

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against SCOTT LEE NOKES,
a Minnesota Attorney,
Registration No. 392060.

**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 November 1, 2011. Respondent currently practices law in Glencoe, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

1. In late November 2011, Donald Fimon and Ronda Geiser met with respondent about preparing a power of attorney (POA) for Donald, who is elderly and had a reduced capacity when it came to financial matters. Geiser and her husband were longtime friends with Donald and had been assisting him with his financial and legal affairs for over 25 years, including balancing his checkbook, banking transactions and purchasing real estate. Donald wanted to formalize this arrangement by making Geiser his attorney-in-fact.

2. Respondent subsequently drafted a power of attorney whereby Geiser would act as Donald's attorney-in-fact in all financial matters and in any legal claims or litigation. Respondent notarized the power of attorney on November 30, 2011.

3. On June 30, 2013, Donald's brother, Darrell Fimon, died. Donald had another brother, Richard Fimon, Jr., with whom he was not on speaking terms.

4. On July 16, 2013, Donald and Geiser met with respondent about investigating whether Donald was named in the decedent's will or was an heir to any other probate assets. Respondent agreed to investigate the matter. The parties did not sign a retainer agreement and no attorney's fees were discussed at this time. Respondent stated he would contact them when he had more information. At Donald's request, Geiser asked respondent that she be present as his attorney-in-fact for any meetings. Respondent was also on notice of Donald's limited capacity given his earlier representation in drafting the POA.

5. On July 17, 2013, respondent contacted Richard, who was reluctant to divulge information about the decedent's estate due to his acrimonious relationship with Donald. Respondent convinced Richard to provide him with a copy of the decedent's will.

6. Respondent reviewed the will, which was holographic. Donald was not named as an heir; however, the will was not properly witnessed.¹ Respondent determined that Donald might be able to contest the will's validity.

7. That same day, respondent called Donald and asked him to come to his office the following day to discuss the will. Respondent did not contact Geiser about the meeting per her earlier request.

8. On July 18, 2013, Donald met with respondent at his office to the review the will. Respondent did not inform Geiser of the meeting per her earlier request.

¹ Richard was listed as sole heir.

Respondent offered to undertake the matter, but indicated that he would require a \$3,500 retainer. In the converse, respondent offered to handle the matter on a one-third contingent fee basis that would not require any retainer from Donald up front. When Donald asked respondent to explain a contingent fee, respondent used the example of "If I collect \$900 on your behalf, you would receive \$600 and I would receive \$300." At the time, the potential value of the decedent's estate was unknown.

9. Donald signed a written fee agreement, dated July 18, 2013, that provided for a one-third contingent fee on the total recovery of the "estate of Darrell Fimon." The fee agreement further provided that any fee dispute would be handled through binding fee arbitration.

10. After meeting with respondent, Donald called Geiser because he was upset and confused about the document that he had signed. Geiser directed Donald to write her name and number down on a piece of paper and ask respondent to contact her.

11. Later on the afternoon of July 18, 2013, respondent called Richard and informed him that he believed the decedent's will was invalid because it was not properly witnessed. During this conversation, Richard disclosed that the decedent's condominium had been sold and the profits deposited into a bank account at Wells Fargo. Richard also disclosed that the decedent had an IRA at Wells Fargo Advisors, LLC (Wells Fargo Advisors).

12. On July 19, 2013, respondent called Geiser, who expressed her displeasure that respondent had met with Donald alone and had him sign legal documents without his attorney-in-fact present, as had been previously requested. Geiser stated that Donald was confused about what he had signed. Respondent denied that Geiser had earlier requested to be present for any meetings with Donald. Respondent did not inform Geiser about the IRA.

13. On July 19, 2013, Richard stopped by respondent's law office and provided him with a copy of the beneficiary list for the IRA from Wells Fargo Advisors, Inc. (Wells Fargo). On July 8, 2012, the decedent had made Donald a beneficiary to 25% of total value of the IRA and the document also identified Donald by name, address, date of birth and social security number. Richard also provided the closing documents from the sale of the decedent's condominium, which indicated that \$135,011.22 had been deposited into a checking account at Wells Fargo bank.²

14. Respondent then contacted Wells Fargo and learned that the value of the IRA was in the range of \$1,000,000 of which Donald was to receive 25% or \$250,000. Respondent emailed with Jon Wells, an employee at Wells Fargo, and received paperwork for Donald to fill out. Respondent also requested in the email that all correspondence and any disbursements from the IRA be sent to his office.

15. On July 21, 2013, Geiser and Donald met to review the terms of the written fee agreement that he had signed with respondent. Both were concerned about the fact that it was a contingent fee and they did not know how much respondent's attorney's fees would be.

16. On July 23, 2013, respondent's legal assistant contacted Geiser to arrange for Donald to come to respondent's office and fill out paperwork for establishing a beneficiary account with Wells Fargo Advisors.

17. On Friday, July 26, 2013, Geiser and Donald met with respondent's legal assistant at his office and filled out a simple, one-page informational form. At one point during the meeting, respondent returned from court and Geiser asked him about the specific value of the IRA. Respondent was evasive and stated only that the amount was "substantial" and that the check would be sent to his office. Respondent did not inform Geiser that the approximate value that Donald would receive was \$250,000.

² Richard also provided a bag of jewelry, which respondent established to be of nominal value.

18. Over the weekend, Geiser and her husband met with Donald to again review the contingent fee agreement. They agreed that the terms appeared unreasonable and that respondent should change his fee agreement to an hourly rate. They agreed to go to respondent's office on Monday to make the request.

19. On Monday, July 29, 2013, Geiser, her husband and Donald appeared at respondent's office and voiced their frustration over not receiving specific information about the amount of money Donald was to receive from the decedent's IRA, the anticipated amount to be distributed to respondent for attorney's fees and the fact that respondent met alone with Donald when signing the fee agreement. Respondent refused to provide specific information about the value of the IRA or his attorney's fees, again tried to shift the focus to his successful conversation with Richard and stated that Donald would not be receiving anything, but for his work in discovering the IRA.

20. Geiser, on behalf of Donald, requested that respondent rescind the contingent fee agreement and replace it with an hourly fee agreement for his work in assisting with the IRA beneficiary forms. Respondent refused. Geiser, on behalf of Donald, then terminated the representation and Donald refused to speak further with respondent.

21. On August 5, 2013, respondent sent Donald a letter that offered to reduce his attorney's fees to a 25% contingent fee. The letter also included a UCC Financing Statement purporting to establish an attorney's lien on the IRA funds held by Wells Fargo.

22. The parties subsequently agreed to mediate the matter. On August 28, 2013, the parties attended mediation, which proved unsuccessful. Donald offered to settle respondent's attorney's fees for \$5,000, which respondent rejected as insufficient.

23. Thereafter, the parties agreed to submit the matter to binding arbitration per the terms of the July 18, 2013, written fee agreement. The arbitration hearing was scheduled for November 12, 2013.

24. Geiser and Donald met with attorney James Reichert and retained him to handle the arbitration. Reichert submitted a statement of the case to the arbitrator on November 7, 2013, and handled last minute negotiations with respondent.

25. On the evening before the arbitration hearing, Reichert emailed respondent indicating that his client had instructed him to renew, one last time, the settlement offer of \$5,000.

26. Respondent responded by email, dated November 11, 2013, that he would accept the \$5,000 offer contingent upon Donald forgoing pursuing an ethics complaints against him and that a confidentiality agreement be signed. Reichert called respondent and informed him that his request for his former client to forgo filing an ethics complaint was unethical. Respondent emailed Reichert later that evening and withdrew the request regarding the ethics complaint conceding it was improper. Since respondent continued to insist upon a confidentiality agreement, no settlement was reached.

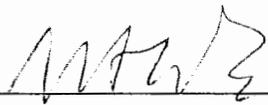
27. On November 12, 2013, the parties appeared for an arbitration hearing. On November 22, 2013, the arbitrator issued a binding fee arbitration determination awarding respondent \$2,800 as reasonable attorney's fees. The arbitrator noted that the decedent's IRA was a non-probate asset, that only fourteen hours of work had been performed by respondent and/or his legal assistant on behalf of Donald, and that a contingent fee was unreasonable under the circumstances.

28. Respondent later released his attorney's lien and did not contest the binding fee arbitration decision. Donald paid \$2,500 in attorney's fees to Reichert. The parties evenly split the cost of mediation and arbitration. Each party paid \$400 towards the cost of mediation and \$1,406 towards the cost of fee arbitration.

29. Respondent's conduct violated Rule 1.5(a), Minnesota Rules of Professional Conduct (MRPC).

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 10, 2015.



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