

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against KRISTI DANNETTE McNEILLY,  
a Minnesota Attorney,  
Registration No. 341265.  
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**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 29, 2004. Respondent currently practices law in Woodbury, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Epperly Matter

1. On or about February 21, 2008, Donald W. Krause purchased 1001 Wildhurst, Orono, Minnesota ("Wildhurst property"), for \$1.6 million. The next day, the Wildhurst property was sold to A.S., the 86-year-old mother of Richard Sand, for \$2.6 million.

2. A.S.'s \$2 million loan application was filled out by others who would later be criminally indicted and convicted. The loan application contained material

misrepresentations concerning A.S.'s income. Under the terms of the loan, A.S. was to pay approximately \$602,000 at closing.

3. The loan proceeds were released without A.S. paying the necessary funds and a check was written to make it appear as if A.S. had, in fact, paid the \$602,000.

4. Brenda Epperly acted as the closing agent for A.S.'s purchase of the Wildhurst property.

5. Almost immediately, payments on the Wildhurst property loan were not made and the loan went into default.

6. In or around April 2009, respondent began representing A.S. in the sale of the Wildhurst property.

7. As the loan was in default, A.S. was attempting to sell the home through a short sale. In April 2009, respondent represented A.S. relative to a purchase agreement submitted by S.S. S.S. issued a \$6,500 check to respondent's law firm as earnest money concerning the sale. When the sale fell through, respondent represented A.S. with regard to a dispute over the earnest money.

8. In April 2009, Epperly signed a retainer agreement with respondent for representation during an investigation by the Minnesota Department of Commerce.

9. The Department of Commerce investigation concerned Epperly's involvement as closing agent in the real estate transactions which resulted in A.S. owning the Wildhurst property.

10. On or about July 14, 2010, Epperly, along with co-defendants Donald W. Krause and Richard A. Sand, were indicted by the federal government on several counts including mortgage fraud concerning the Wildhurst property owned by A.S.

11. Epperly retained respondent to represent her concerning the federal prosecution.

12. In August 2010, the federal prosecutor brought a motion to disqualify respondent from representing Epperly based on respondent's role in A.S.'s attempted sale of the Wildhurst property and A.S. being a witness against Epperly.

13. Rather than expend money fighting the disqualification motion, Epperly secured substitute counsel.

14. Epperly was convicted and sentenced to six months in federal prison.

15. Respondent's conduct violated Rule 1.7(a)(2), Minnesota Rules of Professional Conduct (MRPC).

## SECOND COUNT

### Raines Matter

16. In October 2007, respondent took over the representation of Sandra Raines in a lawsuit against Raines' townhome association. Respondent took over the representation from Raines' prior attorney.

17. The relationship between respondent and Raines deteriorated to the point that on July 9, 2008, respondent notified Raines she would be withdrawing. Respondent sent notice of withdrawal on July 11, 2008.

18. After receipt of respondent's notice of withdrawal on July 11, 2008, Raines requested by telephone that respondent return certain original documents. Respondent told Raines she could pick up her files at respondent's office the next day.

19. On Saturday, July 12, 2008, Raines went to respondent's office and asked for certain original documents. Respondent did not return the requested documents.

20. By email sent July 14, 2008, at 10:47 p.m., Raines requested that respondent return Raines' original bylaws book and plat map.

21. On Tuesday, July 15, 2008, Raines received by messenger a July 15, 2008, letter from Charles E. Jones, attorney for Boulder Village, informing Raines that her deposition was scheduled for July 17, 2008, at 8:30 a.m.

22. Prior to receipt of Jones' July 15, 2008, letter, Raines did not know that her deposition was scheduled for July 17, 2008.

23. At the time of respondent's withdrawal, Raines' deposition was scheduled for July 17, 2008, at 8:30 a.m., and trial was scheduled for September 15, 2008. Respondent did not prior to her withdrawal or at the time of her withdrawal, inform Raines that her deposition was scheduled for July 17, 2008, and that trial in Raines' matter was scheduled for September 15, 2008.

24. On July 16, 2008, Raines notified respondent about the immediate need for her file. Raines advised respondent that she had just received notice for a deposition scheduled for July 17, 2008.

25. Respondent did not immediately provide the file. In her July 17, 2008, response to Raines' request, respondent indicated that the copying service would need at least a week to copy the file.

26. Raines again contacted respondent on July 23, 2008, regarding her file.

27. Respondent did not immediately provide the file. In her July 25, 2008, response to Raines' request for her file, respondent indicated the file would be ready for Raines on July 28, 2008. Raines was not able to retrieve her file until July 30, 2008.

28. Despite Raines' immediate need for the file, the invoice for the copying service demonstrates respondent did not place the order for copying until July 25, 2008.

29. Respondent and Raines agree respondent indicated she would do discovery including sending interrogatories to the opposing side.

30. In her January 26, 2009, response to the complaint, respondent stated, "I served Interrogatories, Admissions, and Request for Production of Documents multiple times on opposing counsel." Respondent further indicated, "Specifically, Interrogatories were prepared and served in February of 2008, and Request for Production of Documents were prepared and served in December 2007 and February 2008." Respondent's statement that she had served interrogatories was false.

31. In an email dated February 11, 2009, respondent falsely reiterated to the District Ethics Committee (DEC) investigator that she served interrogatories on Raines' behalf.

32. After being challenged by the DEC investigator, in a letter dated March 9, 2009, respondent then indicated that "we decided not to serve interrogatories." At no time was Raines made aware that respondent did not intend to serve interrogatories.

33. Respondent's conduct violated Rules 1.3, 1.4(a), 1.16(d), 8.1(a), and 8.4(c), MRPC.

### THIRD COUNT

#### Hargreaves Matter

34. Beginning in July 2009, respondent represented Anthony Hargreaves' son, Craig Hargreaves, concerning a criminal matter. Craig Hargreaves decided to plead guilty.

35. After his May 21, 2010, plea hearing, Craig Hargreaves orally requested that respondent provide his entire file to his father, Anthony Hargreaves. Respondent did not provide Craig Hargreaves' file.

36. On June 13, 2010, Craig Hargreaves wrote to respondent and again requested respondent to turn his file over to Anthony Hargreaves. Respondent did not provide the file.

37. During a September 28, 2010, meeting with the Director, respondent indicated she had not received the June 2010 letter from Craig Hargreaves. On September 29, 2010, the Director's Office provided respondent with a copy of Craig Hargreaves' June 13, 2010, letter requesting his file be provided to Anthony Hargreaves.

38. As of January 2011, respondent had not provided Craig Hargreaves or his designee with Craig Hargreaves' file.

39. In or around February 2011, respondent provided the Director's Office with the files she maintained for several clients, including Craig Hargreaves' file.

40. On March 2, 2011, having received Craig Hargreaves' file from respondent and knowing respondent had not yet provided the file to Anthony or Craig Hargreaves, the Director's Office wrote to Craig Hargreaves advising him that the file was in the custody of the Director's Office and asking for instructions with regard to it.

41. After receiving instructions from Craig Hargreaves, the Director's Office forwarded his file to Anthony Hargreaves on March 10, 2011.

42. Respondent's conduct violated Rule 1.16(d), MRPC.

#### FOURTH COUNT

##### Goodmundson Matter

43. The Jordan Area Community Council (JACC) is a nonprofit, citizen participation organization for the Jordan neighborhood in Minneapolis, Minnesota.

44. In 2008, the JACC Board of Directors became factionalized. Benjamin Myers, a Minnesota attorney, was in one faction and Megan Goodmundson was in the other faction.

45. On July 5, 2008, Goodmundson filed a complaint against Myers with the Director's Office. Goodmundson alleged Myers' conduct with the JACC violated the MRPC.

46. On July 18, 2008, the Director issued a determination that discipline is not warranted, without investigation, and dismissed Goodmundson's complaint.

47. On or about August 2, 2008, respondent, on behalf of Myers, served a summons and complaint upon Goodmundson and others.

48. Respondent alleged Goodmundson, through the filing of her July 5, 2008, complaint with the Director's Office, defamed Myers, caused Myers intentional and

negligent infliction of emotional distress, and caused Myers to suffer real and punitive money damages of at least \$50,000.

49. Rule 21(a), Rules on Lawyers Professional Responsibility (RLPR), provides that "a complaint or charge, or statement relating to a complaint or charge . . . may not serve as a basis for liability in any civil lawsuit brought against the person who made the complaint, charge, or statement."

50. Respondent's conduct violated Rule 21, RLPR, thereby violating Rules 3.1 and 8.4(d), MRPC.

#### FIFTH COUNT

#### Mortgage Matters

51. During 2009, respondent undertook to assist a number of clients with obtaining mortgage modifications.

52. Respondent represented Carol Assiobo-Tipoh, Kellan Christianson and Jennifer Olson. Respondent engaged in a pattern of failure to competently and diligently represent them, failure to adequately communicate the status of their matters, and failure to return file materials as set out in detail below, as well as making misrepresentations.

#### **Assiobo-Tipoh**

53. On May 25, 2009, Assiobo-Tipoh retained respondent to modify her home mortgage. On that same day, Assiobo-Tipoh executed an authorization for information and records and completed a financial worksheet.

54. On May 26, 2009, Assiobo-Tipoh paid in full respondent's flat fee of \$2,400.

55. On June 10, 2009, respondent faxed the authorization to Bank of America, the holder of Assiobo-Tipoh's mortgage loan. The fax cover sheet indicated respondent would be forwarding a loan modification within two weeks.

56. On or about June 22, 2009, Assiobo-Tipoh and respondent received separate letters from Bank of America indicating Bank of America had received an authorization from respondent and was able to speak with respondent but was unable to comply with respondent's request that the lender forward all future correspondence to respondent's office until Assiobo-Tipoh updated her mailing address.

57. On or about July 21, 2009, respondent faxed a proposed loan modification to Bank of America on Assiobo-Tipoh's behalf. This was over a month after respondent had indicated she would do so.

58. On August 6, 2009, Bank of America sent Assiobo-Tipoh a notice of intent to accelerate which advised Assiobo-Tipoh her loan was in default. The notice further indicated Assiobo-Tipoh needed to cure the default by September 5, 2009, or the entire amount of the loan would become immediately due and foreclosure proceedings would be initiated.

59. On August 18, 2009, respondent's office received an email from Bank of America acknowledging a submission and indicating the submission would be sent for review.

60. On or around September 4, 2009, respondent's office noted they contacted Bank of America and they were told the loan modification was denied.

61. On or about September 28, 2009, respondent's office again noted a telephone call to Bank of America. Respondent's file notes indicate the bank indicated the loan modification was denied and the property was in foreclosure. Respondent's file notes also indicated respondent should resend the documents.

62. There is no documented activity on Assiobo-Tipoh's matter between September 28, 2009, and January 4, 2010.

63. On or about January 4, 2010, respondent contacted the bank and learned of a denial of the loan modification.

64. On February 2, 2010, Assiobo-Tipoh sent respondent financial information requested by respondent.

65. On February 11, 2010, respondent communicated with several bank employees about the Assiobo-Tipoh loan.

66. By email sent February 19, 2010, to respondent, Assiobo-Tipoh reminded respondent that it had been two weeks since Assiobo-Tipoh sent respondent the information respondent requested and asked if respondent had worked on her case.

67. By email sent to Assiobo-Tipoh on February 25, 2010, respondent stated that she had tried to obtain another loan modification, but it was denied.

68. By email sent March 9, 2010, Assiobo-Tipoh reminded respondent that she was meeting respondent on March 10, 2010, to have respondent provide information Assiobo-Tipoh previously had requested.

69. Respondent responded by email sent March 10, 2010, asking if Assiobo-Tipoh "got through to any one at Bank of America for those denial letters?"

70. By email sent March 15, 2010, Assiobo-Tipoh asked respondent to turn her file over to the Law Office of Philip W. Getts.

71. Respondent replied by email on March 16, 2010, to Assiobo-Tipoh stating that since the lender denied Assiobo-Tipoh's loan modification three times, respondent had fully performed her duties under the retainer agreement. Respondent further stated she had been continuing to work on Assiobo-Tipoh's behalf "to get a resolution of a traditional loan modification and further follow up to [the lender]," but Assiobo-Tipoh hired Getts instead. Respondent informed Assiobo-Tipoh that she would provide a copy of her file, charge a copying fee, and Assiobo-Tipoh's file should be ready for pickup within two weeks. Assiobo-Tipoh had not agreed in writing to be charged a copying fee as required by Rule 1.16(f), MRPC.

72. Between March 16 and March 24, 2010, Assiobo-Tipoh and respondent exchanged several emails regarding the amount of respondent's copying fee and when

Assiobo-Tipoh could pick up her file. Respondent continually insisted that the copying fee be paid at the time the file was retrieved.

73. On March 24, 2010, Assiobo-Tipoh picked up her file. Respondent waived the copying fee.

74. After the initial meeting in May 2009, respondent had no direct communication with Assiobo-Tipoh until sometime in early 2010.

### **Christianson Matter**

75. In May 2009, Kellan Christianson and his wife contacted Ron Odell of United Home Lending regarding modifying their mortgage. Odell referred the Christiansons to respondent for assistance.

76. On or about May 28, 2009, Odell sent Christianson an email requesting certain documents be gathered.

77. On July 15, 2009, the Christiansons met with Odell. During this meeting, the Christiansons signed a retainer agreement with respondent's firm, paid a \$2,500 fee to respondent and signed authorizations which allowed their lender to speak with respondent. The Christiansons also completed a financial worksheet and provided their financial documents. The Christiansons understood Odell was working with respondent on their file. Respondent was not present at this meeting.

78. The Christiansons were instructed to have no further communications with Bank of America and to forward any documents received from Bank of America to respondent. The Christiansons did as instructed.

79. In October 2009, Bank of America notified Christianson that his house was being put into foreclosure.

80. On October 14, 2009, Christianson sent an email to Odell advising about the foreclosure, asking about the status of the matter and asking that any documentation about the matter be forwarded.

81. Later that same day, Odell replied by email that the Christiansons' "processor," Justin, would call him the next day "with details." Odell also stated to Christianson that until a loan modification trial plan was in place, Bank of America's collection department would continue to call and send notices.

82. Christianson sent an email to Odell on November 4, 2009, indicating Justin called Christianson's home while Christianson was at work, but did not leave contact information so the Christiansons were unable to call him back. Justin did not attempt to reach the Christiansons by any other means. Christianson also provided his and his wife's cell phone numbers and asked Odell to have Justin call them.

83. In late October or early November 2009, the Christiansons received notice of a mortgage foreclosure sale and were informed they needed to vacate their house by December 28, 2009.

84. In November 2009, Christianson took the foreclosure papers into respondent's office.

85. Respondent's staff told Christianson not to worry because they were in communication with the bank and there was a loan modification pending. Christianson was also told that respondent's office would contact him if anything further was needed.

86. Prior to the sheriff's sale, Christianson did not hear anything further from respondent or anyone in her office about the loan modification.

87. After the sheriff's sale, respondent's staff called Christianson and requested that he contact the Anoka County Sheriff's Office to see if the sale had proceeded.

88. The Anoka County Sheriff's Office confirmed that the sale had been completed. The sheriff's office also indicated the Christiansons' home was sold to Bank of America's loan servicing company.

89. In a January 19, 2010, letter, respondent informed Christianson she was working on the loan modification with Bank of America and requested the Christiansons' signature on additional authorization forms.

90. Christianson returned the authorizations to respondent by February 4, 2010.

91. In late February 2010, Christianson requested an update on his file from respondent.

92. By email sent March 5, 2010, to respondent, Christianson reminded respondent of his request for an update and advised respondent that if she did not respond by Wednesday, March 10, 2010, Christianson would contact another lawyer.

93. By email sent March 8, 2010, at 10:13 a.m., respondent responded and asked what information Christianson was seeking. Respondent indicated she had talked to Christianson's wife regarding the loan modification. Respondent indicated she had been contacted by a realtor and asked Christianson for direction.

94. By email sent March 8, 2010, at 2:40 p.m., Christianson clarified he wanted to know the current status of his case, as well as specific information regarding the steps taken on his case. Additionally, Christianson requested copies of all documents and correspondence regarding his case between respondent and the bank. Christianson verified respondent had spoken to his wife during the prior week but that his wife was not given much information and asked respondent to keep him updated concerning the current status of his matter.

95. On March 10, 2010, Christianson contacted Bank of America directly to find out the status of his matter.

96. By email sent March 11, 2010, at 6:15 p.m., Bank of America informed Christianson that after respondent submitted documents and a hardship letter in September 2009 and followed up in October 2009, respondent had no contact with Bank of America until January 2010.

97. Christianson learned that when respondent's office contacted Bank of America in January 2010, respondent's office did not provide an authorization allowing Bank of America to discuss Christianson's loan with respondent. Despite Christianson supplying authorizations, respondent did not contact Bank of America again until early March 2010.

98. Bank of America confirmed that there "was no workout ongoing in the meantime or even a workout in progress." The only help Bank of America was able to offer Christianson was a referral to the foreclosure department to see if the foreclosure could be stopped or reversed.

99. By email dated March 15, 2010, at 5:20 p.m., Christianson requested respondent release all of his documents to the Getts Law Firm.

100. By email sent March 16, 2010, at 11:09 a.m., respondent stated, among other things, that she had performed her duties under the retainer agreement and that there was a fee for copying the file. Respondent further stated the file should be available for retrieval in a week. Christianson had not agreed in writing to be charged a copying fee as required by Rule 1.16(f), MRPC.

101. In response to Christianson's March 17, 2010, email for respondent to "please forward the copying fee immediately," respondent sent a reply email on March 17, 2010, which stated, "What do you mean 'forward' the fee? That would be a payment from you at the time of pick-up of the file."

102. Christianson replied later the same day clarifying that he needed to know the amount of the copying fee so that he could retrieve his file as soon as possible.

103. On March 22, 2010, Christianson again wrote respondent asking about the return of his file and the copying fee.

104. On March 23, 2010, respondent advised Christianson his file was available for pick up and that she was waiving the copying cost. Christianson arranged to pick the file up at noon on March 24, 2010.

105. Later on March 24, 2010, Christianson sent respondent another email requesting all correspondence between respondent's law firm and Bank of America because it was not in his file.

106. On April 15, 2010, the Director's Office received Christianson's complaint regarding respondent.

107. On March 16, 2010, after she had knowledge of her termination and was requested to send the Christiansons' file to their new attorney, respondent sent a letter to Bank of America on behalf of the Christiansons which threatened a lawsuit.

108. The Christiansons worked with Twin Cities Habitat for Humanity (TC Habitat) to try to save their home. Through TC Habitat, the Christiansons learned Bank of America was unable to offer any solutions because the Christiansons' house was sold on December 28, 2009, and Bank of America was unable to rescind the sale.

109. Furthermore, Bank of America indicated respondent did not contact the bank prior to the sale, and did not send in a letter of authorization. Bank of America indicated the first contact was made on March 19, 2010.

110. TC Habitat was unable to help the Christiansons save their home from foreclosure, but did offer them assistance in finding another place to live.

111. Respondent failed to do any work on the Christiansons' file between September 28, 2009, and January 4, 2010.

#### **Olson Matter**

112. In 2009, Ron Odell of United Home Lending referred Jennifer Olson to respondent because she and her husband were having trouble making payments on a mortgage entered into in 2005.

113. On July 10, 2009, the Olsons met with Odell and signed a retainer agreement hiring respondent to modify their mortgage. That same day, they paid in

full respondent's \$2,500 flat fee and signed an authorization for information and records.

114. On or after August 12, 2009, Olson received a letter from Aurora Loan Services (Aurora) confirming their receipt of a packet of financial materials regarding "a loan workout option," but indicating "the package was incomplete." Aurora requested immediate submission of tax returns, paystubs, bank statements, and her tax bill and insurance declaration page.

115. On August 21, 2009, Olson faxed the letter from Aurora to respondent's assistant, Wendy. Olson also provided the information requested in the letter.

116. On or after October 1, 2009, Olson received a letter from Aurora confirming their receipt of Olson's authorization allowing Aurora to provide information to respondent.

117. Olson received several calls from Aurora stating respondent was not providing the information they requested.

118. Olson contacted respondent's law office and was told not to worry by respondent's assistant, Justin. Justin further advised Olson that she did not need to talk to Aurora, and respondent's law firm was providing the information Aurora needed.

119. On or after October 9, 2009, Olson received a letter from Aurora stating Aurora had denied the "loan workout option" on her mortgage because Aurora's approval had expired, and contact attempts had failed. Aurora closed Olson's file.

120. On or after November 10, 2009, Olson received a notice of foreclosure.

121. Olson immediately called respondent's office and spoke to Justin. Justin again told Olson not to worry and advised Olson this was a normal part of the loan modification process.

122. In December 2009, Olson received a notice of foreclosure sale indicating her home was to be sold by sheriff sale on January 7, 2010.

123. Olson again immediately tried unsuccessfully to contact respondent's office. Olson then called Justin on his cell phone. Olson learned for the first time that Justin no longer worked for respondent and was advised to contact respondent directly.

124. As Olson was referred to respondent by Odell, she contacted Odell. Odell advised Olson that she would need to call respondent. Odell also provided Olson with the name of someone else who may be able to help her.

125. Shortly before January 7, 2010, Olson finally spoke to respondent briefly. Respondent asked Olson to email additional information concerning Olson's income and monthly bills.

126. Although Olson had already provided the requested information, Olson again provided the documents and information that respondent requested.

127. At this point, Olson quit working with respondent and worked with Mark Heinzman at First Financial, who was able to help Olson obtain a trial forbearance shortly before the January 7, 2010, sheriff's sale.

128. On May 10, 2010, Olson's complaint was received in the Director's Office.

129. By email sent May 25, 2010, at 12:50 p.m., Olson instructed respondent to mail her entire file to her home address.

130. Respondent replied by email sent May 29, 2010, at 4:20 p.m., that Olson's file was with Mark Heinzman and United Home Lending. Respondent did not provide Olson with her file.

131. By letter dated June 28, 2010, Olson requested a full refund from respondent. Olson indicated she had never been provided with any billing statements.

132. Respondent failed to work on Olson's file between October 20, 2009, and January 4, 2010.

133. Respondent's pattern of misconduct violated Rules 1.3, 1.4, 1.16(d) and (f), and 8.4(c), MRPC.

134. Respondent's misconduct violated Rule 1.16(d), MRPC with respect to Christianson and Assiobo-Tipoh.

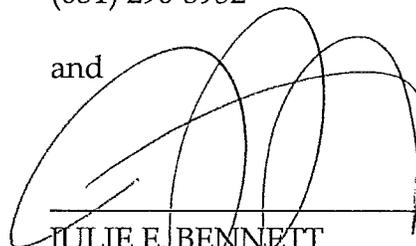
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: July 22, 2014.



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