

DEC 02 2015

FILED

FILE NO. A15-1048

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against DOUGLAS A. RUHLAND,
a Minnesota Attorney,
Registration No. 0094328.

**SECOND 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 Rule 12(a), Rules on Lawyers Professional Responsibility (RLPR).

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 5, 1978. Respondent currently practices law in Eden Valley, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's history of prior discipline is as follows:

A. On July 7, 1989, respondent was publicly reprimanded for failing to honor an agreement with opposing counsel and the trial court, failing to disclose the exercise of an attorney's lien and failing to obey a trial court's order to pay funds to an opposing party, in violation of Rule 8.4(c) and (d), Minnesota Rules of Professional Conduct (MRPC).

B. On July 12, 1989, respondent was issued an admonition for failing to engage in formal discovery in a dissolution action until over one year after commencement of the action, in violation of Rule 1.3, MRPC.

C. On December 28, 1990, respondent was issued an admonition for a conflict of interest in violation of Rule 1.9(a), MRPC.

D. On April 2, 1997, respondent was issued an admonition for failing to probate an estate for approximately 1-1½ years in violation of Rules 1.3 and 1.4(b), MRPC.

E. On April 11, 2001, respondent was issued an admonition for neglecting and failing to adequately communicate with his client regarding correction of a title defect in violation of Rules 1.3 and 1.4, MRPC.

F. On November 18, 2004, respondent was publicly reprimanded and placed on probation for failing to act with adequate diligence in a probate matter, failing to communicate adequately with the client, failing to file probate documents by a court-ordered deadline and failing to appear in court when ordered to do so in the probate matter, in violation of Rules 1.3, 1.4, 1.15(c)(4), 3.2, 3.4(c), and 8.4(d), MRPC.

G. On May 17, 2006, respondent was issued an admonition for failing to inform a client about a court-ordered sanction and improperly withdrawing from the client's representation in violation of Rules 1.4 and 1.16(d), MRPC.

H. On June 19, 2012, respondent was suspended from the practice of law for 30 days for failing to respond to a client's requests for communication, failing to keep the client reasonably informed about the status of the representation and continuing to represent a client after a conflict of interest arose, in violation of Rules 1.4(a)(3) and (4), 1.7(a)(2), and 1.16(a)(1), MRPC. On August 6, 2012, respondent was reinstated to the practice of law, conditioned on his successful completion of the professional responsibility portion of the state bar examination by June 19, 2013, and subject to probation.

I. Respondent failed to successfully complete the professional responsibility examination by June 19, 2013, and, on July 11, 2013, respondent was indefinitely suspended from the practice of law for that failure.

J. On October 3, 2013, respondent was reinstated to the practice of law.

FIRST COUNT

Getzkow Matter

1. James Getzkow and his sister owned certain real property as tenants in common ("the Property"). Getzkow's sister brought a lawsuit against Getzkow to partition the Property and to satisfy or void various mortgages and liens against the Property.

2. On April 8, 2009, Getzkow retained respondent to represent him with regard to his sister's lawsuit. Later, Getzkow retained respondent to sell at least a portion of Getzkow's eventual share of the Property. Getzkow and respondent entered into a retainer agreement that required Getzkow to pay respondent a \$12,000 availability retainer and provided for respondent's hourly representation at the rate of \$200.¹

3. Also on April 8, 2009, respondent presented Getzkow with a mortgage note respondent had drafted. The mortgage note provided for payment of respondent's \$12,000 retainer, at 8% interest, by April 8, 2010. The mortgage note further provided that it was "secured by a Mortgage Deed duly recorded in Stearns County, State of Minnesota." Getzkow and his wife signed the mortgage note on April 8, 2009.

4. Also on April 8, 2009, respondent presented Getzkow with a mortgage deed respondent had drafted, which secured the mortgage note described above as against real estate the Getzkows owned in Stearns County, Minnesota. Getzkow and

¹ Respondent's retainer agreement with Getzkow stated that he was also representing Getzkow and his wife in one or more criminal matters.

his wife signed the mortgage deed on April 8, 2009, and respondent notarized it. Respondent recorded the mortgage deed on April 15, 2009.

5. In entering into the mortgage note and deed with Getzkow, respondent did not (a) notify Getzkow in writing that he should consider consulting with independent counsel with regard to the transaction; (b) disclose and transmit to Getzkow in writing the terms of the transactions in a manner that Getzkow could easily understand; or (c) obtain Getzkow's written consent to the transaction and respondent's role in the transaction in a document separate from the transaction documents.

6. At all times relevant, respondent has maintained trust account nos. xx40 and xx35 at the State Bank in Eden Valley.

7. During the period June 2009 to August 2010, respondent deposited into his trust accounts a total of \$609,338.46 in proceeds he received on Getzkow's behalf from the sale of at least a portion of Getzkow's share of the Property. This total is comprised of the following deposits:

<u>DATE</u>	<u>AMOUNT</u>	<u>ACCOUNT</u>
06/08/2009	\$50,000.00	-xx40
06/11/2009	\$150,000.00	-xx35
10/08/2009	\$ 3,754.59	-xx40
10/20/2009	\$ 1,183.73	-xx40
12/21/2009	\$ 2,367.46	-xx40
06/14/2010	<u>\$402,032.68²</u>	-xx40
TOTAL	\$609,338.46	

8. During the period June 2009 to November 2013, respondent disbursed from his trust accounts all the Getzkow proceeds to Getzkow, respondent and various third parties on behalf of Getzkow and respondent.

² On information and belief, these are the net proceeds from the June 7, 2010, sale of the Getzkow property.

9. Respondent served as the real estate agent with regard to June 10, 2009, and June 7, 2010, sales of portions of Getzkow's share of the Property. As noted in paragraph 14 below, respondent received a commission from the June 10, 2009, sales proceeds. Respondent did not receive a commission from the June 7, 2010, sales proceeds.

10. Respondent's simultaneous service as both Getzkow's real estate agent and attorney with regard to the June 10, 2009, sale created a significant risk that respondent's representation of Getzkow would be materially limited by respondent's personal, economic interest in earning a real estate sales commission and constituted a concurrent conflict of interest. Respondent did not obtain from Getzkow written, informed consent to his representation of Getzkow despite the conflict of interest.

11. In addition, respondent's service as Getzkow's real estate agent with regard to the June 10, 2009, and June 7, 2010, sales constituted business transactions with a client. In entering into these business transactions, respondent did not (a) notify Getzkow in writing that he should consider consulting with independent counsel with regard to the transaction; (b) disclose and transmit to Getzkow in writing the terms of the transactions in a manner that Getzkow could easily understand; or (c) obtain Getzkow's written consent to the transaction and respondent's role in the transaction in a document separate from the transaction documents.

12. As noted in paragraph 7 above, the deposits of Getzkow funds into respondent's trust accounts included a \$50,000 deposit into account no. xx40 on June 8, 2009, and a \$150,000 deposit into account no. xx35 on June 11, 2009.

13. The \$50,000 respondent deposited into his trust account no. xx40 on June 8, 2009, was earnest money paid in connection with the June 10, 2009, sale, and the \$150,000 respondent deposited into his trust account no. xx35 on June 11, 2009, were the net proceeds from the June 10, 2009, sale.

14. The settlement statement for the June 10, 2009, sale reflected that respondent was entitled to receive a \$24,645.60 commission, a \$12,000 payment on respondent's mortgage note and \$9,500 in attorney's fees from the sales proceeds.

15. In the period after June 29, 2009, respondent disbursed to himself from his trust accounts more of the Getzkow proceeds than the combined total of the availability retainer, real estate commission and attorney's fees and expenses to which he was entitled. As of November 18, 2010, which was the date of the last disbursement of Getzkow funds to respondent, respondent had disbursed to himself \$39,311 more than that to which he was entitled as of that date. Respondent's conduct in this regard constituted the misappropriation of client funds. By the conclusion of respondent's representation of Getzkow, respondent had fully earned the Getzkow funds he had disbursed to himself.

16. Respondent's conduct violated Rules 1.7(a), 1.8(a), 1.15(b) and (c)(3), and 8.4(c), MRPC.

SECOND COUNT

Trust Account Shortages and Additional Misappropriation of Client Funds

17. Among the investigative actions taken by the Director with regard to the Getzkow matter described above was to request respondent to provide books and records for his State Bank in Eden Valley trust accounts for the period June 2009 to September 2015. *See* paragraphs 43 to 57 below. The trust account books and records respondent provided in response to the Director's request revealed that respondent had not maintained his trust account books and records in the manner required by Rule 1.15, MRPC, as interpreted by Appendix 1 thereto. In particular, respondent failed to maintain (a) a fully annotated check register; (b) accurate and complete client subsidiary ledgers; and (c) any trial balance or reconciliation reports.

18. The Director audited respondent's State Bank in Eden Valley trust accounts for the period June 2009 through September 2015. The Director's audits

revealed the shortages and additional misappropriation of client funds described below.³

Account No. xx40

19. During the period from at least June 1, 2009, to November 3, 2015, the balance in respondent's trust account no. xx40 was continuously less than that necessary to cover aggregate client balances. The shortage ranged in amount from \$367 to \$65,347. As is further described below, the shortage was the result of respondent's misappropriation of client funds.

20. As of June 1, 2009, i.e., the start of the Director's audit period, respondent's client subsidiary ledgers reflected that he was supposed to be holding the following client balances in his trust account no. xx40:

E.V.L.C.	\$923.60
J's O.	\$750.00
S.S.	<u>\$40,720.30</u>
Total	\$42,393.90

21. In addition, as of June 1, 2009, respondent was also supposed to be holding \$1,406.19 in accrued and undisbursed interest due to the "Interest on Lawyers Trust Account" (IOLTA) program in his trust account no. xx40.⁴

22. Thus, as of June 1, 2009, respondent was supposed to be holding a total of \$43,800.09 (\$42,393.90 plus \$1,406.19) in his trust account no. xx40. In fact, however, the actual balance in the account on that date was only \$29,766.66, indicating a \$14,033.43 shortage (\$43,800.09 minus \$29,766.66).

23. At least a portion of the shortage in respondent's trust account no. xx40 as of June 1, 2009, was the result of respondent's misappropriation of client funds.

³ As reflected in paragraphs 27, 32, 33, 34 and 40, respondent eventually made restitution for the shortages and misappropriation.

⁴ This substantial accrued interest balance was remitted to the IOLTA program in two installments on October 9, 2009, and July 6, 2010.

Specifically, the client subsidiary ledger respondent prepared for his client B.T. reflects that on May 13, 2009, respondent was supposed to be holding the sum of \$9,200.91 for B.T. in the account.⁵ Respondent's B.T. subsidiary ledger further reflects that during the period May 13 to June 1, 2009, respondent disbursed to himself, or to others on his own behalf, \$14,000 in B.T. funds, i.e., \$4,799.09 more than that to which B.T. was entitled from the account (\$14,000 minus \$9,200.91). This \$4,799.09 in excess B.T. disbursements was paid with other clients' funds and/or the accrued interest in respondent's trust account and constituted the misappropriation of those funds.

24. By August 12, 2009, the shortage in respondent's trust account no. xx40 had increased to \$65,347. This increase was primarily the result of respondent's disbursement of additional funds in the B.T. matter, even though the balance in the B.T. subsidiary ledger remained negative and respondent had not deposited additional B.T. funds into the account. Among the B.T. disbursements that increased the shortage was at least \$37,000 in disbursements to respondent, or to others on his own behalf. Again, these disbursements were paid with other clients' funds and/or the accrued interest in respondent's trust account and constituted the misappropriation of those funds.

25. On August 12, 2009, respondent deposited \$33,333 in B.T. funds into his trust account no. xx40, reducing the overall shortage in the account to \$32,014. Even with this deposit, the balance in the B.T. subsidiary ledger remained negative.

26. During the period August 13 to September 9, 2009, the shortage in respondent's trust account no. xx40 increased to \$63,046. This increase was the result of respondent's disbursement of additional funds in the B.T. matter, even though the balance in the B.T. subsidiary ledger remained negative and respondent had not deposited additional B.T. funds into the account. Among the B.T. disbursements that increased the shortage was \$5,000 in disbursements to respondent. Again, these

⁵ A \$33,000 deposit shown on respondent's B.T. subsidiary ledger as having been made on May 13, 2009, was not actually made until August 12, 2009, and was in the amount of \$33,333.

disbursements were paid with other clients' funds and/or the accrued interest in respondent's trust account and constituted the misappropriation of those funds.

27. On September 10, 2009, respondent deposited \$200,000 in B.T. funds into his trust account no. xx40, reducing the overall shortage in the account to \$9,508. This deposit eliminated the negative balance in the B.T. subsidiary ledger.

28. During the period September 11 to October 20, 2009, the shortage in respondent's trust account no. xx40 increased to \$19,261. This increase was the result of respondent's disbursement of additional funds in the B.T. matter in amounts that exceeded the balance in the B.T. subsidiary ledger. Among the B.T. disbursements that increased the shortage was at least \$7,100 in disbursements to respondent. Again, these disbursements were paid with other clients' funds and/or the accrued interest in respondent's trust account and constituted the misappropriation of those funds.

29. On October 21, 2009, respondent deposited \$10,000 in B.T. funds into his trust account no. xx40, reducing the overall shortage in the account to \$9,508.⁶ B.T. received from respondent all the funds to which she was entitled.

30. On April 21, 2011, a \$2,055 check respondent had issued to a third party on behalf of his client S.S. cleared respondent's trust account no. xx40. At the time, respondent had not yet deposited any funds into the account for S.S, so payment of the check created a negative \$2,055 balance in the S.S. subsidiary ledger and increased the overall shortage in the account by the same amount. This check was paid with the other clients' funds in the account and constituted the misappropriation of those funds.

31. On May 3, 2011, even though the balance in the S.S. subsidiary ledger was already negative and respondent had yet to deposit any S.S. funds into the account, respondent disbursed \$3,000 to himself in the S.S. matter. This disbursement was paid with other clients' funds in the account and constituted the misappropriation of those

⁶ This was the final deposit of B.T. funds into respondent's trust account no. xx40 and it eliminated the negative balance in the B.T. subsidiary ledger.

funds. On May 4, 2011, respondent deposited a sufficient amount of S.S. funds into the account to eliminate the negative balance in the S.S. subsidiary ledger and that portion of the overall shortage in the account caused by the S.S. negative balance.

32. On May 17, 2011, even though the balance of funds to which S.S. was entitled from respondent's trust account no. xx40 was only \$1,823, respondent disbursed \$3,823 to himself in that matter. This disbursement created a negative \$2,000 balance in the S.S. subsidiary ledger (\$1,823 minus \$3,823) and increased the overall shortage in respondent's trust account by the same amount. In addition, \$2,000 of the disbursement was paid with other clients' funds and constituted the misappropriation of those funds. On May 24, 2011, respondent deposited a sufficient amount of S.S. funds into the account to eliminate the negative balance in the S.S. subsidiary ledger and that portion of the overall shortage in the account caused by the S.S. negative balance.

33. On October 6, 2011, a \$1,000 check respondent issued to himself on behalf of his client M.P. cleared respondent's trust account no. xx40. At the time, respondent had not yet deposited any funds into the account for M.P., so payment of the check created a negative \$1,000 balance in the M.P. subsidiary ledger and increased the overall shortage in the account by the same amount. In addition, the check was paid with other clients' funds in the account and constituted misappropriation of those funds. On October 7, 2011, respondent deposited a sufficient amount of M.P. funds into the account to eliminate the negative balance in the M.P. subsidiary ledger and that portion of the overall shortage in the account caused by the M.P. negative balance.

34. As of September 30, 2015, the balance in respondent's trust account no. xx40 was \$367 short of that necessary to cover aggregate client balances. On November 3, 2015, respondent deposited a sufficient amount of his own funds into the account to fully eliminate the shortage.

Account No. xx35

35. During the periods December 15, 2009, to September 8, 2010, and April 11, 2012, to November 12, 2013, the balance in respondent's trust account no. xx35 was continuously less than that necessary to cover aggregate client balances. The shortage ranged in amount from \$54 to \$94,918. As is further described below, the shortage was the result of respondent's misappropriation of client funds.

36. On December 15, 2009, the balance in respondent's trust account no. xx35 was \$127,600, which was comprised entirely of funds belonging to respondent's client Getzkow. During the period December 15, 2009, to April 5, 2010, respondent issued trust account checks totaling \$95,018, \$20,000 of which checks were payable to respondent, which he attributed to the L/J matter. At the time, however, respondent had not deposited any funds into the account in the L/J matter. Payment of these checks therefore created a negative \$95,018 balance in the L/J subsidiary ledger and an overall shortage in the trust account of a comparable amount.⁷ In addition, the checks were paid with funds belonging to Getzkow and constituted the misappropriation of those funds.

37. On April 6, 2010, respondent deposited \$10,000 in the L/J matter into his trust account no. xx35. This deposit reduced the negative balance in the L/J subsidiary ledger to \$85,018 and reduced the overall shortage in the account to a comparable amount.

38. On April 16, 2010, respondent deposited \$70,000 in the L/J matter into his trust account no. xx35. This deposit reduced the negative balance in the L/J subsidiary ledger to \$15,018 and reduced the overall shortage in the account to a comparable amount.

⁷ The overall shortage in respondent's trust account no. xx35 was offset by a \$100 pre-existing balance in the account.

39. During the period April 21 to June 15, 2010, even though the balance in the L/J subsidiary ledger remained negative and respondent had not deposited additional L/J funds into the account, respondent made disbursements totaling \$4,654, which he attributed to that matter. These disbursements increased the negative balance in the L/J subsidiary ledger and the overall shortage in the trust account. In addition, the disbursements were again paid with the Getzkow funds in the account and constituted the misappropriation of those funds. On September 8, 2010, respondent deposited a sufficient amount of funds in the L/J matter into the account to eliminate the negative balance in the L/J subsidiary ledger and the overall shortage in the account.

40. On April 11, 2012, even though the balance of funds respondent was supposed to be holding in his trust account no. xx35 in the L/J matter was only \$28,074, respondent disbursed \$28,403 to a third party, which he attributed to that matter. This disbursement created a negative \$329 balance in the L/J subsidiary ledger (\$28,403 minus \$28,074) and created a \$54 overall shortage in the respondent's trust account.⁸ In addition, the disbursement was paid with \$54 in Getzkow funds and constituted the misappropriation of those funds. By November 12, 2013, respondent had earned a sufficient amount of client funds in the account to fully eliminate this shortage.

41. During the period November 12, 2013, to September 30, 2015, the balance in respondent's trust account no. xx35 was continuously sufficient to cover aggregate client balances.

42. Respondent's conduct violated Rules 1.15(c)(3) and (h), as interpreted by Appendix 1 thereto, and 8.4(c), MRPC.

⁸ At the time, respondent's trust account no. xx35 contained a \$275 surplus balance.

THIRD COUNT

Failure to Cooperate with the Director's Investigation

43. On July 3, 2014, the Director requested respondent to provide within three weeks the June 2009 to July 2014 bank statements, cancelled checks, duplicate deposit slips, check register, client subsidiary ledgers and monthly trial balance and reconciliation reports for the trust account(s) into which he deposited funds on behalf of Getzkow. Respondent failed to respond.

44. On July 31, 2014, the Director requested respondent to provide within one week the trust account books and records that had first been requested in the Director's July 3, 2014, letter.

45. On August 8, 2014, respondent sent a fax transmission to the Director in which he requested an extension of time to August 15, 2014, to provide the trust account books and records requested in the Director's July 3, 2014, letter. By letter dated August 11, 2014, the Director granted respondent the extension he requested. Respondent failed to provide the requested trust account books and records by the extended deadline.

46. On August 25, 2014, the Director again requested respondent to provide within one week the trust account books and records that had first been requested in the Director's July 3, 2014, letter.

47. On September 2, 2014, the Director received from respondent many of the trust account books and records requested in the Director's July 3, 2014, letter. Missing from respondent's submission, however, were (a) several bank statements, cancelled checks and deposit slips for both of respondent's trust accounts; (b) check registers and client subsidiary ledgers for respondent's trust account no. xx40 for the period after December 2011;⁹ and (c) all the requested trial balance and reconciliation reports.

⁹ The Director did not discover that that these materials were missing until his audit reached that point in time.

48. On October 10, 2014, the Director requested respondent to provide within two weeks the missing bank statements, cancelled checks and duplicate deposit slips. With regard to the missing trial balance and reconciliation reports, the Director stated, "Please either provide these reports for the period June 2009 to July 2014 or state that you did not maintain them." Respondent failed to respond.

49. On October 27, 2014, the Director again requested respondent to provide within one week the trust account books and records requested in the Director's October 10, 2014, letter. Respondent failed to respond.

50. On November 7, 2014, the Director again requested respondent to provide within one week the trust account books and records requested in the Director's October 10, 2014, letter. On November 17, 2014, respondent sent a fax transmission to the Director in which he stated, "Per your request for additional bank records, I am requesting copies of the same from the State Bank in Eden Valley. I will forward to you upon receipt [sic] from the bank."

51. On December 15, 2014, the Director received from respondent many of the trust account books and records requested in the Director's October 10, 2014, letter. Missing from respondent's submission were the January through June 2012 bank statements, cancelled checks and deposit slips for respondent's trust account no. xx40. Also missing were all requested trial balance and reconciliation reports or any acknowledgement by respondent that he had not maintained those reports.

52. On December 17, 2014, the Director requested respondent to provide the missing bank statements, cancelled checks and duplicate deposit slips for his trust account no. xx40. With respect to the missing trial balance and reconciliation reports, the Director stated, "You also did not provide any monthly trial balance or reconciliation reports for the period June 2009 through July 2014 for either of your trust accounts. We have therefore assumed that you did not maintain those reports during that period." Respondent failed to respond.

53. On February 23, 2015, the Director again requested respondent to provide the trust account records requested in the Director's December 17, 2014, letter. The Director stated that if respondent again failed to provide those materials, "we will request and process a subpoena directed to State Bank in Eden Valley pursuant to Rule 8(c), RLPR." Respondent failed to respond.

54. On February 26, 2015, pursuant to Rule 8(c), RLPR, the Director requested the Lawyers Professional Responsibility Board Chair ("Chair") to approve an investigatory subpoena directed to the State Bank in Eden Valley for the trust account books requested in the Director's December 17, 2014, letter. On March 2, 2015, the Chair approved the subpoena.

55. The Director thereafter obtained a subpoena and, on March 10, 2015, served it on the State Bank in Eden Valley. The bank produced the subpoenaed records to the Director on March 16, 2015.

56. On March 19, 2015, after discovering that respondent had not provided check stubs or client subsidiary ledgers for his trust account no. xx40 for periods after December 2011, the Director wrote to respondent and requested those materials. Respondent failed to respond.¹⁰

57. On March 26, 2015, the Director wrote to respondent. The Director advised respondent that the audits of his State Bank in Eden Valley trust accounts had been completed "to the extent we are able without the additional check stubs and client subsidiary ledgers we requested in our March 19, 2015, letter." The Director requested respondent to provide additional information and documents regarding his handling of the Getzkow funds. Among the areas of the Director's inquiry was the manner in which respondent received payment of the real estate sales commission and attorney's fees reflected on the settlement statement for the June 10, 2009, sale of the Getzkow

¹⁰ Respondent provided these trust account materials, and additional materials through September 2015, to the Director in October 2015.

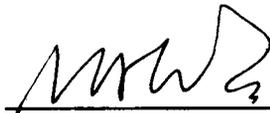
property. In addition, the Director detailed the audit findings of respondent's misappropriation of other clients' funds and requested respondent's complete written response to those findings. Respondent failed to respond.

58. As of the date of this second amended petition for disciplinary action, respondent has provided substantially all of the documents and information requested by the Director.

59. Respondent's conduct violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

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: Nov. 18, 2015.



MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 0148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and



CASSIE HANSON
SENIOR ASSISTANT DIRECTOR
Attorney No. 0303422