

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against KENNETH ANTHONY NEAL,
a Minnesota Attorney,
Registration No. 329782.

**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 October 31, 2003. Respondent is currently licensed to practice law in Minnesota but currently resides and is employed in a non-lawyer position in Houston, Texas.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Misappropriation and Misrepresentation

1. Respondent was employed as an associate attorney at a Minneapolis law firm (the law firm) from September 2003 through January 2006.
2. As more fully set forth below, in 2004 and 2005 respondent undertook the representation of J.C. in her claims against two contractors, Devin Perteet, d/b/a Strait Forward Contracting and Alan Bambenek, arising out of defective work done on real property owned by J.C.

3. Respondent first met with J.C. regarding her legal claims against Perteet and Bambenek in May 2004 at the law firm offices.

4. On November 20, 2004, respondent wrote a demand letter to Perteet, utilizing law firm letterhead, in which he stated that he represented J.C. in her claims against Perteet. In fact, respondent was then representing J.C. on his own without the knowledge or consent of the law firm. The law firm's Attorney Policy Handbook explicitly requires associates opening a new matter or accepting the representation of a new client to review the matter with the chair of the appropriate practice group within the firm, but does not expressly prohibit associates from representing clients on their own. Respondent had not then sought permission to undertake the representation of J.C. or otherwise informed the law firm of his intent to represent J.C.

5. On January 28, 2005, respondent had J.C. sign a written agreement whereby respondent personally agreed to represent her in her claims against Perteet and Bambenek. In the January 28, 2005, retainer letter respondent stated, "I will represent you in connection with the Devin Perteet/Al Bambanack [sic] matter."

6. Respondent received the following payments from or on behalf of J.C. as attorney's fees or advances against expenses to be incurred:

<u>DATE</u>	<u>AMOUNT</u>
1/28/05	\$600.00
2/4/05	\$350.00
2/4/05	\$400.00
10/14/05	\$650.00

7. Respondent deposited all of the funds set forth above into his personal account. The funds received by respondent on January 28 and February 4, 2005, were advance payments against fees to be earned and expenses not yet incurred. As such, these funds should have been deposited into a trust account. The \$650 received by respondent on October 14, 2005, was paid to him after the law firm had agreed, as more fully set forth below, to represent J.C. on a *pro bono* basis.

8. Respondent did not inform the law firm of the receipt of any of the funds from J.C. nor did he deposit those funds to any law firm account.

9. On May 12, 2005, respondent sought permission from the law firm to undertake the representation of J.C. in her claims against Perteet on a *pro bono* basis.

10. When respondent applied to the law firm for permission to represent J.C. *pro bono*, he did not reveal to the firm his prior representation of J.C. or the fact that he had already received \$1,350 from her. The law firm agreed to allow respondent to represent J.C. in the Perteet matter on a *pro bono* basis.

11. On May 17, 2005, respondent sent J.C. a *pro bono* retainer agreement on law firm letterhead.

12. After May 17, 2005, respondent arranged for the law firm to advance various costs associated with the J.C. litigation despite having previously received funds on behalf of J.C. intended to pay such expenses.

13. Respondent's failure to deposit the funds given to him on behalf of J.C. into a trust account; his retention for his own use of funds received as an advance against expenses to be incurred; and his collection of additional attorney's fees from J.C. after the law firm had agreed to represent J.C. on a *pro bono* basis, constitutes misappropriation.

Neglect

14. On June 13, 2005, respondent signed a summons and complaint to institute suit against Devin Perteet, d/b/a Strait Forward Contracting. At respondent's direction, the summons and complaint were filed with the court on June 29, 2005, and were served on Perteet on August 8, 2005.

15. On June 30, 2005, the Hennepin County District Court mailed to respondent a notice of judicial officer assignment. That notice stated, in part, "Pursuant to Rule 111.02 General Rules of Practice for the District Courts, within sixty days after an action has been filed, each party shall submit an Informational Statement." The

Notice further advised, "FAILURE TO TIMELY FILE ANY REQUIRED DOCUMENT OR OTHER FAILURE TO COMPLY WITH THE GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS MAY RESULT IN THE IMPOSITION OF SANCTIONS, INCLUDING POSSIBLE DISMISSAL OF THE CASE OR STRIKING OF THE ANSWER."

16. Respondent failed to file an informational statement on behalf of J.C. and, on September 1, 2005, J.C.'s suit against Perteet was dismissed without prejudice.

17. Respondent failed to inform J.C. that her suit had been dismissed.

18. Respondent reinstated suit against Perteet by serving and filing a new summons and complaint.

19. Although respondent had, on January 28, 2005, agreed to pursue J.C.'s claims against Bambenek, he failed to take any action to prosecute those claims and they may now be barred by application of the statute of limitations.

Conflict of Interest

20. Respondent and Tom Jacobson were partners/shareholders in a cleaning business known as either EZ Cleaning or AEZ Cleaning Service, Inc.

21. In July 2004, after respondent had agreed to act as J.C.'s lawyer in her claims against Perteet and Bambenek, respondent and Jacobson entered into a business agreement with J.C. whereby they would provide construction, cleaning and mold remediation services to J.C. on her homestead.

22. J.C. agreed to hire respondent and Jacobson to provide the services to her homestead because she believed having her lawyer involved in the project would help protect her interests.

23. Respondent did not advise J.C. to have the agreement for construction services reduced to writing.

24. From August through October 2004, J.C. paid to respondent and Jacobson \$13,935.34 for construction, cleaning and mold remediation services. Of the total paid,

\$7,249.99 was paid directly to respondent. Respondent kept at least \$700 of the \$7,249.99 paid to him and paid the rest to Jacobson.

25. Prior to entering into the business agreement with J.C. for cleaning and mold remediation services, respondent did not:

- a. Advise J.C. in writing of the desirability of seeking independent legal counsel in the transaction or give J.C. a reasonable opportunity to seek the advice of independent legal counsel;
- b. Fully disclose and transmit in writing to J.C. the terms of the transaction; or
- c. Obtain J.C.'s written consent to the transaction.

26. In October 2004 respondent told J.C. that Jacobson had shown him pictures of the house that was the subject of the suit against Perteet. Respondent told J.C. that the pictures revealed a mold problem and that Perteet may not take responsibility for the mold damage unless immediate action was taken to remedy it.

27. In a handwritten note on a confidentiality agreement between J.C. and Jacobson, respondent advised J.C., "I would consider remedying the mold situation before it gets out of hand."

28. In response to respondent's advice, J.C. agreed to hire respondent and Jacobson to provide mold remediation services. J.C. asked respondent whether his involvement in providing mold remediation services would be a conflict of interest since he was representing her in her claims against Perteet. Respondent told her it was not a conflict of interest.

29. On October 12, 2004, J.C. paid \$4,128.35 to Jacobson. That sum was intended to be payment for materials to be used by respondent and Jacobson in providing mold remediation services.

30. Respondent's financial interest in providing mold remediation services to property that was the subject of J.C.'s claims against Perteet while at the same time representing J.C. in her claims against Perteet constituted a conflict of interest.

31. Respondent failed to obtain J.C.'s consent after consultation to the conflict of interest arising out of his providing both legal services and mold remediation services that would be an element of damages in J.C.'s claims against Perteet.

32. Respondent's conduct in failing to deposit funds given to him on behalf of J.C. into a trust account and his misappropriation of those funds; his failure to inform the law firm of the receipt of funds from J.C.; his neglect of J.C.'s claims against Perteet and Bambenek; his failure to notify J.C. of the dismissal of her suit against Perteet; his entering into a business transaction with J.C. without complying with the disclosure and consent requirements of Rule 1.8(a); and his failure to seek and obtain J.C.'s consent after consultation to the conflict of interest arising out of his serving as her attorney in her claims against Perteet while at the same time holding a financial interest in a company providing mold remediation services to the property that was the subject of the claims violated Rules 1.3, 1.4, 1.7, 1.8(a), 1.15, 3.2, 8.4(c), and 8.4(d), Minnesota Rules of Professional Conduct (MRPC), as those rules read prior to October 1, 2005.

SECOND COUNT

33. In early November 2005, respondent undertook the representation of A.P. and C.P. in a matter involving the drafting and execution of a gestational contract.

34. The gestational contract that was the subject of respondent's representation was between residents of the states of Ohio and New Jersey, the terms of the contract were intended to be carried out within the state of Ohio, and the contract specified that Ohio law would govern the agreement.

35. Respondent is not licensed to practice law in the state of Ohio and his representation of A.P. and C.P. in the matter of the gestational contract constitutes the unauthorized practice of law in that state.

36. On December 12, 2005, respondent mailed a letter enclosing an invoice for his services in the A.P. and C.P. matter. The letter was on the letterhead of "Kenneth A. Neal, Esq" and identified respondent as "specializing in medical malpractice, construction law, DWI, family law."

37. Respondent is not a certified specialist and did not include in his December 12, 2005, letter a clear statement that he is not certified by any organization accredited by the Minnesota Board of Legal Certification.

38. Respondent's conduct in engaging in the unauthorized practice of law in the A.P. and C.P. matter; and identifying himself as a specialist on his letterhead without including a statement that he is not certified as a specialist violated Rules 5.5(a) and 7.4(d), MRPC, as those rules read after October 1, 2005.

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: April 16, 2007.



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