

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against BRIAN TODD PIERCE,
a Minnesota Attorney,
Registration No. 290038.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

Upon the approval of a Lawyers Professional Responsibility Board Panel Chair, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rules 10(d) 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 February 1, 1999. Respondent currently practices law in Shakopee, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

COUNT ONE

Misappropriation of Client Funds – L.F. Matter

1. In or about June 2003, L.F. retained respondent to represent her in her marital dissolution proceeding. L.F. was referred to respondent by a battered women's shelter. Respondent commenced a dissolution proceeding and obtained court permission for L.F. to proceed *in forma pauperis*.

2. On or about December 15, 2003, at respondent's request L.F. signed a retainer agreement for the dissolution in which L.F. agreed to pay an hourly fee and also signed a retainer agreement for respondent to represent her in a related personal injury matter against her husband for domestic violence injuries L.F. suffered during the marriage.

3. In January 2004 L.F. and her husband signed a marital termination agreement (MTA). The MTA provided in pertinent part that L.F. would receive \$30,000 from her husband, as follows:

a. The first \$15,000 when L.F. signed the MTA, a separate release in the related personal injury matter and a withdrawal of her restitution claim in the related criminal proceeding against her husband.

b. The other \$15,000 when the judgment and decree was filed and L.F.'s husband had received notice from the court that L.F. had withdrawn her restitution claim in the criminal matter.

4. On or about January 12, 2004, L.F. signed the MTA, the release and the withdrawal of her restitution claim.

5. On or about January 15, 2004, respondent received from counsel for L.F.'s husband a check in the amount of \$15,000 made payable to respondent's trust account. That day respondent deposited the check. Respondent disbursed \$10,000 (one-third (1/3) of the settlement) to himself for attorneys' fees pursuant to his retainer agreement with L.F. On or about January 23, 2004, respondent disbursed the other \$5,000 to L.F.

6. Also on January 23, the court issued the judgment and decree.

7. On or about January 29, 2004, respondent received from opposing counsel a check for the remaining \$15,000 made payable to respondent's trust account. That day respondent deposited the check. L.F. was entitled to all these funds. Respondent did not, however, disburse these funds to L.F.

8. Instead, respondent paid the \$15,000 to himself and misappropriated the funds for his own benefit.

9. Respondent failed to pay the funds to L.F.

10. In May and June 2004, respondent's law partner, Max Keller, made two payments totaling \$15,000 to L.F. Neither respondent or Keller disclosed respondent's misappropriation of the \$15,000 to L.F.

11. Respondent's conduct violated Rules 1.5(d), 1.15(a) and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

COUNT TWO

Misleading Statement and Failure to Cooperate With Disciplinary Investigation

12. On January 12, 2005, the Director mailed to respondent notice of investigation in the L.F. matter. The notice requested respondent's written response and:

[A]ll documents, including but not limited to client subsidiary ledgers, bank statements, checks and deposit tickets, that evidence, memorialize, or refer or relate in any way to, your receipt, handling, and/or distribution of funds on behalf of [L.F.].

Respondent failed to respond.

13. On January 27 and February 4, 2005, the Director requested respondent to provide the information and documents requested in the notice of investigation.

Respondent failed to respond to either of these requests.

14. On February 7, 2005, an Assistant Director telephoned respondent's office and left a message for respondent to return the call. Respondent failed to do so.

15. On February 9, 2005, respondent mailed his response to the L.F. matter. Respondent did not address his handling of L.F.'s funds. Even though the L.F. trust account transactions occurred in January 2004, respondent provided trust account

documents only for the year 2003. In doing so, respondent falsely stated, "As you can see, L.F. had no funds in the trust account."

16. On February 10, 2005, respondent was requested to appear for a February 17, 2005, meeting at the Director's Office and was asked to bring to the meeting all of the information and documents relating to the L.F. matter.

17. On February 17 respondent faxed a letter stating the lawyer respondent wanted to retain as counsel was out of town. Respondent stated he would have "[his] attorney contact [the Director's Office] as soon as he returns."

18. On February 17 and February 24, 2005, an Assistant Director telephoned respondent's office and left messages for respondent to return the call. Respondent failed to do so, and no attorney representing respondent contacted the Director's Office.

19. On February 24, 2005, the Director wrote respondent scheduling a meeting for March 3, 2005, at the Bloomington office of the law firm in which respondent is now employed.

20. On March 3, 2005, representatives of the Director's Office appeared at the Bloomington office for the meeting. Respondent failed to appear for the meeting.

21. Later that day a partner in respondent's law firm told the Director's Office that he had located respondent, informed respondent that he had missed the meeting and instructed respondent to call the Director's Office. Respondent did not do so.

22. On March 9, 2005, respondent's secretary telephoned the Director's Office, spoke with an Assistant Director, said that respondent had retained counsel and arranged for respondent and counsel to meet at the Director's Office on March 15, 2005.

23. On March 15, respondent appeared with counsel for the meeting and admitted misappropriating L.F.'s \$15,000. Respondent stated that the requested trust account documents were in storage in his garage.

24. Respondent's conduct violated Rules 8.1(a)(3) and 8.4(c), MRPC, and Rule 25, RLPR.

COUNT THREE

Pattern of Issuing Insufficient Funds Checks

25. In December 2004 respondent pled guilty to violating Minn. Stat. § 609.535. This statute provides in pertinent part, "Whoever issues a check which, at the time of issuance, the issuer intends shall not be paid, is guilty of issuing a dishonored check"

26. Respondent's conviction was based on his issuance of a check drawn on his law office business account in June 2004 in the amount of \$306.25. The check was for payment of vehicle registration and state sales tax.

27. Additionally, in May 2004, two (2) items drawn on respondent's business account were returned for insufficient funds. In June 2004 twenty (20) items drawn on respondent's business account were returned for insufficient funds.

28. Respondent's pattern of issuing insufficient funds checks violated Rule 8.4(b) and (c), MRPC.

COUNT FOUR

Pattern of Failing to Appear in Court

Troung Matter

29. Respondent represented Justin Troung against criminal charges.

30. On April 16, 2004, the court mailed to respondent notice of an April 26, 2004, hearing.

31. Respondent failed to appear on April 26, failed to request a continuance and failed to advise the court or opposing counsel that respondent would not appear.

Hecker Matter

32. In September 2004 Aaron Hecker was the subject of criminal charges.

33. A hearing was scheduled for Monday, September 27, 2004. The weekend before, Hecker retained respondent.

34. On September 27 respondent telephoned the court administrator's office, stated that he had been retained and requested a continuance.

35. On October 1, 2004, the court administrator's office informed respondent that the hearing was rescheduled to October 4, 2004.

36. On October 4, respondent failed to appear. Respondent's law partner, Keller, appeared and requested a continuance. The request was granted, and the matter was rescheduled to October 11, 2004.

37. Respondent failed to appear on October 11, failed to inform the court or opposing counsel that he would not appear and failed to request a continuance. Respondent's wife, who also was respondent's secretary, telephoned the court that day and stated that respondent was in Missouri. In fact, respondent had returned on October 6 from a trip to Missouri.

Sanchez Matter

38. Respondent represented Jose Sanchez against criminal charges.

39. On September 30, 2004, the court mailed to respondent notice of an October 19, 2004, hearing.

40. Respondent failed to appear on October 19, failed to request a continuance and failed to advise the court or opposing counsel that he would not appear.

41. Respondent's pattern of failing to appear in court violated Rules 1.3, 3.2, 3.4(c) and 8.4(d), 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: March 31, 2005.



KENNETH L. JORGENSEN
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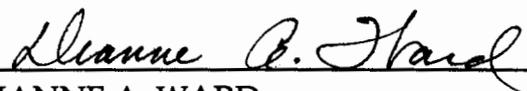
and



TIMOTHY M. BURKE
SENIOR ASSISTANT DIRECTOR
Attorney No. 19248x

This petition is approved for filing pursuant to Rules 10(d) and 12(a), RLPR, by the undersigned Panel Chair.

Dated: April 18, 2005.



DIANNE A. WARD
PANEL CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD