

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against STEPHANIE ANNE ONORATO,
a Minnesota Attorney,
Registration No. 292473.

**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 (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on September 7, 1999. Respondent currently practices law in Lonsdale, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Neglect and Issuance of NSF Checks to a Court

1. On or about February 13, 2005, J.M. retained respondent to represent her in a spousal maintenance matter. J.M.'s original judgment and decree had provided that she was to receive spousal maintenance by way of automatic wage withholding. Ramsey County had informed J.M. that it was discontinuing automatic wage withholding of spousal maintenance effective June 1, 2005. J.M. retained respondent to obtain an order directing the continuation of wage withholding.

2. Respondent took no action in the J.M. matter during the period from February 13 until approximately May 14, 2005.

3. On May 14, 2005, respondent mailed a motion (which the court received on May 16, 2005) on J.M.'s behalf. Respondent enclosed with her motion check no. 2629 for \$55 drawn on her personal account no. 7400971 at White Rock Bank (hereinafter "personal account"), in payment of the court's motion fee.

4. Respondent's check no. 2629 reached her account for payment on May 19, 2005. At that time, the balance in respondent's personal account was a negative \$59.34. As a result, on May 20, 2005, the bank returned respondent's check no. 2629 for insufficient funds.

5. The hearing on respondent's motion was held on May 31, 2005, before Referee Ann K. Leppanen. At the hearing, Referee Leppanen orally ordered respondent to prepare and submit a proposed order by June 14, 2005. Respondent faxed a proposed order to opposing counsel, Patrice Rico, for her approval on June 2, 2005.

6. On June 3, 2005, Karen Mareck, the Ramsey County Family Court manager, wrote to respondent. Mareck informed respondent that her check had been returned and requested that respondent promptly remit \$85 (the \$55 motion fee plus a \$30 returned check fee) by cash, money order or cashier's check. Mareck stated, "No order on the motion heard on May 31, 2005, will be entered until these fees are paid." Respondent failed to promptly remit payment.

7. On June 9, 2005, Rico informed Referee Leppanen that legislation continuing wage withholding of spousal maintenance had been enacted. Rico argued that respondent's motion was therefore moot and a written order unnecessary. Respondent replied with a June 11, 2005, letter asking that the matter be held in abeyance for thirty (30) days.

8. Because respondent failed to draft and submit an order as directed by the court at the May 31, 2005, hearing, the referee held a telephone conference on June 20, 2005. During the June 20, 2005, telephone conference, Referee Leppanen directed respondent to immediately submit a proposed order. Respondent failed to do so.

9. On June 30, 2005, Referee Leppanen's clerk wrote to respondent, noting respondent's failure to submit a proposed order and stating, "Failure to submit the order by July 7, 2005 will result in sanctions against you of \$50 per day until the Order is received." Additionally, the clerk indicated "no Order will be signed by the court until the \$85 fee . . . [is paid]."

10. Despite the court's direction for payment of the filing fee by cash, money order or cashier's check, on July 7, 2005, respondent mailed to Referee Leppanen an order, together with her personal account check no. 2443 for \$85.

11. Respondent's check no. 2443 reached her account for payment on July 12, 2005. At that time, the balance in respondent's personal account was a negative \$5.84. As a result, on July 13, 2005, the bank returned respondent's check no. 2443 for insufficient funds.

12. On July 11, 2005, Referee Leppanen issued her final order. In the order, Referee Leppanen stated that respondent's proposed order "was not consistent with the Court's oral order and . . . was not approved as to content and form by [Rico]." Referee Leppanen ordered respondent's motion stricken.

13. On August 12, 2005, after Mareck filed a complaint with the Director, respondent tendered a \$115 money order to the court in payment of the \$55 motion fee and the two \$30 returned check fees.

14. Respondent's conduct in neglecting the J.M. matter, issuing insufficient funds checks to the court and failing to comply with the court's directives concerning submission of a proposed order and payment of the motion fee and penalties violated Rules 1.1, 1.3, 3.4(c), and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

False Statements

False Statements Regarding Direct Deposits

15. In her August 12, 2005, cover letter to Karen Mareck, Ramsey County Family Court manager, in the J.M. matter, *see* paragraph 13 above, respondent explained the cause of her insufficient funds checks as follows:

When I found out [check 2629] was returned, I called my Bank and was told there was a problem with crediting a direct deposit and that it was resolved. However, it was not. Thus, when I dropped off the edited Order I did not think there was a problem using my check. . . .

At any rate, I am closing my personal account tomorrow, because I do not want any more problems with the account.

16. In her August 12, 2005, response to the district ethics committee (DEC) investigator, respondent similarly explained:

When I found out [check no. 2629] had been returned, I called my Bank; I was told there had been a problem with crediting a direct deposit and the problem was resolved. However, it was not. * * *

I was horrified to find out that the second check was returned.

I have since opened another personal account at another Bank and will close the instant account tomorrow. I obviously cannot afford to have any more problems of this nature.

17. Respondent indicated to the Director's Office that the direct deposit to which respondent was referring in her August 12, 2005, letters to Mareck and the DEC investigator was of her public defender paychecks.

18. Although respondent began work as a public defender on May 4, 2005, she did not establish direct deposit of her paycheck until May 23, 2005. The direct deposit of respondent's public defender paychecks began on June 10, 2005, and continued on a regular basis thereafter.

19. Respondent's implication in her August 12, 2005, letters to Mareck and the DEC investigator that a problem with the crediting of a direct deposit caused the return

of her filing fee check no. 2629 was false. Respondent did not even establish direct deposit of her public defender paycheck until more than a week after she mailed the J.M. motion and filing fee and three days after the bank had returned the check for insufficient funds.

20. Respondent's implication in her August 12, 2005, letters to Mareck and the DEC investigator that the bank's failure to correct the problem with the crediting of a direct deposit caused the return of her filing fee check no. 2443 was false. By the time respondent issued that check, direct deposit of her public defender paychecks had begun and were continuing on a regular basis.

21. In fact, the balance in respondent's personal account was continuously negative during the periods from May 5 to June 6, 2005, and June 27 to July 8, 2005, both before and after direct deposit of her public defender paychecks.

Redaction of Documents Provided to the Director

22. On January 19, 2006, the Director requested respondent to produce, among other things, her original business account bank statements for the period February through July 2005.

23. On February 2 and 3, 2006, respondent faxed and mailed materials to the Director in response to the Director's January 19, 2006, letter, including copies of her business account bank statements. Respondent redacted various "NSF RETURN CHECK CHARGE/OVERDRAFT CHARGE" entries from the copies provided without disclosing to the Director that she had done so.

24. On February 9, 2006, the Director requested respondent to produce, among other things, her February through July 2005 personal account bank statements.

25. In response to the Director's February 9 letter, on February 20, 2006, respondent mailed materials, including copies of her personal account bank statements, to the Director. Respondent redacted various returned check and "NSF CHARGE" entries and several indications of negative balances, including those referenced in

paragraph 21 above, from the copies provided without disclosing to the Director that she had done so.

26. Respondent has stated that she redacted the information from the business and personal account bank statements she produced to the Director because she was "quite frankly, embarrassed about the returned checks."

27. Respondent's conduct in making false statements in her August 12, 2005, letter to the court and the DEC investigator, and redacting information from the bank statements she produced at the Director's request violated Rules 3.4(b), 4.1, 8.1(a) and (b), and 8.4(c), MRPC, and Rule 25, RLPR.

THIRD COUNT

Failure to Deposit Client Funds in Trust

28. Respondent engaged in a pattern of depositing client cost and fee advances into her business account in order to cover checks issued on, and prevent overdrafts on, the account.

J.M. Advance

29. On February 13, 2005, J.M. paid \$450 to respondent as and for an advance on the court's \$55 motion fee and respondent's attorney's fees. *See* paragraphs 1 through 13, above.

30. Respondent did not enter into a written fee agreement with J.M. and did not deposit J.M.'s advance payment into a trust account. Rather, on or about February 23, 2005, respondent deposited J.M.'s advance payment into her business account no. 28594801 at Frandsen Bank & Trust (hereinafter "business account").

31. On February 23, 2005, when the balance in the account was only \$77.04, respondent issued her business account check no. 1190 for \$211.07, in payment of a general business expense.

32. Respondent's deposit of J.M.'s \$450 cost and fee advance was credited to her business account on February 23, 2005. Respondent's check no. 1190 reached the bank for payment on February 25, 2005.

33. If not for the deposit of J.M.'s advance payment, the amount of respondent's business account check no. 1190 would have exceeded the balance in respondent's business account and payment of the check would have created an overdraft.

34. On information and belief, respondent deposited J.M.'s advance payment into her business account to enable check no. 1190 to clear and to avoid an overdraft in the account.

M.S. Matter

35. On February 18, 2005, respondent's client M.S. paid \$350 to respondent. M.S.'s payment included a \$245 cost advance.

36. Respondent did not enter into a written fee agreement with M.S. and did not deposit M.S.'s advance payment into a trust account. Rather, on or about February 21, 2005, respondent deposited M.S.'s advance payment into her business account.

37. On February 18, 2005, when the balance in the account was only \$37.04, respondent issued her business account check no. 1186 for \$310, in payment of a general business expense.

38. Respondent's deposit of M.S.'s \$350 advance was credited to her business account on February 21, 2005. Respondent's check no. 1186 reached the bank for payment on February 23, 2005.

39. If not for the deposit of M.S.'s advance payment, the amount of respondent's business account check no. 1186 would have exceeded the balance in respondent's business account and payment of the check would have created an overdraft.

40. On information and belief, respondent deposited M.S.'s advance payment into her business account to enable check no. 1886 to clear and to avoid an overdraft in the account.

41. Respondent's conduct in depositing fee and cost advances into her business account violated Rule 1.15(a), MRPC, Lawyers Professional Responsibility Board Opinion No. 15 and the Supreme Court's holding in *In re Lochow*, 469 N.W.2d 91 (Minn. 1991).

FOURTH COUNT

Knowing Issuance of NSF Checks

42. On March 23, 2005, respondent issued herself check no. 1194 written on her business account in the amount of \$426.80. At the time, the actual balance in respondent's business account was only \$11.68. Respondent knew when she issued check no. 1194 that the account did not contain sufficient funds to cover it.

43. Also on March 23, 2005, respondent deposited business account check no. 1194 into her personal account. The deposit of check no. 1194 into respondent's personal account was necessary to eliminate a \$406.84 negative balance in the personal account.

44. Respondent's business account check no. 1194 reached the bank for payment on March 24, 2005, creating a \$415.12 (\$11.68 minus \$426.80) negative balance in the account. Respondent did not deposit funds sufficient to eliminate this negative balance until March 31, 2005.

45. On May 7, 2005, respondent issued herself check no. 1201 written on her business account in the amount of \$268. At the time, the actual balance in respondent's business account was a negative \$189.68. Respondent knew when she issued check no. 1201 that the account did not contain sufficient funds to cover it.

46. Also on May 7, 2005, respondent deposited business account check no. 1201 into her personal account. The deposit of check no. 1201 into respondent's personal account was necessary to eliminate a \$266.30 negative balance in the account.

47. Respondent's business account check no. 1201 reached the bank for payment on May 11, 2005, creating a \$457.68 (negative \$189.68 plus negative \$268)

negative balance in the account. On May 12, 2005, the bank refused payment and returned check no. 1201.

48. On May 16, 2005, respondent deposited funds into her business account sufficient to cover check no. 1201. On May 18, 2005, check no. 1201 was presented for payment and cleared respondent's business account.

49. Respondent's knowing issuance of dishonored checks on her business account violated Rules 8.4(c) and (d), 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: October 16, 2006.



MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and



JULIE E. BENNETT
ASSISTANT DIRECTOR
Attorney No. 289474