FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against THOMAS MICHAEL SKARE,
a Minnesota Attorney,
Registration No. 183325.

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 October 16, 1987. Respondent currently practices law in Cloquet, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

On February 15, 2006, respondent was issued an admonition for failing to communicate with, and take timely action on behalf of, a client and for failing to promptly, upon request, return the client file, in violation of Rules 1.3, 1.4(a), and 1.16(d), Minnesota Rules of Professional Conduct (MRPC).

FIRST COUNT

1. On February 14, 2012, respondent's client trust account at Frandsen Bank & Trust (hereinafter "the bank") became overdrawn. Pursuant to Rule 1.15(j) through (o), MRPC, the bank reported the overdraft to the Director.

2. Respondent explained the overdraft had been the result of two factors: (a) in November 2010, respondent issued a $693 check on his trust account without first depositing funds into the account to cover the check; and (b) in August 2011, the bank inadvertently deposited into his operating account funds which were intended for deposit into his trust account. In light of these factors, and because they indicated respondent was not properly reconciling his trust account, the Director converted the trust account overdraft inquiry into a formal disciplinary investigation.

3. Based on the trust account books and records respondent provided in the context of the disciplinary investigation, the Director audited respondent's trust account for the period June 2010 through October 2012. The Director's audit reflected a continuous shortage in respondent's trust account (i.e., an amount by which aggregate client balances exceeded the actual trust account balance) during the period November 15, 2010, to October 5, 2012, in amounts ranging from $693 to $6,110.

4. The shortage in respondent's trust account was the result of the transactions described below.

5. On November 15, 2010, respondent's trust account check no. 1031 in the amount of $693—issued on behalf of respondent's client K.S. to a court reporter—cleared respondent's trust account. As of November 15, 2010, however, respondent had not deposited any funds for K.S. into his trust account. As a result, check no. 1031 was paid with funds belonging to other of respondent's clients and a $693 shortage in respondent's trust account balance was created.

6. On August 15, 2011, $2,200 in client funds intended for deposit into respondent's trust account was deposited in error by the bank into respondent's operating account. This deposit was comprised of $1,200 received on behalf of respondent's client "3.D.C." and $1,000 received on behalf of respondent's client D.B. Respondent's bookkeeper noted the error and twice—once in October 2011 and once in November 2011—requested the bank to transfer the deposit into respondent's trust

account. The bank did not make the requested transfer and neither respondent nor the bookkeeper followed up with the bank to rectify the error. On October 3, 2011, respondent's trust account check no. 1077 in the amount of $1,000—issued on D.B.'s behalf—cleared respondent's trust account. Because the D.B. funds intended for deposit into respondent's trust account had been deposited into respondent's operating account, check no. 1077 was paid with funds belonging to other of respondent's clients and the shortage in respondent's trust account increased to $1,693 ($693 plus $1,000).[1]

7. On October 13, 2011, $1,000 in client funds intended for deposit into respondent's trust account was, due to respondent's error (or that of his bookkeeper), deposited into respondent's operating account. This deposit was comprised of funds received on behalf of respondent's client M.S. On January 6, 2012, respondent's trust account check no. 1086 in the amount of $1,000—issued on M.S.'s behalf—cleared respondent's trust account. Because the M.S. funds intended for deposit into respondent's trust account had been deposited into respondent's operating account, check no. 1086 was paid with funds belonging to other of respondent's clients and the shortage in respondent's trust account increased to $2,693 ($1,693 plus $1,000).

8. On February 2, 2012, respondent's trust account check no. 1088 in the amount of $3,422.86—issued to respondent on behalf of his client P.W.—cleared respondent's trust account. At the time, P.W. was entitled to only $2,000 from respondent's trust account. As a result, $1,422.86 of check no. 1088 ($3,422.86 minus $2,000) was paid to respondent with funds belonging to other of respondent's clients and the shortage in respondent's trust account increased to $4,115.86 ($2,693 plus $1,422.86).

9. On February 3, 2012, respondent's trust account check no. 1090 in the amount of $4,000—issued to respondent on behalf of his client M.W.—cleared

[1] Respondent did not attempt to disburse any portion of the 3.D.C. funds from his trust account during the audit period.

respondent's trust account. At the time, M.W. was entitled to only $2,033.90 from respondent's trust account. As a result, $1,966.10 of check no. 1090 ($4,000 minus $2,033.90) was paid to respondent with funds belonging to other of respondent's clients and the shortage in respondent's trust account increased to $6,081.96 ($4,115.86 plus $1,966.10). (A $28 fee assessed as a result of the February 14, 2012, overdraft that followed further increased the shortage to $6,109.96.)

10. On February 23, 2012, respondent deposited $551.86 of his own funds into his trust account to eliminate the overdraft. This deposit decreased the shortage in respondent's trust account to $5,530.10 ($6,109.96 minus $551.86).

11. On March 12, 2012, respondent deposited an additional $2,341.14 of his own funds into his trust account. This deposit further decreased the shortage in respondent's trust account to $3,188.96 ($5,530.10 minus $2,341.14). (A $48 check charge assessed to respondent's trust account on May 16, 2012, increased the shortage to $3,236.96.)

12. Finally, on October 5, 2012, respondent deposited an additional $3,236.96 into his trust account to fully eliminate the shortage.

13. During the period from October 2009 to August 2011, respondent failed to ensure that his trust account was interest bearing.

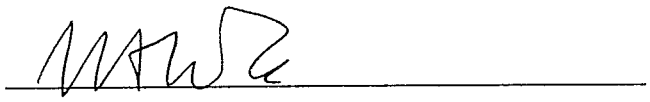
14. During the period from at least November 2010 to October 2012, respondent was not reconciling his trust account in the manner required by Rule 1.15, MRPC, as interpreted by Appendix 1 thereto. Respondent's failure in this regard prevented him from discovering and correcting the shortages in his trust account. Respondent's conduct in failing to maintain the required trust account books and records violated Rule 1.15(c)(3), MRPC, and Appendix 1 thereto.

15. Respondent's conduct from at least November 15, 2010, through October 5, 2012, of allowing shortages to exist in his trust account, ultimately resulting in the unintentional misappropriation of client funds, violated Rule 1.15(a), MRPC.

16. Respondent's conduct in failing to ensure between October 2009 and August 2011 that his trust account was interest bearing violated Rule 1.15(e), 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 3, 2013.



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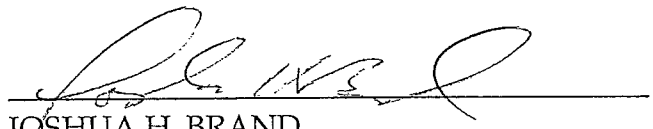

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