

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against JOHN V. NORTON,
a Minnesota Attorney,
Registration No. 79911.

**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 4, 1960. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

1. On July 13, 1994, respondent was placed on two years' supervised private probation for neglect of three client matters, non-communication, and non-cooperation with the disciplinary investigation, in violation of Rules 1.3, 1.4, 3.2, 8.1(a)(3) and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

2. On April 20, 1988, respondent was issued an admonition for failing to attend two meetings on behalf of a client, non-communication, and non-cooperation with the disciplinary investigation, in violation of Rules 1.3, 1.4 and 8.1(a)(3), MRPC, and Rule 25, Rules on Lawyers Professional Responsibility (RLPR).

3. On October 29, 1979, respondent was issued a warning for neglect and non-communication in violation of DR 1-102(A)(5) and (6) and DR 6-101(A)(3), Minnesota Code of Professional Responsibility.

FIRST COUNT

Misappropriation of Client Funds

1. On June 21, 2001, a \$181.77 overdraft occurred on respondent's Central Bank client trust account number 125954 (hereinafter "trust account"). Pursuant to Rule 1.15(j) through (o), MRPC, the Director received notice of the overdraft on June 25, 2001.

2. On July 9, 2001, the Director wrote to respondent to request an explanation for, and various trust account books and records related to, the overdraft. On August 16, 2001, respondent responded by providing (a) a letter from Central Bank, explaining only that the overdraft occurred because the bank decided to pay, rather than return, a check drawn on the account, and (b) respondent's own letter stating simply, "I trust this satisfies your needs for this inquiry." Respondent failed to include any of the trust account books and records the Director had requested. Thereafter, respondent failed to respond to the Director's August 21 and September 17, 2001, follow-up inquiries requesting an explanation for why respondent's trust account was overdrawn. On October 22, 2001, the Director commenced a formal disciplinary investigation due to respondent's failure to explain why or how the overdraft occurred.

3. After the formal disciplinary investigation was commenced, respondent claimed that the overdraft occurred when he inadvertently placed \$7,000 belonging to his client (D.N.) into his business account instead of his trust account. This explanation was inaccurate and had no relation to the actual cause of the overdraft. Although respondent did fail to deposit the D.N. funds into his trust account, the bank paid no trust account checks related to the D.N. matter prior to the overdraft. Instead, an audit conducted by the Director reveals that the overdraft was caused by the bank's payment

of a \$315.60 check in the L.S. matter. The audit further shows that respondent had previously misappropriated the L.S. funds that were supposed to be in the account to cover the \$315.60 check.

4. The Director audited respondent's trust account for the period of January 1, 2000, to September 26, 2002, hereinafter, "the audit period," and discovered the L.S. shortage and other deficiencies detailed below.

5. Based on trust account materials and client settlement statements provided by respondent, the Director determined that respondent should have been holding at least \$16,211.53 in client funds in his trust account as of January 1, 2000, the start of the audit period, as follows:

L.A.	\$3,268.09	Balance of funds from 12/99 settlement required to cover 1/6/00, 1/21/00, 2/11/00, 2/14/00, 2/17/00, 8/14/00 and 9/25/01 trust account disbursements
M.S.	\$4,705.00	Balance of funds withheld for "Medical Payable" from 12/99 settlement, plus funds to cover additional 1/21/00 trust account disbursement
L.S.	\$7,181.94	Balance of funds from 10/99 settlement required to cover 10/17/01 trust account disbursement
C.W.	\$450.00	Balance of funds from an unknown source necessary to cover 1/21/00 trust account disbursement
Wixs ¹	\$606.50	Balance of funds from an unknown source necessary to cover 1/11/00 trust account disbursement

6. In fact, however, the balance in respondent's trust account on January 1, 2000, was only \$13,146.20 (\$13.03 of which was interest to be paid to the Lawyer Trust Account Board) indicating a \$3,078.36 shortage.

¹ The client's full name is not available in respondent's records.

7. Throughout the entire audit period, the balance in respondent's trust account was continuously and substantially less than that necessary to cover aggregate client balances. This shortage ranged in amounts from approximately \$628 (on February 4, 2000) to approximately \$56,434 (on January 31, 2001). As of September 26, 2002, the end of the Director's audit period, the shortage in respondent's trust account was approximately \$42,908.

8. During the period through at least October 2001, respondent, without entitlement or attribution to any individual client, withdrew or transferred substantial funds from his trust account for his own use and benefit. These withdrawals and transfers caused the shortage in respondent's trust account.

9. During the audit period, respondent occasionally had to replace withdrawn or transferred trust account funds in order to cover legitimate client disbursements.² Examples of these transactions include but are not necessarily limited to:

- On March 20, 2001, the balance in respondent's trust account was only \$79.42. On that day, respondent transferred \$1,000 from another account to his trust account and issued check no. 1981 for \$1,000 to his client M.S.
- On April 3, 2001, the balance in respondent's trust account was only \$279.57. On that day, respondent transferred \$3,000 from his business account to his trust account. On April 4, 2001, respondent issued trust account check no. 1982 for \$1,000 on behalf of his client L.P.
- On April 5, 2001, respondent issued trust account check nos. 1986 for \$1,330.91 and 1987 for \$1,800, in the L.P. and D.H./T.H. matters, respectively. Respondent transferred additional funds from his business

² Respondent's redeposit of personal funds into his trust account indicates that respondent was aware of the shortages in his trust account.

account on April 16 and 24, 2001, to ensure that all of these checks would clear.

10. On June 13, 2002, the balance in respondent's trust account was \$446.61. On that day, respondent deposited \$25,000 in personal funds into his trust account in order to cover the following client disbursements:

<u>Date</u>	<u>Check No.</u>	<u>Payee</u>	<u>Amount</u>
6/13/02	2125	Shannon Munson	\$7,747.81
6/26/02	2126	L. W.	700.00
7/18/02	2127	Fairview Health (for S.E.)	1,443.92
7/29/02	2130	L.P.	<u>725.56</u>
		Total:	\$10,617.29

By September 26, 2002, respondent had disbursed the remainder³ of the \$25,000 deposit by issuing checks totaling \$14,800 to himself, thus reducing the trust account balance to \$30.12.

11. The clients from whom respondent misappropriated funds during the audit period include Shannon Munson, L.S., S.C., M.S., L.P. and D.N. These transactions are detailed below.

Shannon Munson Representation

12. On September 21, 1999, Shannon Munson retained respondent to represent her in connection with injuries she sustained in an automobile accident.

13. On or about September 25, 2000, respondent settled Munson's claim against one of the insurers for \$100,000.

14. On October 4, 2000, respondent deposited the Munson settlement funds into his trust account. In early October 2000, respondent issued trust account checks to Munson and another lawyer involved in the matter for \$28,353 and \$16,667, for their

³ In making the \$10,617.29 in legitimate client disbursements and the \$14,800 of unattributed disbursements to respondent, respondent actually disbursed more than the \$25,000 personal funds deposit (i.e., \$10,617.29 + \$14,800 = \$25,417.29).

respective shares of the settlement. Respondent also withdrew the \$16,929.65 in fees and costs to which he was entitled.

15. Respondent withheld \$38,050.68 from the settlement, from which he was to hold \$28,050.68 in trust for Munson's unpaid medical bills (including approximately \$20,000 owed to Regions Hospital) and \$10,000 for future costs in pursuing related claims (underinsured and product liability cases).

16. After October 18, 2000, respondent misappropriated the Munson funds in their entirety through a series of transfers to his business account. These transfers included the following:

10/18/00	\$ 3,000.00
10/19/00	\$ 3,000.00
10/23/00	\$ 1,100.00
10/24/00	\$ 900.00
10/30/00	\$ 3,500.00
11/06/00	\$ 1,000.00
11/08/00	\$ 1,500.00
11/15/00	\$ 1,700.00
11/16/00	\$ 4,600.00
11/24/00	\$ 2,000.00
11/28/00	\$ 2,500.00
12/04/00	\$ 2,100.00

17. Using funds he was to be holding for other clients, respondent issued trust account checks to Munson on October 24, 2001 (\$1,000), December 31, 2001 (\$1,000), and June 13, 2002 (\$7,747.81). Respondent also issued a \$54 check to St. Croix Emergency on Munson's behalf on August 7, 2001. After these disbursements, respondent should have been holding \$28,248.87 in his trust account for Munson's unpaid medical bills and the related causes of action. Due to respondent's misappropriations, the balance in respondent's trust account on June 13, 2002, was only \$17,697.24. By September 26, 2002, the end of the Director's audit period, the balance was \$30.12.

18. As a result of respondent's misappropriation, respondent's trust account balance was at all times during the audit period insufficient to cover the client funds

due and owing Munson and other clients. For significant periods on and after October 19, 2000, respondent's trust account balance was insufficient to cover the funds withheld from the Munson settlement.

19. To date, respondent has not paid Munson's medical bills nor has he refunded the \$28,248.87 to Munson.

L.S. Representation

20. Respondent represented L.S., a minor, in a claim for injuries sustained on an amusement ride at the State Fair.

21. In October 1999 respondent settled L.S.'s claim against one of the named defendants for \$75,000.

22. The settlement was paid in the form of three checks: (a) \$32,961.16 payable to a bank to be held and administered by the court on L.S.'s behalf until she reached the age of 18 years; (b) \$34,856.90 payable to respondent for his attorney's fees and costs; and (c) \$7,181.94 payable to respondent to be held in trust to cover the subrogation claim of Meridian Resource Corporation.

23. Between October 1999 and October 17, 2001, when the bank paid respondent's trust account check to Meridian, respondent should have been holding the \$7,181.94 in subrogation funds in his trust account. However, due to respondent's misappropriation, the balance in his trust account during the period from at least January 1, 2000, to October 17, 2001, was insufficient to cover the client funds due and owing to L.S. and other clients. For significant periods on and after January 14, 2000, the balance in respondent's trust account was insufficient to pay the \$7,181.94 subrogation funds due to Meridan.

24. On October 3, 2001, respondent issued a \$7,181.94 trust account check to Meridian in satisfaction of its subrogation claim. On October 17, 2001, the bank paid respondent's check with funds respondent deposited into the account for other clients (S.C. and/or J.R.).

S.C. Representation

25. Respondent represented S.C. in connection with injuries sustained in a car accident.

26. On or about October 2, 2001, respondent settled S.C.'s injury claim for \$10,000. Respondent deposited the settlement proceeds into his trust account on October 2, 2001.

27. Respondent retained \$5,598.66 from the settlement, which he was to hold in his trust account pending the no-fault arbitration of a chiropractic bill.

28. On and after October 16, 2001, respondent misappropriated the S.C. funds to cover various client disbursements, including the check to Meridian Resources in the L.S. matter.

29. On January 16, 2002, the no-fault arbitrator issued an award requiring the insurer to pay \$4,000 toward the chiropractic bill. On January 23, 2002, consistent with the arbitrator's award, the insurer issued a \$4,000 check directly to S.C., which S.C., in turn, paid over to the chiropractor.

30. On February 14, 2002, respondent issued a \$4,459.66 trust account check to S.C. On February 19, 2002, the bank paid the check with funds respondent deposited into his trust account for his clients S.E., B.W. and/or R.H.

31. On April 24, 2002, respondent issued a \$1,139 trust account check to S.C., after learning that the insurer had paid the final medical bill. On April 30, 2002, the bank paid the check with funds respondent deposited into his trust account for other clients.

32. As a result of respondent's misappropriation, the balance in his trust account during the period October 2, 2001, through at least April 30, 2002, was at all times insufficient to cover the client funds due and owing to S.C. and other clients. For significant periods on and after October 17, 2001, the balance in respondent's trust account was insufficient to cover the \$5,598.66 withheld from the S.C. settlement.

M.S. Representation

33. Respondent represented M.S. in connection with personal injuries sustained in a car accident.

34. In December 1999 respondent settled M.S.'s claim with the insurer. Respondent deposited the \$22,500 settlement draft into his trust account.

35. Respondent retained \$4,255 from the settlement funds, which he was to hold in his trust account to pay various outstanding medical bills, including a \$2,431 bill owed to Occupational Rehabilitation Center (ORC).

36. On June 12, 2000, respondent issued a \$213.78 trust account check to a medical provider on M.S.'s behalf, which the bank paid on June 16, 2000.

37. On February 15, 2001, respondent issued a \$1,580.15 trust account check to ORC, stating, "We believe the amount of the check reflects the comprehensive amount agree [sic] on." This check was never negotiated. In fact, the balance in respondent's trust account during the period immediately following February 15, 2001, would have been insufficient to cover the check.

38. On March 20, 2001, respondent issued a \$1,000 trust account check to M.S. On March 21, 2001, the bank paid the check with funds respondent transferred into his trust account from his business account.

39. On April 9, 2001, respondent prepared a settlement statement addressing the \$4,255 in outstanding M.S. medical bills. The statement represented, among other things, that respondent had paid \$1,580.15 to ORC.

40. On April 9, 2001, respondent also issued a \$1,466.85 trust account check to M.S. representing the balance remaining in trust after payment of M.S.'s medical bills. On April 11, 2001, the bank paid the check with funds respondent transferred into his trust account from his business account.

41. On January 28, 2002, respondent issued a \$1,580.15 trust account check to ORC. On February 1, 2002, the bank paid the check with funds respondent deposited into his trust account for other clients.

42. As a result of respondent's misappropriation, the balance in respondent's trust account during the period from at least January 1, 2000, to January 28, 2002, was at all times insufficient to cover the client funds due and owing to M.S. and other clients. For significant periods on and after January 24, 2000, the balance in respondent's trust account was insufficient to cover the funds withheld from the M.S. settlement.

L.P. Representation

43. Respondent represented L.P. in a personal injury matter.

44. On or about August 22, 2000, respondent settled L.P.'s claim for \$6,000. Respondent deposited the L.P. settlement funds into his trust account on August 24, 2000.

45. L.P. directed respondent to retain the entire amount of her settlement in his trust account pending resolution of her related medical bills.

46. On and after August 29, 2000, respondent misappropriated the L.P. funds through a series of transfers to his business account. These transfers included the following:

08/29/00	\$ 3,000.00
09/01/00	\$ 1,000.00
09/06/00	\$ 500.00
09/08/00	\$ 200.00
09/13/00	\$ 700.00
09/15/00	\$ 250.00
09/18/00	\$ 200.00
09/19/00	\$ 150.00

47. On February 16, 2001, respondent issued L.P. a \$1,770.63 trust account check for her share of the settlement. On February 22, 2001, the bank paid the check with funds respondent deposited into his trust account for another client (J.R.).

48. On April 4, 2001, respondent issued a \$1,000 trust account check to his co-counsel in the L.P. matter. On April 9, 2001, the bank paid the check with funds transferred into respondent's trust account from his business account.

49. By July 29, 2002, respondent had apparently resolved L.P.'s medical bills and issued to L.P. her remaining \$725.56 trust account balance. The bank paid the check with funds respondent deposited into his trust account for other clients.

50. Due to respondent's misappropriations, the balance in respondent's trust account during the period August 24, 2000, to at least January 31, 2002, was at all times insufficient to cover the client funds due and owing to L.P. and other clients. For certain periods on and after September 6, 2000, the balance in respondent's trust account was insufficient to cover the funds he was to be holding for L.P.

D.N. Representation

51. Respondent represented D.N. in a personal injury matter.

52. On or about June 26, 2001, respondent settled D.N.'s claim for \$7,000.

53. Respondent initially deposited the D.N. settlement funds to an account other than his trust account. By June 27, 2001, however, respondent had transferred substantially all of the D.N. settlement funds into his trust account.

54. On June 26, 2001, respondent issued D.N. a \$3,623.38 trust account check for her portion of the settlement. Respondent retained \$1,043.52 from the settlement, which he was to hold in his trust account for outstanding medical expenses.

55. On April 8, 2002, respondent disbursed the D.N. settlement balance by issuing trust account checks to D.N. and various medical providers. The bank paid these checks with funds respondent deposited into his trust account for other clients.

56. Due to respondent's misappropriations, the balance in respondent's trust account during the period June 27, 2001, to at least January 31, 2001, was at all times insufficient to cover the client funds due and owing to D.N. and other clients. For

certain periods on and after July 6, 2001, the balance in respondent's trust account was insufficient to cover the funds withheld from the D.N. settlement.

57. Respondent's conduct in misappropriating client funds from his trust account violated Rule 8.4 (c) and (d), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Munson Matter - Misrepresentations and Failure to Provide Accounting in Order to Conceal Theft

58. Paragraphs 12 through 19 above are incorporated herein by reference.

59. Following the September 25, 2000, settlement, respondent was responsible for: (a) paying or arranging for payment of Munson's outstanding medical bills; and (b) pursuing Munson's possible products liability and underinsured motorist claims.

60. During the period October 2000 to October 2001, Munson continued to receive letters, billings and telephone calls from her medical providers seeking payment of her outstanding medical bills. Munson forwarded this information to respondent, who took little or no action regarding Munson's medical bills or her other claims of action.

61. On October 5, 2001, Munson wrote to respondent expressing frustration with respondent's lack of progress on her case. Munson requested an accounting of her trust funds and demanded that respondent immediately pay her medical bills. Munson also requested that respondent release \$2,000 to her from the settlement funds respondent was supposed to be holding.

62. On October 22, 2001, respondent issued Munson a \$1,000 trust account check, but did not provide Munson with the requested accounting or pay her medical bills.

63. On December 20, 2001, Munson again wrote to respondent, requesting release of the full amount of her trust funds and copies of any checks issued against those funds since the settlement. Respondent failed to respond.

64. On December 28, 2001, Munson again wrote respondent requesting release of her funds.

65. On December 31, 2001, respondent sent Munson another \$1,000 trust account check and stated, "We need to talk about the balance [sic] and I need to get balance [sic] due from experts." Respondent did not provide Munson with an accounting of her funds.

66. In February and April 2002, the Director began requesting trust account information from respondent's counsel concerning respondent's handling of the Munson settlement funds. On May 7, 2002, respondent's counsel provided a partial client ledger for the Munson matter. The ledger does not identify the amount of funds being held for Munson in trust.

67. Respondent did not release any additional trust funds to Munson or provide the requested accounting until June 13, 2002. On June 13, 2002, respondent wrote Munson enclosing an accounting and a trust account check payable to Munson for \$7,747.81.

68. The accounting provided by respondent was misleading and failed to list unpaid medical bills that were known to respondent and reflected in Munson's client file. These bills include, but are not limited to Maplewood Good Samaritan (\$882.12), Physician's Services (\$924.00) and Dr. Robert Clift (\$445.30). In addition, the accounting falsely implied that respondent was continuing to hold \$30,072.24 for Munson's medical creditors. In fact, the balance in respondent's trust account on June 13, 2002, was \$25,445.05 and at various times over the preceding 19 months had been less than \$1,000.

69. In his June 13, 2002, letter to Munson, respondent falsely stated:

At your request I recall sending a letter to the regents [sic] hospital assuring them that they would be paid out of the proceeds of the injury claims.

In fact, respondent had not given Regions Hospital a letter of protection or any other written assurance of payment.

70. Respondent's letter and accounting were false and misleading and were provided for the purpose of concealing his misappropriation of Munson's settlement funds.

71. Respondent's conduct in failing to promptly provide Munson with an accurate accounting or to promptly release her funds to her, and making false statements to Munson, violated Rules 1.4, 1.15(c), 4.1, and 8.4(c) and (d), MRPC.

THIRD COUNT

Failure to Maintain Required Trust Account Books and Records

72. During the period through at least May 2001, respondent failed to maintain the trust account books and records required by Lawyers Professional Responsibility Board (LPRB) Opinion No. 9.

73. Specifically, respondent failed to maintain proper trust account client subsidiary ledgers, trial balances and reconciliations.

74. In addition, respondent made numerous telephone and other transfers of funds from his trust account to his business account and other bank accounts without proper documentation, and failed to attribute the transferred funds to individual clients.

75. Respondent also inappropriately used his trust account as a business/personal account by depositing his and his wife's social security checks, and immediately transferring the proceeds to his business or other account during the period June to September 2001.

76. Respondent's conduct in failing to maintain proper trust account books, records and procedures violated Rule 1.15(h), MRPC, as further interpreted by LPRB

Opinion No. 9, and in using his trust account for personal purposes violated Rule 1.15(a), MRPC.

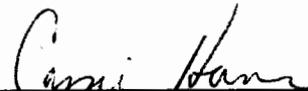
WHEREFORE, the Director respectfully prays for an order of this Court disbarring respondent or imposing otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: January 15, 2003.



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