

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

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

**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 11, 1990. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's disciplinary history, including admonitions is as follows:

- a. 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).

FIRST COUNT

Josie Barnett Matter

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 as reflected in the transaction documents was not fair and reasonable. 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.

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. The transfer documents contain a number of handwritten notations that were not present on the documents at the time Barnett executed them. Respondent never gave Barnett the original or a copy of the transfer documents.

12. Although the transfer documents purport to memorialize a transaction between Barnett and PSF, the transaction appears to be between respondent and Barnett. Facts indicating that the transaction was between respondent and Barnett include:

a) The transfer documents signed by Barnett are also purportedly signed by Paul Ruud who is designated therein as a "representative of PSF Corporation."

b) Paul Ruud is an employee of respondent. Ruud was employed by respondent from April 1998 through November 1, 1999, and again from January 2002 through the present.

c) Barnett never met with, or spoke with, Paul Ruud regarding the \$2,000 advance.

d) Ruud's signatures on the transfer documents and on a June 13, 2000, letter to Barnett's successor counsel discussing the \$2,000 advance were placed on those documents by respondent.

e) Neither Ruud nor PSF has ever entered into similar transactions with any other person or entity.

f) PSF, despite the fact that it is referred to in the transfer documents both as a corporation and as a Minnesota company, was never formally organized and is not incorporated in Minnesota or any other state.

g) All of the funds advanced to Barnett were paid from respondent's business account. Although respondent has produced copies of two checks from Ruud to respondent purporting to reimburse respondent the \$1,750 advanced to Barnett on November 11, 1999, it is not clear from the checks that that was their actual purpose. To the extent that Ruud did repay respondent for the \$1,750 advanced to Barnett, there is evidence that respondent later reacquired PSF/Ruud's interest in the transaction with Barnett. On March 2, 2000, at or around the same time respondent prepared and mailed to American Family Insurance Company and Barnett's successor counsel an attorney's lien that he asserted in the Barnett matter, respondent paid Ruud \$2,000 by delivering a check to him payable to Citizens Bank. Although respondent represented to the Director that the \$2,000 check was issued to Ruud for reimbursement of accrued mileage, Ruud had not worked for respondent since November 1, 1999.

h) Respondent placed all of the handwritten notations on the transfer documents, except for Barnett's signature and initials.

i) Respondent, in negotiations with Barnett's successor counsel, actively concealed the fact that all of the funds advanced to Barnett had been paid from respondent's business account.

j) Respondent, in negotiations with Barnett's successor counsel, held himself out as having authority to negotiate on behalf of PSF.

k) All of the monies paid by Barnett in satisfaction of her obligation to PSF were retained by respondent.

13. 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. Respondent used Barnett's purported obligation to PSF to advance his own interests in collecting on his attorney's lien.

14. 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.

15. 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.

16. Respondent's conduct violated Rules 1.7, 1.8(a), (e), and (j), and 8.4(c), MRPC.

SECOND COUNT

False and Misleading Statements

17. 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 induced Paul Ruud to testify falsely under oath regarding the transaction.

18. 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, respondent gave to Ruud for his review and use in formulating his testimony the letters respondent had submitted to the Director in the Barnett matter.

19. At the October 29, 2003, sworn statement, with respondent's knowledge and encouragement, 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.

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, and respondent, not Ruud, signed Ruud's name to the transaction documents.

20. 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 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.

In fact, respondent did loan Barnett money against her case, Ruud did not give Barnett \$250 on November 11, 1999, and respondent signed Ruud's name to the transaction documents and to the June 13, 2000, letter.

21. On June 13, 2000, in response to an inquiry from Kristi Paulson, respondent falsely told Paulson, "Ms. Barnett was issued a cash advance of \$2,000.00 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.

22. 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.

23. 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.

24. 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.

25. 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."

26. On February 19, 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.

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

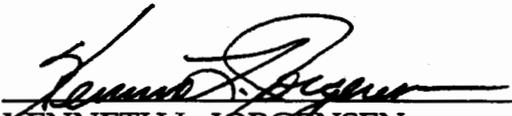
When Ms. Barnett pleaded with me for a loan, I put her in contact with Mr. Ruud and Mr. Ruud advanced funds to Ms. Barnett through his company, Pre-settlement Funding (PSF). There were a few other companies doing the same type of business and she chose Mr. Ruud as he was local, had better rates, and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

In fact, respondent personally advanced the funds to Barnett, and Ruud had no contact of any sort with Barnett regarding the advance prior to November 11, 1999.

27. Respondent's conduct violated Rules 3.4(b), 4.1, 8.1(a)(3), and 8.4(a), (c), and (d), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court disbarring respondent or 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 26, 2004.


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