

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against LARRY S. SEVERSON,
a Minnesota Attorney,
Registration No. 99363.

PETITION FOR
DISCIPLINARY ACTION

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on September 26, 1975. Respondent currently practices law in Apple Valley, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Conflicts of Interest, Improper Business Transactions with a Client and Related Dishonest Conduct

Background

1. D■■■■ S■■■■ was born D■■■■ M■■■■ L■■■■ on April 2, 1978. S■■■■'s parents were killed in a car accident less than three months after her birth. S■■■■ was adopted by her relatives, D■■■■ and C■■■■ S■■■■, and she subsequently took the last name of her adoptive parents.

2. S█████ became the sole beneficiary to various insurance proceeds and other monies ("inheritance"). The majority of this inheritance was managed through a court monitored conservatorship in which her adoptive parents served as co-conservators.

3. In 1988 S█████'s adoptive parents divorced. S█████ divided her time between the two households until her adoptive father passed away in 1990. S█████'s adoptive mother remarried and became C█████ H█████.

4. S█████ experienced difficulties adjusting to H█████'s new household. M█████ S█████, who is respondent's daughter, was a high school friend of S█████. In the fall of 1995, S█████ moved into the Severson household and lived there through her senior year in high school.

Closing the S█████ Conservatorship

5. On April 2, 1996, S█████ turned eighteen years old. S█████ planned to attend Mount Holyoke College in Massachusetts.

6. Respondent offered to assist S█████ with closing the conservatorship and thereafter investing her inheritance to cover her college costs. S█████ believed that respondent was acting as her attorney and relied on his legal advice. At no time did respondent indicate that he was not acting as S█████'s attorney.

7. H█████ was the sole conservator over S█████'s conservatorship. Over the years, H█████ had sought legal advice from attorney Stephen Radke. After consulting with respondent, S█████ asked H█████ to retain respondent's law firm, Severson, Sheldon, Dougherty and Molenda, P.A. ("law firm"), to close out the conservatorship in 1996.¹ Respondent was a founding partner of the law firm, which is based in Apple Valley, Minnesota.

¹ The law firm is now known as Dougherty, Molenda, Solfest, Hills and Bauer. Respondent is no longer a member of the law firm.

8. Respondent was the shareholder/partner within the law firm responsible for directing the closing of S ■■■■■'s conservatorship. Robert Bauer, an associate member of the law firm at the time, was also listed as an attorney on this file but his involvement was minimal.² Upon information and belief, respondent directed various staff to prepare the necessary documents to file with the probate court in order to close the conservatorship.

9. On April 17, 1996, H ■■■■■ met with Darlene Jenison, a paralegal in the law firm, to review the final accounting to be submitted by H ■■■■■ as conservator. Jenison then drafted the closing documents for the probate file, which would release S ■■■■■'s inheritance.

10. On May 7, 1996, Jenison met with H ■■■■■ a second time to complete the closing documents and final accounting to be submitted to the probate court. During this meeting, H ■■■■■ signed a cover letter, which was composed by Jenison, to the probate court enclosing accounting documents and other documents necessary to close the conservatorship. The letter stated, "Please contact D ■■■■■'s attorney, Larry S. Severson, at 432-3136 should you have any questions or require anything further." Respondent was copied on the letter.

11. H ■■■■■ also signed an affidavit listing Bauer and respondent as attorneys of record for the conservatorship. H ■■■■■ then hand-delivered the conservatorship documents to S ■■■■■.

12. After consulting with respondent, S ■■■■■ signed the receipt/waiver/consent form on May 8, 1996, which was part of the closing documents. Respondent notarized S ■■■■■'s signature.

13. The court discharged S ■■■■■'s conservatorship on May 31, 1996. At the time the conservatorship was closed, S ■■■■■'s inheritance totaled \$541,867.57.

² Bauer's involvement was limited to placing two telephone calls.

14. The law firm's itemized billing records indicate that between April and May 1996, S [REDACTED] was charged \$980 in attorney's fees for closing the conservatorship. This work consisted of completing final accounts for the conservatorship, releasing bonds, coordinating bank statements, and ultimately obtaining the inheritance from the probate court as further described below in paragraphs 23-27.

Financial Investment Agreement

15. On June 4, 1996, respondent presented a power of attorney (POA) and a financial investment agreement ("investment agreement") to S [REDACTED] for her signature.

16. The POA appointed respondent to be S [REDACTED]'s attorney in fact and gave respondent authority to take control over her inheritance funds, including directing various financial institutions that held conservatorship funds to pay these funds to the law firm's trust account. The POA indicated that the document was drafted by the law firm.

17. The investment agreement allowed respondent to personally "invest and reinvest the funds in mortgages, securities and other interest generating opportunities" for a period of 48 months. Respondent agreed to pay S [REDACTED] a fixed interest rate of 9% per annum, in 48 monthly installments of \$3,750 per month, totaling \$45,000 annually or a total of \$180,000 during the 48-month period. The investment agreement further stated that respondent would pay S [REDACTED] "on the last day of the 48th month from the date of this Agreement, any interest then yet unpaid as hereinbefore agreed and the principal balance of \$500,000.00."

18. The investment agreement was set to expire in June 2000 when S [REDACTED] expected to graduate from Mount Holyoke College, but provided that S [REDACTED] could elect to extend the agreement for an additional 12-month period upon giving written notice thereof.

19. On June 4, 1996, S [REDACTED] signed both the POA and the investment agreement. As of June 4, 1996, the conservatorship funds had not been distributed yet to the law firm. *See* paragraph 22. S [REDACTED] believed that respondent was acting as her attorney in closing the conservatorship and that he would continue to represent her legal and financial interests during the duration of the investment agreement. At no time did respondent indicate he did not represent S [REDACTED] for these purposes.

20. By drafting and entering into the POA and investment agreement with S [REDACTED], respondent entered into a business transaction with a client without complying with the requirements for doing so, as follows:

- a. First, respondent did not explain the POA or the terms of the investment agreement to S [REDACTED] in a manner in which she could understand³;
- b. Second, respondent did not provide S [REDACTED] with the opportunity to seek the advice of independent counsel as to the advisability of the terms of the investment agreement with respondent; and
- c. Third, respondent did not advise S [REDACTED] that he had a personal conflict of interest in that he intended to invest her inheritance into his own business ventures; that he would commingle her funds with his own; and that he would personally gain from the use of her inheritance funds. *See* paragraphs 24-26.

21. In addition, the terms of the investment agreement were not fair and reasonable to S [REDACTED] as follows:

- a. First, the investment agreement did not contain adequate provisions that would protect S [REDACTED]'s inheritance, such as requiring that investments be made in secured investments or fixed market securities. In

³ At the time S [REDACTED] signed the POA and investment agreement, she was still in high school and/or had recently graduated and resided in respondent's home.

particular, the investment agreement permitted for high risk investment, including respondent's investment of S■■■■'s inheritance into his own business ventures;

b. Second, the investment agreement did not provide any means by which S■■■■ could recover her inheritance in the event that respondent defaulted on the monthly interest payments or repayment of principal at the conclusion of the 48-month period. For example, S■■■■ had no signatory power or other authority, independent of respondent's consent, to regain her inheritance; and

c. Third, the investment agreement did not require respondent to provide S■■■■ with an accounting, monthly or annually, for her inheritance during the 48-month period.

Respondent's Receipt and Disbursement of S■■■■'s Inheritance

22. Upon the probate court's approval of closing S■■■■'s conservatorship, the law firm received a check from First Bank in the amount of \$316,686.17 and a check from Norwest Bank in the amount of \$225,181.40. On June 5, 1996, these checks were deposited in the law firm's trust account. At the close of the conservatorship, the law firm was holding a total of \$541,868.16 on behalf of S■■■■ in its trust account.

23. Upon information and belief on June 5, 1996, respondent disbursed a trust account check that was made payable to S■■■■ in the amount of \$41,868.16 but S■■■■ denies receiving a check made payable to her in that amount. The Director has been unable to establish what happened to these funds.

24. Upon information and belief, on June 12, 1996, two trust account checks were prepared at the direction of respondent to disburse S■■■■'s inheritance. The first check in the amount of \$434,000 was recorded as disbursed with the annotation "Real Estate purchase John A. Benedict."

25. A second trust account check in the amount of \$66,000 was recorded as disbursed to Valley Ford, Inc. In 1996, respondent was the owner and CEO of Valley Ford, Inc., a car dealership located in Apple Valley, Minnesota. The Minnesota Secretary of State's records show the registered corporate address for Valley Ford, Inc. was the same address as the law firm. Valley Ford, Inc. was statutorily dissolved in 2007.

26. Upon information and belief on June 13, 1996, respondent caused the trust account check identified as "Real Estate purchase John A. Benedict" to be voided and reissued as a \$434,000 check payable as "Real Estate purchase Valley Ford, Inc." Respondent has never identified what real estate was purchased or otherwise documented this transaction despite requests by the Director. Respondent did not inform S [REDACTED] about the purchase of any real estate or that he had invested her inheritance in his own business venture.

27. By June 13, 1996, all checks disbursed from the law firm's trust account on behalf of S [REDACTED] had cleared the account.

Investment Agreement for the Period June 13, 1996, through June 13, 2000

28. In August 1996, S [REDACTED] moved to Massachusetts to attend Mount Holyoke College. During the 48-month duration of the investment agreement, S [REDACTED] was required to make estimated quarterly tax payments to both state and federal tax authorities on any interest earned by her investments.

29. Respondent hired an accountant to handle S [REDACTED]'s taxes, including estimated interest payments. In addition, respondent made the estimated quarterly tax payments to state and federal tax authorities. Respondent deducted the accountant's fees and quarterly tax payments from the monthly interest payments he owed to S [REDACTED].

30. During the 48-month term of the investment agreement, respondent occasionally corresponded with S [REDACTED] about the amounts paid to the state and federal

taxing authorities, together with a random accounting of other payments made outside of the terms of the agreement, *i.e.*, payments made for school tuition, car repairs, etc. Severson corresponded with S [REDACTED] on law firm letterhead with reference to "Our File No. 4207-13896."

31. Respondent's correspondence during this period never included any information on where S [REDACTED]'s inheritance was invested or a detailed accounting that included her current balance or total amount of interest earned. S [REDACTED] remained unaware how respondent had invested her inheritance; what profits, if any, her investments had made; how respondent accounted for any financial gains or losses; or whether respondent personally benefited from the use of her inheritance. S [REDACTED] continued to trust that respondent was acting as her attorney in monitoring her investments and that he acted in her best interests due to their personal relationship.

32. Between 1996 and 2000, respondent failed to adhere to the terms of the investment agreement. Respondent should have sent S [REDACTED] monthly interest payments totaling \$3,750. Respondent failed to pay or underpaid S [REDACTED] on no fewer than four occasions during this period. Respondent's underpayments totaled approximately \$4,000 over the 48-month term of the investment agreement.

June 2000 Verbal Modification of Investment Agreement

33. In 1999, H [REDACTED] became terminally ill. In the fall of 1999, S [REDACTED] transferred to the College of St. Catherine in St. Paul, Minnesota, and moved in with H [REDACTED] to care for her. In February 2000, H [REDACTED] passed away.

34. The original 48-month investment agreement was to terminate at the end of June 2000. As of June 13, 2000, S [REDACTED]'s inheritance balance was approximately \$504,000, including payments in arrears and accrued interest on the amounts in arrears. Under the terms of the investment agreement, S [REDACTED] was entitled to payment of the original principal in full plus arrears.

35. S ■■■ had not completed college as originally anticipated and was still struggling with H ■■■'s death at the time the investment agreement was set to expire. Respondent told S ■■■ that he would continue to invest and manage her inheritance. Respondent verbally agreed to continue paying interest under the terms of the original investment agreement. This verbal agreement was contrary to the terms of the original investment agreement, which required any modifications to be made in writing.

36. The terms of the June 2000 verbal extension of the original investment agreement was unfair to S ■■■ and unreasonable for the reasons set forth in paragraph 21. The verbal extension was further unfair since it left S ■■■ without any documentation of their agreement and hindered her ability to enforce an action in the event of respondent's breach of contract, which respondent did by unilaterally reducing the interest rate by which he was to make monthly payments to S ■■■ from 9% to 8%.

Respondent's Handling of the Investment Agreement from 2000-2003

37. After the parties' verbal extension of the investment agreement in June 2000, respondent continued to manage S ■■■'s inheritance. S ■■■ also continued to view respondent as her attorney in managing her inheritance along with providing additional legal services recounted below.

38. In August 2000, respondent assisted S ■■■ in obtaining a certificate of deposit. On August 4, 2000, S ■■■ wrote a check from her Norwest Bank checking account in the amount of \$30,000 payable to Eagle Valley Bank. Respondent sent the check to Eagle Valley Bank using law firm letterhead referencing "D ■■■ M. S ■■■, Our file # 4207-13896." Eagle Valley Bank deposited the funds into a one-year certificate of deposit in S ■■■'s name. On or about August 24, 2001, S ■■■ cashed the CD and received a personal money order from Eagle Valley Bank in the amount of \$30,000. The personal money order indicated that S ■■■ endorsed the funds over to respondent, who

deposited them into his personal checking account at Eagle Valley Bank on September 24, 2001.

39. Respondent never gave S [REDACTED] an accounting of the \$30,000 after it was deposited into his checking account. Respondent states he has no recollection of what happened to these funds and cannot provide an accounting.⁴ S [REDACTED] did not gift the \$30,000 to respondent or owe him \$30,000 at the time of the transaction.

40. In the late fall of 2000, S [REDACTED] consulted with respondent about her own estate planning needs following the death of H [REDACTED]. Respondent drafted a living will and power of attorney for S [REDACTED], which were executed in December 2000. S [REDACTED] did not sign a written fee agreement for the representation and respondent never indicated the amount of his attorney's fees. Respondent did not bill S [REDACTED] at the time the legal services were provided. Later in defense of a civil suit brought by S [REDACTED] to recover her inheritance, respondent provided a bill for \$900 in attorney's fees years after the fact to offset part of the amount he owed to S [REDACTED].

41. In 2002, the Severson Family Limited Partnership, which was created in 1999 and of which respondent was the general partner, purchased 482 voting shares of a bank holding company, Financial Services of St. Croix Falls, Inc. ("Financial Services").

42. The cost of the voting shares was \$750,000. To finance the purchase, respondent states he invested \$500,000 from S [REDACTED]'s inheritance along with \$250,000 of his own funds. Respondent has been unable to produce any financial records to document that the stock was purchased using \$500,000 from S [REDACTED]'s inheritance. To the contrary, respondent initially informed the Director that he originally invested S [REDACTED]'s inheritance in Financial Services right after the funds were received from closing out the conservatorship in 1996. When confronted with the time discrepancy

⁴ Respondent also did not include these funds in the accounting that he produced in the course of S [REDACTED]'s civil litigation against respondent and the law firm. Respondent's receipt of these funds was identified by the Director after the parties' had settled the civil litigation.

between when the stock was purchased (2002), and when he received S■■■■'s inheritance funds from the probate court (1996), respondent rescinded the statement. Ultimately, Financial Services issued stock in the name of the Severson Family Limited Partnership only.

43. At the time of the stock purchase, respondent was legal counsel for Financial Services and also had a personal and business relationship with Michael Cobb, a major stockholder in Financial Services. Other owners of Financial Services were also clients of the law firm and/or respondent's business associates.

44. Respondent did not receive any written waivers from S■■■■ to invest her funds in a holding company for which he was legal counsel or to waive any conflicts of interest with other law firm clients. Thus, if respondent, as he alleges, invested S■■■■'s inheritance in Financial Services, it constituted a conflict of interest.

45. In June 2002, S■■■■ graduated from the College of St. Catherine. Respondent assisted S■■■■ in renting an apartment. On June 14, 2002, respondent sent a letter on law firm letterhead to an apartment management company on behalf of S■■■■ stating:

[D■■■■] has income from a trust left to her on an insurance settlement from the death of her parents in the amount of \$500,000.00. At the present time, this money is invested at an 8% rate and provides D■■■■ with a monthly income of \$3,333.00 a month. Additionally, D■■■■ has another fund in the amount of \$22,500.00, which I maintain on her behalf, which can be drawn upon at her request.

The exact nature of the \$22,500 referenced in the letter is unknown. Upon information and belief, it is believed that this is either a remnant of the \$40,000 that was never paid to S■■■■ in 1996, a remnant of the \$30,000 from September 2001, or consists of other portions of the original inheritance. See paragraphs 23 and 39. Respondent has never accounted for these funds and S■■■■ never received the \$22,500.

Terminating the Investment Agreement

46. After 2003, respondent continued to manage S█████'s inheritance pursuant to the verbal extension of the original investment agreement. S█████ still viewed respondent as her attorney in managing her inheritance, along with providing additional legal services during this period.

47. In December 2004, S█████'s landlord refused to return a \$1,195 security deposit. S█████ discussed the matter with respondent who contacted the landlord. Thereafter, respondent commenced a lawsuit on behalf of S█████ and her roommates. Jessica Sanborn, an associate in the law firm, researched elements of the litigation.

48. In April 2007, the landlord-tenant dispute settled for \$2,000. Defendants presented respondent with a check made payable to the law firm in the amount of \$2,000. The law firm disbursed \$1,465 to S█████ and held \$535 for legal fees and costs. In defense of S█████'s civil suit, respondent produced a bill for \$5,457 in attorney's fees and costs years after the fact to reduce in part the amount he owed to S█████.⁵

49. S█████ began a movement training program at Global Somatics in St. Paul, which she completed in June 2005. While enrolled in the program, S█████ considered retrieving her inheritance from respondent to buy a house. Although S█████ determined she was not ready to buy a house, she discussed her investment plans with respondent. For the first time since signing the investment agreement in 1996, S█████ asked respondent directly where her money was invested. Respondent stated "mortgages." Respondent's statement was false, since respondent states he invested S█████'s inheritance in bank stock. See paragraph 42. Respondent assured S█████ that her inheritance would be made available if she wanted to purchase a house.

⁵ S█████ had been billed and paid \$535 at the time legal services were provided.

50. In the fall of 2006, S [REDACTED] started a graduate program at the University of Minnesota. While enrolled in graduate school, respondent handled a number of legal matters for S [REDACTED] relating to a business plan that she was developing, including:

a. In February 2006, S [REDACTED] joined with A [REDACTED] P [REDACTED] T [REDACTED] S [REDACTED] to share the costs of purchasing and maintaining certain equipment to be used in S [REDACTED]'s business. On or about February 27, 2006, respondent drafted an agreement for these purposes. Respondent did not charge S [REDACTED] attorney's fees at the time the legal services were provided. In defense of S [REDACTED]'s civil suit, respondent produced a bill for \$417 in attorney's fees years after the fact to reduce in part his liability to S [REDACTED].

b. In the summer of 2006, respondent represented S [REDACTED] in incorporating a business entitled M [REDACTED] I [REDACTED]. On August 23, 2006, respondent wrote to S [REDACTED] providing her with legal advice regarding procedures and formalities to be observed in the operation of M [REDACTED] I [REDACTED]. Respondent's letter was on law firm letterhead and referenced her client file number with the firm. Respondent also prepared articles of organization and filed the documents with the Secretary of State's Office. Respondent did not charge S [REDACTED] attorney's fees at the time the legal services were provided. In defense of S [REDACTED]'s civil suit, respondent again produced a bill for \$1,163 in attorney's fees years after the fact to reduce in part his liability to S [REDACTED].

c. From December 2008 until May 2009, respondent represented S [REDACTED] in another business matter involving S [REDACTED] 107. S [REDACTED] sent respondent a licensing agreement and other documents, which respondent reviewed and edited on her behalf. Respondent's sent S [REDACTED] his edits on law firm letterhead referencing her client file number. Respondent did not charge S [REDACTED] attorney's

fees at the time the legal services were provided. In defense of S█████'s civil suit, respondent produced a bill for \$1,320 in attorney's fees months after the fact to reduce in part his liability to S█████.

d. In 2009, Gary Husko, another attorney in the law firm, represented S█████ in a trademark matter. Husko sent S█████ a retention letter; however, opening documents indicate respondent was the original attorney.

51. In the first half of 2007, S█████ and respondent discussed dissolving the investment agreement and returning S█████'s inheritance. Respondent told S█████ he was in the progress of selling shares of Financial Services and advised she would be paid from the sale.

52. As S█████'s graduation approached in 2008, S█████ again approached respondent about retrieving her inheritance. S█████ had been working with a financial advisor and anticipated buying a home and starting her business. Respondent advised S█████ it would take him up to six months to return her inheritance.

53. S█████ waited six months and again approached respondent about retrieving her inheritance in order to purchase some business equipment. Respondent gave S█████ various excuses as to why the funds were not available, including that he was waiting for parties to refinance a horse farm. Respondent ultimately advised S█████ to take out a business loan to purchase the equipment.

54. In September 2009, S█████ asked respondent to meet with her and a financial advisor in order to provide her with an accounting. The meeting never occurred.

55. S█████ sought assistance from legal counsel as a last resort to retrieve her inheritance. S█████ retained attorney Ferdinand Peters, who wrote respondent on October 21, 2009, demanding that he return all funds due to S█████ along with a full accounting by November 4, 2009.

56. On October 27, 2009, respondent responded that a bank, presumably in which he owned an interest, was being marketed for sale and that he was refinancing real estate. Respondent did not provide an accounting or indicate when repayment would be made.

57. On November 2, 2009, respondent sent Peters an interest payment in the amount of \$2,391, and claimed the balance due to S [REDACTED] was \$410,000. Respondent did not provide an accounting. On December 1, 2009, respondent sent Peters another interest payment of \$2,221. The next day, respondent's accountant, David Shabaz, provided Peters with information claiming the balance due to S [REDACTED] was only \$371,363.23.⁶

58. On December 2, 2009, Peters wrote respondent disputing Shabaz's accounting but requested immediate payment of at least the \$371,363.23 respondent agreed he owed S [REDACTED]. Peters further offered to work with Shabaz after payment had been made to determine a final settlement number agreeable to all parties. Peters also requested documentation supporting Shabaz's accounting.

59. Respondent responded by letter dated December 8, 2009, stating, "Obviously, [S [REDACTED]] knows what dollar amounts were received, deposited and paid on her behalf." Respondent refused to provide the requested documentation but stated he would continue to make interest payments until the horse farm was refinanced or sold.

60. In January and February 2010, respondent sent Peters interest payments in the amounts of \$2,295.29 and in March 2010 an interest payment of \$2,073. On March 4, 2010, Peters met with respondent who finally conceded he did not have the money to pay S [REDACTED]. Peters specifically asked respondent about the original deposit of S [REDACTED]'s inheritance funds and to whom these funds were disbursed. Respondent falsely stated

⁶ The Director reviewed Shabaz's accounting and found multiple errors and failures to account for client funds. The Director's accounting shows a principal balance owed to Ms. S [REDACTED] in the amount of \$426,559.78.

that his partner, Terrence Merritt, handled the transactions. Peters followed up with Merritt, who confirmed he was not employed at the law firm in 1996 when the law firm received S█████'s conservatorship funds.

61. In June 2010, S█████ was named as a defendant in a lawsuit filed by Alerus against respondent and others. See paragraph 82. As a result of this lawsuit and respondent's delay in repayment, S█████ initiated a lawsuit on July 22, 2010, against respondent and the law firm. The parties settled the civil suit on December 13, 2010; however, S█████'s recovery was reduced by the cost of having to take legal action to retrieve her settlement. In addition, the settlement occurred after the Director had initiated a disciplinary investigation.

62. Respondent's conduct in engaging in improper business transactions with a client that involved multiple conflicts of interest and related dishonest conduct violated Rules 1.7(a) and (b), 1.8(a), and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Real Estate Transactions Involving Conflicts of Interest and Related Dishonest Conduct

63. In a series of real estate transactions, respondent used S█████'s name and encumbered her inheritance to protect his own personal holdings to the detriment of S█████, as follows:

Horse Farm Transaction

64. In May 2007, respondent and his wife took out a first mortgage in the amount of \$900,000 to preserve their equity in property located in Township 114 in Dakota County, Minnesota. This property is commonly referred to as "the horse farm." On June 14, 2007, respondent sold the horse farm on a contract for deed in the amount of \$1,500,000 and at an interest rate of 8.25%

65. By January 2008, S [REDACTED] sought the return of her inheritance. See paragraphs 51-54. On January 25, 2008, without S [REDACTED]'s knowledge or consent, respondent assigned the contract for deed on the horse farm to S [REDACTED]. Specifically, respondent drafted and executed an assignment of contract for deed and warranty deed, in which he and his wife sold, assigned and transferred to S [REDACTED] their interest in the horse farm's contract for deed.

66. S [REDACTED] was unaware that she held a vendor's interest in the horse farm. S [REDACTED] did not receive the contract's monthly payments of \$10,500, nor did respondent increase S [REDACTED]'s interest rate on her inheritance to 8.25%, as reflected in the contract for deed. S [REDACTED] did not receive any benefit from the assignment.

67. Although the assignment instructed the county to send copies of all tax statements to S [REDACTED], when respondent drafted the assignment, he inserted his home address, not S [REDACTED]'s address. S [REDACTED] learned of the assignment only after she received a notice of real estate tax delinquency from the county in July 2009.

Mortgage to the M [REDACTED]s

68. Respondent owed long-time friends W [REDACTED] and S [REDACTED] M [REDACTED] \$250,000 in an unsecured loan. In order to provide collateral to secure the loan, respondent drafted and executed a mortgage note on the horse farm in the amount of \$250,000, which conveyed to the M [REDACTED]s, with the power to sell, security in the horse farm. At the time, S [REDACTED] still held a vendor's interest in a contract for deed on the horse farm. Respondent instructed S [REDACTED] to come to his office and sign the mortgage document. Respondent did not explain the underlying transaction or the legal consequences of signing the mortgage document to S [REDACTED], who believed that signing the document would enable respondent to release her inheritance.

69. As a result of the transaction, respondent secured a \$250,000 personal loan.⁷ S█████ became the borrower in a \$250,000 mortgage contract for which she received no tangible benefit from the transaction.

Prosperan Bank Assignment (Alerus Litigation)

70. In 2003, respondent entered into an agreement to develop nineteen residential lots in Burnsville, Minnesota ("development property"). Respondent conducted the transaction through Forest Park Heights, L.L.C., a limited liability company owned by respondent. The investment was financed through Washington County Bank, later known as Prosperan Bank, and now known as Alerus Financial National Association ("Alerus").

71. On July 3, 2007, Alerus, Forest Park Heights, L.L.C. and others ("investment group") entered into a construction loan in the amount of \$3,200,000. The development property failed to sell as expected and the investment group defaulted on the note. On August 25, 2008, the investment group entered into a forbearance agreement with Alerus. By March 2009, the investment group was again behind on its obligations and requested that Alerus extend the forbearance agreement.

72. Alerus agreed to extend the forbearance agreement subject to the delivery of S█████'s assignment of her security interest, rights and title to the horse farm. According to the assignment, S█████ would remain "liable as vendor under the Contract for Deed."

73. Respondent contacted S█████ and told her there were some papers he needed her to sign regarding the horse farm. On March 27, 2009, S█████ came to the law firm to sign the assignment. Respondent did not state why he needed S█████'s signature or explain the underlying transaction, including the legal consequences of signing the

⁷ Upon information and belief, respondent had received the \$250,000 loan from the M█████s prior to this transaction. It appears that this transaction was the result of a demand by the M█████s for respondent to provide some form of security to ensure his repayment of the loan.

assignment. S [REDACTED] believed signing the document would facilitate repayment of her inheritance. S [REDACTED] did not understand that the document she signed further encumbered the horse farm. S [REDACTED] did not benefit from the transaction.

74. Paragraph 9 of the Alerus' assignment falsely stated, "Assignor [S [REDACTED]] is the daughter of Mr. Severson and will benefit from the Lender and the Borrower Group [respondent, et al.] further extending the Forbearance Agreement." Upon information and belief, respondent intentionally misled Alerus' attorneys to believe S [REDACTED] was his daughter and as such would benefit from the extension of the forbearance agreement. At a minimum, respondent failed to correct the misinformation.

75. On July 2, 2009, Alerus' security interest in S [REDACTED]'s assignment was perfected pursuant to a UCC financing statement that Alerus filed against S [REDACTED] with the Minnesota Secretary of State's Office. S [REDACTED] did not receive notification of the UCC filing. The address on the UCC financing statement was the address given by respondent when he created the initial assignment of contract for deed, *i.e.*, respondent's home address.

Pledge of Financial Stock

76. On March 31, 2009, four days after having S [REDACTED] assign her rights to the horse farm, respondent pledged all 482 shares of Financial Services stock to Alerus. Respondent did so to secure his personal obligations of \$3,200,000 owed to Alerus. S [REDACTED] did not benefit from respondent's pledge of the Financial Services stock, which respondent alleges was purchased with her inheritance. Because respondent held the stock entirely under the Severson Family Limited Partnership entity, Alerus did not require notification or agreement from S [REDACTED].

77. Throughout 2009, S [REDACTED] had approached respondent regarding the status of receiving her inheritance. Respondent did not explain that she had assigned her interest in the horse farm to Alerus or that he had pledged the Financial Service stock to

Alerus. Respondent assured S [REDACTED] he was doing everything he could to get her inheritance to her. S [REDACTED] believed respondent was acting in her best interests.

Cancellation of Contract for Deed

78. In July 2009, S [REDACTED] received a notice of property tax delinquency for the horse farm. Until this time, S [REDACTED] was unaware she held a vendor's interest in the contract for deed to the horse farm. The letter cited penalties so S [REDACTED] called respondent to find out the origins of the notice.

79. In response, respondent drafted a quit claim deed and instructed S [REDACTED] to come to the law firm to sign the document. S [REDACTED] did so on July 14, 2009. On that same day, respondent served upon the holder of the contract for deed, J & D Properties – Empire, a notice of cancellation.

80. Due to the delinquent taxes, respondent was unable to file the quit claim deed or the notice of cancellation of the contract for deed. Respondent failed to advise S [REDACTED] that he was unable to file the notice of cancellation.

81. Nonetheless, on October 15, 2009, respondent entered into another contract for deed pertaining to the horse farm. The purchaser was Xiong Companies, L.L.C. The purchase price was \$2,200,000. The contract for deed to Xiong Companies, L.L.C. could not be filed due to the delinquent taxes. In that regard, Suburban Title, Inc. held the original, unfiled, transaction documents.

82. Alerus is the successor financial institution to Prosperan Bank. Alerus assumed respondent's Forest Park Heights, LLC loan and subsequent agreements related to the development property. The development property continued to experience financial difficulty. Due to her vendor's interest in the horse farm and the assignment signed by S [REDACTED] a year earlier, Alerus served a notice of default on S [REDACTED] on April 7, 2010. On June 24, 2010, S [REDACTED] was named in a lawsuit titled *Alerus Financial, National Association as successor to Prosperan Bank f/k/a Washington County Bank v. Forest*

Park Heights, L.L.C., Leroy E. Albjerg, Larry S. Severson and D. M. S. The total amount due and owing Alerus was \$2,908,632.

83. Respondent did not pay the delinquent property taxes on the horse farm until August 2011. The deed quit claiming the horse farm from S back to respondent was filed on September 2, 2011. Respondent, through his counsel, provided Peters with a copy of the quit claim deed in November 2011. Alerus then dismissed S from its lawsuit against respondent and others.

84. Respondent's conduct in entering into a series of real estate transactions involving conflicts of interest and dishonesty violated Rules 1.7(a) and (b), and 8.4(c), MRPC.

THIRD COUNT

False Statements, False Billing Records and Related Misconduct

85. During the course of S's civil lawsuit, respondent made false statements and created documents that served to conceal his misuse of S's inheritance and to lessen his liability to repay her. During the Director's disciplinary investigation, respondent also made false statements and provided many of the same documents.

False Billing Statements and False Statements Related Thereto

86. During S's civil lawsuit against respondent and the law firm, S's attorney, Peters, requested that respondent provide an accounting of his handling of S's inheritance. Respondent hired an accountant, Shabaz, to create an accounting, based upon information provided by respondent, detailing the amount he claimed to owe S. See paragraph 57. Respondent created four misleading billing statements for legal services on law firm letterhead and provided them to Shabaz and later to Peters in an attempt to reduce the principal amount owed to S. Respondent

implied these billing statements had been created by the law firm as part of their regular billing practices at the time the legal services were provided.

87. In reality, respondent created these billing statements, in some instances, years after the legal services had been provided in order to reduce the amount he owed to S [REDACTED] in the civil litigation. Respondent charged S [REDACTED] for attorney's fees even though respondent had not charged any fee at the time the legal services were provided in several matters. *See* paragraphs 40, 48, and 50. In one instance, respondent significantly inflated the amount of his attorney's fees beyond the amount of attorney's fees actually paid by S [REDACTED] at the time the legal services were incurred. *See* paragraph 48.

88. On October 30, 2010, respondent provided the four billing invoices to the Director again implying they had been created at the time the legal services were provided in order to mislead the Director as to the amount he owed to S [REDACTED]. These documents were provided as part of an accounting created by Shabaz.

89. On February 28, 2011, after reviewing the Shabaz accounting, the Director wrote to respondent asking him to explain to whom S [REDACTED] had paid the legal fees cited in the four invoices since he credited the fees against the principal he claimed due to S [REDACTED].

90. On March 14, 2011, respondent wrote to the Director and stated that the legal fees to which the Director referred to in the invoices were paid to the law firm, which had credited S [REDACTED] with these payments as part of the settlement in S [REDACTED]'s civil suit.

91. Respondent's statement was false. The four invoices were not created by the law firm's billing department, the law firm has no record of ever receiving these payments, and the invoices appear to have been generated by respondent's secretary in November 2009. Respondent's statement that the law firm had credited S [REDACTED] with

payment of the legal fees cited in the four invoices was similarly false, because the law firm only credited S [REDACTED] for outstanding balances pertaining to the work done by Huusko on a trademark matter in 2009.

92. At no time did respondent ever inform the Director or Peters that these invoices were created after the fact and not created as part of the law firm's regular billing practices.

False Statements Regarding S [REDACTED]'s Purchase of a Vehicle in Respondent's Accounting of Funds Due S [REDACTED] in the Civil Litigation

93. In the accounting that respondent produced to Peters, and later to the Director, respondent reduced S [REDACTED]'s principal balance by \$18,750 for the month of November 2003. Respondent's checkbook register identified the payment as a wire transfer to Stones [Ford], Inc., a car dealership, for purchase of a car in November 2003.

94. Respondent's statement is false. S [REDACTED] purchased a Ford Escape in the amount of \$15,000 in 2001 but did not purchase a second car in 2003.

95. On June 14, 2011, the Director sent respondent a letter stating S [REDACTED] denied purchasing a vehicle in November 2003 and requested that respondent document the purchase.

96. By letter dated July 22, 2011, respondent stated, "With respect to the \$18,750 amount . . . we went back to consult CPA [David] Shabaz. *Mr. Shabaz can find no such entry in the Excel spreadsheet or the supporting records.*" (Emphasis in original.)

97. Respondent's statement was false. The accounting documents submitted by respondent to the Director clearly note the transactions. Respondent later admitted the entry was erroneous, but respondent's admission came after the parties' settlement.

False Statement to Opposing Counsel to Conceal Mishandling of S [REDACTED]'s Inheritance

98. During S [REDACTED]'s civil suit, respondent falsely told Peters that Terrence Merritt, a partner in the law firm, was responsible for handling the receipt and

disbursement of S [REDACTED]'s inheritance funds after the law firm received them from the probate court. Respondent's statement was false since Merritt was not employed at the law firm in 1996. Upon information and belief, respondent handled and disbursed S [REDACTED]'s inheritance in 1996. See paragraphs 23-27.

False Statement to the Director Regarding the Existence of an Attorney-Client Relationship

99. On November 3, 2010, respondent stated in his answer to the complaint that no attorney-client relationship existed between himself and S [REDACTED] and falsely stated that he did not charge S [REDACTED] legal fees. Contrary to respondent's denial, the accounting, which was created by respondent's accountant, Shabaz, shows "Severson legal fees" were removed on multiple occasions from S [REDACTED]'s principal balance, totaling over \$9,000. See paragraphs 40, 48, and 50. Comparison of the reconstructed invoices with the S [REDACTED] client file indicates the work charged on the invoices was work done by respondent.

False Statements to the Director About Investing S [REDACTED]'s Inheritance

100. Respondent misrepresented to the Director how he invested S [REDACTED]'s money and has failed to account for the funds from 1996-2002.

101. On June 5, 1996, the law firm held \$541,868.16, representing S [REDACTED]'s inheritance. The law firm has a long-standing policy that only partner may disburse trust account funds. Using the POA drafted by the law firm, and as a partner of the firm, on June 12, 1996, respondent disbursed \$66,000 to Valley Ford, Inc. and on June 13, 1996, he disbursed \$434,000 to Valley Ford, Inc. The firm's trust account bank balance report indicates that the \$434,000 trust account check related to "real estate purchase."

102. By letter dated October 11, 2010, the Director noted that S [REDACTED]'s inheritance was invested in respondent's Valley Ford car dealership in 1996 and asked respondent to provide a full accounting of S [REDACTED]'s \$500,000 from 1996 through the present.

103. On November 3, 2010, respondent wrote that the funds had not been invested in his car dealership. However, respondent's answer was silent on where, if not Valley Ford, the funds were invested. Respondent instead wrote that in 2002, through the Severson Family Partnership, he invested S█████'s money to purchase shares of Financial Services.

104. Respondent's answer failed to account for S█████'s inheritance from June 13, 1996, through 2002. On February 28, 2011, the Director again asked respondent to account for S█████'s \$500,000 from the point at which it was deposited into respondent's Valley Ford, Inc. account until 2002.

105. On March 14, 2011, respondent stated that:

Ms. S█████'s funds continued to be invested in Financial Services during the 48-month period, during which time [respondent] continued to pay Ms. S█████ interest monthly to finance her undergraduate studies at Mount Holyoke. [Respondent] continued to pay Ms. S█████ interest on the investment as Ms. S█████ finished her undergraduate degree at Saint Catherine's College [sic]. [Respondent] said he would have been able to have the shares owned by Financial Services redeemed had Ms. S█████ requested her funds be returned at the conclusion of the investment period, which she did not do.

106. On April 14, 2011, the Director wrote to respondent restating respondent's claim that the purchase of the Financial Services stock was made in 1996. The Director asked respondent to provide the names of the members of the Severson Family Limited Partnership from 1996 through 2010. The Director requested that respondent correct any inaccuracies in the Director's restatement of respondent's March 14, 2011, answer.

107. On May 6, 2011, respondent wrote that "Ms. S█████'s money at all times was invested in Financial Services of St. Croix, Inc." and in the name of the Severson Family Limited Partnership. Respondent further stated that the Severson Family Limited Partnership consisted of respondent and his wife.

108. On June 20, 2011, the Director sent an email to respondent's counsel and asked that respondent provide confirmation of his \$750,000 stock purchase, through the Severson Family Limited Partnership, "in 1996 when the conservatorship was closed."

109. On June 27, 2011, the Director received an email message from respondent's counsel. The message attached a letter from respondent to Eagle Valley Bank asking for a replacement certificate. Respondent stated he lost his original certificate. Nowhere in the email message or attached letter did respondent or counsel correct the Director's understanding that the Financial Services shares were purchased in 1996.

110. The Director responded to the June 27, 2011, email message and stated that there was no date of purchase on the certificate and therefore respondent was unable to substantiate S█████'s funds were invested in Financial Services since 1996. The Director stated that without the share certificate of stock the Director was unable to substantiate respondent's claims that S█████'s \$500,000 was invested in Financial Services. The Director also stated that there was evidence to contradict respondent's claims that S█████'s funds had been invested through Severson Family Limited Partnership since 1996, because the Severson Family Limited Partnership did not exist in 1996.

111. On July 22, 2011, respondent admitted he did not know where S█████'s inheritance went after it was deposited into his Valley Ford account. Respondent's counsel stated that he, not respondent, had made incorrect statements in his letters to the Director, although respondent had reviewed and edited counsel's letters.

Denial of Any Arrears

112. Upon review of respondent's accounting of S█████'s funds, the Director determined that on several occasions respondent either did not pay S█████ interest payments, or made payments for less than the amount agreed upon.

113. On February 28, 2011, the Director wrote respondent about concerns with respondent's accounting. On March 14, 2011, respondent stated that the spreadsheet provided to the Director shows that respondent was not in arrears with S [REDACTED]. On May 6, 2011, respondent wrote that the Director's statement about respondent being in arrears was not accurate.

114. By his own accounting respondent failed to pay S [REDACTED] \$3,750 in January 1999. In October 1996, respondent paid S [REDACTED] \$3,580, not the amount due of \$3,750, and in June 2000, respondent paid S [REDACTED] \$3,333, not the amount due of \$3,750. There are multiple other instances whereby respondent either failed to pay S [REDACTED] the amount due, or made no payment at all.

115. Respondent's statements denying that he was in arrears were false.

False Statement – S [REDACTED] Agreed to the Reduction of Interest From 8% to 7%

116. The accounting, created by respondent's accountant, Shabaz, indicated that respondent lowered S [REDACTED]'s interest rate from 8% to 7% starting in January 2009. Thereafter, the accounting deducted any payment made by respondent in 2009 and 2010 above the 7% interest rate from S [REDACTED]'s principal balance. S [REDACTED] stated she did not agree to the reduced interest payments.

117. By letter dated October 11, 2010, the Director inquired about the reduction of interest paid to S [REDACTED]. By letter dated November 3, 2010, respondent stated that he discussed the reduction with S [REDACTED] at some length. Respondent stated that due to the adverse economy S [REDACTED] agreed to reduce the interest paid to her from 8% to 7%. Respondent's statement is false.

118. Starting in May 2008, respondent made monthly payments to S [REDACTED] in the amounts of \$3,048 or \$3,048.84. This amount reflected monthly payments of an 8% annual interest on \$457,327. Respondent continued to make payments in this amount until October 2009.

119. Respondent's payments to S [REDACTED] were not decreased to \$2,392 until October 2009, after S [REDACTED] began to question respondent's accounting and the month S [REDACTED] retained Peters. Payment of \$2,392 reflects a monthly payment of 7% annual interest on \$410,000. S [REDACTED] cashed her interest payment checks, but noted on the check that they were being cashed under protest.

120. Respondent's false statements, submission of false and misleading billing records to opposing counsel during civil litigation and to the Director during the disciplinary investigation, in part, in order to reduce the amount of principal owed to a client, who had filed suit to retrieve funds in respondent's possession, violated Rules 8.1(a) and (b), and 8.4(c) and (d), MRPC.

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: July 16, 2013.



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