

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against ANGELA MONTGOMERY MONTEZ,
a Minnesota Attorney,
Registration No. 322192.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

Upon the approval of a Lawyers Professional Responsibility Board Panel Chair, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rules 10(d) 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 October 25, 2002. Respondent was last known to have practiced law in Cottage Grove, Minnesota. Respondent has relocated to Omaha, Nebraska.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's history of prior discipline, including admonitions, is as follows:

On August 25, 2008, respondent was issued an admonition for failing to communicate to a client the scope of her representation and the basis and rate of her fee, and failing to obtain the client's consent to limit the scope of the representation, in violation of Rules 1.2(c) and 1.5(b), Minnesota Rules of Professional Conduct (MRPC).

FIRST COUNT

Failure to Safe Keep Client Funds, Failure to Abide by a Fee Arbitration Decision and Related False Statements

1. On June 15, 2009, Better Future Adoption Services (“BFAS”) retained respondent to represent it regarding allegedly libelous statements made about BFAS by former BFAS employees.

2. Respondent and BFAS entered into a retainer agreement that provided for a \$5,000 “fixed fee,” to be paid “in a 20% upfront retainer and equal monthly payments of \$1,000 for a period of 4 months.” The retainer agreement further provided that respondent would provide BFAS with a monthly accounting of her time and expenses and that when respondent’s time and expenses exceeded the \$5,000 retainer, BFAS would be required to pay for respondent’s services at the rate of \$75 per hour.

3. Also on June 15, 2009, BFAS issued respondent a check for the entire \$5,000 retainer provided for under their retainer agreement. Despite the fact that, at the time, respondent had not earned the entire BFAS retainer, respondent failed to place any portion of the BFAS retainer into a trust account. Respondent’s conduct constituted a failure to safeguard client funds.

4. Lori Gross is the BFAS employee who both signed the retainer agreement with respondent and prepared the \$5,000 check that was issued to respondent. Upon learning that Ms. Gross had directed payment of the entire \$5,000 retainer, Agitu Wodajo, BFAS’s executive director, scheduled a July 13, 2009, meeting with respondent to discuss respondent’s handling of the retainer.

5. During Wodajo’s discussion with respondent on July 13, 2009, respondent failed to satisfactorily address Wodajo’s concerns regarding respondent’s handling of the BFAS retainer and became angry and confrontational. As a result of respondent’s

conduct during the meeting, Wodajo consulted with and retained attorney James Hanvik.

6. On July 14, 2009, Hanvik wrote to respondent on BFAS's behalf. Hanvik included with his letter a statement signed by Wodajo terminating respondent's representation of BFAS and requesting that respondent forward to Hanvik its files, records and other property. In his letter, Hanvik also requested that respondent forward BFAS's files, records and other property. Hanvik opined that respondent had not earned BFAS's entire retainer and requested an opportunity to discuss that issue with respondent.

7. On July 23, 2009, respondent responded to Hanvik's letter. Respondent enclosed BFAS's file and stated her belief that she had earned the BFAS retainer. Respondent further stated, "It is unfortunate that BFAS decided to breach the representation agreement, despite the headway that was being made on their libel claims. However, after the considerable turmoil that the agency has been through and will likely continue to experience I am not interested in pursuing a civil action at this point."

8. On August 7, 2009, Hanvik wrote to respondent. Hanvik requested that respondent place "the disputed" portion of the retainer into a trust account and stated his expectation that BFAS would submit the matter to fee arbitration for final resolution.

9. By email to Hanvik dated August 17, 2009, respondent stated, "I am in agreement with depositing \$2000 in trust pending a binding fee arbitration decision."

10. As is further detailed below, respondent did not deposit any portion of the BFAS retainer into a trust account. At the time respondent sent the August 17, 2009, email, she did not even have a trust account. Respondent's statement that she would place the funds in trust was false.

11. On or about September 2, 2009, Hanvik submitted a petition to the Hennepin County Bar Association's fee arbitration program. The petition was accompanied by a "Binding Arbitration Agreement" signed by both Hanvik and respondent. The agreement stated, "We . . . agree to submit our legal fee dispute to the Hennepin County Bar Association's Legal Fee Arbitration Program for binding arbitration."

12. A fee arbitration panel held a hearing in the matter on November 20, 2009. Either prior to the start of, or during a break in, those proceedings, respondent reiterated to Hanvik and to others present that she had placed \$2,000 of the BFAS retainer in trust. Respondent's statement, as further detailed below, was false.

13. On December 4, 2009, the fee arbitration panel awarded BFAS a \$3,250 refund of its retainer. In support of its determination, the panel stated, "The final award reflects the panel's determination that the reasonable fees earned by respondent attorney were \$125.00 per hour at 14 hours total."¹

14. On December 7, 2009, Hanvik wrote to respondent and requested payment on the fee arbitration award. Respondent did not respond to Hanvik's letter.

15. To date, respondent has not paid to BFAS or Hanvik any portion of the fee arbitration award.

16. Respondent's conduct in failing to place an advance fee payment in trust, failure to safeguard client funds, failure to remit unearned client fees back to the client, and making false statements to the client and successor counsel that the disputed portion of the retainer would be placed in trust violated Rules 1.15(a) and (c)(4), 4.1, and 8.4(c) and (d), MRPC.

¹ The basis for the fee arbitration panel's calculation of respondent's fees at a rate of \$125 per hour is unclear.

17. Respondent's failure to comply with a binding fee arbitration award violated Rule 8.4(i), MRPC.

SECOND COUNT

False Statements to the Director

Introduction

18. At all times relevant, respondent has maintained three mutual fund accounts with Waddell & Reed Financial Advisors ("Waddell & Reed"): a joint account with her husband, a joint account with another relative (possibly her daughter), and an Individual Retirement Account ("IRA") in respondent's individual name. Since at least January 1, 2009, respondent's joint mutual fund account with her husband has consistently had a balance of less than \$15. Respondent's joint mutual fund account with her daughter has consistently had a balance of approximately \$5,000.

19. As is further described below, respondent has repeatedly represented to the Director that she deposited the BFAS funds into her Waddell & Reed mutual fund account and was holding the disputed portion of the BFAS retainer in that account. In support of this claim, respondent provided the Director with redacted copies of statements for her Waddell & Reed IRA mutual fund, which is the only one of respondent's mutual funds that is held in her individual name. Accordingly, respondent's general claim that the BFAS funds were deposited and held in her Waddell & Reed mutual fund account is more specifically a claim that those funds were in her Waddell & Reed IRA mutual fund account.

20. Set forth below is a chart reflecting the deposit, withdrawal and earnings history of respondent's Waddell & Reed IRA mutual fund account:

<u>DATE</u>	<u>DEPOSITS</u>	<u>W/DRAWAL</u>	<u>FEES</u>	<u>EARNING</u>	<u>BALANCE</u>
12/31/08					\$4,704.08
05/04/09	\$3,487.37				\$8,191.45

08/06/09	(\$3,000.00)	(\$344.34)		\$4,847.11
10/07/09	(\$1,000.00)	(\$122.12)		\$3,724.99
12/03/09		(\$15.00)		\$3,709.99
12/14/09	(\$150.00)	(\$11.00)		\$3,548.99
12/14/09	(\$120.95)			\$3,428.04
12/16/09	(\$300.00)	(\$44.33)		\$3,083.71
12/31/09			\$1,628.96	\$4,712.67
02/18/10	(\$500.00)	(\$66.56)		\$4,146.11
03/17/10	(\$425.00)	(\$58.22)		\$3,662.89
03/31/10			\$178.56	\$3,841.45
04/16/10	(\$250.00)	(\$38.78)		\$3,552.67
04/28/10	(\$1,750.00)	(\$205.45)		\$1,597.22
05/25/10	(\$575.00)	(\$74.89)		\$947.33
06/01/10	(\$100.00)	(\$22.11)		\$825.22
06/16/10	(\$200.00)	(\$33.22)		\$592.00
06/21/10	(\$75.00)	(\$19.33)		\$497.67
06/30/10			(\$22.19)	\$475.48
07/12/10	(\$100.00)	(\$11.00)		\$364.48
07/22/10	(\$111.86)	(\$11.00)		\$241.62
09/30/10			\$39.80	\$281.42

21. The source of the \$3,487.37 deposit into respondent's Waddell & Reed IRA mutual fund account on May 4, 2009, was an April 20, 2009, check drawn on an account in the name of "Children's Law Center of Minnesota."

22. The various withdrawals from respondent's Waddell & Reed IRA mutual fund account shown in the chart above were made by way of checks issued by Waddell & Reed and made payable to respondent.

False Statements & Submission of Altered Documents

23. With her letter to the Director dated April 11, 2010, and her May 18, 2010, submission to the Director, respondent produced redacted statements for her Waddell & Reed IRA mutual fund account as verification that the BFAS retainer was being held in that account. Respondent redacted from these statements any indication that the

mutual fund at issue was, in fact, an IRA. Respondent's altering of the statements was done in order to mislead the Director and conceal her failure to safe keep client funds.

24. In letters to the Director dated April 11, April 29 and June 1, 2010, respondent stated that she had "deposited," "set aside" or "earmarked" the sum of \$2,000 in her Waddell & Reed mutual fund pending resolution of the fee arbitration proceeding. In her June 1, 2010, letter, respondent also stated that "the money would not be used on any other expenses but solely go toward the arbitration award should I be deemed to owe BFAS any funds."

25. However, as described in paragraphs 20 and 21 above, the only deposit into respondent's Waddell & Reed IRA mutual fund account (which was the mutual fund for which respondent produced statements in verification of the deposit and retention of the BFAS retainer) was made on May 4, 2009, and BFAS funds were not the source of that or any other of the deposits into that account.² Further, as is illustrated by the chart appearing in paragraph 20 above, respondent has since withdrawn substantially all the funds from her Waddell & Reed IRA mutual fund account. Respondent did not remit any of the funds so withdrawn to BFAS or Hanvik.

26. On June 1, 2010, when respondent most recently informed the Director that the disputed BFAS funds were being held in her mutual fund, the balance in respondent's Waddell & Reed IRA mutual fund (which, again, was the mutual fund for which respondent produced statements in verification of the deposit and retention of the BFAS retainer) was only \$825.22.

27. Respondent's statements in her April 11, April 29 and June 1, 2010, letters to the Director, as described in paragraph 24 above, were false.

² The BFAS funds were likewise not the source of any deposits into either of respondent's other two Waddell & Reed mutual fund accounts.

28. In her June 1, 2010, letter to the Director respondent stated that, upon receipt, she deposited the BFAS retainer into her Waddell & Reed mutual fund. Respondent stated further, "The only large deposit into this account was the funds from BFAS after whatever overdue business expenses were paid."

29. However, as described in paragraphs 20 and 21 above, the only deposit into respondent's Waddell & Reed IRA mutual fund account (which, again, was the mutual fund for which respondent produced statements in verification of the deposit and retention of the BFAS retainer) was made on May 4, 2009, and BFAS funds were not the source of that or any other deposit into that account.³

30. Respondent's statements in her June 1, 2010, letter to the Director, as described in paragraph 28 above, were false.

31. In her April 11 and June 1, 2010, letters to the Director, respondent stated that she was unable to withdraw and remit to BFAS any of the funds from her Waddell & Reed mutual fund because she was in the midst of a divorce and prohibited from depleting any of her assets, including the Waddell & Reed mutual fund account. In her June 1, 2010, letter, respondent stated further that the source for that prohibition was "the court's order directing both parties not to deplete any assets that may be arguably considered marital property."

32. However, the summons and petition respondent prepared in her divorce proceeding were dated December 31, 2009, and she did not file those documents with the court until January 4, 2010. This was exactly one month after issuance of the BFAS fee arbitration award. Further, the temporary orders that have been issued in respondent's divorce proceeding address only matters relating to respondent's children. At no time did the court order respondent not to withdraw funds from her Waddell &

³ The BFAS funds were likewise not the source of any deposit into either of respondent's other two Waddell & Reed mutual fund accounts.

Reed mutual fund accounts. Finally, despite her representations that she was prohibited from disbursing funds from her Waddell & Reed mutual fund account, respondent has, as is reflected in the chart appearing in paragraph 20 above, disbursed substantially all of the funds in that account during the pendency of her divorce.

33. Respondent's statements in her April 11 and June 1, 2010, letters to the Director, as described in paragraph 31 above, were false.

34. In her April 29 and June 1, 2010, letters to the Director, respondent stated that she maintained her Waddell & Reed mutual fund for "business expenses." Respondent further stated in her June 1, 2010, letter to the Director that she was able to "direct checks to be made from" her Waddell & Reed mutual fund "as needed."

35. However, as illustrated by the chart appearing in paragraph 20 above, respondent did not make any disbursements from her Waddell & Reed IRA mutual fund (which, again, was the mutual fund for which respondent produced statements in verification of the deposit and retention of the BFAS retainer) in direct payment of any business expenses. Further, although at least one of the mutual funds respondent held jointly with others appears to have allowed some check-writing capability, no such capability existed with regard to respondent's IRA mutual fund account.

36. Respondent's statements in her April 29 and June 1, 2010, letters, as described in paragraph 34 above, were false.

37. In her April 29, 2010, letter to the Director, respondent stated that she had been "adding funds to the" Waddell & Reed mutual fund account "as I am able to build the full arbitration award."

38. However, as illustrated by the chart appearing in paragraph 20 above, respondent did not make any deposits into her Waddell & Reed IRA mutual fund

account (which, again, was the mutual fund for which respondent produced statements in verification of the deposit and retention of the BFAS retainer) after May 4, 2009.⁴

39. Respondent's statement in her April 29, 2010, letter, as described in paragraph 37 above, was false.

40. Respondent attached to her April 29, 2010, letter to the Director a version of her retainer agreement with BFAS that she had altered from the version BFAS had received from respondent. This altered retainer agreement read as follows:

A total fixed fee of \$5,000, ~~payable in a 20% upfront retainer and equal monthly payments of \$1,000 for a period of 4 months~~ + after 4 mos monthly payments of \$1,200.

41. Respondent omitted the language, "payable in a 20% upfront retainer and equal monthly payments of \$1,000 for a period of 4 months," and added the language, "+ after 4 mos monthly payments of \$1,200."

42. The signatures, dates and other handwriting appearing on the altered retainer agreement were otherwise identical to, and an exact copy of, those appearing on the original version. Respondent made the alterations referenced above after the parties had fully executed the original retainer agreement.

43. Respondent also presented the altered retainer agreement to the fee arbitration panel during the November 20, 2009, hearing. Wodajo and Hanvik saw the altered retainer agreement for the first time during this hearing.

44. Respondent's alterations to the retainer agreement as described in paragraphs 40 through 42 above were made without BFAS's knowledge or authorization. Respondent altered the retainer agreement and presented it to the fee arbitration panel in order to mislead the panel regarding her entitlement to the entire

⁴ Respondent likewise did not make any deposits into either of her other two Waddell & Reed mutual fund accounts.

\$5,000. Respondent similarly submitted the altered retainer agreement to the Director in order to conceal her failure to safe keep client funds.

45. Respondent's conduct in making repeated false statements to the Director and presenting altered documents to the Director and a fee arbitration panel violated Rules 4.1 and 8.4(c) and (d), MRPC.

THIRD COUNT

Failure to Cooperate

46. On December 23, 2009, Hanvik submitted a complaint against respondent to the Director. On January 12, 2010, the Director issued a notice of investigation that referred the matter for investigation to the Nineteenth District Ethics Committee (DEC) and directed respondent to provide her written response to the complaint to the DEC.

47. Respondent did not, in fact, submit a written response to the complaint, but she spoke on at least one occasion with the DEC investigator, who did not also require respondent to submit a written response.

48. On March 15, 2010, after receiving the DEC report and discovering that respondent had not submitted a written response to the DEC, the Director wrote to respondent and requested that she provide a written response within 14 days. Respondent failed to timely respond.

49. On April 5, 2010, the Director wrote again to respondent to request her written response to the complaint.

50. By letter dated April 11, 2010, which the Director did not receive until April 16, 2010, respondent produced her written response.

51. On April 20, 2010, the Director wrote to respondent and requested that she produce certain additional documents and information in the matter by April 30, 2010. Respondent failed to timely produce these materials. The Director also requested respondent's appearance at a meeting with the Director on May 6, 2010.

52. On May 4, 2010, the Director wrote again to respondent to request that she produce the documents and information that had previously been requested in the Director's April 20, 2010, letter. Later in the day on May 4, 2010, after the Director's May 4, 2010, letter to respondent had been placed in the mail, the Director received a letter dated April 29, 2010, from respondent.

53. Respondent appeared for the May 6, 2010, meeting in the Director's Office.

54. On May 7, 2010, the Director requested that respondent produce account statements for her Waddell & Reed mutual fund and various documents from her divorce proceeding.

55. On May 18, 2010, the Director received from respondent various Waddell & Reed mutual fund account statements and some, but not all, of the requested divorce documents.⁵

56. On May 21, 2010, the Director wrote to respondent to request the missing divorce documents and various other documents and information, primarily concerning the activity in her Waddell & Reed mutual fund account. On June 8, 2010, the Director received from respondent a responsive letter dated June 1, 2010.

57. On July 22, 2010, the Director wrote to respondent and requested that she (a) sign and return authorizations directed to Waddell & Reed to enable the Director to obtain comprehensive account statements for respondent's mutual fund account, (b) produce the divorce documents that had been missing from respondent's prior submissions, and (c) state whether she had made any payments on the BFAS fee arbitration award. Respondent failed to respond to the Director's July 22, 2010, letter.

⁵ As noted above, the Waddell & Reed mutual fund account statements produced by respondent were for her IRA mutual fund, although respondent redacted that information from the statements.

58. On August 6, 2010, the Director wrote again to respondent to request her response to the Director's July 22, 2010, letter. Although respondent failed to provide a written response, she did advise the Director by telephone that she was in the process of moving. Respondent did not, at that time, provide the Director with her new mailing address.

59. On August 16, 2010, as a result of respondent's continuing failure to respond, the Director requested, pursuant to Rule 8(c), RLPR, authorization from the Lawyers Board Chair to obtain a subpoena directed to Waddell & Reed. The Board Chair approved the Director's request on August 17, 2010, and, on September 21, 2010, the Director served a subpoena on Waddell & Reed's local agent.

60. On September 20, 2010, the Director wrote to respondent a third time to request her response to the Director's July 22, 2010, letter. On September 27, 2010, the postal service returned the Director's September 20, 2010, letter as undeliverable.

61. On September 27, 2010, the Director emailed to respondent copies of the Director's July 22 and September 20, 2010, letters. Respondent acknowledged receipt of the Director's email and, in response to the Director's subsequent request, provided her new mailing address.

62. To date, however, respondent has not provided a substantive response to the Director's July 22, August 6 or September 20, 2010, letters.

63. On November 15, 2010, the Director mailed charges of unprofessional conduct to respondent at her new mailing address. Respondent failed to provide an answer to the charges of unprofessional conduct in the time allowed by Rule 9(a)(1), RLPR.

64. Respondent's conduct in failing to cooperate in the Director's investigation violated Rule 25, RLPR, and Rule 8.1(b), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent or imposing otherwise 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: December 3, 2010.



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This petition is approved for filing pursuant to Rules 10(d) and 12(a), RLPR, by the undersigned Panel Chair.

Dated: 12/17/10, 2010. 

WILLIAM P. DONOHUE
PANEL CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD