

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against DAVID A. OVERBOE,
a Minnesota Attorney,
Registration No. 83318.

**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 June 13, 1980. Respondent was admitted to practice law in North Dakota on July 19, 1972. Respondent's North Dakota law license was temporarily suspended on December 4, 2006. Respondent currently maintains an office in Fargo, North Dakota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Deceptive Use of a Trust Account

1. On May 22, 1990, a judgment of approximately \$1,400,000 was entered against respondent in the United States District Court for the District of North Dakota. The judgment arose from a failed farm cooperative in which respondent had been involved. At this time, respondent has not paid the judgment. _____

2. On October 25, 2000, respondent opened account no. 04294850 at Western State Bank (hereinafter "WSB trust account"). Respondent titled the account, "Overboe Trust Account."

3. Respondent did not use the WSB trust account as a fiduciary account in his capacity as a lawyer. Rather, respondent deposited his own earned funds into the account and disbursed those funds to himself or to others on his behalf.

4. Respondent's acknowledged purpose in opening and using the WSB trust account in this manner was to protect his funds from attachment by the judgment creditor. In an August 12, 2004, letter to the Director, respondent stated:

Approximately 15 years ago a judgment was taken against me for 1 and ½ million dollars as a result of my investing \$6,000.00 in a farmer cooperative. It is necessary for me to be careful about transferring funds between my wife and me. It is also important that I not keep a great deal of money in my own account, because the law firm that obtained the Judgment is right next door to me.

5. Respondent's titling of the WSB account as a "trust account" and using the account to shield his funds from attachment by a judgment creditor, violated Rule 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Misrepresentations to, and Non-Cooperation With, the Director's Office

6. Pursuant to Rule 1.15(j) – (o), MRPC, the Director received notice of a March 7, 2004, overdraft in respondent's Wells Fargo Bank IOLTA account no. 072-0339071 (hereinafter "IOLTA account"), an account that respondent also titled "Overboe Trust Account."¹

7. On March 19, 2004, the Director wrote to respondent regarding the overdraft on his IOLTA account. The Director enclosed a copy of the overdraft notice

¹ On March 17, 2004, respondent deposited \$9,500 of his own funds into the IOLTA account, creating a \$9,985.67 balance in the account. On March 19, 2004, respondent closed the IOLTA account, converted the \$9,985.67 balance into a cashier's check and deposited the cashier's check into the WSB trust account.

and requested "a written documented explanation for **this** overdraft" (emphasis added).

8. In his March 29, 2004, response, respondent stated as follows:

The check was written to transfer funds to my family farm account, which account is in the name of my wife, Debora R. Overboe.

At the time the check was written I believed that there was [sic] sufficient funds **in the account** to cover the \$8,000.00 check. I wrote the check without checking. The check was written on March 15th, 2004. On March 15th I checked to see if there was [sic] sufficient funds to cover the check and found that there was not. I promptly deposited two checks totaling \$9,500.00 in the account.

(Emphasis added.)

9. On May 3, 2004, the Director wrote to respondent. Among other things, the Director asked respondent to (a) explain the basis for his belief that his IOLTA account contained funds sufficient to cover the \$8,000 check since only approximately \$500 was in the account on that date, and (b) identify and provide records for the account into which he transferred the balance from his IOLTA account, i.e., the WSB trust account.

10. In his May 14, 2004, response, respondent stated:

The \$8,000.00 check was supposed to be drawn on a different account. I was going to deposit the funds in that account to cover the check when I realized the check has [sic] been drawn on this account. I made the deposit out of personal funds to cover the check.

* * *

The cashier's check was deposited in a checking account belonging to my wife Debra R. Overboe.

Respondent did not specifically identify or provide the requested records for the WSB trust account.

11. The overdraft explanation respondent provided in his March 29, 2004, letter (that he mistakenly believed his IOLTA account contained funds sufficient to cover the \$8,000 check) and the explanation he provided in his May 14, 2004, letter (that he intended to issue the \$8,000 check on another account) are inconsistent and irreconcilable. On information and belief, respondent falsely explained the cause of the overdraft in his March 29, 2004, letter, and failed to specifically identify and provide records for the WSB trust account at that time in order to avoid having to reveal the existence of that account.

12. Respondent's statement that the WSB trust account belonged to his wife was false. During the period from at least March 2003 to January 2004, all deposits into the WSB trust account were comprised entirely of funds received by respondent. No funds received by respondent's wife were deposited into the account.

13. On August 2, 2004, the Director specifically asked respondent to identify the account on which he intended to issue the \$8,000 check.

14. In his August 12, 2004, response, respondent, for the first time, identified the WSB trust account and stated:

The purpose of this account is not for client funds. The purpose of this account is for transactions between my wife and me.

15. Respondent's statement was false. During the period from at least March 2003 to January 2004, all deposits into respondent's WSB trust account were comprised entirely of funds received by respondent. No funds received by respondent's wife were deposited into the account.

16. In a September 9, 2004, letter, the Director asked respondent to explain why he designated the WSB trust account as a trust account. In his September 28, 2004, response, respondent stated:

The account at Western State Bank was opened to handle the funds between my wife and me. I handle her business affairs. I did not want

her funds levied on and tied up in court for months because of a Judgment against me. A joint account would not have worked.

17. Respondent's statement was false. During the period from at least March 2003 to January 2004, all deposits into respondent's WSB trust account were comprised entirely of funds received by respondent. No funds received by respondent's wife were deposited into the account.

18. Respondent's misrepresentations to the Director concerning the cause of the overdraft in his IOLTA account and the purpose of the WSB trust account, and non-cooperation with the Director's investigation violated Rules 8.1(a)(3) and 8.4(c), MRPC, as effective before October 1, 2005, and Rule 25, Rules on Lawyers Professional Responsibility (RLPR).

THIRD COUNT

Commingling and Other Trust Account Improprieties

19. On April 16, 2003, the balance in respondent's IOLTA account was \$1,129.67. This entire balance was comprised of earned funds to which respondent, and not a client or third party, was entitled.

20. On April 16, 2003, respondent deposited \$77,675 into his IOLTA account on behalf of a client. Some portion of these client funds remained in respondent's trust account during the period April 16 to May 6, 2003. During that entire period, respondent also maintained an approximately \$1,100 balance of his own funds in the IOLTA account, thus commingling his funds with client funds.

21. On July 25, 2003, respondent deposited \$200 into his IOLTA account on behalf of a client. These client funds remained in respondent's trust account during the period July 25 to August 20, 2003. During that entire period, respondent also maintained an approximately \$1,100 balance of his own funds in the IOLTA account, thus commingling his funds with client funds.

22. In light of the outstanding judgment against respondent referenced in paragraph 1, above, respondent's deposit and retention of client funds with his own funds in the trust account placed the client funds at risk of attachment or garnishment by the judgment creditor.

23. On October 6, 2003, respondent deposited \$4,500 of his own money into the IOLTA account. Respondent intended to donate these funds to a Vietnam War memorial.

24. During the period from at least April 16, 2003, to March 17, 2004, respondent maintained a balance of his own funds in his IOLTA account that exceeded the amount permitted by Rule 1.15(a), MRPC.

25. Respondent's commingling of his own funds with client funds in his IOLTA account and retaining personal funds in his IOLTA account violated Rule 1.15(a), MRPC.

DISCIPLINARY HISTORY

26. On March 26, 1987, the North Dakota Supreme Court publicly reprimanded respondent and suspended him for six months for practicing law under a misleading firm name, misusing funds in his client trust account and issuing a dishonored check on another account to cover an overdraft in his trust account. *In re Overboe*, 403 N.W.2d 1 (N.D. 1987).

27. On January 13, 1988, the North Dakota Supreme Court suspended respondent for 90 days for entering into a business transaction with a client involving the purchase of land, commencing a forcible detainer action against the client, failing to inform the court that the client claimed an ownership interest in the land, and recording a mortgage against other property the client was purchasing on a contract for deed, as a means of securing a debt he claimed he was owed by the contract vendor. *In re Overboe*, 417 N.W.2d 853 (N.D. 1988).

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent or imposing other 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, 2007.



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