

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against ROBERT J. MILLER,
a Minnesota Attorney,
Registration No. 73428.

**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 27, 1959. Respondent currently practices law in New Hope, Minnesota.

On July 20, 2004, a Panel of the Lawyers Professional Responsibility Board found probable cause for public discipline concerning the first and third counts below. The Director has, since the finding of probable cause, investigated further allegations of unprofessional conduct against respondent and alleges that respondent has committed additional misconduct as set forth in the second count below.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

On June 2, 1989, respondent and the Director stipulated to supervised private probation for a period of three years for violation of DR 6-101(A)(3), DR 0-102(B)(4), DR 1-102(A)(5) & (6), and DR 9-102(B), Minnesota Code of Professional Responsibility;

Rules 1.3, 1.4, 1.15, 8.1(a)(3) and 8.4(d), Minnesota Rule of Professional Conduct (MRPC); and Rule 25, Rules on Lawyers Professional Responsibility (RLPR).

FIRST COUNT

1. On or about June 13, 1994, Rhea McComber retained respondent to draft a revocable living trust and other estate planning documents.

2. On September 7, 1994, McComber and Anna Gustafson, McComber's sister-in-law and the named trustee of her trust, met with respondent and executed a document entitled "Revocable Trust Agreement of Rhea E. McComber" (the Trust). Respondent did not draft or have executed a pour-over will as a part of McComber's estate plan.

3. The terms of the Trust provided that, upon McComber's death, her estate was to be distributed in various percentages to seven individuals and two organizations. The individuals consisted of Gustafson, a stepdaughter, and five relatives who were heirs-at-law. The organizations were the University of Minnesota and the Ronald McDonald House. McComber had other relatives who were her heirs-at-law, but who were not named as beneficiaries of the Trust.

4. It was intended that the Trust would be funded by transfer of McComber's homestead to the Trust. Except for a \$64,000 certificate of deposit held jointly with Gustafson and a grandniece, McComber had no other assets of significant value. The trust agreement contained a recitation stating that, contemporaneously with the execution of the Trust, McComber "assigned, transferred and delivered to said Trustees certain property, the receipt of which is hereby acknowledged."

5. Respondent failed to draft, have executed, and record the documents necessary to transfer to the Trust title to the homestead.

6. On June 27, 2000, McComber died. Pursuant to the terms of the Trust, Gustafson put McComber's homestead on the market for sale. An agreement was entered into to sell the homestead for \$224,000. In August 2000, while in the process of selling the home, Gustafson learned that title to the homestead had never been transferred to the Trust.

7. On August 11, 2000, Gustafson met with respondent. He told her he did not know why title had not been transferred to the Trust and that McComber's estate would have to be probated in order to transfer title to the homestead.

8. Thereafter respondent represented Leanna Erickson, McComber's grandniece, in petitioning for her appointment as personal representative of McComber's estate and in her capacity as personal representative of the estate. Because the homestead had never been transferred to the Trust and McComber had no will, transferring title to the homestead through probate resulted in a different distribution than that called for in the Trust. Gustafson, McComber's stepdaughter, the University of Minnesota, and the Ronald McDonald House received nothing from the probate estate. Some of the heirs-at-law named in the Trust received less than they otherwise would have, some received more, and the heirs-at-law that had been excluded from the Trust received distributions from the probate estate.

9. Respondent's conduct violated Rules 1.1 and 1.3, MRPC.

SECOND COUNT

10. In September 1997 respondent was retained to probate the estate of William J. Brantner. William J. Brantner died intestate on May 20, 1997, had no surviving spouse and was survived by two children, Ros Brantner and Ena Brantner.

11. On January 30, 1998, respondent filed an application for informal appointment of Ros Brantner as administrator of the estate of William J. Brantner. Ros Brantner was appointed administrator that same day.

12. On March 27, 1998, William J. Brantner's homestead was sold. At the closing of that sale a check in the amount of \$13,775.34 payable to William J. Brantner was delivered to respondent.

13. On May 13, 1998, respondent sent the real estate proceeds check to Ros Brantner, who was then residing in North Carolina, for his endorsement and return. Ros Brantner endorsed and returned the check to respondent. Respondent deposited the check in his trust account on May 27, 1998.

14. Thereafter, except for making the distributions noted below, respondent did nothing further to complete the administration of the estate of William J. Brantner.

15. On October 16, 2000, respondent sent Ros Brantner a check drawn on his business account in the amount of \$2,500. The letter forwarding this check stated, "Enclosed please find our check no. 11208 in the amount of \$2,500.00 which is a partial 'advance' on your estate distribution which amount is being funded by this office. I am sorry for the delay. I hope we can get this matter closed out shortly."

16. On September 18, 2001, respondent sent Ros Brantner a check drawn on his trust account in the amount of \$2,500. The check was designated as "Partial distribution Estate William Brantner."

17. On October 14, 2003, respondent sent Ros Brantner a check drawn on his trust account in the amount of \$2,000. The check was designated as "Monies from Estate."

18. Respondent has made no distributions to Ena Brantner or paid any of the creditors' claims filed in the probate proceedings. Respondent still retains \$9,275.34 in his trust account on behalf of the estate of William J. Brantner.

19. Despite repeated requests from Ros Brantner, Ros Brantner's mother, and creditors of the estate for information regarding the status of the estate and an accounting of the real estate sale proceeds and a request from the court requesting the filing of personal representative's statement to close estate, respondent has failed to provide the requested information.

20. Respondent's conduct violated Rules 1.3, 1.4, and 3.2, MRPC.

THIRD COUNT

A. McComber Matter

21. On September 6, 2002, the Director sent respondent a notice of investigation in regards to the complaint involving his handling of the McComber trust and estate matters. That notice requested a response within 14 days.

22. On October 4, 2002, the District Ethics Committee (DEC) investigator assigned to investigate the complaint wrote to respondent noting that he had not received a response to the notice of investigation and asking respondent to "Please advise."

23. On October 30, 2002, the DEC investigator wrote a second letter to respondent, sent by certified mail, noting that he had not received a response to the notice of investigation and asking respondent to "Please advise." Respondent signed the return receipt for this letter.

24. Respondent never provided a response to the DEC investigator.

25. On January 29, 2003, a paralegal in the Director's Office spoke with respondent in an attempt to arrange a meeting with him regarding the McComber

matter. Respondent asked that he be sent another copy of the September 6, 2002, notice of investigation and complaint and said that he would call back to arrange a meeting.

26. On January 30, 2003, the Director sent respondent another copy of the September 6, 2002, notice of investigation and complaint and asked that he provide a written response to the complaint within 10 days.

27. On February 14, 2003, the Director wrote to respondent noting that he had neither called to arrange a meeting or provided a written response to the notice of investigation and complaint. That letter directed respondent to appear in the Director's Office on March 6, 2003. Respondent was told to provide a copy of his answer to the complaint at that meeting.

28. On March 6, 2003, respondent called the Director's Office and rescheduled the March 6 meeting to March 13, 2003.

29. On March 13, 2003, respondent appeared at the Director's Office for the scheduled meeting and provided a brief written response to the complaint.

30. On April 23, 2003, the Director wrote to respondent requesting him to respond to the allegation that he failed to honor his agreement with Gustafson and that, if she would not proceed with legal action against him, he would settle amicably with the Trust beneficiaries. That letter requested a response within 10 days.

31. On June 5, 2003, having received no response, the Director wrote to respondent requesting a response to the April 23, 2003, letter.

32. On June 19, 2003, the Director wrote to respondent noting that no response had been received to the April 23 and June 5 letters and directing him to appear in the Director's Office on July 14, 2003.

33. Respondent failed to appear for the July 14 meeting or otherwise respond to the June 19 letter.

B. Brantner Matter

34. On November 7, 2003, the Director received a complaint against respondent from Katherine Brantner alleging impropriety in the handling of the proceeds of a sale of real estate from the estate of Brantner's ex-husband, including failure to account for over \$13,000 of home sale proceeds.

35. On November 13, 2003, the Director mailed to respondent a notice of investigation and the complaint of Katherine Brantner. That notice requested that respondent provide a response to the Brantner complaint together with designated trust account books and records within 14 days.

36. On December 9, 2003, having received no response, the Director wrote to respondent requesting a response to the notice of investigation within two weeks.

37. On December 30, 2003, having received no response, the Director wrote to respondent requesting a response to the notice of investigation by January 9, 2004.

38. On March 8, 2004, the Director's Office contacted respondent by telephone to inquire about his response to the Brantner complaint. Respondent requested that he be sent another copy of the notice of investigation and complaint. That same day the Director sent respondent by fax and mail copies of the notice of investigation and prior correspondence requesting a response together with a letter seeking specific information regarding the allegations in the complaint. That letter requested a response within 10 days.

39. On March 25, 2004, having received no response, the Director again wrote to respondent requesting a response to the prior inquiries. That letter requested a response no later than April 1, 2004.

40. Respondent has failed to respond in any fashion to the Director's requests for information in regard to the complaint of Katherine Brantner until after the July 20, 2004, probable cause hearing in this matter.

41. Respondent's conduct violated Rule 8.1(a)(3), MRPC, and Rule 25, RLPR.

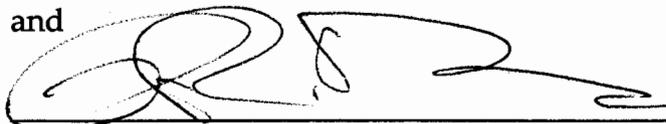
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: August 17, 2004.


KENNETH L. JØRGENSEN
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY

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and


PATRICK R. BURNS
SENIOR ASSISTANT DIRECTOR
Attorney No. 134004

The first and third counts of this petition having been approved for filing by a Lawyers Board Panel chaired by the undersigned on July 20, 2004, the second count of this petition is hereby approved for filing pursuant to Rule 10(e), RLPR.

Dated: August 20, 2004.


KENNETH R. WHITE
PANEL CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD