FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against KEVIN KENNETH SHOEBERG, a Minnesota Attorney, Registration No. 204535.	**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 October 27, 1989. Respondent currently practices law in Woodbury, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

In considering whether public discipline is warranted it is appropriate, pursuant to Rule 19(b)(4), Rules on Lawyers Professional Responsibility (RLPR), to consider respondent's prior discipline. Respondent's history of prior discipline, including admonitions, is as follows:

A. On November 14, 2000, respondent was issued an admonition for failing to clarify the basis and rate of his fee at the commencement of the representation and for failing to promptly pay to his client the portion of settlement monies to which there was no dispute the client was entitled in violation of Rules 1.5(b) and 1.15(c)(4), Minnesota Rules of Professional Conduct (MRPC).

B. On July 11, 2012, respondent was issued a panel admonition for negligently misappropriating $1,300 in client funds by withdrawing fees prior to deposit of the involved clients' retainers into his trust account, in violation of Rule 1.15(c)(5), MRPC, and/or additional provisions of Rule 1.15, MRPC.

FIRST COUNT

Sambo Sou Matter

1. Sambo Sou ("Sambo") contacted respondent in February 2011 to discuss filing a bankruptcy case for Sambo. Because Sambo's English was limited, her daughter, Molyka "Moka" Soun, served as a translator. Moka also corresponded with respondent by email on behalf of her mother.

2. Sambo told respondent her debts consisted of past due medical bills and that she would contact respondent when she was ready to proceed. Sambo was not planning to file a joint bankruptcy petition with her husband, Pound Soun ("Pound").

3. Sambo, Pound, and Moka met with respondent on March 19, 2011. Sambo agreed to pay respondent a "flat fee" of $1,800 that was to include a court filing fee of $299 under a fee agreement respondent presented to her. Sambo signed the fee agreement and gave respondent a check for $1,800.

4. The fee agreement included the following provisions:

> I have agreed to pay my attorney $1,800 as a flat fee for representation in filing a Chapter 7 Bankruptcy. The flat fee includes the bankruptcy filing fee of $299.00.
>
> I understand that I will be billed (in tenth hour increments) at the hourly rate for all services rendered, including but not limited to conferences (including telephone conferences) with myself or anyone else, drafting and/or reviewing documents or pleadings; correspondence review or generated; research; preparation and attendance at (including traveling to and from court appearances, hearings, conferences, investigations, depositions and any other work done on my behalf.
>
> I understand that my attorney will provide me with periodic statements of account in order to inform me on a timely basis of the fees being charged.

My attorney has also advised me that his office has a policy of returning telephone calls and responding to the client generally within twenty-four hours (24) unless he is in trial or some hearing.

5. As described below, respondent did not file a bankruptcy petition in Sambo's case until 21 months later, on December 19, 2012. Respondent did not hold the $299 from Sambo for a filing fee in a trust account pending the filing of Sambo's bankruptcy petition.

6. Prior to the first meeting with respondent on March 19, 2011, Pound transferred the titles to their motor vehicles into his name to try and keep them out of Sambo's bankruptcy proceeding.

7. Sambo took pre-filing credit counseling as required by the bankruptcy rules. She sent respondent a certificate of completion on April 26, 2011. Respondent did not acknowledge receipt of the certificate, so Sambo emailed respondent on May 3, May 10, and July 27, 2011, and asked him to confirm receipt. Respondent did not confirm receipt of the certificate or otherwise respond until July 27, 2011.

8. Also in the email dated May 10, 2011, Sambo told respondent she was travelling to Cambodia and would be away from June 21, 2011, until July 28, 2011. Sambo returned to the United States early on July 11, 2011.

9. On August 13, 2011, Sambo, Pound, and Moka met with respondent at his office. Sambo and Pound's family friend and advocate, complainant Richard Erickson, Ph.D., also attended the meeting. Following the meeting, Sambo provided additional information to respondent. Respondent said he would prepare a bankruptcy petition and send it to Sambo for review.

10. On August 15, 2011, respondent emailed Moka and enclosed a list of debts to be included in the schedules to the bankruptcy filing. Respondent asked Moka to review the list for accuracy and also said he was planning to make changes to the petition and schedules and send them to Moka and Sambo for their review. Moka emailed respondent with the additional information on August 30, 2011.

11. On September 14, 2011, Sambo emailed respondent and asked, "What is the update on the bankruptcy case? Just wondering if you would like us to transfer the

car titles back to the way it was before. Please let us know." Respondent did not respond.

12. On November 7, 2011, Sambo emailed respondent and said, "Haven't heard from you in a while. I was wondering what was the update on the bankruptcy case? Please let me know." Respondent replied on the following day and said he had "all of the information put in the petition." Respondent also told Sambo to add her name back to the titles to the vehicles. Sambo emailed respondent on November 8, 2011, and said she had done so. Sambo also said, "Let us know what the next step is."

13. On January 25, 2012, Sambo took another credit counseling course because her previous certificate was more than 180 days old and was no longer valid. Sambo emailed a certificate of completion to respondent on the same day with the following message: "Here is my certificate. Also, we transferred the car titles back to the original names: Pound Soun and Sambo Sou. Is there anything else that I am supposed to do? When will you be filing the bankruptcy? Please let me know." Respondent did not respond.

14. Sambo emailed respondent again on February 2, 2012, and said, "I was wondering if you need me to do anything else? I have already taken my pre-bankruptcy course and I was wondering if you've received the email with the attachment of the certificate . . . . Did you submit the bankruptcy papers?" Respondent did not respond.

15. Sambo emailed respondent again on February 8, 2012. She wrote: "I was wondering what's the update on the bankruptcy case? Please let me know; I've been sending you multiple e-mails with no response." Respondent responded on the same day and wrote: "Sambo, I got the information organized and will provide you with a draft in the next couple of days. Please review and let me know if I have not included a creditor or something is incorrect."

16. Respondent did not provide Sambo with a draft of the bankruptcy petition until March 27, 2012. Moka and respondent exchanged emails on March 27 and

31, 2012, regarding subjects including Pound's income and the vehicle titles. Moka told respondent the titles were changed and Sambo's name was added back in January 2012.

17. After March 31, 2012, respondent did not communicate with Sambo, Moka, or Dr. Erickson and made no progress on Sambo's bankruptcy case until after Dr. Erickson filed a complaint against respondent with the Director's Office.

18. On June 12, 2012, Moka emailed respondent and said, "Is there an update on the bankruptcy case? Please let me know." Respondent did not respond. On June 27, 2012, Dr. Erickson submitted a complaint against respondent to the Director's Office regarding respondent's handling of Sambo's bankruptcy matter.

19. Respondent did not reply to Moka until July 5, 2012. Respondent wrote, "Moka, has the transaction with the vehicles been completed? I think we should file if everything is ready" - even though Moka told respondent in March 2012 that her parents had changed the vehicle titles back to joint ownership in January 2012. Moka replied on the same day and said, "Everything is ready. Please file away. Let me know when you file it. Thanks! If you need anything, please call 952-426-9265."

20. Respondent did not send an updated bankruptcy petition to Moka for review until November 20, 2012. Sambo was in the hospital battling a serious illness at that time, however, and was not released until approximately November 28, 2012.

21. Because of the delay in filing Sambo's bankruptcy, she was required to take credit counseling for a third time, on November 1, 2012. Moka forwarded the certificate of completion to respondent on the same day.

22. Respondent filed a bankruptcy petition in Sambo's case on December 19, 2012. The court issued a "discharge of debtor" on March 26, 2013. Sambo died on June 9, 2014.

23. Respondent's conduct in failing to communicate with Sambo Sou (and with Moka Soun on behalf of Sambo Sou) and to diligently handle Sambo Sou's bankruptcy proceeding violated Rules 1.3 and 1.4(a)(3) and (4), MRPC.

SECOND COUNT

Diane Lewis and Kristie Lewis Matters

24. Diane Lewis and her daughter, Kristie Lewis, together had an initial consultation with respondent on March 29, 2012. Diane Lewis and respondent discussed removing an easement on real property she owns in Pine County, Minnesota, so that she could sell it. Kristie Lewis asked respondent to file a Chapter 7 bankruptcy petition for her.

25. Diane Lewis left an abstract of title and a certificate of survey with respondent, who said he would review them and contact her. Respondent estimated the work in obtaining an easement would cost Diane Lewis $500.

26. Diane Lewis did not pay respondent anything for her case, but paid respondent $1,800 on behalf of Kristie Lewis for her bankruptcy that was to cover a $306 filing fee and respondent's attorney's fee of $1,494. Diane Lewis told respondent to give priority to Kristie Lewis's bankruptcy case over her real estate matter.

27. On May 11, 2012, respondent filed a Chapter 7 bankruptcy petition in Kristie Lewis's case.

28. Beginning in June 2012 Diane Lewis began calling respondent approximately once per week. She was unable to get through to him and left phone messages saying she wished to talk to him about her case and about an apparent error in listing a second mortgagee in Kristie Lewis's bankruptcy filings. Respondent did not return Diane Lewis's calls or communicate with either her or Kristie Lewis.

29. On August 14, 2012, the bankruptcy court issued a discharge of debtor and closed Kristie Lewis's case.

30. Diane Lewis submitted a complaint against respondent to the Office of Lawyers Professional Responsibility on October 24, 2012. The Director mailed a copy of the complaint and a notice of investigation to respondent's counsel on November 1, 2012.

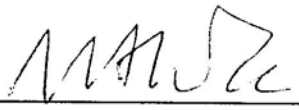
31. Respondent phoned Diane Lewis and Kristie Lewis for the first time in several months on November 26 or 27, 2012. Respondent returned Diane Lewis's

abstract and certificate of title to her by hand-delivery on November 29, 2012. Respondent also hand-delivered numerous items from Kristie Lewis's file and a letter dated November 29, 2012, addressing her concern about the way her second mortgage was listed in her bankruptcy filings.

32. Respondent's conduct in failing to communicate with Diane Lewis and Kristie Lewis from May 2012 until November 2012 violated Rule 1.4(a)(3) and (4), MRPC. Respondent's conduct in failing to return the Lewises' papers and property until November 2012, after Diane Lewis submitted a complaint to the Director's Office, violated Rules 1.15(c)(4), 1.16(d), and 8.4(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: January 12, 2015.



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