

FILE NO. A11-1279
STATE OF MINNESOTA
IN SUPREME COURT

In Re Petition for Disciplinary
Action against BARBARA ANN NIMIS,
a Minnesota Attorney,
Registration No. 235428.

**SUPPLEMENTARY 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 supplementary petition for disciplinary action pursuant to Rules 10(e) and 12(a), Rules on Lawyers Professional Responsibility (RLPR).

Respondent is currently the subject of a June 16, 2011, petition for disciplinary action. The Director has investigated further allegations of unprofessional conduct against respondent.

The Director alleges that respondent has committed the following additional unprofessional conduct warranting public discipline:

SECOND COUNT

Continued Failure to Cooperate with the Director

11. As previously stated in the June 16, 2011, petition in this matter, respondent failed to respond to the Director's inquiries regarding four overdrafts in respondent's trust account. Based on respondent's failure to cooperate with the inquiries of the Director, on January 14, 2011, the Director sent respondent a notice of investigation regarding the overdrafts in respondent's account. The notice requested various trust account books and records. Respondent failed to respond to the Director's notice of investigation and further inquiries.

12. On March 25, 2011, the Director served upon respondent charges of unprofessional conduct in connection with respondent's failure to cooperate with the Director's Office. Rule 9(a)(1) RLPR, requires a respondent to serve and file an answer

within 14 days. Respondent failed to serve an answer to the charges of unprofessional conduct on the Director or the Panel Chair assigned to the matter.

13. On April 14, 2011, the Panel Chair sent notice to respondent and the Director that respondent had defaulted on the Director's charges and the therefore the charges were deemed to be true. Based on the charges and respondent's failure to serve an answer to the charges, the Panel determined there was probable cause to believe public discipline was warranted and instructed the Director to file a petition for disciplinary action with the Minnesota Supreme Court.

14. Respondent's conduct violated Rule 8.1(b), Minnesota Rules of Professional Conduct (MRPC), and Rule 25 Rules of Lawyers Professional Responsibility (RLPR).

THIRD COUNT

A. Improper Use of a Trust Account

15. Respondent represented client T. Elk in a criminal matter. Respondent's written retainer agreement with T. Elk and his mother, J. Arcoren, dated July 13, 2010, states in part, "I understand that all fees paid are nonrefundable and will not be held in a trust account." On August 3 and September 7, 2010, respondent deposited fees received from T. Elk into respondent's trust account. Pursuant to respondent's retainer agreement, however, these fees were non-refundable and should not have been placed in respondent's trust account.

16. In August 2010, T. Allison and K. Johnson jointly retained respondent. The fee agreement with Allison and Johnson was a flat rate of \$1,250, which Allison and Johnson paid in four installments between mid-September and November 2010. Respondent deposited each of the installments into respondent's trust account, although respondent had earned the entire \$1,250 before depositing the first installment.

17. On September 21, 2010, respondent deposited \$1,500 into respondent's trust account on behalf of client S. Demuth. Respondent had, however, earned the entire \$1,500 before depositing the funds into her trust account.

18. On November 15, 2009, respondent deposited \$95 on behalf of client A. Zoser in her trust account. Although respondent made no disbursement on behalf of client A. Zoser, by September 15, 2010, the balance in respondent's trust account was only \$10.67, and therefore not sufficient to cover A. Zoser's balance. On September 21, 2010, respondent deposited \$1,500 of earned fees into her trust account.

19. On October 13, 2010, check no. 3305 in the amount of \$71.25, and issued on behalf of A. Zoser, cleared respondent's trust account. The A. Zoser balance in respondent's trust account after payment of check no. 3305 was \$23.75 (\$95-71.25). On October 20, 2010, the balance in respondent's trust account was \$22.54, and therefore not sufficient to cover A. Zoser's balance.

20. On October 22, 2010, check no. 3317 in the amount of \$95, attributed to A. Zoser, cleared respondent's trust account. Check no. 3317 was more than the amount respondent was holding on behalf of A. Zoser at that time and caused an overdraft in respondent's trust account.

21. Between November 2009 and October 2010, while respondent was holding funds on behalf of A. Zoser, respondent deposited earned fees into her trust account in connection with the T. Elk, Allison and Johnson, and S. Demuth matters, thereby commingling client funds with personal funds.

22. Between August and November 2010, respondent issued, or caused to be issued, checks from her trust account to pay her own personal expenses. These checks cleared respondent's trust account and include the following: nine checks issued to pay respondent's student loan, two checks issued for "fresh produce," one check issued for spa services, and one check issued toward respondent's class reunion fees.

B. Failure to Maintain Trust Account Books and Records

23. During the period from at least August 1 through November 30, 2010, respondent failed to keep the appropriate trust account books and records required by Rule 1.15(h), Minnesota Rules of Professional Conduct (MRPC), as interpreted by Appendix 1. Namely, respondent kept incomplete client subsidiary ledgers and failed

to maintain monthly trial balances of the subsidiary ledgers and monthly trust account reconciliations.

24. Respondent's improper use of a trust account and failure to maintain the required trust account books and records resulted in four overdrafts in respondent's trust account on the following dates: October 22, October 29, November 1 and November 3, 2010.

25. Respondent's conduct violated Rule 1.15(a), (b), (c)(3), and (h), MRPC, as interpreted by Appendix 1.

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.

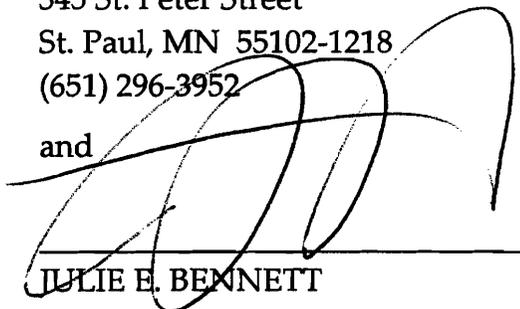
Dated: February 17, 2012.



MARTIN A. COLE
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PROFESSIONAL RESPONSIBILITY

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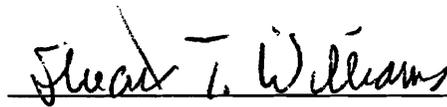
and



JULIE E. BENNETT
SENIOR ASSISTANT DIRECTOR
Attorney No. 289474

This supplementary petition is approved for filing pursuant to Rule 10(e), RLPR, by the undersigned.

Dated: February 8, 2012.



STUART T. WILLIAMS
PANEL CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD