

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against MARTHA G. SCHMITT,
a Minnesota Attorney,
Registration No. 147023.

**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 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 May 6, 1983. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Charity Brand Matter

1. On June 19, 2003, respondent was appointed by the Hennepin County District Court to represent Charity Brand in her petition for restoration to capacity. Brand had been subject to a conservatorship since 1993.

2. Pursuant to an In Forma Pauperis Order that had been entered in the Brand conservatorship matter in 1993, respondent submitted to Hennepin County seven invoices for attorney's fees, totaling \$2,260. Hennepin County paid the invoices by issuing checks to respondent's employer, MAO Senior Legal Services.

3. Despite the fact that respondent's fees were being paid by Hennepin County, respondent told Brand that she should make attorney's fees payments directly to her. Pursuant to that instruction, Brand gave respondent three checks totaling \$1,400, payable to respondent. Respondent misappropriated those funds to her own use.

4. Respondent's conduct violated Rules 8.4(c) and (d), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Douglas E. Hansen Matter

5. On June 15, 2001, Douglas E. Hansen, a vulnerable adult, was referred to MAO Senior Legal Services for assistance in the preparation of a will and a power of attorney.

6. On November 21, 2002, Hansen sold his home in preparation for moving to a residential facility. Respondent represented Hansen in that transaction.

7. On December 10, 2002, respondent deposited \$28,232.66 from the proceeds of the home sale to the MAO Senior Legal Services pooled trust account (MAO trust account) on behalf of Hansen.

8. On December 31, 2002, respondent issued MAO trust account check number 1846 in the amount of \$9,407.76 payable to Highland Bank. Respondent designated these funds as coming from the funds held in trust on behalf of Douglas Hansen.

9. On January 6, 2003, respondent deposited MAO trust account check 1846 in to her personal account at Highland Bank, thereby misappropriating the funds to her own use.

10. On January 15, 2003, RHS Title, LLC issued a check payable to respondent in the amount of \$5,000. That check was issued for the benefit of Douglas Hansen and represented a refund of funds belonging to Hansen that had been held in escrow at the closing of the sale of Hansen's home.

11. On February 11, 2003, respondent issued MAO trust account check number 1852 in the amount of \$3,621.17 payable to Highland Bank. Respondent designated these funds as coming from the funds held in trust on behalf of Douglas Hansen.

12. On February 17, 2003, respondent deposited to her own account at Highland Bank the \$5,000 check from RHS Title, LLC and the \$3,621.17 MAO trust account check number 1852, thereby misappropriating those funds to her own use.

13. On July 28, 2003, respondent provided a false accounting of the Hansen homestead sale proceeds to the Department of Veterans Affairs. In that accounting she falsely represented that the \$9,407.76 and \$3,621.17 payments to Highland Bank represented payments on a second mortgage on the Hansen property. In fact, as noted above, respondent had misappropriated those funds to her own use.

14. Respondent's conduct violated Rules 4.1, 8.4(c), and 8.4(d), MRPC.

THIRD COUNT

Margaret Bollinger Estate Matter

15. In 1996 through 1999 respondent represented Judith Lampert in her capacity as personal representative of the estate of Margaret Bollinger.

16. On September 22, 1998, respondent filed a Petition for Order of Complete Settlement of Estate and a Final Account with the Hennepin County Probate Court. The Final Account falsely listed cash on hand for distribution in the amount of \$141,824. In fact, there was at least an additional \$30,173.25 of estate funds available for distribution.

17. On December 23, 1998, the Hennepin County Probate Court approved the Final Account submitted by respondent with a correction unrelated to the additional unreported funds.

18. On November 11, 1999, respondent had \$30,173.25 transferred from the Margaret Bollinger Estate checking account to the MAO trust account.

19. On December 14, 1999, respondent issued MAO trust account check number 1881 in the amount of \$14,624.62 payable to Highland Bank. Respondent designated these funds as coming from the funds held in trust on behalf of the Margaret Bollinger estate.

20. On December 17, 1999, respondent deposited MAO trust account check 1881 in to her personal account at Highland Bank, thereby misappropriating the funds to her own use.

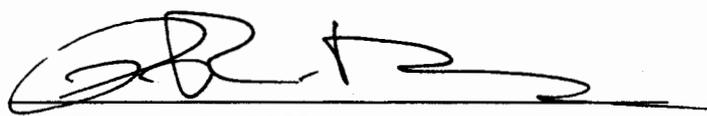
21. Respondent's conduct violated Rules 3.3(a)(4), 8.4(c), and 8.4(d), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court disbarring respondent or 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: May 19, 2004.


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