

FILE NO. A14-0316

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against TERRY H. RUEB,
a Minnesota Attorney,
Registration No. 121964.

**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 for disciplinary action pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility (RLPR).

Respondent is currently the subject of a January 23, 2014, petition for disciplinary action. The Director, having received additional information from respondent, hereby amends that petition for disciplinary action and alleges that respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Bergeron Matter

1. On March 1, 2010, David Bergeron hired respondent to represent him in a marriage dissolution matter.
2. Between March 1, 2010, and June 20, 2011, Bergeron paid respondent a total of \$58,543.75 for fees and costs.
3. On June 20, 2011, Bergeron delivered to respondent two checks—one for \$10,000 and one for \$15,000. These amounts were intended to be payment for attorney's fees and are included in the \$58,543.75 in fees noted above.

4. As of June 20, 2011, respondent was owed only \$3,672 in fees for services provided to Bergeron and, therefore, should have deposited \$21,328 into a trust account to be held until earned. Instead, respondent deposited the \$10,000 check in its entirety to his own account. This resulted in an improper payment of \$6,328 to respondent of fees not yet earned.

5. Respondent deposited the June 20, 2011, \$15,000 check into his trust account.

6. In July and August 2011, respondent paid to himself at least \$13,000 of the \$15,000 that he was holding in his trust account on behalf of Bergeron. Respondent withdrew these funds from the trust account via approximately 12 internet transfers.

7. Respondent did not provide to Bergeron written notice of the time, amount, and purpose of the withdrawals nor did he provide Bergeron with an accounting of the funds held in the trust account on his behalf.

8. Bergeron's marriage dissolution was finalized in September 2011.

9. Bergeron called respondent multiple times seeking an accounting of the funds paid for attorney's fees and a refund of any unearned fees but, despite respondent's promise to provide one, respondent never provided an accounting.

10. Respondent's conduct in the Bergeron matter violated Rules 1.4, 1.15(a), 1.15(b), 1.15(c)(3), 1.16(d), and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Greenleaf Sixth Association Matter

11. Greenleaf Sixth Association (the Association) is a homeowners association. In 1998 a hailstorm damaged a number of homes belonging to members of the Association. While the Association was responsible for the repair of home sidings damaged in the hailstorm, each individual homeowner had their own homeowner's policy with varying provisions relating to payment for such repairs. The Association

took out a loan to pay for the repairs to the damaged homes and then sought reimbursement for the cost of repairs from the individual homeowners who had made claims on their homeowner's insurance policies for the costs of the repairs.

12. In February 2001 the Association hired respondent to assist it in collecting reimbursements from the individual homeowners who had received insurance payments for the hail damage but who had not reimbursed the Association for the cost of the repairs.

13. On September 21, 2001, respondent mailed demand letters to at least nine homeowners seeking reimbursement payments for the siding repairs.

14. Between 2001 and his discharge as the Association's lawyer in 2012 respondent failed to diligently pursue the Association's claims for reimbursement payments from homeowners.

15. On April 16, 2012, respondent delivered to the Association a cashier's check drawn on U.S. Bank in the amount of \$12,500. Respondent, by delivery of the check, falsely represented that the funds were amounts he had collected as reimbursement payments. No accounting was then provided to the Association with respect to the funds. As more fully set forth in paragraph 29 below, respondent provided what purported to be a partial accounting on September 4, 2012.

16. Respondent's representation that the \$12,500 represented funds he had collected as reimbursement payments was false. In fact, respondent had collected no reimbursement payments and the \$12,500 he paid to the Association came from his own funds.

17. On July 9, 2012, Nicholas Stepka, the president of the Association, sent an email to respondent on behalf of the Association asking for a list of all open cases, where each case stands, and next steps needed.

18. On July 18, 2012, Stepka sent an email to respondent asking to meet with him the next Tuesday or Thursday to discuss the Association's case files.

19. On July 23, 2012, not having received a response, Stepka emailed respondent again asking what time would work best for the meeting.

20. On July 23, 2012, respondent responded to Stepka's email, but discussed only another, unrelated case and did not respond to the request for a meeting.

21. On July 24, 2012, Stepka emailed respondent telling him that with respect to the siding matter, he would be sending a representative to respondent's office the next Monday at 10:00 a.m. to pick up all siding associated documents from him.

22. On July 29, 2012, respondent sent an email to Stepka stating, in part, "As a result of my schedule and with just three business days' notice, I am not able to have items ready for pick up on Monday morning at 10:00 a.m. I will contact you, however, to schedule a date and time."

23. On August 11, 2012, Stepka sent an email to respondent telling him that the Association was having Heidi Beacham review the siding lawsuit, that she needed to see the files, and asking when the files could be made available to her.

24. On August 15, 2012, at 4:55 p.m., Beacham went to respondent's office for the purpose of picking up the Association's files with respect to the siding reimbursement matters. Respondent refused to give Beacham the files.

25. On August 15, 2012, at 8:08 p.m., Stepka sent an email to respondent noting that Beacham had been unable to get the siding reimbursement files from him and giving him "final notice" that all siding related lawsuit files be made available to Beacham no later than August 17, 2012.

26. On August 17, 2012, respondent sent an email to the Association's board members. In that email he stated that Beacham appeared at his office without any notice or appointment. The balance of the email discussed a matter unrelated to the retrieval of the siding reimbursement files.

27. On August 17, 2012, Stepka responded to respondent's email stating, "Terry, in all honesty, instead of writing this [respondent's] email I wish you would have worked on getting us our siding lawsuit files."

28. On August 21, 2012, Stepka sent an email to respondent stating, in part, "I look forward to seeing a detailed printed accounting of all monies collected by September 3, 2012."

29. On September 4, 2012, respondent delivered to the Association a listing of amounts he had allegedly collected in two of the siding reimbursement matters. The listing of amounts did not provide dates the sums were collected or an itemization of respondent's fees and expenses. The listing provided by respondent was false. In fact, as noted above, respondent had collected no reimbursement payments and the \$12,500 he paid to the Association came from his own funds.

30. On October 2, 2012, Stepka emailed respondent inquiring about one of the siding reimbursement matters noting that respondent had said he should be able to wrap it up by the end of September.

31. On October 9, 2012, at 3:07 p.m., having received no response from respondent, Stepka emailed him again stating, "Terry, I feel like there is lack of communication, and respect, it has been a week since I wrote this [October 2] email. If you do not get back to the Board by 10AM tomorrow, I will make a motion to hire another attorney to go over our case files and review invoices when monies was collected and that all laws were followed. Please update the board ASAP."

32. On October 9, 2012, at 4:21 p.m., respondent sent an email to the Association's board members stating, "I am responding to Nick's [Stepka's] e-mail from last week regarding wrapping up of the settlement by the end of September. I was out of the office in Court outside the metro area when the e-mail was sent, and I had other Court obligations and commitments last week, also. When I indicated the end of September, it was an estimate, not an exact guarantee of the time frame. At any rate,

the settlement is on track and I expect to have it wrapped up this month. I will stay in contact with the Board, and keep you informed."

33. Respondent's statement in the October 9, 2012, email that the settlement of one of the reimbursement cases was on track and was expected to be wrapped up within the month was false. In fact, there was no settlement being negotiated by respondent.

34. On October 10, 2012, Stepka sent an email to respondent asking for a detailed update to the board regarding work done on the siding reimbursement cases. In that email Stepka expressed dissatisfaction with respondent's delayed responses and respondent's failure to produce invoices for the board.

35. On October 14, 2012, respondent sent an email to the Association's board members stating, "As a clarification and further update, the settlement has been reached. The settlement funds will be received within a matter of days, no later than the end of this month. I will keep you posted."

36. Respondent's statement in the October 14, 2012, email that a settlement had been reached was false. In fact, there was no settlement that was negotiated by respondent.

37. On October 30, 2012, at 4:23 p.m., respondent sent an email to the Association's board members stating, in part, "As expected, settlement funds are being received this week. I will immediately contact you to make arrangement to hand deliver a cashier's check upon verification of collection."

38. Respondent's statement in the October 30, 2012, email that settlement funds were being received was false. In fact, there was no settlement that was negotiated by respondent.

39. On October 30, 2012, at 4:31 p.m., Stepka responded to respondent's email stating, "I have 100% availability this week to meet. I can meet any at [sic] moment.

When we meet, the Board expects all files related to all association documents in accordance to the Minnesota Rules of Professional Conduct.”

40. On November 4, 2012, respondent delivered another U.S. Bank cashier’s check in the amount of \$9,500 to the Association. Respondent, by delivery of the check, falsely represented that the funds were amounts he had collected as reimbursement payments.

41. Respondent’s representation that the \$9,500 represented funds he had collected as reimbursement payments was false. In fact, respondent had collected no reimbursement payments and the \$9,500 he paid to the Association came from his own funds.

42. On November 14, 2012, Stepka sent an email to respondent stating, “This is a reminder that the board is still expecting all siding related documents by the end of the business day on Friday, 5:00PM [November 16], as promised. Thank you for your prompt attention to this matter.”

43. On November 16, 2012, at 9:05 p.m., respondent sent an email to the Association’s board members stating that it was his understanding that he had been asked to provide the files on November 17.

44. On November 16, 2012, at 9:27 p.m., Stepka sent an email to respondent stating, in part, “We want all association related files and statements. What time can we get those files tomorrow, I assume by 7PM?”

45. On November 17, 2012, Stepka sent an email to respondent asking, “When can I come collect the files?”

46. On November 17, 2012, respondent sent an email to the Association’s board members stating, “As I wrote yesterday, Nick and Brandon met with me on Nov. 2. From Nick’s most recent e-mails, I understand the agreements made at the Nov. 2 meeting are no longer in effect. Given the tone of Nick’s e-mails, I will be referring this matter to my attorney.”

47. On November 21, 2012, Theresa Peterson, a lawyer retained by the Association, wrote to respondent stating, in part, "I have been retained to represent Greenleaf Sixth Association. Your services as Greenleaf's attorney are hereby terminated. . . . Greenleaf demands the immediate return of its files. . . . A courier will be at your office on November 28, 2012 at 4:00 p.m. to collect the above files and documents." (Emphasis in original.)

48. On November 28, 2012, respondent called Peterson and told her the files were not ready to be picked up and that they could be picked up on December 5, 2012.

49. Peterson received the Association's files from respondent on December 5, 2012. That same day Peterson sent an email to Stepka stating, in part, "I received the documents from [respondent] this morning. . . . The siding documents appear to be everything that was turned over by the Association to [respondent], plus property records, a few summary sheets listing names of homeowners, and copies of correspondence sent by [respondent] in 2001. There is no accounting or detail regarding amounts collected, not even copies of the settlements checks."

50. Respondent's conduct in the Greenleaf Sixth Association matter violated Rules 1.3, 1.4, 1.15 (c) (4), 1.16(d), 4.1, and 8.4(c), MRPC.

THIRD COUNT

Non-Cooperation in Disciplinary Investigation

51. On January 23, 2013, a notice of investigation with respect to the complaint of David Bergeron was mailed to respondent. The notice directed respondent to, pursuant to Rule 25, RLPR, and Rule 8.1(b), MRPC, provide a complete written response to the District Ethics Committee (DEC) investigator assigned to investigate Bergeron's complaint within 14 days.

52. Deanne Dulas was the DEC investigator assigned to investigate the Bergeron complaint.

53. On February 5, 2013, Dulas wrote a letter addressed to respondent and Bergeron. In that letter Dulas told respondent that she wanted to see from him, in particular, his billing records for Bergeron's case, a copy of his retainer agreement, a copy of his trust account records and bank statements relative to Bergeron, and any documentation regarding payments made by Bergeron.

54. On February 6, 2013, Dulas had a telephone conversation with respondent. During that conversation respondent asked for additional time to respond to the Bergeron complaint. It was agreed that respondent would have a response to Dulas by February 22, but that if he needed more time he could call Dulas and ask for an additional extension.

55. On February 22, 2013, Dulas had a telephone conversation with respondent regarding the Bergeron complaint. Respondent told Dulas that his response was not yet finished. Dulas extended the time to respond to March 1, 2013.

56. On March 1, 2013, respondent called Dulas and told her that, due to his heavy schedule, his response was not completed and that he would try to have the response to the Bergeron complaint to her on Monday, March 4.

57. On March 11, 2013, respondent called Dulas and told her that his wife was having medical problems and that his response to the Bergeron complaint would be delayed.

58. On March 12, 2013, Dulas wrote a letter to respondent stating that she needed a response to the Bergeron complaint as soon as possible and that she would like to have his response no later than March 22.

59. On March 12, 2013, a notice of investigation with respect to the complaint of Heidi Beacham (writing on behalf of Greenleaf Sixth Association) was mailed to respondent. The notice directed respondent to, pursuant to Rule 25, RLPR, and Rule 8.1(b), MRPC, provide a complete written response to the DEC investigator assigned to investigate Beacham's complaint within 14 days.

60. Paul Zeig was the DEC investigator assigned to investigate Beacham's complaint.

61. On March 22, 2013, Zeig wrote to respondent notifying him that he had been appointed to conduct the investigation of the Beacham complaint and requesting certain trust account and billing records.

62. On March 26, 2013, having not yet received a written response from respondent regarding the Bergeron complaint, Dulas wrote him another letter. In that letter Dulas again reminded respondent that she needed his response and asked that, if he cannot provide the response, he describe why he could not do so.

63. On April 4, 2013, Zeig had a telephone conversation with respondent regarding the Beacham complaint. During that conversation respondent stated that his incoming mail was being misdirected and that he had not received any prior mailings with respect to Beacham's complaint.

64. On April 11, 2013, Dulas wrote to respondent. In that letter she noted that it had been more than two months since she forwarded her original request for a response to the Bergeron complaint and again requested a written response to the complaint.

65. On April 12, 2013, Zeig wrote to respondent requesting that a response to the Beacham complaint and Zeig's March 22 letter be delivered to him no later than April 19.

66. On April 29, 2013, Dulas again wrote to respondent noting that she had yet to receive from him any materials in response to Bergeron's complaint and advising him that if he wished to submit a response he should do so as soon as possible.

67. On April 30, 2013, Zeig had a telephone conversation with respondent. During this conversation Zeig again requested a response to the Beacham complaint and his March 22 letter.

68. On May 3, 2013, respondent faxed to Zeig a "partial response" to the Beacham complaint and Zeig's March 22 letter. The "partial response" consisted of billing statements and a trust account subsidiary ledger for one of the matters respondent was handling on behalf of the Association. That same day Zeig called respondent and told him he still required a full narrative response to the Beacham complaint.

69. On May 3, 2013, Dulas again wrote to respondent. In that letter she detailed her efforts to obtain a response from him, told him that she intended to submit her report to the DEC on May 10, and told him the if he wished to respond to Bergeron's complaint the response should be submitted immediately.

70. On May 9, 2013, respondent faxed to Zeig a written response to the Beacham complaint.

71. On May 9, 2013, respondent faxed to Dulas a written response to the Bergeron complaint.

72. On June 4, 2013, after receiving a report back from the DEC regarding the Beacham complaint against respondent, the Director wrote to respondent forwarding him a copy of the DEC's report and asking that he respond to the report within two weeks.

73. On June 4, 2013, after receiving a report back from the DEC regarding the Bergeron complaint against respondent, the Director wrote to respondent forwarding him a copy of the DEC's report and asking that he respond to the report within two weeks.

74. On June 26, 2013, respondent called the Director's Office. During a June 27 telephone conversation, respondent said that he had not received the Director's June 4 letters until June 26 and said he would provide a response by July 11.

75. On July 11, 2013, respondent called the Director's Office and requested an extension of time to respond to the June 4 letters. It was agreed that he could have until July 17 to respond.

76. On July 19, 2013, respondent called the Director's Office and requested another extension of time to respond. An extension to July 26 was granted with the proviso that no further extensions would be granted.

77. On July 22, 2013, the Director wrote to respondent confirming that a response to the June 4 letters was due by July 26 and requesting that he provide certain trust account books and records by August 12.

78. On July 26, 2013, respondent called the Director's Office to say that he had a family emergency and would not be able to provide his response to the June 4 letters until the following Monday, July 29.

79. On August 12, 2013, respondent wrote to the Director requesting an additional ten days to respond. This letter was received by the Director on August 15.

80. On August 15, 2013, having not yet received a response to the June 4 letters or the trust account books and records requested on July 22, the Director wrote to respondent. In that letter the Director cited to Rule 8.1, MRPC, and Rule 25, RLPR, and asked for a complete response to the letters of June 4 and July 22 within one week.

81. On June 6, 2014, respondent and his counsel met with representatives of the Director's Office. At this meeting respondent disclosed to the Director for the first time that he had improperly paid to himself \$6,328 from funds provided to him by Bergeron and that the \$12,500 and \$9,500 payments he made to the Association were from his own funds rather than from funds collected on behalf of the Association.

82. Respondent's conduct in failing to timely respond to the DEC's and the Director's requests for information and documents during the course of the investigation of the Bergeron and Beacham matters violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

WHEREFORE, the Director respectfully prays for an order of this Court suspending 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: October 7, 2014.



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



PATRICK R. BURNS
FIRST ASSISTANT DIRECTOR
Attorney No. 134004