**FILE NO. _____**

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action
against DALE W. SHELDON,
a Minnesota Attorney,
Registration No. 100080.

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**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 l0(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 April 22, 1976. Respondent currently practices law in Minnetonka, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Failure to Maintain Required Trust Account Books and Records

1. Respondent is a sole practitioner and his practice includes the collection of consumer debts. Respondent maintains a Wells Fargo Bank trust account number 325 5001301. Respondent uses the trust account to process the collections he receives on behalf of his clients.

2. During 2006, respondent did not prepare subsidiary ledgers for each client for whom he received trust funds nor did respondent prepare a monthly "trial balance" of the subsidiary ledgers as explained in Appendix 1 of the Minnesota Rules of

Professional Conduct (MRPC). Respondent did maintain individual client collection statements reflecting amounts respondent collected for clients each month, the portion of the collections to which each client was entitled, and the portion of the collections to which respondent was entitled for attorney's fees and costs.

3. Respondent maintained sufficient records to enable him to generally reconcile the total amount that had been paid out on behalf of clients and withdrawn as attorney fees to the amount he understood was in the trust account. However, in October of 2005, respondent's computer became inoperable and respondent lost the data he used to prepare that reconciliation. As a result, respondent was unable to perform even that general reconciliation. Instead, in order to determine the amount of funds to which respondent was entitled, respondent's bookkeeper telephoned Wells Fargo Bank on a monthly basis to obtain the balance in the trust account as of the first of the month. Respondent and his bookkeeper compared that amount to respondent's billing statements to determine the amounts that had been paid, or were owing to clients. Respondent then withdrew the balance from the trust account as attorney fees. Respondent did so without preparing a reconciliation of the checkbook balance and the subsidiary ledger trial balance as provided for in Appendix 1 which would have shown any shortage of funds held on behalf of individual clients. As a result, respondent withdrew attorney fees from the account to which he was not entitled, causing shortages in the amounts that he was to hold on behalf of clients.

4. Respondent was unaware of these shortages until around April 21, 2006, when he received an overdraft notice from the bank. That overdraft was also reported to the Director pursuant to Rule 1.15(j)-(o), MRPC. The Director subsequently audited respondent's trust account for the period December 2005 through March 2007.

5. The Director's audit confirmed that as of December 1, 2005, the balance in respondent's trust account was approximately $20,000 short of that necessary to cover client balances. During this time respondent learned that his father was terminally ill

and for the next few months respondent was frequently absent from his office. By the time of the April 21, 2006, overdraft, the shortage in respondent's trust account had increased to approximately $58,000.

6. The single largest cause of the shortage and eventual overdraft was respondent's payment of attorney's fees to himself that exceeded the amounts his client collection statements indicated he was due. For example:

a. Respondent's January 1, 2006, collection statements reflect that respondent was due $12,317 in attorney's fees and costs from amounts he collected for his clients during the month of December 2005. During January 2006, however, respondent paid himself $25,000 in attorney's fees and costs, a difference of $12,683. (During the month of January 2006, the shortage in respondent's trust account increased by $12,447.)

b. Respondent's February 1, 2006, collection statements reflect that respondent was due $18,850 in attorney's fees and costs from amounts he collected for his clients in January 2006. During February 2006, however, respondent paid himself $30,000 in attorney's fees and costs, a difference of $11,150. (During the month of February 2006, the shortage in respondent's trust account increased by $12,764.)

7. As soon as respondent learned of the problem in April 2006, he promptly deposited personal funds totaling $48,500 into his trust account to substantially eliminate the shortage in the account. In May 2006, respondent also retained earned fees in his trust account to fully offset the shortage. The Director's audit revealed that from May of 2006 through the end of the audit, respondent was preparing the required books and records and that his account was properly reconciled.

8. Respondent's conduct in failing to maintain the required trust account books and records resulted in the unintentional misappropriation of client funds in his

trust account between December of 2006 and April of 2007 and violated Rule 1.15(a) and 1.15(h), 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: May 2, 2008.

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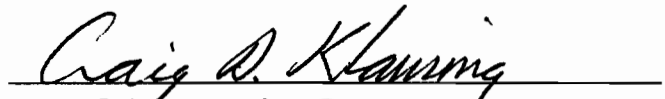

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