

FILE NO. A09-382
STATE OF MINNESOTA
IN SUPREME COURT

COPY

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

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDATION FOR DISCIPLINE**

The above-entitled matter came on for hearing on September 17, 2009, before the Honorable Warren E. Litynski, the duly appointed Referee by the Minnesota Supreme Court.

Julie E. Bennett appeared on behalf of the Director of the Office of Lawyers Professional Responsibility (Director).

Gregory J. Rebeau (Respondent) appeared pro se, having waived his right to be represented by counsel.

The hearing was conducted on the Director's January 28, 2009, Petition for Disciplinary Action and March 4, 2009, Supplementary Petition for Disciplinary Action.

Director called the following witnesses: Amy K. L. Schmidt, Mario Scott Moreno, Gregory J. Rebeau, and Lynda J. Nelson.

Respondent called Jennifer Fierro as a witness.

The parties were directed to submit proposed Findings of Fact, Conclusions of Law, Recommendation for Discipline, and a Memorandum on or before October 5, 2009, at which time the record closed.

The return date to the Minnesota Supreme Court is October 23, 2009.

Based on the evidence submitted to the Referee, and upon all the files, records and proceedings herein, the Referee makes the following Findings of Fact, Conclusions of Law, and Recommendation for Discipline:

FINDINGS OF FACT

1. Respondent was admitted to practice law in the State of Minnesota on September 29, 1978. He is a sole practitioner engaged in the general practice of law. Respondent has no disciplinary history for the approximate 31 years he has practiced law.

Failure to File and/or Pay Employer Withholding Taxes

2. Respondent admits that despite having employees and an obligation to do so, he failed to file and/or to pay federal employer withholding tax returns for various quarters during the years 1999, 2000, 2003 through 2007, and 2008. (Petition for disciplinary action ("Pet.") ¶ 1; Respondent's answer ("R. Ans.") ¶ 2; see also Exhibits ("Ex.") 1 through 13.)

3. Pursuant to 26 USC §§ 3402, 3509, Respondent has an obligation to file and pay employer withholding tax returns relative to his employees.
4. **First Quarter 1999.** Respondent filed his federal employer withholding tax return for the first calendar quarter of 1999 on May 5, 1999. Respondent admits 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. (Pet. ¶ 2; R. Ans. ¶ 2; *see also* Ex. 1.)
5. As of August 10, 2009, Respondent had not paid the balance due and owing for the first quarter of 1999. (Ex. 1.)
6. **Fourth Quarter 1999.** Respondent filed his federal employer withholding tax return for the fourth calendar quarter of 1999 on January 31, 2000. Respondent's 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 again assessed late payment penalties and interest, which increased this balance to \$3,632.73. (Pet. ¶ 3; R. Ans. ¶ 2; *see also* Ex 2.)
7. As of August 10, 2009, Respondent has not paid the balance due and owing for the fourth quarter of 1999. (Ex. 2.)
8. **First Quarter 2000.** Respondent filed his federal employer withholding tax return for the first calendar quarter of 2000 on May 13, 2000. Respondent's return reflected \$674.21 in employer withholding taxes due from Respondent, which Respondent remitted with the return. The IRS assessed late filing and payment penalties and interest totaling \$76.14. (Pet. ¶ 4; R. Ans. ¶ 2; *see also* Ex. 3.)
9. As of August 10, 2009, Respondent had not paid the balance due and owing for the first quarter of 2000. (Ex. 3.)
10. **Second Quarter 2005.** Respondent filed his federal employer withholding tax return for the second calendar quarter of 2005 on August 11, 2005. Respondent's return reflected \$1,607.06 in employer withholding taxes due from Respondent, which Respondent remitted with the return. Respondent admits the IRS assessed late filing and payment penalties and interest in the amount of \$104.34. (Pet. ¶7; R. Ans. ¶ 2; *see also* Ex. 6.)
11. As of August 10, 2009, Respondent had not paid the balance due and owing for the second quarter of 2005. (Ex. 6.)
12. **Third Quarter 2005.** Respondent admits that during the third 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 file an employer withholding tax return with, or pay any employer withholding taxes to, the IRS for that quarter. Respondent is indebted to the IRS for an unknown amount for that quarter. (Pet. ¶ 8; R. Ans. ¶ 2; *see also* Ex. 7.)

13. **Third Quarter 2006.** Respondent filed his federal employer withholding tax return for the third 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. (Pet. ¶ 9; R. Ans. ¶ 2; *see also* Ex. 8.)
14. As of August 10, 2009, Respondent had not paid the balance due and owing for the third quarter of 2006. (Ex. 8.)
15. **First Quarter 2007.** Respondent filed his federal employer withholding tax return for the first calendar quarter of 2007 on June 23, 2008. Respondent's 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. (Pet. ¶ 10; R. Ans. ¶ 2; *see also* Ex. 9.)
16. As of August 10, 2009, Respondent had not paid the balance due and owing for the first quarter of 2007. (Ex. 9.)
17. **Second Quarter 2007.** Respondent admits that during the second 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 file an employer withholding tax return with, or pay any employer withholding taxes to the IRS for that quarter. Respondent admits he is indebted to the IRS for an unknown amount for that quarter. (Pet. ¶ 11; R. Ans. ¶ 2; *see also* Ex. 10.)
18. **Third Quarter 2007.** Respondent filed his federal employer withholding tax return for the third calendar quarter of 2007 on June 23, 2008. Respondent's 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. (Pet. ¶ 12; R. Ans. ¶ 2; *see also* Ex. 11.)
19. As of August 10, 2009, Respondent had not paid the balance due and owing for the third quarter of 2007. (Ex. 11.)
20. **Fourth Quarter 2007.** Respondent filed his federal employer withholding tax returns for the fourth calendar quarter of 2007 on June 23, 2008. Respondent's return reflected \$861.49 in employer withholding taxes due from Respondent, which he 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. (Pet. ¶ 13; R. Ans. ¶ 2; *see also* Ex. 12.)
21. As of August 10, 2009, Respondent had not paid the balance due and owing for the fourth quarter of 2007. (Ex. 12.)
22. **First Quarter 2008.** Respondent filed his federal withholding tax return for the first calendar quarter of 2008 on June 16, 2008. Respondent's return reflected \$948.53 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 \$1,046.06. (Pet. ¶ 14; R. Ans. ¶ 2; *see also* Ex. 13.)

23. As of August 10, 2009, Respondent had not paid the balance due and owing for the first quarter of 2008. (Ex. 13.)
24. 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 first quarter of 1999, fourth quarter of 1999, first quarter of 2000 and second quarter of 2005. (Pet. ¶ 15; R. Ans. ¶ 2.)
25. **Fourth Quarter 2003 and First Quarter 2004.** Although Respondent denied in his answer that he had at least one employee and an obligation to withhold and pay to the IRS federal employer withholding taxes during the fourth calendar quarter of 2003 and the first calendar quarter of 2004, Respondent submitted at least two letters to the Director's Office indicating that he had at least one employee during the fourth quarter of 2003 and the first quarter of 2004. (R. Ans. ¶ 3; Exs. 33 & 34.)
26. Respondent denied that he failed to file an employer withholding tax return with, or pay any employer withholding taxes to, the IRS for the fourth quarter of 2003 and the first quarter of 2004. (R. Ans. ¶ 3.)
27. Documentation from the IRS indicates that Respondent did not file an employer tax return for the fourth quarter of 2003 nor did he file an employer tax return for the first quarter of 2004. (Exs. 4 & 5.)
28. Because Respondent had an employee during the fourth quarter of 2003 and the first quarter of 2004 and he failed to file employer tax returns for that period, Respondent is indebted to the IRS for an unknown amount for the fourth quarter of 2003 and first quarter of 2004.

New Procedures

29. In 2006 Respondent's Office Manager left Respondent's employ. The Office Manager was replaced by Jennifer Fierro. Ms. Fierro testified that when the previous Office Manager left her employment, she took with her a number of records. However, Ms. Fierro has no first-hand knowledge of same and her testimony lacks credence.
30. Ms. Fierro testified that she had developed and implemented new office procedures. A tax individual was hired, and the withholding tax records had been resolved, together with new office procedures relating to scheduling, follow-up, billing, and recording. However, at trial the Director introduced Exhibit 80 which demonstrated that Respondent has failed to file or pay an Employer's Quarterly Federal Tax Return for quarters ending June 30, 2008, September 30, 2008, December 31, 2008, March 31, 2009, and June 30, 2009. Assuming Ms. Fierro was forthright in her testimony, it appears that the new system, at least for Employer's Quarterly Tax Returns, is not working very well.
31. Exhibit 80 indicates that the above tax returns were not filed as of August 10, 2009. Since this was only five weeks before the hearing, the Referee finds that Respondent should have self-reported.

**Trust Account Matter/ Fraudulent Use of a Trust Account/ Commingling/
Misappropriation/Failure to Promptly Disburse Earned Fees/ Failure to Maintain
Required Trust Account Books and Records**

32. Respondent's US Bank trust account became overdrawn on July 10, 2006. Pursuant to Rule 1.15(j) to (o), Minnesota Rules of Professional Conduct (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. (Pet. ¶ 17; R. Ans. ¶ 5; Exs. 14 & 15.)
33. 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." (Pet. ¶ 18; R. Ans. ¶ 5; Ex. 15.)
34. 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.
- (Pet. ¶ 19, R. Ans. ¶ 5; Ex. 20.)
35. 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. (Pet. ¶ 20; R. Ans. ¶ 5; Ex. 21; Testimony of Lynda Nelson ("Nelson test.").)
36. 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. (Pet. ¶ 21; R. Ans. ¶ 5; *see also* Exs. 14, 15, 18, 19, 21, 22, 25, 28, 30-32, 34-37, 39, 42, 43, & 46.)
37. Respondent admitted that beginning in 2006 he routinely deposited earned fees into his trust account and disbursed those earned fees directly to himself and to his business and personal creditors. (Pet. ¶ 22; R. Ans. ¶ 5; Nelson test.; *see also* Ex. 48.)
38. Respondent admitted that his 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 was attempting to collect those taxes. (Pet. ¶ 23; R. Ans. ¶ 5; Ex. 20.)
39. 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 totaling \$26,050 from his trust account. (Pet. ¶ 24; R. Ans. ¶ 5; *see also* Nelson test.; & Ex. 48.)

40. In addition to the cash withdrawals, Respondent admits that on September 25, 2006, he made a \$1,000 Internet transfer from his trust account to another account. (Pet. ¶ 25; R. Ans. ¶ 5; *see also* Nelson test.; & Ex. 48.)
41. Respondent testified that he had intended to admit the allegations contained in paragraph 26 of the petition for disciplinary action. (R. test.)
42. Respondent admits that during the periods of 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. (Pet ¶ 26; R. test.; *see also* Nelson test.; & Ex. 48.)
43. Respondent admits 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

(Pet. ¶ 27; R. Ans. ¶ 5; *see also* Nelson test.; & Ex. 48.)

44. In a letter to the Director dated August 18, 2009, Respondent admitted that he had the funds of at least one client in his trust account along with the funds he was attempting to shelter from the IRS. (Ex. 20.)
45. 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. (Pet. ¶ 28; R. Ans. ¶ 5; *see also* Ex. 48.)
46. Specifically, on June 20, 2006, he 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.

47. On June 20, 2006, Respondent's trust account check number 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 number 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 number 1764, i.e., was used to cover Respondent's personal or business rent expense. (Pet. ¶ 29; R. Ans. ¶ 5; *see also* Nelson test.; & Ex. 48.)
48. 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. Respondent admits that the balance of his own funds in the trust account on July 10, 2006, was \$168.26. On that date, Respondent admits his trust account check number 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. Respondent admits that since the amount of check number 1615 (\$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 number 1615. (Pet. ¶ 30; R. Ans. ¶ 5; *see also* Nelson test.; & Ex. 48.)
49. Respondent admits 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 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
07/12/06	1612	Cingular	\$147.27
07/14/06	1616	AT&T	\$ 15.83

(Pet. ¶ 31; R. Ans. ¶ 5; *see also* Ex. 48.)

50. Respondent admits that 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. Respondent admits that on July 20, 2006, Respondent's trust account check number 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. Respondent admits that payment of check number 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. (Pet. ¶ 32; R. Ans. ¶ 5; *see also* Exs. 14, 18 & 48.)
51. 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. Respondent admits that on that date, Respondent's trust account check number 1686 in the amount of \$60, which Respondent had issued to himself, cleared Respondent's trust account. Respondent admits that since the amount of check number 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. (Pet. ¶ 33; R. Ans. ¶ 5; see also Ex. 48.)

52. 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. (Pet. ¶ 34; R. Ans. ¶ 5; see also Ex. 48.)
53. On April 29, 2005, Respondent's trust account check number 1779 in the amount of \$20,000, which Respondent had issued to TCF Bank on Vang's behalf, cleared Respondent's trust account. (Pet. ¶ 35; R. Ans. ¶ 5; see also Ex. 48.)
54. Respondent disbursed the \$25,000 in attorney's fees to which he was entitled in the Vang matter between April 22, 2005, and September 9, 2005, in 15 different installments. (Pet. ¶ 36; R. Ans. ¶ 5.)
55. 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. (Pet. ¶ 37; R. Ans. 5; see also Ex. 48.)
56. 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 to the MRPC (in effect on and after October 1, 2005). In particular, Respondent failed to maintain the required trust account trial balances and reconciliations. (Nelson test.)
57. Respondent's office manager testified that at the time she became office manager in June 2006, many of the required records were not available in Respondent's office. Testimony of Jennifer Fierro ("Fierro test."); see also Ex. 27.)
58. The Director's Office was required to obtain many of the trust account records, including but not limited to bank statements, copies of checks, and deposit copies directly from the bank because Respondent was unable to produce the requested documents. (Ex. 37.)
59. These documents are required by Rule 1.15, MRPC, which incorporates Appendix 1.

Moreno Matter

60. 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. (Pet. ¶ 40; R. Ans. ¶ 8.)
61. 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.

Respondent admits these two paragraphs were inconsistent and failed to clearly communicate to the Morenos how Respondent would handle the Morenos' retainer fee. During testimony Respondent affirmed his admission that the paragraphs were inconsistent. (Pet. ¶ 41; R. Ans. ¶ 8; Respondent's testimony ("R. test.")

62. 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. (Pet. ¶ 42; R. Ans. ¶ 8.)

63. Respondent's retainer agreement with the Morenos further provided:

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

(Pet. ¶ 43; R. Ans. ¶ 8.)

64. For the first few months, the Morenos received billing statements on a fairly regular basis but that after the first few months they did not receive regular billings even though they asked for accountings. (Moreno test.)

65. Respondent would tell the Morenos that a billing statement would be forthcoming, but the Morenos did not receive a billing statement. (Moreno test.)

66. The Moreno matter had almost been completed at the time Ms. Fierro was hired. Nevertheless, she prepared the final billing statement by looking through the file documents. She provided the Director's Office with all of the billing information in the file. (Fierro test.)

67. According to billing and payment information produced by Respondent prior to June 2007, Morenos had paid Respondent \$12,500.00 and that there was a credit balance of \$4,471.50 at the time of termination. (Nelson test.; Ex. 39.)

68. Respondent admits that at his request, the Morenos made the following payments to Respondent on April 13, 2005, May 23, 2005, July 5, 2005, August 14, 2005, August 27, 2005, February 15, 2006, March 3, 2006, and April 6, 2006, totaling \$12,500. (Pet. ¶ 45, R. Ans. ¶ 8.)

69. Just prior to the probable cause hearing in this matter, Respondent produced two more invoices in the Moreno matter. Adjusting the previous balance to include these invoices resulted in the Morenos having a credit balance of \$3,911.50. (Nelson test.; Ex. 52.)
70. The April 6, 2006, payment was for \$4,000 and was paid just prior to Respondent's termination. (Pet. ¶ 45; R. Ans. ¶ 8.)
71. Respondent disputes that the total owing Morenos should have been \$3,911.50. The real problem here is that Respondent failed to have an adequate bookkeeping procedure.
72. 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. 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 the few billing statements sent to the Morenos. (Exs. 29, 39 & 53.)
73. 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. (Pet. ¶ 47; R. Ans. ¶ 8.)
74. At the time of termination, Respondent refunded \$610.00 to the Morenos claiming that was the amount to which the Morenos were entitled. (Ex. 53; Nelson test.; Moreno test.; Fierro test.)
75. Throughout the course of the Director's investigation, the Director asked Respondent on several occasions to produce an accounting and other information related to the Moreno funds. (Exs. 28, 30, 34, 36, 39, 42, 43, 45 & 53.)
76. At the time of termination it appears, according to the Director, that Respondent owed the Morenos \$3,911.50. Because of the dispute, the decision as to attorney's fees earned should be resolved in civil litigation.
77. 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 \$4,500 of the funds paid to him. (Ex. 39.)
78. 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." (Pet. ¶ 50; R. Ans. ¶ 8.)
79. 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. (R. test.; Nelson test.; Fierro test.)

80. 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.
81. 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. 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." (Exs. 44 & 45.)
82. 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 the Moreno billings and payments. (Exs. 44 & 45; R. test.; Nelson test.)
83. Respondent admits that 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 at least \$3,900 of the funds the Morenos had paid to him. (Pet. ¶ 54; R. Ans. ¶ 8.)

Dishonesty in a Vehicle Forfeiture Matter

84. Respondent testified that in his supplementary answer to petition for disciplinary action that he intended to admit paragraphs 56, 57, and 58 of the Director's supplementary petition for disciplinary action. (R. test.)
85. On December 13, 2006, one C.S. was involved in an automobile accident resulting in damage to his vehicle. C.S. was also charged with Second Degree Driving While Impaired. Pursuant to M.S. 169A.03 ("Vehicle Forfeiture"), the Ramsey County Sheriff's Office seized the vehicle.
86. C.S. retained Respondent to represent him in both the DWI and vehicle forfeiture matters. (Supplementary Petition for Disciplinary Action ("S.Pet.") ¶ 56; R. test.)
87. On December 20, 2006, the Ramsey County Sheriff's Office served its notice of seizure and intent to forfeit on Farmers Insurance Company ("Farmers"), which insured C.S.'s vehicle. On January 12, 2007, Respondent contested the forfeiture and filed a demand for judicial determination of the forfeiture. (S. Pet. ¶ 57; R. test.; Ex. 54.)
88. On March 5, 2007, C.S. plead guilty to Second Degree DWI. The guilty plea resulted in a conviction of a designated offense pursuant to M.S. 169A.63.

89. Upon conviction for a designated offense, all right, title, and interest in a vehicle subject to forfeiture vests in the appropriate agency. (S. Pet. ¶ 60; R. Supp. Ans. ¶ 2.)
90. C.S. carried insurance on the vehicle. Minnesota case law provides that along with the vehicle, the insurance proceeds are subject to forfeiture. See, *Schug v. \$9,916.50 in U.S. Currency*, 669 N.W.2d 379, 384 (Minn. 2003), a Minnesota published Court of Appeals case. (S. Pet. ¶ 61; R. Supp. Ans. ¶ 4.)
91. Amy K. L. Schmidt was the prosecutor for the City of Shoreview, where the accident took place, and she handled the criminal and civil matters involving this incident.
92. Ms. Schmidt is also employed by a private law firm. On some of her correspondence Ms. Schmidt used stationary identifying her as a member of the private law firm without a reference to her as the prosecutor.
93. On July 13, 2007, Ms. Schmidt served Respondent a notice of motion and motion for summary judgment in the vehicle forfeiture matter. The motion hearing was scheduled for July 24, 2007. Ms. Schmidt appeared, but there was no appearance by Respondent or C.S., as neither Respondent or his client had been properly served. In fact, Respondent had not communicated to C.S. the time or date of hearing.
94. Ms. Schmidt did not realize that service was improper. She appeared in court and requested that she be granted summary judgment. Apparently, the Judge did not notice the timely service problem, and he granted the motion for summary judgment. Respondent testified that he had received Ms. Schmidt's summary judgment paperwork prior to the hearing date, but he did not take any action on it because service was untimely. However, rather than notifying the Court as to the problem or opposing the summary judgment by his own motion, Respondent did not notify the Court or Ms. Schmidt regarding the problem of service.
95. While all of this was going on, Farmers issued an insurance check made out to C.S. and the Ramsey County Sheriff.
96. The Sheriff's Department attempted to obtain the signature of C.S. on the check, which he refused to do.
97. Eventually, C.S. signed the check. When the Sheriff attempted to cash the check, it was not honored because it was more than six months old.
98. On August 23, 2007, Respondent wrote to Schmidt and claimed, among other things, that she had failed to timely serve him with her summary judgment motion. Schmidt responded to Respondent on August 23, 2007, stating that she believed service had, in fact, been timely. Schmidt stated, "I have instructed the Sheriff's Department to not dispose of the vehicle pending your motion to reconsider or other avenue of appeal." Respondent did not take any further action in the matter at that time. (Exs. 57 & 58; Schmidt test.)
99. On September 25, 2007, Schmidt wrote again to Respondent and asked whether C.S. intended to challenge the order for summary judgment. Respondent admits that he

responded to Schmidt on October 1, 2007, stating that he was awaiting word from his client. (S. Pet. ¶ 64; R. Supp. Ans. ¶ 2.)

100. On October 8, 2007, Respondent finally filed an appeal of the district court's July 24, 2007 order for summary judgment with the Minnesota Court of Appeals. Shortly thereafter, he and Schmidt agreed that Respondent would withdraw C.S.'s appeal in exchange for Schmidt's entry into a stipulation to vacate the order for summary judgment based on the untimely service issue. (S. Pet. ¶ 65; R. Supp. Ans. ¶ 2.)
101. Ms. Schmidt told Respondent that she was agreeing to vacate the order for summary judgment based solely on the untimely service issue and intended to re-file the motion for summary judgment. (S. Pet. ¶ 65; R. Supp. Ans. ¶ 2.)
102. On October 23, 2007, based on the parties' stipulation, the court ordered the July 24, 2007, order for summary judgment vacated. (S. Pet. ¶ 65; R. Supp. Ans. ¶ 2; Schmidt test.; R. test.)
103. Respondent admits that on November 16, 2007, Schmidt served and filed an amended notice of motion and motion for summary judgment and that the hearing on Schmidt's motion was scheduled for January 10, 2008. (S. Pet. ¶ 66; R. Supp. Ans. ¶ 2.)
104. On January 2, 2008, Respondent served a response to Schmidt's summary judgment motion on C.S.'s behalf. (S. Pet. ¶ 67; R. Supp. Ans. ¶ 2; R. test.; Schmidt test.)
105. Also on January 2, 2008, Respondent wrote to Farmers enclosing a copy of the court's October 23, 2007, order vacating the summary judgment order. In his letter to Farmers Respondent stated that the vehicle was "solely owned by [C.S.]" and demanded payment of the insurance proceeds to C.S. (S. Pet. ¶ 68; R. Supp. Ans. ¶ 2; R. test.) In fact, the vehicle was not solely owned by C.S. because it was subject to forfeiture.
106. Respondent further stated that if the proceeds were not paid by January 7, 2008, "I have been instructed by my client to utilize any and all remedies to secure your cooperation including a bad faith claim and the possibility of personal liability." (S. Pet. ¶ 65; R. Supp. Ans. ¶ 2.) Respondent did not present any evidence to support the position that Respondent had been instructed by his client to seek the remedies listed. In fact, it appears that C.S. was in the dark as to how Respondent was operating.
107. Respondent did not copy Schmidt on his letter to Farmers or otherwise inform her of his actions. Based on Respondent's representations, Farmers issued a check for the insurance proceeds to C.S. (S. Pet. ¶ 68; R. Supp. Ans. ¶ 2.)
108. As the ownership of the vehicle reverted to the Ramsey County Sheriff's Office upon the commission of the act by operation of statute, Respondent's statement to Farmers that the vehicle was owned solely by C.S. was false. (Ex. 70.)
109. At the time of Respondent's false statement that C.S. was the sole owner of the vehicle, C.S. had been convicted, the judicial forfeiture proceeding was pending, and the hearing on

Schmidt's motion for summary judgment was a little over a week away. (R. Supp. Ans. ¶ 2; Ex. 64.)

110. On January 10, 2008, the district court again ordered summary judgment in favor of Schmidt's client. The Order for Summary Judgment did not include the insurance proceeds at issue herein.
111. In approximately May 2008, in attempting to recover the insurance proceeds from Farmers, Schmidt learned for the first time of Respondent's January 2, 2008, letter to Farmers and Farmers' issuance of the proceeds check to C.S. (S. Pet. ¶ 70; R. Supp. Ans. ¶ 2.; R. test.; Schmidt test.)
112. On July 2, 2008, Schmidt served and filed a notice of motion and motion and related papers seeking an order finding Respondent and C.S. in contempt of court, for repayment of the insurance proceeds and for attorney's fees and sanctions. The hearing on Schmidt's motion was held on August 12, 2008. (S. Pet. ¶ 71; R. Supp. Ans. ¶ 2.)
113. On August 14, 2008, the district court issued an order (a) directing C.S. to return to the Ramsey County Sheriff's Office the insurance proceeds he received from Farmers, (b) finding Respondent in contempt of court and sanctioning him \$500, and (c) ordering Respondent and C.S. to pay attorney's fees of \$1,854.84. (S. Pet. ¶ 72; R. Supp. Ans. ¶ 2.) It appears at that time C.S. was unaware of the actions that were taking place behind the scenes.
114. In the memorandum attached to its August 14, 2008, order, the district court stated that Respondent "acted in contempt of court and in bad faith and that he acted deceitfully and abused the process of the Court by misrepresenting a Court order in order to obtain proceeds that he and his client were not legally entitled to." (S. Pet. ¶ 73; R. Supp. Ans. ¶ 2.)

Florida Licensure Matter

115. Sometime prior to October 2000 Respondent was admitted to practice law in the State of Florida.
116. Testimony at the hearing was that Respondent was suspended for failing to pay the annual registration fee. However, Ex. 76 indicates that Mr. Rebeau's membership in the Florida Bar terminated because of his non-payment of the registration fee.
117. For an unknown period until at least August 2007, respondent stated on his law office letterhead that he was "Also Admitted in Florida." (Exs. 15, 17, 20, 23, 24, 26, 27, 29, 31, 33, 38 & 40.)
118. Subsequent to October 2000 when the Florida license lapsed, Respondent did not practice law in the State of Florida.
119. Because the term "admitted" is ambiguous, and because Respondent did not practice any law in the State of Florida after his license was suspended, Respondent's inclusion of the statement on his letterhead that he was admitted in Florida was not false or misleading.

Failure to Cooperate with the Director

120. On October 1, 2008, Schmidt submitted a complaint to the Director. On October 13, 2008, the Director sent Respondent a notice of investigation requesting Respondent's written response to Schmidt's complaint. Respondent responded to the complaint on October 23, 2008. (S. Pet. ¶ 79; R. Supp. Ans. ¶ 10.)
121. On November 14, 2008, the Director wrote to Respondent and requested additional information regarding the Schmidt complaint and that Respondent failed to respond. (Nelson test.)
122. On December 2, 2008, the Director wrote to Respondent again requesting his response to the Director's November 14, 2008, letter and Respondent failed to respond. (Nelson test.)
123. On December 9, 2008, after learning about the Florida licensure matter, the Director sent Respondent a notice of investigation requesting his response in the matter and Respondent failed to respond. (Nelson test.)
124. Ms. Nelson testified that on January 7, 2009, the Director wrote two letters to Respondent, one requesting his response to the Director's November 14, 2008, letter in the Schmidt matter, and the other requesting his response to the Florida licensure matter. Ms. Nelson indicated that the Director's Office did not receive responses to either letter. (Nelson test.)
125. Ms. Nelson testified that on January 28, 2009, the Director wrote to Respondent and requested his appearance for a February 17, 2009, meeting in the Director's Office to discuss the Schmidt and Florida licensure matters. Ms. Nelson indicated that Respondent failed to appear for the meeting and did not contact the Director to request that the meeting be rescheduled. (Nelson test.)
126. Ms. Nelson personally prepared the November 14, 2008, December 2, 2008, January 7, 2009, and January 28, 2009, letters. Ms. Nelson indicated that as part of her preparation procedures she requests the file copy of the letter be returned to her after mailing. She indicated that she received the file copy of each of these letters. (Nelson test.)
127. Ms. Nelson also testified the correspondence was sent to the address which had been previously used to mail items to Respondent and she stated that there is no indication in the Director's file that any correspondence sent to Respondent after October 23, 2008, was returned to the Director's Office as undeliverable. (Nelson test.)
128. On February 18, 2009, Respondent's assistant wrote to the Director and stated that Respondent had been unavailable due to a "family medical illness resulting in death" and that Respondent would be in court in out-state Minnesota on February 19, 2009. Respondent further admits his assistant stated that Respondent would be "addressing the matters you are awaiting response to" the following week "when he returns to the office." (S. Pet. ¶ 85; R. Supp. Ans. ¶ 10.)
129. Respondent's office manager testified that she acts at Respondent's direction. (Fierro test.)

130. Respondent's assertion that he did not receive the Director's letters of November 14, 2008, December 2, 2008, December 9, 2008, January 7, 2009, and January 28, 2009, is not credible.
131. The Director's letters of November 14, 2008, December 2, 2008, December 9, 2008, January 7, 2009, and January 28, 2009, were addressed to Respondent's known address. (Exs. 74-78.)
132. Furthermore, Respondent's office manager was clearly aware of the Director's pending request when she drafted the February 18, 2009, letter. In fact, she identifies that Schmidt matter in her letter. (Ex. 79.)
133. Respondent admits that as of March 2, 2009, the Director's Office had received nothing further from Respondent regarding the Schmidt matter and the Florida licensure matter. (S. Pet. ¶ 86; R. Supp. Ans. ¶10.)

CONCLUSIONS OF LAW

1. Respondent's conduct in failing to file and pay employer withholding taxes violated Rule 8.4(d), MRPC.
2. 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 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).
3. 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.
4. Respondent's conduct in making a false statement to Farmers in order to obtain the insurance proceeds violated Rules 4.1 and 8.4(c) and (d), MRPC.
5. Respondent's use of the term "admitted in Florida" was not falsely misleading and did not violate any rules.
6. Respondent's conduct in failing to cooperate in the Director's investigation of the Schmidt matter violated Rule 25, Rules on Lawyers Professional Responsibility (RLPR).

RECOMMENDATION FOR DISCIPLINE

Aggravating Factors

1. The multiple acts of professional misconduct and the length of time over which the failure to file or pay withholding taxes occurred.

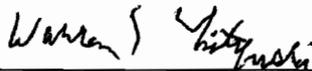
Mitigating Factors

1. Respondent claims that he is remorseful; however, the Referee finds otherwise.
2. Respondent has practiced law for a period of 31 years without any prior discipline.

The Referee recommends:

1. That Respondent, Gregory J. Rebeau, be suspended from the practice of law in the State of Minnesota for a period of ninety (90) days. Following the suspension period, Respondent shall automatically be reinstated to the practice of law in Minnesota.
2. Prior to reinstatement, Respondent should pay \$900.00 in costs plus disbursements - Rule 24.
3. Respondent should satisfy all Continuing Legal Education requirements - Rule 18(e).
4. Respondent should comply with the requirements of Rule 26.
5. Prior to reinstatement Respondent should provide proof that all employer quarterly tax returns have been filed and all taxes paid.

Dated this 27 day of October, 2009.



Supreme Court Referee Warren E. Litynski