

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against GREGORY J. REBEAU,
a Minnesota Attorney,
Registration No. 89977.

**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 September 29, 1978. Respondent currently practices law in St. Paul, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Failure to File and Pay Employer Withholding Taxes

1. Despite having employees and an obligation to do so, respondent failed to file and/or failed to pay federal employer withholding tax returns for various quarters during the years 1999, 2000, 2003 through 2007, and 2008.

2. **1st Quarter 1999.** Respondent filed his federal employer withholding tax return for the 1st calendar quarter of 1999 on May 5, 1999. The Internal Revenue Service (IRS) assessed employer withholding taxes of \$847.49 based on the return. Respondent remitted only \$507.39 with the return, leaving an unpaid balance of \$340.10. The IRS

assessed late payment penalties and interest which increased this balance to \$696.72. To date, respondent has not paid any portion of this balance.

3. **4th Quarter 1999**. Respondent filed his federal employer withholding tax return for the 4th calendar quarter of 1999 on January 31, 2000. The return reflected \$699.33 in employer withholding taxes due from respondent, which respondent remitted with the return. The IRS, however, assessed additional employer withholding taxes of \$1,656.55 based on the return. The IRS also assessed late payment penalties and interest, which increased this balance to \$3,632.73. To date, respondent has not paid any portion of this balance.

4. **1st Quarter 2000**. Respondent filed his federal employer withholding tax return for the 1st calendar quarter of 2000 on May 13, 2000. The return reflected \$674.21 in employer withholding taxes due from respondent, which respondent remitted with the return. The IRS, however, assessed late filing and payment penalties and interest totaling \$76.14. To date, respondent has not paid any portion of this balance.

5. **4th Quarter 2003**. During the 4th calendar quarter of 2003, respondent had at least one employee and an obligation to withhold and pay to the IRS federal employer withholding taxes. Respondent did not, however, file an employer withholding tax return with, or pay any employer withholding taxes to, the IRS for that quarter. Respondent is thus indebted to the IRS for an unknown amount for that quarter.

6. **1st Quarter 2004**. During the 1st calendar quarter of 2004, respondent had at least one employee and an obligation to withhold and pay to the IRS federal employer withholding taxes. Respondent did not, however, file an employer withholding tax return with, or pay any employer withholding taxes to, the IRS for that quarter. Respondent is thus indebted to the IRS for an unknown amount for that quarter.

7. **2nd Quarter 2005**. Respondent filed his federal employer withholding tax return for the 2nd calendar quarter of 2005 on August 11, 2005. The return reflected \$1,607.06 in employer withholding taxes due from respondent, which respondent remitted with the return. The IRS, however, assessed late filing and payment penalties and interest in the amount of \$104.34. To date, respondent has not paid any portion of this balance.

8. **3rd Quarter 2005**. During the 3rd calendar quarter of 2005, respondent had at least one employee and an obligation to withhold and pay to the IRS federal employer withholding taxes. Respondent did not, however, file an employer withholding tax return with, or pay any employer withholding taxes to, the IRS for that quarter. Respondent is thus indebted to the IRS for an unknown amount for that quarter.

9. **3rd Quarter 2006**. Respondent filed his federal employer withholding tax return for the 3rd calendar quarter of 2006 on October 31, 2006. The IRS assessed employer withholding taxes of \$717.82 based on the return. Respondent remitted only \$590.51 with the return, and his check was returned for insufficient funds. The IRS assessed penalties and interest for a total balance due of \$984.25. To date, respondent has not paid any portion of this balance.

10. **1st Quarter 2007**. Respondent filed his federal employer withholding tax return for the 1st calendar quarter of 2007 on June 23, 2008. The return reflected \$692.83 in employer withholding taxes due from respondent, which respondent failed to remit with the return. The IRS assessed late filing and payment penalties and interest, for a total balance due of \$998.59. To date, respondent has not paid any portion of this balance.

11. **2nd Quarter 2007**. During the 2nd calendar quarter of 2007, respondent had at least one employee and an obligation to withhold and pay to the IRS federal employer withholding taxes. Respondent did not, however, file an employer

withholding tax return with, or pay any employer withholding taxes to, the IRS for that quarter. Respondent is thus indebted to the IRS for an unknown amount for that quarter.

12. **3rd Quarter 2007.** Respondent filed his federal employer withholding tax return for the 3rd calendar quarter of 2007 on June 23, 2008. The return reflected \$1,065.57 in employer withholding taxes due from respondent, which respondent failed to remit with the return. The IRS has assessed late filing and payment penalties and interest for a total unpaid balance of \$1,446.59. To date, respondent has not paid any portion of this balance.

13. **4th Quarter 2007.** Respondent filed his federal employer withholding tax returns for the 4th calendar quarter of 2007 on June 23, 2008. The return reflected \$861.49 in employer withholding taxes due from respondent, which respondent failed to remit with the return. The IRS has assessed late filing and payment penalties and interest, for a total unpaid balance of \$1,094.82. To date, respondent has not paid any portion of this balance.

14. **1st Quarter 2008.** Respondent filed his federal withholding tax return for the 1st calendar quarter of 2008 on June 16, 2008. The return reflected \$948.53 in employer withholding taxes, which respondent failed to remit with the return. The IRS has assessed late filing and payment penalties and interest for a total unpaid balance of \$1,046.06. To date, respondent has not paid any portion of this balance.

15. On February 23, 2006, and May 24, 2006, the IRS issued to respondent notices of intent to levy to recover payment in employer withholding taxes, penalties and interest for the 1st quarter of 1999, 4th quarter of 1999, 1st quarter of 2000 and 2nd quarter of 2005.

16. Respondent's conduct in failing to file and pay employer withholding taxes, violated Rule 8.4(c) and (d), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Trust Account Matters

Introduction

17. Respondent's US Bank trust account became overdrawn on July 10, 2006. Pursuant to Rule 1.15(j) to (o), MRPC, US Bank reported the overdraft to the Director. Respondent's trust account again became overdrawn on July 24, 2006, and was again reported to the Director.

18. In a July 19, 2006, letter respondent explained the cause of the first overdraft as follows: "I recently hired a new Office Assitant [sic] and she mistakenly handed me the wrong checkbook. I then issued a check to my roommate [sic] assuming I had been handed the correct checkbook."

19. In a letter dated August 18, 2006, respondent stated, "This letter will serve to clarify the reasons for the overdraft in the trust account. The IRS recently notified us they were levying our operating account based upon a mistaken assessment for withholding taxes dating from 2000. As a result, our trust account was used to pay certain bills during the time we were negotiating and resolving the IRS matter. At the time this incident occurred, the only client funds that were being held in my trust account were funds belonging to Mr. Walsh."

20. The Director converted respondent's trust account overdraft inquiry into a formal disciplinary investigation and, on September 18, 2006, issued a notice of investigation to respondent.

21. Throughout the course of the Director's investigation of the overdrafts in respondent's trust account and respondent's trust account practices generally, the Director obtained from respondent and US Bank copies of respondent's trust account books and records for the period January 2004 to November 2006.

Fraudulent Use of a Trust Account

22. The Director’s review of respondent’s trust account books and records reflected that, beginning in 2006, respondent routinely deposited earned fees into his trust account and disbursed those earned fees directly to himself and to his business and personal creditors.

23. Respondent’s acknowledged purpose in using his trust account in this manner was to protect his funds from attachment by the IRS, which was, at the time, claiming that respondent owed it additional employer withholding taxes and attempting to collect those taxes. *See* First Count, paragraphs 1 to 15, above.

24. Beginning in April 2005 and continuing into the period during which respondent was using his trust account to shelter funds from IRS attachment, respondent made a series of cash withdrawals from his trust account, as follows:

<u>DATE</u>	<u>AMOUNT</u>
04/22/05	\$10,000.00
04/25/05	\$5,000.00
04/27/05	\$3,000.00
05/09/05	\$2,000.00
05/26/05	\$500.00
06/03/05	\$500.00
08/01/05	\$500.00
02/15/06	\$1,000.00
04/14/06	\$1,500.00
04/20/06	\$750.00
04/27/06	\$300.00
06/02/06	\$1,000.00

25. In addition, on September 25, 2006, respondent made a \$1,000 internet transfer from his trust account to another account.

Commingling

26. During the periods June 16 to 20, 2006, June 22 to July 7, 2006, and September 21 to October 6, 2006, respondent held some balance of client funds in his trust account, while at the same time maintaining an excessive balance of his own funds in the account, thus commingling client funds with his own funds.

27. The table below shows the balances of client funds and the balances of respondent's own funds during the periods referenced above:

<u>DATE</u>	<u>CLIENT FUNDS</u>	<u>RESPONDENT'S FUNDS</u>
06/16 – 06/18/06	\$500.00	\$843.43
06/19/06	\$500.00	\$493.43
06/22/06	\$500.00	\$3,844.43
06/23 – 06/26/06	\$500.00	\$1,854.43
06/27/06	\$500.00	\$1,354.43
06/28/06	\$500.00	\$1,299.43
06/29/06	\$500.00	\$1,099.43
06/30 – 07/02/06	\$500.00	\$599.43
07/03 – 07/04/06	\$500.00	\$499.43
07/05/06	\$1,000.00	\$206.43
07/06/06	\$500.00	\$506.43
09/21 – 09/24/06	\$50.00	\$2,520.86
09/25 – 09/27/06	\$50.00	\$1,520.86
09/28 – 10/05/06	\$50.00	\$520.86

Misappropriation

28. Respondent made disbursements from his trust account in payment of personal or business expenses that exceeded the commingled balance of his own funds in the trust account, thus resulting in the misappropriation of client funds.

29. Specifically, on June 20, 2006, respondent was holding in his trust account a \$500 filing fee advance for his client Walsh. The balance of respondent's own funds in

the trust account was \$739.43. On that date, respondent's trust account check no. 1764 in the amount of \$795, which respondent had issued to Jim Carlson in payment of his own personal or business rent expense, cleared respondent's trust account. Since the amount of check no. 1764 (\$795) exceeded the balance of respondent's own funds in the trust account (\$739.43), \$55.57 of the Walsh filing fee advance (\$795 minus \$739.43) was used to cover trust account check no. 1764, i.e., was used to cover respondent's personal or business rent expense.

30. On July 10, 2006, respondent was holding in his trust account a \$500 filing fee advance for his client Walsh and a \$50 service fee advance for his client Haanen. The balance of respondent's own funds in the trust account on July 10, 2006, was \$168.26. On that date, respondent's trust account check no. 1615 in the amount of \$247.30, which respondent had issued to Xcel Energy in payment of his own personal or business utilities expense, cleared respondent's trust account. Since the amount of check no. 1791 (\$247.30) exceeded the balance of respondent's own funds in the trust account (\$168.26), \$79.04 of the Walsh/Haanen funds (\$247.30 minus \$168.26) was used to cover trust account check no. 1791, i.e., was used to cover respondent's personal or business utilities expense.

31. The following additional trust account checks, issued by respondent in payment of his own personal or business expenses, thereafter cleared respondent's trust account, resulting in the further misappropriation of the Walsh/Haanen funds:

<u>DATE</u>	<u>CHECK NO.</u>	<u>PAYEE</u>	<u>AMOUNT</u>
07/10/06	1741	Kathy Boyer	\$500.00 ¹
07/12/06	1612	Cingular	\$147.27
07/14/06	1616	AT&T	\$15.83

¹ Payment of this check caused the initial overdraft in respondent's trust account. Respondent states that he issued this check on his trust account in error.

32. As a result of the above disbursements, the balance in respondent's trust account at the end of business on July 20, 2006, was \$101.86, \$448.14 short of that necessary to cover the \$550 in Walsh/Haanen funds. On July 20, 2006, respondent's trust account check no. 1614 in the amount of \$500, which respondent had issued to the Clerk of Appellate Courts on his client Walsh's behalf, cleared the trust account. Payment of check no. 1614 caused another overdraft in the account. Respondent deposited funds sufficient to eliminate both the overdraft and the overall trust account shortage on July 26, 2006.

33. On November 10, 2006, respondent was holding in his trust account a \$50 service fee advance for his client Haanen. The balance of respondent's own funds in the trust account was \$20.86. On that date, respondent's trust account check no. 1686 in the amount of \$60, which respondent had issued to himself, cleared respondent's trust account. Since the amount of check no. 1686 (\$60) exceeded the balance of respondent's own funds in the trust account (\$20.86), \$39.14 of the Haanen funds (\$60 minus \$20.86) was used to cover trust account check no. 1686, i.e., was used to cover respondent's disbursement to himself.

Failure to Promptly Disburse Earned Fees

34. On April 21, 2005, respondent deposited \$45,000 into his trust account on behalf of his client Vang. Of this deposit, \$25,000 was due respondent as and for attorney's fees and \$20,000 was to be remitted on the client's behalf to TCF Bank.

35. On April 29, 2005, respondent's trust account check no. 1779 in the amount of \$20,000, which respondent had issued to TCF Bank on Vang's behalf, cleared respondent's trust account.

36. Respondent disbursed to himself the \$25,000 in attorney's fees to which he was entitled in the Vang matter as follows:

<u>DATE</u>	<u>CHECK NO.</u>	<u>AMOUNT</u>	<u>VANG BALANCE</u>
04/22/05	Cash withdrawal	\$10,000.00	\$15,000.00
04/25/05	Cash withdrawal	\$5,000.00	\$10,000.00
04/27/05	Cash withdrawal	\$3,000.00	\$7,000.00
04/29/05	1629	\$400.00	\$6,600.00
05/02/05	1630	\$250.00	\$6,350.00
05/03/05	1631	\$200.00	\$6,150.00
05/03/05	1780	\$2,000.00	\$4,150.00
05/09/05	Cash withdrawal	\$2,000.00	\$2,150.00
05/10/05	1633	\$200.00	\$1,950.00
05/26/05	Cash withdrawal	\$500.00	\$1,450.00
05/31/05	1632	\$300.00	\$1,150.00
06/03/05	Cash withdrawal	\$500.00	\$650.00
08/01/05	Cash withdrawal	\$500.00	\$150.00
09/09/05	1761	\$50.00	\$100.00
09/09/05	1762	\$100.00	-0-

37. Thus, respondent retained some balance of his earned fees in the Vang matter in his trust account during the period April 21 to September 9, 2005.

Failure to Maintain Required Trust Account Books and Records

38. During the period from at least January 2004 to at least November 2006, respondent failed to maintain the trust account books and records required by Rule 1.15, MRPC, as interpreted by Lawyers Professional Responsibility Board Opinion No. 9 (in effect through September 30, 2005) and Appendix 1 thereto (in effect on and after October 1, 2005). In particular, respondent failed to maintain the required trust account trial balances and reconciliations.

39. Respondent's use of his trust account as a personal/business account to shelter funds from attachment by the IRS, commingling of client funds with his own

funds in a trust account, misappropriation of client funds, failure to promptly disburse earned fees, making of cash withdrawals from his trust account and failure to maintain required trust account books and records violated Rules 1.15(a), (b) and (c)(3), and 8.4(c), MRPC, and Appendix 1 thereto (formerly Lawyers Professional Responsibility Board Opinion No. 9).

THIRD COUNT

Moreno Matter

40. On April 19, 2005, Joan and Mario Moreno retained respondent to represent them in a mechanic's lien matter. The Morenos signed a retainer agreement and paid respondent a \$1,000 retainer fee.

41. The retainer agreement respondent prepared and the Morenos signed contained the following language under the "RETAINER/DEPOSIT" heading:

The CLIENT agrees to pay immediately to Greg J. Rebeau, Attorney at Law, an initial retainer/deposit . . . to be deposited in their trust account and held for further withdrawals. Greg J. Rebeau, Attorney at Law, shall submit bills monthly to the CLIENT for services rendered and other fees, charges and expenses incurred. An unearned balance remaining in the retainer account at the termination of Greg J. Rebeau, Attorney at Law's representation will be refunded to the CLIENT.

At the end of the agreement, just above the signatures, the following language appeared:

It is understood by and between the parties that (1) the funds/retainer will not be held in a trust account and (2) the Client may not receive a refund of the fees if the Client later chooses not to hire the lawyer or chooses to terminate the lawyer's services.

These two paragraphs were inconsistent and failed to clearly communicate to the Morenos how respondent would handle the Morenos' retainer fee.

42. Respondent entered into retainer agreements with the same inconsistent provisions with several of his other clients, including McKusick, Dennstedt, Preston, Wuollet, O'Neal and Anderson.

43. Respondent's retainer agreement with the Morenos further provided as follows:

The CLIENT understands and acknowledges that billing statements will be submitted on a monthly basis.

44. Despite the Morenos' periodic requests for monthly billing statements, respondent issued only the following invoices to the Morenos: (a) April 30, 2005, covering the period through April 20, 2005; (b) June 20, 2005, covering the period through June 18, 2005; (c) July 31, 2005, covering the period through July 28, 2005; and (d) August 31, 2005, covering the period through August 22, 2005. Respondent did not provide the Morenos with any other monthly invoices.² (Respondent issued a May 2, 2006, invoice, covering the period through April 27, 2006, following his termination.)

45. At respondent's request, the Morenos made the following payments to respondent:

April 13, 2005	\$1,000.00
May 23, 2005	\$1,500.00
July 5, 2005	\$1,000.00
August 14, 2005	\$1,000.00
August 27, 2005	\$1,500.00
February 15, 2006	\$1,000.00
March 3, 2006	\$1,500.00
April 6, 2006	\$4,000.00

² Respondent has also produced May 31, 2005, and March 3, 2006, invoices that the Morenos do not recall receiving.

46. During the periods April 13, 2005, to May 17, 2005, May 23, 2005, to August 5, 2005, and August 14, 2005, to at least April 27, 2006, respondent had received payments from the Morenos in amounts greater than his billing invoices indicated he had earned. The amounts of these credit balances ranged in amount from \$50 to approximately \$5,172. Respondent did not retain these credit balances in a trust account and did not accurately reflect them on his billing statements to the Morenos.

47. By letter dated April 20, 2006, the Morenos informed respondent that they were terminating him as their lawyer. The Morenos asked respondent to provide them with their file and the balance of their unearned retainer fees.

48. At the time of termination, the Morenos had paid respondent \$3,911.50 more than respondent had earned. Yet, on May 2, 2006, respondent refunded only \$610 to the Morenos.

49. Throughout the course of the Director's investigation, the Director has repeatedly asked respondent to produce an accounting of the Moreno funds. On June 28, 2007, the Director provided respondent with a spreadsheet summary the Director had prepared, which reflected respondent's billings to, and payments from, the Morenos. The spreadsheet reflected significant periods of time during which respondent had received payments from the Morenos in excess of his billings and that at the end of his representation he had not earned almost \$4,500³ of the funds paid to him.

50. In an August 23, 2007, letter, respondent stated that he disputed the Director's spreadsheet summary of the amounts billed to and paid by the Morenos and was "in the process of compiling, again, the missing documents to dispute the same."

³ The Director has revised its spreadsheet summary of Moreno billings and payments to incorporate the amounts reflected on respondent's May 31, 2005, and March 3, 2006, billing invoices, which, as noted above, the Morenos do not recall receiving.

51. On September 7, 2007, respondent stated, with specific respect to the Moreno spreadsheet, "The spreadsheet provided by you has been reviewed and we have created are [sic] own accounting of the same. Upon review and comparison of both sets of figures . . . the specific areas of contention will be forwarded to you. I anticipate that will arrive at your office mid-week." Respondent did not then, or at any time since, produce a Moreno accounting.

52. At a September 18, 2007, meeting with the Director, respondent stated that he did not necessarily disagree with the Director's spreadsheet, but simply had not had an opportunity to review it carefully.

53. On September 24, 2007, respondent stated, for the first time, that his original Moreno file, which had previously been provided to the Director, was "necessary to complete our accounting and comparison." Respondent further stated that "it continues to be my position that the billings and hours billed to Mr. Moreno correspond with my accounting. [Emphasis added.] At this time, we continue to go through files and records and will be providing any additional information relative to this file by the end of the week." The Director couriered respondent's original Moreno file to him on October 1, 2007. At that time, the Director requested a copy of the Moreno accounting respondent had referenced in his September 24 letter. To date, respondent has not produced such an accounting or any other substantive response to the Director's spreadsheet summary of Moreno billings and payments.

54. Thus, despite the Director's repeated requests and respondent's repeated promises to do so, respondent has never produced an accounting refuting the Director's conclusions that (a) for significant periods of time, the Morenos had made payments to respondent in excess of the fees respondent had earned and respondent failed to retain those credit balances in a trust account, and (b) at the time the Morenos terminated his representation, respondent had not earned approximately \$3,900 of the funds the Morenos had paid to him.

55. Respondent's conduct in failing to hold the Morenos' unearned fees in trust, failing to clearly communicate to the Morenos and other clients how he would be handling their initial fee retainers and failing to bill in accordance with his retainer agreement, violated Rules 1.15(a) and (c)(5), 1.4(b) and 1.5(b), 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 28, 2009.



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