

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against JEFFREY H. OLSON,
a Minnesota Attorney,
Registration No. 82004.

**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 October 5, 1979. Respondent currently practices law in Minnetonka, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

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

A. On November 9, 2005, respondent was issued an admonition for violation of Rules 1.3, 1.4, 1.5(b), 3.2, 3.4(c), and 8.4(d), MRPC.

FIRST COUNT

Walton Matter

1. On August 4, 2013, an individual using the name "Rina Walton" emailed respondent. In her email, Rina Walton stated she was seeking representation in the collection of amounts owed to her pursuant to a Japanese divorce decree. Rina Walton

stated that she resided in Japan, but that her former husband, whom she identified as "Tomio Walton," from whom the funds would be collected, resided in Minnesota.

2. In fact, "Rina Walton" and "Tomio Walton" are false identities of persons whose real identity has not yet been discovered. As described below, the "Waltons" enlisted respondent's help in presenting bogus checks to banks on four occasions in 2013, and in using those checks to wrongfully obtain funds from banks for the Waltons and respondent on three of those occasions. Respondent continues to claim that the Waltons are real persons and that Rina Walton was an actual client.

3. In a responsive email to Rina Walton, respondent agreed to represent her and attached a fee agreement, which Rina Walton later signed and returned. Respondent's fee agreement entitled him to a \$12,000 retainer against which respondent would charge his services at the rate of \$250 per hour. The fee agreement provided that the first \$1,000 of the retainer "IS NOT TRUST ACCOUNT FUNDS AND IS A NONREFUNDABLE FEE AS THIS IS FOR PRELIMINARY WORK TO BE DONE IMMEDIATELY."

4. At some point, Rina Walton provided copies of the purported Japanese divorce decree and other documents to respondent.

5. On August 15, 2013, Rina Walton sent an email to respondent in which she stated that when she informed her former husband that she had hired a lawyer to collect the funds due under their divorce decree, "he said he will be paying the fund [sic] to you but it is going to be paid twice to your firm." Rina Walton further stated that she expected her former husband's payment to be made to respondent "before Tuesday."

6. Respondent communicated to Tomio Walton that he preferred to receive the funds by way of wire transfer or a certified check. Tomio Walton declined to provide the funds in either of these forms. Respondent agreed to accept a non-certified check.

7. On August 19, 2013, respondent received, purportedly from Tomio Walton, a check in the amount of \$249,790 drawn on an account in the name of "Goodrich Landing Gear Services" (hereinafter "Goodrich") at the Bank of Montreal, Canada.¹ Tomio Walton told respondent that this check represented funds owed to him by Goodrich and that, at Tomio Walton's request, Goodrich had issued the check in respondent's name. Respondent did not ask Tomio Walton why Goodrich owed him money or why it was willing to issue its check to respondent. Tomio Walton did not volunteer an explanation, and respondent accepted his statements without taking any steps to verify them.

8. On August 20, 2013, respondent deposited the Goodrich check into his trust account at Flagship Bank. Later that day, a Flagship Bank representative told respondent that, because the check was drawn on a Canadian bank, the funds would not be made available for several weeks. Respondent directed Flagship Bank to reverse the deposit, which it did, and contacted Tomio Walton to request replacement funds.

9. Again, respondent communicated to Tomio Walton that he preferred to receive the funds by way of wire transfer or a certified check. Tomio Walton declined to provide the funds in either of these forms.

Wolf-Gordon Check Matter

10. On August 29, 2013, respondent received, purportedly from Tomio Walton, a check in the amount of \$249,900 drawn on an account in the name of Wolf-Gordon, Inc. (hereinafter "Wolf-Gordon") at KeyBank. Again, respondent understood that this check represented funds owed to Tomio Walton and that, at Tomio Walton's request, Wolf-Gordon had issued the check in respondent's name. Again, respondent did not ask Tomio Walton why Wolf-Gordon owed him money or why it was willing to

¹ During the entire period in which respondent was receiving and disbursing funds on behalf of Rina Walton, her funds were the only client funds in respondent's trust account.

issue its check to respondent. Tomio Walton did not volunteer an explanation, and respondent accepted his statements without taking any steps to verify them.

11. On August 29, 2013, respondent deposited the Wolf-Gordon check into his Flagship Bank trust account. Respondent emailed Rina Walton to inform her of the deposit and stated that he would be away from his office and unable to wire transfer the funds to her until September 16, 2013. In a responsive email, Rina Walton stated that she was "really having issue with my Son here he is seriously ill," that her former husband "said he cannot [sic] send me other money because he has sent all he has to you," and that she needed the funds more promptly "or my ex will cancel the check." In another email, Rina Walton stated that she was "relocating to England soon and I [sic] am willing to get a house with this money."

12. By email dated September 2, 2013, Rina Walton provided respondent with information regarding the bank account into which she wanted him to wire transfer the funds.

13. On September 5, 2013, respondent signed an international wire request form at Flagship Bank. Consistent with the information Rina Walton had provided to him on September 2, 2013, respondent directed the transfer of \$179,700 from his trust account to an account in the name of "Alexy Supplys" at "Lloyds TSB Bank" in the United Kingdom. Respondent did not ask Rina Walton about her relationship to "Alexy Supplys" or why she wanted her funds transferred to an account in that name.

14. Also on September 5, 2013, respondent directed the transfer of \$2,000 from his trust account into his business account in partial payment of his retainer.

15. During the period September 6 to 10, 2013, Rina Walton sent multiple email communications to respondent urgently requesting verification of the wire transfer to "Alexy Supplys."

16. In a September 10, 2013, email, respondent provided Rina Walton with a document he had received from Flagship Bank verifying the wire transfer to "Alexy Supplys."

17. On September 16, 2013, respondent issued to himself trust account check no. 5004 in the amount of \$10,000 in payment of the balance of his retainer.

18. As of September 16, 2013, respondent had provided only \$3,625 in legal services to Rina Walton.²

19. Respondent issued the following additional trust account checks, all of which were in payment of respondent's own business expenses, from the proceeds of the Wolf-Gordon check:

DATE	CK NO.	PAYEE	AMOUNT	PURPOSE
09/06/13	5001	Wayne R. Gadiant	\$ 55,000.00	Loan repayment
09/09/13	5002	William H. Henney	\$ 1,000.00	Office expenses
09/09/13	5003	Thimsen Ave. P/S	\$ 1,250.00	Office rent
09/19/13	5005	Richard Camp, CPA	\$ 500.00	Accounting services
09/19/13	5006	Jose Santos	\$ 250.00	Refund to client

Even under the terms of respondent's fee agreement with his purported client, Rina Walton, respondent was not entitled to these funds.

20. In the September 10, 2013, email by which respondent forwarded to Rina Walton verification of the wire transfer, respondent stated:

I am investigating the amount as there should be after deducting the \$12,000 for my retainer there should have been [sic] an additional \$58,000 paid to you. There could have been a mistake. This \$58,000 will be paid to you, but it will take me getting back to my office on Monday, September 16th to check all records.

² Despite language in his fee agreement with Rina Walton requiring him to do so, respondent did not provide Rina Walton with any invoices or billing statements. This amount is based on a billing statement respondent reconstructed after his representation of Rina Walton had terminated.

21. In fact, as detailed in paragraph 19 above, respondent had disbursed virtually all of the \$58,000 remaining from the Wolf-Gordon check in payment of his own business expenses. Respondent's statements in his September 10, 2013, email to Rina Walton were therefore false.

22. In a September 11, 2013, email, Rina Walton directed respondent to wire transfer the remaining \$58,000 of the Wolf-Gordon check to "Mr. Revan Wiryawan." Rina Walton stated, "Please kindly instruct your Bank to effect this transfer because the fund is meant for my important needs." Rina Walton sent at least three additional email communications to respondent on September 11 and 12, 2013, requesting that he transfer the \$58,000 to "Mr. Revan Wiryawan."

23. In a September 12, 2013, email, respondent stated, "there will be no wire transfer of \$58,000 until after I get back to my office on Monday, September 16th, and even then it may later [sic] as I stated in my email to you of September 10th."

24. During the period September 12 to 19, 2013, Rina Walton sent multiple email communications to respondent requesting him to wire transfer the remaining \$58,000 to "Mr. Revan Wiryawan" and providing respondent with information regarding the bank account into which she wanted him to transfer the funds. Respondent responded to Rina Walton that he was "working on it."

25. Respondent never transferred the \$58,000 to Rina Walton. Because Rina Walton was a fictitious client and was not entitled to the Wolf-Gordon funds, the funds in fact belonged to either KeyBank or Flagship Bank.

26. On February 6, 2014, KeyBank sued Flagship Bank and respondent in U.S. District Court for the District of Minnesota, seeking the return of the \$249,900. Flagship Bank cross-claimed against respondent, who in turn filed a cross-claim and a third party complaint against Rina and Tomio Walton. On July 23, 2014, the clerk of court issued a summons to respondent, but to date respondent has been unable to serve the Waltons with the complaint. The lawsuit is pending.

Flavor 1st Check Matter

27. On September 20, 2013, Rina Walton sent an email to respondent informing him that Tomio Walton would be sending another payment.

28. Again, respondent communicated to Tomio Walton that he preferred to receive the funds by way of wire transfer or a certified check. Tomio Walton declined to provide the funds in either of these forms.

29. On September 24, 2013, respondent received, purportedly from Tomio Walton, a check in the amount of \$224,706 drawn on an account in the name of "Flavor 1st Growers and Packers, LLC" (hereinafter "Flavor 1st") at TD Bank. Again, respondent understood that this check represented funds owed to Tomio Walton and that, at Tomio Walton's request, Flavor 1st had issued the check in respondent's name. Again, respondent did not understand, and did not ask Tomio Walton why Flavor 1st owed money to Tomio Walton or why it was willing to issue its check to respondent. Tomio Walton did not volunteer an explanation, and respondent accepted his statements without taking any steps to verify them.

30. Respondent deposited the Flavor 1st check into his Flagship Bank trust account on September 24, 2013.

31. In a September 24, 2013, email, respondent informed Rina Walton of the Flavor 1st deposit. In a responsive email, Rina Walton stated that she would provide information regarding the bank account into which she wanted respondent to transfer the funds and asked him to transfer the funds the very next day. Respondent responded that he would not be able to transfer the funds "until the bank tells me the check has cleared which may be in a couple of days or it may be longer." In several email communications that followed, Rina Walton continued to urgently demand that respondent transfer the funds and that he not "give me that [sic] excuses you gave me on my \$58,000."

32. On September 25, 2013, Rina Walton provided respondent with the information regarding the bank account into which she wanted respondent to transfer the Flavor 1st funds.

33. On September 26, 2013, consistent with the information Rina Walton had provided to him on September 25, 2013, respondent completed an international wire transfer request form directing the transfer of funds to the "OGAKI KYORITSU BANK, LTD." in Japan on behalf of "BERNARDS TRADING COMPANY LIMITED." Respondent did not ask Rina Walton about her relationship to "BERNARDS TRADING COMPANY LIMITED," or why she wanted her funds transferred to an account in that name.

34. Also on September 26, 2013, by way of trust account check no. 5007, respondent paid to himself \$2,247.06 of the Flavor 1st funds. Respondent was not entitled to these funds.

35. On September 27, 2013, Rina Walton emailed respondent and stated that she wanted him to transfer the Flavor 1st funds into an account different than the one of which she informed him on September 25, 2013. Rina Walton provided respondent with the information regarding that account. Later in the day on September 27, 2013, Tomio Walton provided respondent with information regarding an account—which may or may not have been the same account Rina Walton referenced in her September 27 email—into which respondent was to transfer the Flavor 1st funds. The bank identified by Tomio Walton was in the Netherlands and the account he identified was in the name of "SHOOTLE MEDIATONE EUROPE BV." Respondent did not ask Rina Walton about her relationship to "SHOOTLE MEDIATONE EUROPE BV" or why she wanted her funds transferred to an account in that name.

36. On the morning of September 30, 2013, Rina Walton emailed respondent and stated that she wanted him to transfer the Flavor 1st funds into an account different than the one of which she informed him on September 27, 2013. The account identified

by Rina Walton was in Malaysia. Rina Walton explained that her “guardian who raised me from early childhood passed on the early hours of monday [sic] morning Malaysian time” and that she would be traveling to Malaysia to be with her family.

37. On September 30, 2013, respondent signed another international wire request form. Consistent with the information that had been provided to him by Rina Walton on September 30, 2013, respondent directed the transfer of \$222,500 from his trust account to “CIMB BANK BERHAD” in Malaysia on behalf of “TOBEST NORA ENTERPRISE.” In a September 30, 2013, email, Rina Walton explained to respondent that “TOBEST NORA ENTERPRISE” “is my Family member.”

38. In emails dated October 1 and 3, 2013, email, Rina Walton informed respondent that Tomio Walton would be remitting another payment to him. Rina Walton stated that Tomio Walton had not “disclose[d] the Amount to me that you will let me know.” In her emails, Rina Walton again inquired of respondent regarding payment of the \$58,000 balance from the Wolf-Gordon funds.

39. Again, respondent communicated to Tomio Walton that he preferred to receive the funds by way of wire transfer or a certified check. Tomio Walton declined to provide the funds in either of these forms.

Old Dominion Check Matter

40. On October 3, 2013, respondent received, purportedly from Tomio Walton, a check in the amount of \$498,500 drawn on an account in the name of “Old Dominion Freight Line, Inc.” (hereinafter “Old Dominion”) at Wells Fargo Bank. Again, respondent understood that this check represented funds owed to Tomio Walton and that, at Tomio Walton’s request, Old Dominion had issued the check in respondent’s name. Again, respondent did not understand, and did not ask Tomio Walton why Old Dominion owed money to Tomio Walton or why it was willing to issue its check to respondent. Tomio Walton did not volunteer an explanation, and respondent accepted his statements without taking any steps to verify them.

41. Respondent deposited the Old Dominion check into his Flagship Bank trust account on October 3, 2013.

42. In an October 3, 2013, email to Rina Walton, respondent informed her that he had received and deposited into his trust account "a check for \$435,500." Respondent's statement was false, as the amount of the Old Dominion check was actually \$498,500. Respondent further stated, "I am working on the \$58,000 payment. I think I am close."

43. On October 3, 2013, by way of trust account check no. 5008, respondent paid to himself \$125 of the Old Dominion funds. On October 9, 2013, by way of trust account check no. 5009, respondent paid to himself an additional \$2,000 of the Old Dominion funds. Respondent was not entitled to these funds.

44. In an October 4, 2013, email Rina Walton provided respondent with information regarding the account into which she wanted him to transfer the Old Dominion funds "and the 58,000 left on the first Transfer."

45. During the period October 3 to 7, 2013, Rina Walton sent respondent a series of emails in which she urgently demanded that he immediately arrange for the transfer of the Old Dominion funds.

46. On October 7, 2013, respondent signed an international wire request form. Consistent with the information that Rina Walton had provided him on October 4, 2013, respondent directed the transfer of \$495,500 from his trust account to an account in the name of "AMP FZE" at "Emirates NBD Bank" in the United Arab Emirates. Respondent did not ask Rina Walton about her relationship to "AMP FZE" or why she wanted her funds transferred to an account in that name.

47. In an October 7, 2013, email, respondent provided Rina Walton with the completed international wire transfer request form and stated that \$495,500 was being wire transferred to her "according to your instructions" and that that amount "includes my payment to you of \$58,000."

48. Respondent's statement to Rina Walton that the funds he was transferring on October 7, 2013, included the \$58,000 remaining from the Wolf-Gordon funds was false. In fact, the \$495,500 respondent wire transferred to Rina Walton on October 7, 2013, consisted entirely of the funds respondent had received from Old Dominion.

49. On October 7 and 8, 2013, respondent received from Rina Walton a series of email communications in which she urgently requested verification of the transfers to of both the Flavor 1st and Old Dominion funds.

50. On October 8, 2013, the Old Dominion check respondent deposited into his Flagship Bank trust account was returned, causing a \$498,500 overdraft in the account. At that point or soon thereafter, respondent and Flagship Bank realized that Rina Walton was a fictitious person and that the checks respondent deposited into his trust account on her behalf had been fraudulently altered.

51. Until October 8, 2013, however, respondent believed Rina Walton to be an actual person and client, that the legal matter in which he represented her was legitimate and that the funds he received on her behalf were authentic.

52. As of October 8, 2013, respondent had provided only \$4,500 in legal services to Rina Walton. As noted in paragraphs 14 and 17 above, however, as of September 16, 2013, respondent had disbursed to himself the entire \$12,000 retainer provided for under his fee agreement with Rina Walton as well as additional amounts to which he was not entitled.

53. Respondent's conduct in failing to make a diligent and competent analysis of the "Waltons" legal matter (including failing to competently take steps to confirm that the "Waltons" were who they claimed to be) violated Rules 1.1 and 1.3, MRPC.

54. Respondent's conduct in charging an unreasonable fee and making false statements to "Rina Walton," based on respondent's belief that she was an actual client, violated Rules 1.15(a), 1.5(a), and 8.4(a), MRPC.

55. Respondent's conduct in obtaining \$58,000 from a bank to which he had no legal entitlement violated Rule 8.4(a) and (c), MRPC.

SECOND COUNT

Wellington Matter

56. On February 24, 2011, Susan W. Wellington retained respondent to represent her in a dissolution of marriage against George Wilkinson. Wilkinson represented himself.

57. Respondent and Wellington entered into a written fee agreement for the representation. Under the terms of the agreement, Wellington paid a retainer of \$2,000, \$1,000 of which was to be "nonrefundable" because it was for "preliminary work to be done immediately."

58. In his first meeting with Wellington and Wilkinson, respondent told them, among other things, that they were not to tamper with or dispose of any joint assets.

59. On March 14, 2011, respondent asked Wellington to sign a new fee agreement. Wellington agreed. Under the terms of the new agreement, Wellington paid a "flat fee" of \$2,500 that was to cover a \$404 filing fee and "all attorneys fees through trial."

60. On April 4, 2011, respondent was to meet jointly with Wellington and Wilkinson. Prior to the meeting, respondent met with Wellington alone and told her the cost of the anticipated representation exceeded his expectations, and he wanted Wellington to lend him \$25,000 rather than charging her additional attorney fees.

61. Respondent immediately presented a promissory note to Wellington that he had prepared in advance. Wellington was surprised at respondent's request, but signed the promissory note and gave respondent a \$25,000 check from a joint account with Wilkinson despite Wellington's concerns about whether she was following respondent's earlier advice not to dissipate marital assets. Under the terms of the

agreement, in exchange for Wellington's loan of \$25,000 on April 4, 2011, respondent promised to pay her \$30,000 (\$25,000 principal plus \$5,000 interest) on June 4, 2011. Respondent used up the funds soon after.

62. In entering into a loan transaction with Wellington, respondent did not: (a) advise Wellington in writing of the desirability of seeking independent legal advice about the loan; (b) give Wellington a reasonable opportunity to obtain independent legal advice about the loan; and (c) obtain Wellington's informed consent, in a document separate from the loan agreement, to the essential terms of the loan, respondent's role in the loan, and whether respondent was representing Wellington with regard to the loan.

63. On April 7, 2011, respondent filed a summons and petition for dissolution in Wellington's case and a certificate of representation.

64. On May 17, 2011, respondent emailed Wellington. A portion of the email requested an additional "short term" loan of \$5,000 from Wellington that respondent would repay by either June 15 or 30, 2011. Wellington responded to respondent's email but not to respondent's loan request.

65. Respondent failed to repay the loan to Wellington by June 4, 2011.

66. On June 10, 2011, Wellington emailed respondent requesting to pick up a check in repayment of the loan that day. Respondent replied and told Wellington he would "make payments" beginning the following week and pay off the loan in full by July 10, 2011.

67. On June 17, 2011, Wellington emailed the following to respondent: "Jeff, Today George asked me the balance of our savings [sic]. I don't like to be put in a position where I have to dissemble. Please can we conclude this particular chapter. Susan." Respondent did not respond.

68. On July 8, 2011, Wellington emailed respondent, noted his failure to respond to her June 17, 2011, email, and requested a response. Wellington also wrote:

"I fear the business of the loan is becoming a matter of bad faith." Respondent replied and asked Wellington to meet him during the first part of the week of July 18, 2011.

69. On or about July 11, 2011, respondent made a partial loan repayment of \$4,500 to Wellington.

70. Wellington emailed respondent after receiving the \$4,500 payment. Wellington wrote: "I did receive your payment of \$4500. Thank you. However, I do not intend to meet with you until the loan is paid." Thereafter, Wellington did not meet with respondent again except for on August 16, 2011, in connection with a court hearing (*see below*).

71. On August 16, 2011, respondent emailed Wellington and told her he could not repay the loan at that time, but expected to be able to do so by the following week. Respondent also confirmed that he would be at a scheduled court hearing with her later that day.

72. At the August 16, 2011, hearing, the court ordered respondent to submit a stipulated judgment and decree by September 16, 2011, and that a judgment would not be entered until January 2, 2012, in accordance with Wellington's and Wilkinson's agreement.

73. On September 1, 2011, Wellington emailed respondent and said if he did not repay the loan by September 9, 2011, she would file a complaint with the Lawyers Professional Responsibility Board. Respondent replied and told Wellington he was "close to getting the funds to make full payment" but needed until at least September 23, 2011, to repay the loan. Wellington granted respondent an extension to repay the loan to noon on September 23, 2011. Respondent failed to repay the loan at that time.

74. Respondent filed a signed marital termination agreement (MTA) in Wellington's case on September 26, 2011. Respondent emailed Wellington and Wilkinson on the following day to notify them that the MTA had been filed.

75. On January 12, 2012, the court reviewed and approved the MTA in Wellington's case and issued a notice of the entry of judgment to respondent. Respondent did not provide Wellington with a copy of the judgment and decree until July 2012, after Wellington requested it from respondent.

76. On February 20, 2012, Wellington emailed respondent and said she had prepared a complaint to the Office of Lawyers Professional Responsibility (OLPR) based upon his conduct in the loan agreement. Respondent replied on February 21, 2012, and said he would repay Wellington in full by the end of March 2012. Wellington filed a complaint with the OLPR on February 22, 2012.

77. Respondent failed to repay Wellington by the end of March 2012 as he had promised to do on February 21, 2012.

78. On April 24, 2012, respondent met with the Director regarding Wellington's complaint. Respondent told the Director he would pay off the loan to Wellington by June 1, 2012. Respondent failed to do so.

79. On June 22, 2012, respondent told the Director's Office that he hoped to repay Wellington the following week. Respondent failed to do so.

80. On April 3, 2013, Wellington emailed respondent to request repayment of the loan. Respondent replied on April 4, 2013, and told Wellington he had suffered serious injuries in an auto accident "on June 26, 2013 [sic]." Respondent wrote, "Unfortunately, this has delayed getting you paid." Respondent said he intended to pay Wellington "in full" by April 30, 2013, and would "make a payment" to Wellington within a week.

81. On April 8, 2013, respondent emailed Wellington and told her he had a check for her in the amount of \$20,500 that was dated April 10, 2013. Wellington picked up the check, which was drawn on respondent's trust account, from respondent on the following day.

82. To date, respondent has not paid the \$5,000 in interest due under the loan agreement with Wellington.

83. Respondent's conduct in entering into a loan transaction with Wellington without required consent and disclosures violated Rule 1.8(a), MRPC.

THIRD COUNT

Mobil Auto Rescue & Repair, LLC

84. Marshall Franzman is the owner of Mobil Auto Rescue & Repair, LLC (hereinafter "Mobil"). Sheri Selig is Franzman's significant other and the bookkeeper for Mobil.

85. On December 19, 2011, respondent and Mobil entered into a \$500 "flat fee" agreement regarding an unemployment compensation matter with a former employee Kenneth Hall. Respondent described the legal work he was to do as follows: "Kenneth Hall's claim for unemployment insurance to include [illegible] hearing & letter of reconsideration and does not include Court of Appeals appeal." The \$500 flat fee was to cover respondent's legal fees but not costs.

86. Respondent's flat fee agreement with Mobil failed to state that: (a) the fee would not be held in the trust account until earned; (b) that Mobil (the client) had the right to terminate the client-lawyer relationship; and (c) that Mobil would be entitled to a refund of all or a portion of the fee if the agreed-upon legal services were not provided.

87. On February 6, 2012, an administrative hearing was held by phone to determine Hall's employment status. Franzman and Selig attended the hearing with respondent. At respondent's request, the hearing was continued to February 22, 2012, in order to allow Mobil to obtain the testimony of two additional witnesses.

88. Respondent emailed Franzman later on February 6, 2012. Respondent said "after thinking about this a little bit over the last several hours" he wanted Franzman to pay an additional \$500 for his representation. Respondent also wrote:

“My thinking is simple. The case has doubled. What was going to be one hearing is now two hearings.” Franzman felt he had no choice but to pay respondent an additional \$500, and did so.

89. On February 27, 2012, an unemployment law judge with the Department of Employment and Economic Development (DEED) ruled that Hall was an employee of Mobil’s rather than an independent contractor. Respondent requested reconsideration of the decision on March 12, 2012. A final order affirming the decision was issued on April 16, 2012.

90. In anticipation of filing an appeal of the court’s decision, Franzman and Selig met with respondent on March 14, 2012, to discuss respondent’s representation of Mobil in an appeal of the Hall matter to the Minnesota Court of Appeals.

91. Respondent confirmed the March 14, 2012, meeting with Franzman and Selig in email to Franzman on March 13, 2012. Respondent proposed a new “flat fee” agreement under which Mobil would pay \$1,750 to (a) “stop all collection” of the amount assessed to Mobil by DEED and the Minnesota Department of Revenue, and (b) the appeal to the Court of Appeals. Respondent attached a draft of the proposed new agreement.

92. Respondent’s new flat fee agreement failed to state that (a) the fee would not be held in the trust account until earned; (b) that the client has the right to terminate the client–lawyer relationship; and (c) that the client will be entitled to a refund of all or a portion of the fee if the agreed-upon legal services are not provided. Franzman accepted the new flat fee agreement and signed it on behalf of Mobil.

93. On April 19, 2012, respondent emailed Franzman and Selig and attached a copy of the petition for writ of certiorari, the writ of certiorari, and a statement of the case for their review prior to it being filed with the Court of Appeals.

94. On May 15, 2012, respondent filed the petition for writ of certiorari and statement of the case regarding the Hall matter with the Court of Appeals. On May 16, 2012, respondent emailed Selig and told her of the filing.

95. On May 25, 2012, DEED filed a motion in the Court of Appeals to dismiss Mobil's appeal based on respondent's failure to serve the petition for writ of certiorari on DEED within the time period required by Minn. Stat. § 268.105, subdiv. 7(a) (2011).

96. Respondent failed to advise Franzman or Selig of DEED's motion to dismiss Mobil's appeal to the Court of Appeals and failed to fully disclose and explain to Franzman and Selig the full effect on the appeal of respondent's failure to properly serve the writ for certiorari.

97. On June 4, 2012, after respondent failed to respond to several unanswered telephone messages, Selig emailed respondent and requested information about the status of the appeal. Respondent replied to Selig on the following day. Respondent apologized for his failure to respond to Selig's telephone messages. Respondent indicated that DEED had filed a motion to dismiss the appeal "claiming improper service," but gave Selig no other explanation. Respondent did not tell Selig the basis for the motion to dismiss was respondent's failure to serve the petition for writ of certiorari upon DEED within the time limit, causing Mobil to lose the right to appeal the matter.

98. Selig replied to respondent's June 5 email shortly after it was sent. She wrote, "I don't know what that means. I am hoping that is good for us? But, for some reason I have a feeling it is not." Respondent failed to respond. Later that day, Selig emailed respondent again and told him she was trying to figure out what the motion to dismiss meant and that she did not believe it was favorable. Selig also asked respondent how he intended to deal with the matter. Respondent did not respond.

99. Later on June 5, 2012, Selig emailed respondent for a third and final time. She wrote that she had not heard from respondent, she was trying to understand the

status of the case, and she was scared. Selig again asked respondent how he was planning to handle the case. Respondent did not respond.

100. On June 6, 2012, Selig emailed respondent again, saying she was confused about the Hall case and wanted respondent to call with an update. On the same day, respondent, without the knowledge or authorization of Franzman or Selig, contacted Dennis D. Evans, who is an attorney and the Chief Compromise Officer with DEED, to discuss settlement options in the Hall matter. As described below, between June 6 and 13, 2012, respondent communicated with Evans several times that week and eventually reached a settlement agreement with DEED without Franzman's or Selig's knowledge.

101. On June 8, 2012, respondent filed a notice of voluntary dismissal with the Court of Appeals. Respondent did not copy Franzman or Selig on the notice or tell them he had filed it.

102. On Monday, June 11, 2012, the Court of Appeals issued an order dismissing the appeal and discharging the writ of certiorari. Respondent did not provide Franzman or Selig with a copy of the order dismissing their appeal.

103. On June 11, 2012, Evans emailed a letter to respondent with a draft of a compromise settlement agreement in the Hall matter that Evans had already signed. Respondent emailed Evans and asked him to make one change and return a corrected copy to respondent. Evans made the change and emailed a corrected version to respondent for the signature of a representative of Mobil.

104. Also on June 11, 2012, Selig and respondent exchanged several email messages. Respondent did not tell Selig or Franzman that he had filed a voluntary dismissal of the Hall case with the Court of Appeals on June 8, 2012, and that in doing so Mobil gave up the right to contest Hall's unemployment compensation claim.

105. On June 11, 2012, respondent emailed a settlement agreement to Selig for Franzman's signature in the Hall matter. Respondent stated DEED had signed the agreement with terms consistent with their agreement. Selig responded a few minutes

later with questions, including whether Mobil could still have a hearing. Respondent told Selig Mobil "cannot have hearing," but did not explain how the settlement with DEED came to be or its significance.

106. Later on June 11, 2012, Selig emailed respondent and asked if a hearing was dependent on Mobil's signing the compromise settlement agreement with DEED. Respondent's reply was, "We have an [sic], and with an agreement there is no hearing." Respondent did not inform Selig then or later that the agreement with DEED was not final until Mobil signed the compromise settlement agreement. In a later email on June 11, 2012, respondent confirmed to Selig the "fines and penalties would go away."

107. Respondent told Selig that the settlement agreement was the only option they had to conclude the Hall matter, and that the settlement needed to be completed quickly or they would be forced to pay three times more money to DEED. Franzman and Selig believed they had no other option than to settle the matter without their input into the compromise settlement agreement.

108. On June 12, 2012, the Court of Appeals filed an order dismissing the appeal and discharged the writ of certiorari based upon respondent's notice of voluntary dismissal. Respondent failed to provide Franzman or Selig with a copy of the Court's order.

109. On June 12, 2012, Selig and respondent continued to exchange emails. Selig told respondent she logged onto the unemployment website. She asked respondent why it indicated Mobil owed \$1,759 for April through June 2012.

110. Respondent replied to Selig's email on June 13, 2012. Respondent told Selig that under the agreement she needed to pay \$1,500 to DEED and "when that happens that [the remaining amounts owed] will be erased." Selig responded with several questions to respondent, including when the unpaid amount would "not be there again." Respondent repeated that the amount owed would be "wiped out" because of the settlement agreement, but that he would check on the status. Selig

thanked respondent, and said it was “scary . . . that you can just owe money without a clue as to why.”

111. On June 18, 2012, Selig emailed respondent requesting to know if payment was received and what would happen next. Respondent did not respond.

112. On June 21, 2012, respondent requested a “business loan” from Franzman and Selig in an email with a subject line of “Short term loan big pay back” that began, “Marshall and Sheri: I need your help.” Respondent proposed a loan with a six-day payback, either a \$6,000 loan with \$9,000 payback, or a \$5,000 loan and \$7,500 payback.

113. Selig responded that respondent’s loan request was “ironic,” as they were waiting for respondent to explain how much of a refund of the attorney fees they paid they could expect and that they were waiting for a copy of DEED’s motion to dismiss.

114. Respondent replied to Selig’s email on June 21, 2012. Respondent said, in part, that there would no refund because of the large amount of work required to be done by respondent and that the settlement “was better than the worst decision” and “worse than the best decision that you pay nothing.”

115. Respondent’s June 21, 2012, email to Selig also contained the following: “You paid a filing fee of \$550.00 and a premium of \$120.00 for a Cost Bond, all that were necessary to have the appeal and reach the Settlement.” Respondent’s statement was false.

116. On June 22, 2012, Selig replied to respondent and requested copies of the documents that were filed for the hearing and motion to dismiss due to improper service. Selig stated that respondent billed for services that were not discussed. Selig also terminated respondent’s representation. Respondent failed to provide Selig with a copy of the documents she requested.

117. On June 21, 2012, Franzman filed an ethics complaint against respondent with the OLPR. Franzman alleged respondent advised him a motion to dismiss was filed by DEED regarding his appeal of the matter to the Court of Appeals but that

respondent had not explained what the motion was and had not provided a copy of the motion.

118. On June 29, 2012, Selig emailed respondent and stated she had not received copies of the documents she requested. Selig requested to pick the documents up from respondent that afternoon. Respondent's reply email stated: "I will get it to you. I have been in the hospital since late Tuesday." Shortly thereafter, Selig again emailed respondent about the on-line account. Respondent failed to respond.

119. Respondent's conduct in entering in and charging a flat fee to Mobil without required notices violated Rule 1.4(a)(3) and 1.5(b)(1), MRPC. Respondent's conduct in charging Mobil an additional \$500 on February 6, 2012, after the case was in progress and after agreeing to handle the matter on a flat fee that Mobil had already paid violated Rule 1.5(a) and (b), MRPC.

120. Respondent's conduct in failing to serve a petition for a writ of certiorari with the Minnesota Court of Appeals in the Mobil case within the required time, as described above, violated Rules 1.1 and 1.3, MRPC.

121. Respondent's conduct in failing to communicate with Selig or Franzman about the *Mobil Auto Rescue & Repair, LLC vs. Hall* matter, including failing to: (a) return Selig's phone calls and respond to Selig's email seeking information about Mobil's case in late May and early June 2012; (b) communicate with Franzman and Selig about DEED's motion to dismiss and to explain its significance to Mobil's case; and (c) provide copies to Franzman and Selig of pleadings and orders filed in their case violated Rules 1.4(a)(1), (3) and (4), and 1.4(b), MRPC.

122. Respondent's conduct in falsely telling Selig on June 21, 2012, that Mobil had "paid a filing fee of \$550 and a premium of \$120 for a cost bond" violated Rules 4.1 and 8.4(c), MRPC.

123. Respondent's conduct in communicating with Evans about Mobil's case and in settling Mobil's case with DEED without Selig's and Franzman's knowledge or consent violated Rules 1.2 and 1.4(a)(2) and (3), MRPC.

FOURTH COUNT

False Statements to the Director

Franzman Matter

124. On June 25, 2012, the Director's Office received Franzman's complaint against respondent. On August 17, 2012, the Director received respondent's response (dated March 29, 2012) to the Franzman complaint. In his response, respondent failed to disclose that he had failed to serve the petition for writ of certiorari upon DEED, that DEED filed a motion to dismiss Mobil's case or that the matter was dismissed by the Court of Appeals.

125. In his response to Franzman's complaint, respondent made the following additional false statements:

After a couple of weeks I was able to have discussions with the attorney in the MN Attorney General's Office handling the appeal, and had a meeting with him at his office in St. Paul. At his suggestion I had discussions with an attorney in his department that handles settlement . . . but after several conversations exploring possible terms for a settlement we came up with settlement terms to discuss with our clients. I called Mobil, and discussed these terms that invoked making a payment to MN Unemployment Insurance, but the payment would be substantially below the amount that would have to be paid with an unfavorable decision from the MN Court of Appeals. Mobil said "yes" to these terms, and the settlement documents with these terms were sent to Mobil, and Mobil made the payment according to the settlement.

With the completion of the settlement and the dismissal of the appeal case filed my representation of Mobil ended.

126. Respondent failed to disclose to the Director until December 20, 2012, that (a) he failed to timely serve the petition for writ of certiorari regarding Mobil's appeal;

and (b) the settlement negotiations with DEED were only the result of respondent's failure to timely serve the petition for writ of certiorari and the loss of Mobil's right to contest Hall's unemployment compensation claim. Respondent's disclosure was in response to an inquiry from the Director dated December 6, 2012.

127. In his response to Franzman's complaint, respondent also falsely stated that he communicated with Franzman and Selig about the dismissal of Mobil's case against Hall and that they understood why the case settled. In fact, neither Franzman nor Selig, at the time Franzman filed his complaint, understood why the Court of Appeals matter was dismissed and how it affected Mobil's position in the case.

Walton Matter

128. During a May 1, 2014, meeting with representatives of the Director, respondent stated that (a) Rina Walton had agreed to loan to him the \$58,000 he disbursed on his behalf from the Wolf-Gordon deposit as described in paragraph 19 above; (b) he told Rina Walton he would prepare a promissory note and other documents regarding the loan; and (c) because Rina Walton immediately changed her mind regarding the loan and began demanding repayment, he never prepared the loan documents.

129. Respondent's statements to the Director as described in paragraph 128 above were false. Rina Walton did not authorize a \$58,000 loan to respondent from the Wolf-Gordon funds.

130. Also during the May 1, 2014, meeting with representatives of the Director, respondent stated that Rina Walton authorized payment of the \$2,247.06 he disbursed to himself from the Flavor 1st deposit as described in paragraph 34 above as an additional fee. Respondent's statement was false. Rina Walton did not authorize respondent to pay himself an additional fee.

131. Also during the May 1, 2014, meeting with representatives of the Director, respondent stated that Rina Walton authorized payment of the \$2,125 he disbursed to

himself from the Old Dominion deposit as described in paragraph 43 above as an additional cost and/or fee. Respondent's statement was false. Rina Walton did not authorize respondent to pay himself additional fees or costs.

132. Respondent's conduct in making false statements to the Director violated Rules 8.1(b) and 8.4(c), MRPC.

FIFTH COUNT

Trust Account Violations

133. Respondent maintained Bremer Bank business account no. -0392 (hereinafter "business account") and Bremer Bank trust account no. -0552 (hereinafter "trust account").

134. As is more fully described below, during the period April 2011 to April 2013, respondent improperly utilized his trust account for the deposit and disbursement of personal and business loan proceeds.

135. On April 6, 2011, respondent transferred \$4,000 from his business account into his trust account. On April 7, 2011, respondent transferred an additional \$4,000 from his business account into his trust account. The source of these transfers was the \$25,000 loan respondent had received from his client Wellington, *see* paragraphs 60-61 above. Prior to the transfers, the balance in respondent's trust account was \$11.12.

136. On March 26, 2014, respondent stated the following to the Director regarding the loan from Wellington:

There was no reason to deposit loan proceeds on April 6, 2011, and April 7, 2011 in to my trust account other than to not have it be deposited in to the regular operating checking account as revenue or income of the business.

137. By May 3, 2011, respondent had disbursed from his trust account substantially all of the Wellington loan proceeds, primarily to himself or for his own personal or business benefit.

138. On August 24, 2012, respondent deposited \$15,000 into his trust account. The source of the deposit was a loan respondent received from Patrick Pariseau, who was not a client.

139. On March 26, 2014, respondent stated the following to the Director regarding the loan from Pariseau:

There is no reason that the loan proceeds on August 24, 2012 of \$15,000.00 were deposited in my trust account other than to not have loan proceeds be deposited into the regular operating account and might be considered revenue or income of the business... I was not representing Patrick Pariseau or his interests.

140. By August 29, 2012, respondent had disbursed substantially all of the Pariseau loan proceeds to himself.

141. On April 9, 2013, respondent deposited \$30,000 into his trust account. The source of the deposit was a loan respondent received from Wayne Gadiant, who was not a client.

142. On March 26, 2014, respondent stated the following to the Director regarding the loan from Gadiant:

There is no reason that the loan proceeds deposited o [sic] April 9, 2013 in the amount of \$30,000.00 were deposited in my trust account other than to not have loan funds deposited in the regular operating account that could be confused as revenue or income... I was not representing Mr. Gadiant or his interests.

143. By April 11, 2013, respondent had disbursed substantially all of the Gadiant loan proceeds, as follows:

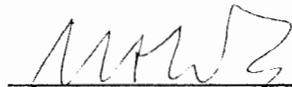
DATE	CHECK	PAYEE	AMOUNT
04/10/2013	1232	Patrick Pariseau	\$7,000.00
04/11/2013	1231	Susan Wellington	\$20,500.00
04/11/2013		Jeffrey H. Olson	\$2,400.00

144. Respondent failed to maintain his trust account books and records in the manner required by Rule 1.15, Minnesota Rules of Professional Conduct (MRPC), as interpreted by Appendix 1 thereto. In particular, respondent failed to maintain client subsidiary ledgers, monthly trial balance reports and monthly reconciliation reports.

145. Respondent's conduct in improperly using his trust account to deposit loan proceeds and disburse them in payment of his own business expenses, and in failing to maintain proper trust account books and records violated Rule 1.15(a), (c)(3) and (h), 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: January 26, 2015.



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