FILE NO. A09-890

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against THOMAS ALLEN ROTHSTEIN,
a Minnesota Attorney,
Registration No. 217542.

AMENDED 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 amended petition upon the parties' agreement pursuant to Rules 10(a) 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 September 19, 1991. Respondent is not currently practicing law and his law license is on a voluntary inactive status. Respondent last practiced law in Bloomington, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT
Pattern of Misappropriation of Law Firm Funds and Dishonesty to Conceal Misappropriation

Introduction

1. In early 2005, respondent formed the Halberg Criminal Defense law firm ("law firm") with three other lawyers, Marsh Halberg, Eric Nelson and Tina Appleby. Each of the four lawyers owned a one-fourth interest in the law firm.

2. Respondent was responsible for most of the office management tasks within the law firm, including maintenance of the firm's financial and accounting

records and payment of its bills. Respondent utilized the *Quickbooks* computer program to maintain the law firm's financial and accounting records. Respondent had signatory authority on the law firm's business account.

3. In April 2006, attorney Brent Schafer purchased a one-fifth interest in the law firm.

4. In early 2008, Schafer noticed irregularities in the financial and accounting records respondent maintained for the law firm. At that time, Schafer and the other partners undertook a review of the law firm's records and uncovered respondent's acts of misappropriation described below.

5. In April 2008, the partners confronted respondent with the irregularities and misappropriation they had discovered. At that time, respondent admitted that he had misappropriated $27,500 in law firm funds and repaid that amount to the law firm. Also at that time, and pursuant to his agreement with the law firm, respondent took an unpaid leave from the law firm.

6. As further described below, respondent's misappropriation of law firm funds greatly exceeds the $27,500 he admitted and repaid in April 2008.

7. In August 2008, respondent and the other law firm partners reached agreement regarding dissolution of respondent's interest in the law firm and termination of his employment.

Checks Issued to Respondent in Excess of Approved Shareholder Distributions

8. During 2005, respondent disbursed law firm funds to himself totaling $8,500 more than the approved shareholder distributions. The other law firm partners were not aware of and did not authorize these additional disbursements to respondent.

9. During 2006, respondent disbursed law firm funds to himself totaling $23,300 more than the approved shareholder distributions. The other law firm partners were not aware of and did not authorize these additional disbursements to respondent.

10. During 2007, respondent disbursed law firm funds to himself totaling $20,039 more than the approved shareholder distributions. The other law firm partners were not aware of and did not authorize these additional disbursements to respondent.

11. These unauthorized disbursements of law firm funds respondent made to himself during the years 2005 through 2007 totaled $51,839 and constituted misappropriation of law firm funds.

12. In an effort to conceal his misappropriation from the other law firm partners, respondent did not enter many of the law firm business account checks by which he made unauthorized disbursements to himself into the law firm's *Quickbooks* records.

13. With respect to other of the law firm business account checks by which respondent made unauthorized disbursements to himself, respondent falsely identified the payee and/or purpose of the check in the law firm's *Quickbooks* records. For example, among the unauthorized disbursements respondent made to himself was a $5,000 disbursement in March 2007. Respondent falsely reflected this check in the law firm's *Quickbooks* records as a check payable to J.F., a law firm client, as a fee refund to the client. In fact, no such fee refund was made to J.F., or any other client.

Cash Withdrawals

14. During the years 2006 and 2007, respondent made cash withdrawals totaling $21,500 from the law firm's business account, which the law firm partners were not aware of and did not authorize. The dates and amounts of respondent's unauthorized cash withdrawals are as follows:

DATE	AMOUNT
11/04/2006	$ 4,000.00
01/05/2007	$ 2,500.00
02/15/2007	$ 5,000.00
03/12/2007	$ 5,000.00
06/22/2007	$ 5,000.00

15. Respondent's $21,500 in unauthorized cash withdrawals from the law firm's business account constituted misappropriation of law firm funds.

16. Respondent made false entries in the law firm's *Quickbooks* records in an effort to conceal these unauthorized cash withdrawals from his partners. Respondent falsely recorded his January 5, 2007, cash withdrawal in the law firm's *Quickbooks* account as a fee refund to J.D., a law firm client. Respondent falsely recorded his February 15, 2007, cash withdrawal in the law firm's *Quickbooks* account as a fee refund to J.F., a law firm client. Finally, respondent falsely recorded his March 12, 2007, cash withdrawal in the law firm's *Quickbooks* account as a fee refund to L.R., a law firm client. In fact, no such fee refunds were made to these or any other clients.

Personal Transactions on Law Firm Credit and Debit Cards

17. In approximately April 2005, the law firm provided each of its partners with a business credit card to be used for purchases related to the law firm.

18. During 2005 and 2006, respondent and at least one other partner utilized the law firm credit card for both business and personal purposes.

19. During 2005, respondent made personal purchases on his law firm credit card totaling approximately $8,489. During 2006, respondent made personal purchases on his law firm credit card totaling approximately $17,000.

20. In August or September 2006, the law firm partners discussed the personal use of the law firm credit cards, with the discussion focusing on a partner other than respondent. During the course of these discussions, respondent stated that he had used the law firm credit card for personal purposes only on a limited basis. In fact, by mid-September 2006, respondent had incurred personal charges of more than $16,000 on the law firm credit card.

21. At or about the time of these discussions regarding personal use of the law firm credit card, respondent made a false debit entry in the law firm's *Quickbooks* records in the amount of $23,823.87. Respondent identified this entry as a fee refund

and annotated it, "LUMP SUM FOR ACCT'G PURPOSES." In fact, no such fee refund was made from the law firm business account to any client. Rather, respondent made the entry to force reconciliation of the law firm business account and to conceal his personal use of the law firm credit card from the other partners.

22. In December 2006, the other partner repaid the firm in full for his personal purchases on the law firm credit card. Since that time, it has been that partner's practice to review the monthly law firm credit card statements, identify any personal purchases and repay the law firm on an ongoing, monthly basis.

23. Respondent continued to use the law firm credit card for personal purposes throughout 2007. In 2007, respondent made personal purchases on his law firm credit card totaling approximately $12,000.

24. In addition, during 2007, respondent used the law firm's debit card for approximately $2,600 in personal expenditures, including an approximately $2,400 payment to Continental Diamond.

25. The other law firm partners were not aware of and did not authorize respondent's personal purchases on the law firm debit and credit cards.

26. Respondent's unauthorized personal purchases on the law firm credit and debit cards during the years 2005 through 2007 totaled more than $40,000 and constituted misappropriation of law firm funds.

Online Transfers

27. During 2006 and 2007, respondent made a series of online transfers from the law firm's business account into his personal account. The other partners were not aware of and did not authorize these transfers.

28. In most cases, respondent repaid the transfers within a few days by either (a) endorsing his law firm paycheck as payable to the law firm and re-depositing the check into the law firm's business account, or (b) endorsing other checks issued to him as payable to the law firm and depositing the check into the law firm business account.

29. During 2006, respondent failed to repay the law firm for $1,200 in online transfers he made from the law firm business account into his personal account.

30. During 2007, respondent failed to repay the law firm $8,800 in online transfers he made from the law firm business account into his personal account.

31. Respondent's unreimbursed online transfers from the law firm business account into his personal account totaled $10,000 and constituted misappropriation of law firm funds.

Checks Issued to R.M.

32. R.M. is respondent's childhood friend. The law firm did not represent R.M. in any legal matters and had no connection to R.M. independent of respondent's friendship.

33. During 2006, respondent issued two checks totaling $6,500 to R.M. on the law firm business account. These checks had no legitimate law firm purpose. The other law firm partners were not aware of these checks and did not authorize their issuance.

34. Respondent's issuance of checks totaling $6,500 to R.M. constituted misappropriation of law firm funds.

35. In an effort to conceal his disbursements to R.M. from the other law firm partners, respondent did not enter the first check he issued to R.M. at all into the law firm's *Quickbooks* records. Respondent falsely entered the second check he issued to R.M. in the law firm's *Quickbooks* as a fee refund to K.B., a law firm client. In fact, no such refund was made to K.B.

Checks Issued to B.G.

36. B.G. was a law firm client who performed remodeling work at the home of respondent's girlfriend. During 2007, respondent issued two law firm business account checks to B.G. totaling $3,180 in payment of this remodeling work. The other law firm partners were not aware of these checks and did not authorize their issuance.

37. Respondent made false entries in the law firm's *Quickbooks* records in an effort to conceal his issuance of the checks to B.G. from the other law firm partners. Specifically, respondent falsely identified the purpose of these checks to be fee refunds to clients. In fact, no such fee refunds were made to any clients.

Law Firm Checks Issued in Payment of Personal Expenses

38. During the years 2005 through 2007, respondent made several personal purchases at Costco which he paid for with law firm business account checks. Respondent's personal Costco purchases paid with law firm funds totaled approximately $3,800. The other law firm partners were not aware of these purchases and did not authorize them.

39. Respondent made false entries in the law firm's *Quickbooks* records in an effort to conceal his personal Costco purchases from the other law firm partners. Specifically, on an unknown date during the period January 10 to April 2, 2008, respondent changed the law firm's *Quickbooks* records with respect to two of the Costco checks to identify those checks as "Employee Advances."

40. In late 2006 and early 2007, respondent issued two law firm checks to a moving company totaling approximately $961 in payment of personal moving expenses. The other law firm partners were not aware of these checks and did not authorize their issuance.

41. Respondent's issuance of law firm business account checks totaling approximately $4,761 in payment of his personal Costco expenditures and moving expenses constituted misappropriation of law firm funds.

False Credit Card Refunds

42. In September 2006, respondent processed a credit card refund in the amount of $7,000 and, in the law firm's *Quickbooks* records, falsely attributed the refund to law firm client, D.J. In fact, no credit card refund was issued to D.J. or any other

client. Rather, it appears respondent issued the $7,000 refund to his own personal credit card.

43. In April 2007, respondent processed a credit card refund in the amount of $7,500 and, in the law firm's *Quickbooks* records, falsely attributed this refund to law firm client, H.V. In fact, no credit card refund was issued to H.V. or any other client. Rather, it appears respondent issued the $7,500 refund to his own personal credit card.

44. At some point between March 26 and April 5, 2008, respondent changed the entry in the law firm's *Quickbooks* records to eliminate H.V.'s name and to instead simply read, "Fee Refund."

Additional Dishonest Efforts to Conceal Misappropriation

45. Respondent made additional false entries to the law firm's *Quickbooks* records to force reconciliation of the account and to conceal his misappropriation of law firm funds from the other partners. These false entries took the form of non-existent fee refunds to clients and "suspense" entries, which are bookkeeping entries intended to temporarily account for disbursements pending a decision regarding the accurate attribution of disbursements. Among these false entries are those described below.

46. In September 2005, respondent made a legitimate $4,000 refund to one of the law firm's clients, M.N., which he accurately entered in the law firm's *Quickbooks* records. On November 1, 2005, however, respondent falsely entered a second fee refund to M.N. in the law firm's *Quickbooks* records, in the amount of $6,000. In fact, no such refund was made to M.N. or any other client.

47. In 2005, respondent entered two false "suspense" entries in the law firm's *Quickbooks* records: (a) one dated May 27, 2005, in the amount of $2,500 and attributed to law firm client B.P., and (b) another dated November 15, 2005, in the amount of $4,000 with no client attribution.

48. In April 2006, respondent made a false entry to the law firm's *Quickbooks* records indicating that $1,500 fee refund was issued to law firm client, K.E. In fact, no such refund was issued to K.E. or any other client.

49. In December 2006, respondent made a false entry to the law firm's *Quickbooks* records indicating that a $3,000 fee refund was made to an unnamed client. In fact, no such refund was issued to any client.

50. In August 2007, respondent made a false entry to the law firm's *Quickbooks* records indicating that a $1,000 fee refund was made to law firm client, E.M. In fact, no such refund was issued to E.M. or any other client.

51. In October 2007, respondent made a false entry to the law firm's *Quickbooks* records indicating that a $1,500 fee refund was made to law firm client, G.N. In fact, no such refund was issued to G.N. or any other client.

Restitution

52. During the period May 2006 to February 2008, respondent made restitution to the law firm in the approximate amount of $19,500. Respondent restored funds to the law firm business account by (a) issuing checks on his personal account and depositing them into the law firm account, (b) not issuing or re-depositing his shareholder distribution checks into the law firm account, and (c) endorsing checks issued to respondent by third parties as payable to the law firm and depositing them into the law firm's account.

53. As noted above, respondent made additional restitution to the law firm in the amount of $27,500 in April 2008, after Nelson and the other law firm partners confronted respondent with his financial irregularities and misappropriation.

54. Respondent has failed to make restitution of more than $100,000 in law firm funds he misappropriated.

55. On April 15, 2009, the Hennepin County Attorney's Office issued a criminal complaint against respondent for his misappropriation of law firm funds as described above. The criminal complaint charged respondent with nine counts of felony theft by swindle in violation of Minn. Stat. § 609.52, subd. 2(4), subd. 3(1) and 3(2).

56. On October 14, 2009, respondent pled guilty to a felony charge of theft by swindle in an amount more than $35,000, in violation of Minn. Stat. § 609.52, subd. 2(4) and 3(1). (A copy of the transcript of respondent's guilty plea is attached as Exhibit 1.) A pre-sentence investigation has been ordered and respondent is scheduled to be sentenced on January 12, 2010.

57. Respondent's conduct in misappropriating law firm funds and making false entries in the law firm's *Quickbooks* records in an effort to conceal his misappropriation, violated Rules 8.4(b),(c) and (d), Minnesota Rules of Professional Conduct.

WHEREFORE, the Director respectfully prays for an order of this Court suspending or disbarring respondent, 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: Nov. 13, 2009.

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

CASSIE HANSON
SENIOR ASSISTANT DIRECTOR
Attorney No. 303422