOLTA trust accounts he maintained.

64. On or about June 30, 2000, respondent received \$6,000 on behalf of Mark Gaston in settlement of his personal injury claim. Respondent did not deposit those funds into a trust account as required by Rule 1.15, MRPC, but instead deposited the funds into his business account.

65. On or about September 18, 2000, respondent received \$7,750 on behalf of Charles Garner in settlement of his personal injury claim. Respondent did not deposit those funds into a trust account as required by Rule 1.15, MRPC, but instead deposited the funds into his business account.

#### AGGRAVATION AND MITIGATION

66. Respondent's clients in the PSF transactions were financially vulnerable persons who relied upon respondent to protect their interests. His conduct in taking advantage of them is an aggravating factor.

67. Respondent has committed multiple offenses, many of them intended to hide his involvement in prior misconduct. This, together with his obstruction of the disciplinary process is considered as an aggravating factor.

68. Respondent has asserted that his misconduct is mitigated by his alcoholism. In order to establish alcoholism as a mitigating factor respondent has the burden of proving by clear and convincing evidence that: (1) he is affected by alcoholism, (2) the alcoholism caused the misconduct, (3) he is recovering from alcoholism and from any other disorders which caused or contributed to the misconduct, and (4) the recovery has arrested the misconduct and the misconduct is not apt to recur.

69. Respondent has failed to establish by clear and convincing evidence factors 2 – 4 necessary in order to consider his alcoholism in mitigation.

70. There was no testimony at hearing establishing that alcoholism was the cause of respondent's misconduct. While Dr. Schaefer, testifying on behalf of respondent, opined that alcoholism was a contributing factor, he specifically declined to state that it caused the misconduct.

71. Respondent's refusal to enroll in an outpatient chemical dependency treatment program, contrary to the recommendations of Andrew Birmingham, LADC, and Dr. Schaefer, casts significant doubt as to whether respondent is, in fact, recovering from alcoholism.

72. Mr. Lieber demonstrated by clear and convincing evidence that he is an alcoholic. In the opinion of Andrew Birmingham, LADC Mr. Lieber meets the criteria for "alcohol dependence 303.90," under DSM-IV criteria. Exh. 100. Mr. Birmingham's testimony was received in the form of his opinion letter, pursuant to stipulation. Mark Schaefer, Ph.D., also opined that Mr. Lieber objectively meets the criteria for alcohol dependency. Dr. Schaefer is a marriage counselor for Mr. and Mrs. Lieber, but he has had considerable experience in teaching doctors about alcohol issues and he is well qualified to render opinions regarding alcohol issues. Ex. 102. Dr. Schaefer stated that it is not entirely clear whether Mr. Lieber is an alcoholic or an alcohol abuser, but he indicated that in either case Mr. Lieber has serious problems related to alcohol. This testimony was corroborated by witnesses Paul Ruud and Steven Finch, who had shared with Mr. Lieber his habit of heavy drinking, by Lauren Lieber, and by exhibits received into evidence, including Dr. Schaefer's records.

73. Mr. Lieber attends Alcoholics Anonymous on a weekly basis, missing attendance only occasionally. He attends with Dan Rivard. Mr. Lieber has maintained sobriety since January 15, 2004, and has maintained abstinence since that time, with the exception of a single beer in July 2004. On that occasion, he refrained from further consumption and disclosed both to his wife and to Dr. Schaefer the drink that he had. Ex. 103. Mr. Lieber's law office employees include two who are recovering alcoholics. Mr. Lieber has built a support system for his recovery with Mr. Rivard and with his law office associate, Reino Paaso, both of whom are recovering alcoholics.

74. Alcohol played an important causal role regarding Mr. Lieber's misconduct. Dr. Schaefer testified that, although he could not opine that alcohol directly caused each and every individual act of misconduct, Mr. Lieber's alcohol problems were causally related to the misconduct in various ways. Alcohol exacerbated and in some measure caused the attitudes and behavior patterns that played an important role in Mr. Lieber's misconduct -- poor judgment, impulsiveness, dismissiveness, and self-centered attitudes.

### CONCLUSIONS OF LAW

1. Respondent's conduct in entering into the PSF transactions with his clients violated Rules 1.7, 1.8(a), (e), and (j), and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

2. Respondent's conduct in making false statements, some under oath, to Barnett's new attorneys, and the Director and in ratifying the false testimony of Paul Ruud violated Rules 3.4(b), 4.1, 8.1(a)(3), and 8.4(a), (c), and (d), MRPC.

3. Respondent's conduct in regard to the handling of his trust account violated Rules 1.15(a), (b), (c), and (h), and 8.4(c), MRPC.

### RECOMMENDATION FOR DISCIPLINE

This Referee recommends that respondent be disbarred.

DATED 28 APRIL 2005.

BY THE COURT:

  
\_\_\_\_\_  
DAVID E. CHRISTENSEN  
SUPREME COURT REFEREE

### MEMORANDUM

Respondent has admitted most of the conduct set forth in the Petition for Discipline. Although he now appears to be cooperating with the Board, he has in the past attempted to conceal his actions, has provided false information, and apparently condoned perjury. He contributes his actions to greed and alcoholism. His psychologist describes him as being arrogant. In spite of the fact that his psychologist has recommended either in-patient or out-patient treatment for chemical dependency, he has ignored this advice and decided that he can do it on his own.

Taken together, the character traits described above make this Referee unwilling to make a recommendation of less than disbarment.

D.E.C.

**CERTIFICATE OF DISTRIBUTION**

File No. A04-636

The undersigned hereby acknowledges the distribution of Findings of Fact, Conclusions of Law and Recommendation dated April 28, 2005 in the above-entitled matter on this 29th day of April, 2005 to the following persons:

MR. PATRICK R. BURNS  
SENIOR ASSISTANT DIRECTOR  
OFFICE OF LAWYERS PROFESSIONAL RESPONSIBILITY  
1500 LANDMARK TOWERS U.S. MAIL  
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MR. WILLIAM J. WERNZ  
ATTORNEY AT LAW  
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MINNEAPOLIS, MN 55402-1498

CLERK OF APPELLATE COURTS  
305 MINNESOTA JUDICIAL CENTER U.S. MAIL  
25 REV. DR. MARTIN LUTHER KING, JR., BLVD.  
ST. PAUL, MN 55155

BY:   
JANET L. BRUA-COLBY  
Official Court Reporter