

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against DAVID A. SINGER,
an Attorney at Law of the
State of Minnesota.

**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 April 22, 1974. Respondent currently practices law in Crystal Bay, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's history of prior discipline is as follows:

A. On November 15, 1990, respondent received an admonition for failing to adequately communicate with a client, in violation of Rule 1.4(a) and (b), Minnesota Rules of Professional Conduct (MRPC).

B. On April 7, 1993, respondent received an admonition for neglect of a legal matter and failing to adequately communicate with a client, in violation of Rules 1.3 and 1.4, MRPC.

FIRST COUNT
Trust Account Misappropriation

1. Bobby Ward retained respondent in January 1994 to represent him in a personal injury action. On November 2, 1998, Ward filed a complaint against respondent with the Director's Office. During investigation of the Ward complaint, on March 3, 1999, the Director requested that respondent provide his trust account records for the period from December 1, 1997, to February 25, 1999, inclusive (this request was later expanded to May 31, 1995, to March 31, 1999).

2. Upon providing the trust account records, respondent identified several instances of his inappropriate withdrawal of client funds from his trust account during the audit period, in amounts ranging from \$150 to \$5,000. The total amount of unattributed withdrawals by respondent was over \$50,000. Some of those instances are more particularly set out in paragraphs 4 and 5, below. In addition, respondent identified all cases where he had earned fees in a personal injury matter, but not taken the fees because he had already misappropriated funds from the trust account and wished to avoid an overdraft.

3. During the audit period, respondent engaged in a pattern of taking client funds out of the trust account for his own use. Respondent would then repay the trust account by deposit of another client's settlement, before making payments on behalf of prior settlements, and on occasion by leaving all or a portion of his fees in the trust account, so that his trust account did not become overdrawn. By this pattern of taking client funds, respondent regularly used client funds for periods of several days to several weeks or more. Respondent deposited over \$12,000 of personal funds into the trust account in March 1999. After giving respondent credit for all earned fees, the trust account substantially balanced at the end of the audit period.

4. As a result of respondent's taking of client funds, respondent's trust account was continuously short during the audit period, in amounts ranging from \$450

shortly after the audit began to over \$16,000. For the last eighteen months of the audit period, the trust account had a continuous shortage of at least \$10,000. At the end of the audit period, after giving respondent credit for earned fees that had not been withdrawn, and after deposit of nearly \$12,000 by respondent, the trust account substantially balanced. Examples of respondent's misuse of client funds include, without limitation, the following:

a. On August 28, 1995, respondent received \$22,500 on behalf of Client A as a settlement. Medicare had a subrogation interest, the amount of which was in dispute. Respondent placed these funds into his trust account, pending resolution of the Medicare dispute. On September 8, 1995, respondent paid \$8,872.89 to his former law firm as its fees in the case. The remaining \$13,627.11 belonged to the client and/or Medicare. On December 30, 1996, respondent paid the client \$9,172.76. While the Client A funds were in the trust account, respondent used the funds, causing a shortage (but not causing an overdraft). Respondent had the use of the Client A funds for over one year, and of the Medicare portion of those funds for over three years. No portion of those funds belonged to respondent. Deposit of funds into the trust account by respondent in March 1999 restored the balance of these funds, allowing payment to Medicare in April 1999.

b. On June 2, 1998, respondent deposited \$4,000 of a negotiated liability settlement for Client B into the trust account. Respondent wrote check 1976 for \$500 from the trust account to himself as fees. The balance was to pay a doctor's lien owed by Client B. Respondent then negotiated the lien with the doctor, but used the funds intended to pay the doctor. Respondent repaid these funds into the trust account in March 1999, and in mid-1999, paid the doctor from the trust account. Respondent had the use of this client's funds for over one year.

c. On December 15, 1997, respondent received \$18,000 on behalf of Client C. On December 15, 1997, respondent wrote check 1666 to himself for \$4,000 for fees. On December 17, 1997, respondent paid the client \$8,389.46. After applying a \$2,000 credit for the balance of his fees, the balance of \$3,610.24 was to be held, pursuant to letters of protection, until the no-fault was completed. The no-fault insurer was non-responsive. Between December 17, 1997, and March 31, 1999, respondent used these funds for himself. Respondent's March 1999 deposit restored these funds to the trust account.

d. Respondent received \$12,000 for Client D on July 28, 1995. Respondent appropriately disbursed all but \$2,955.78 by August 11, 1995. The balance was disbursed to a doctor on March 28, 1996. Respondent had the use of these client funds for seven months. Respondent made unattributed withdrawals to himself during these seven months. Respondent made the disbursement to the doctor from other client funds which had been deposited.

5. Respondent's conduct in misappropriating client and/or third party funds violated Rules 1.15(a) and (b)(4), and 8.4(b) and (c), MRPC.

SECOND COUNT

Failure to Maintain Required Books and Records

6. Respondent certified on his annual attorney registration statements filed in 1996, 1997 and 1998 that he maintained the trust account books and records required by the MRPC and Lawyers Professional Responsibility Board (LPRB) Opinion 9.

7. Respondent provided the following records for his trust account: checkbook register, bank statements, canceled checks and duplicate deposit slips for the audit period. Respondent did not keep, and did not provide, contemporaneously prepared cash receipts or disbursements journals, client subsidiary ledgers, monthly trial balances or monthly reconciliations.

8. Respondent's conduct in failing to maintain the required trust account books and records, while certifying to the Court on his annual attorney registration statement that he did so, violated Rules 1.15(g) and 8.4(c), MRPC, and LPRB Opinion 9.

WHEREFORE, the Director respectfully prays for an order of this Court disbarring respondent or imposing otherwise 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 27, 2000.



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