

FILE NO. C5-02-987

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against RONALD P. SMITH,
an Attorney at Law of the
State of Minnesota.

**AMENDED PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

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

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on March 21, 1958. Respondent currently practices law in St. Paul, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Thomas L. Burow Matter - Conflict of Interest

1. In 1993 respondent prepared a Trust Agreement for Thomas L. Burow (Burow). The Trust Agreement was executed on May 11, 1994. The beneficiaries named in the trust were the children of nine of Burow's cousins and a not yet officially formed nonprofit organization known as the Friends of Burow Farm. The Trust Agreement and all subsequent restatements of the Trust Agreement designated First Trust National Association (now known as U.S. Bank Trust, N.A.) and Michael Cashill as trustees.

2. On April 13, 1995, Burow executed a Restatement of Trust Agreement drafted by respondent. That restatement eliminated the gift to the nonprofit organization but retained the children of the nine cousins as beneficiaries.

3. On March 7, 1997, Burow executed a 1997 Restatement of Trust Agreement drafted by respondent. The 1997 Restatement of Trust Agreement eliminated the children of one of Burow's cousins as beneficiaries but retained the children of the other eight cousins as beneficiaries.

4. On December 23, 1998, Burow signed a 1998 Restatement of Trust Agreement drafted by respondent. The 1998 Restatement of Trust Agreement significantly departed from the previous versions. It eliminated the children of the eight cousins named in the 1997 Restatement of Trust Agreement as beneficiaries and substituted the following eleven beneficiaries: Kathleen Smith (respondent's daughter and long-time friend of Burow), Brian Smith (respondent's son and long-time friend of Burow), John Langenbrunner (a long-time friend of Burow), Michael Cashill (trustee of the Burow Trust and long-time friend of Burow), the three children of Leonard Mollner (one of Burow's cousins), the University of Minnesota Cancer Center, DARTS, Catholic Charities, and The Little Sisters of the Poor.

5. On December 23, 1998, Burow was 87 years old. He had never married and had no children.

6. On December 23, 1998, Burow's physical and mental condition was such as to reasonably call into question his testamentary capacity.

7. Burow had had no prior contact with or involvement in the University of Minnesota Cancer Center, Catholic Charities, or the Little Sisters of the Poor. Burow's prior involvement with DARTS had consisted of receiving services provided such as transportation to social events, meals on wheels, and social visits from a DARTS representative. Other than a \$100 donation in 1997, Burow had declined subsequent solicitations for donations to DARTS.

8. Respondent has been a longtime board member of Catholic Charities.
9. The value of Burow's estate as of December 23, 1998, was in excess of three million dollars. The gifts to respondent's children under the 1998 Restatement of Trust Agreement were substantial: \$25,000 to Kathleen Smith, 15 percent of the residue of the estate to Brian Smith, and one half of Burow's interest in Burow Management LLC to Brian Smith.
10. On December 23, 1998, Burow also signed documents prepared by respondent creating an entity known as Burow Management LLC and transferring to that entity Burow's interest in his homestead. Those documents were dated December 1, 1998, and included: Articles of Organization of Burow Management LLC, Quitclaim Deed, Burow Management LLC Partnership Agreement and Transfer of Partnership Interest.
11. The Burow Management LLC Partnership Agreement and Transfer of Partnership Interest provided for ownership interests in Burow Management LLC as follows: Thomas Burow - 80 percent; Michael Cashill - 10 percent; and Brian Smith - 10 percent. Neither Michael Cashill nor Brian Smith made any contributions of cash or property to Burow Management LLC in exchange for their 10 percent interests.
12. The quitclaim deed Burow executed on December 23, 1998, conveyed his homestead property to Burow Management LLC.
13. The 1998 Restatement of Trust Agreement devised Burow's interest in Burow Management LLC to Michael Cashill and Brian Smith, provided that he had not already gifted it to them during his lifetime.
14. On March 1, 2000, U.S. Bank Trust, N.A. petitioned the Ramsey County district court for instructions and declaratory relief. That petition and subsequent amendments thereto expressed concerns regarding Burow's testamentary capacity

in executing the various December 23, 1998, agreements and requested that the court determine their validity.

15. On March 22, 2000, Burow Management LLC, by its managing partner, Michael Cashill, deeded its interest in the Burow homestead to the Thomas L. Burow Trust. No consideration was given for the transfer.

16. On March 22, 2000, Brian Smith, Kathleen Smith and Michael Cashill signed a document waiving any interest in the estate or trust of Thomas L. Burow.

17. On April 17, 2001, the Ramsey County district court issued an order invalidating the 1998 Will and Restatement of Trust Agreement of Thomas L. Burow and declaring null and void the Articles of Organization of Burow Management LLC and the Burow Management LLC Partnership Agreement dated December 23, 1998. The court, in issuing its order, concluded that the December 23, 1998, Will and Restatement of Trust Agreement were the product of undue influence by respondent and Michael Cashill and that Thomas L. Burow lacked testamentary capacity on December 23, 1998.

18. Respondent's conduct in preparing instruments that named as beneficiaries his son, daughter, and a charity in which he was personally interested violated Rules 1.7(b) and 1.8(c), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Thomas L. Burow Matter - Transfer of Partnership Agreement

19. The Transfer of Partnership Interest document contains handwritten notations that did not appear on the document at the time it was signed. In particular, one of the notations reads:

12-23-98

Parties agree that Tom [Burow] will retain 100% interest in LLC until such time as City Mend. Hts agrees to allow senior housing at 1875 Victoria - if no senior housing allowed no transfer of any

interest from Tom. Tom to furnish initial costs of project. Tom to live with Brian if project goes forward & thereafter costs shared per interests above.

20. Respondent added the above handwritten notation to the Transfer of Interest document after Burow had executed it on December 23, 1998.

21. On September 24, 1999, in a written response to an inquiry from attorney Edward Hitchcock made on behalf of relatives of Burow, respondent stated that Burow had transferred his interest in his homestead to Burow Management, LLC and that Burow held only an 80% controlling interest in the LLC. Respondent attached to his September 24 letter to Hitchcock a copy of the Transfer of Partnership Interest document that contained no handwritten notations.

22. On February 21, 2001, respondent was asked at his deposition about the handwritten notations on the December 23, 1998, Transfer of Partnership Interest document. In response, respondent stated and implied that the handwritten notations were placed on the Transfer of Partnership document at the time it was executed and that Burow, at all times, had retained a 100% ownership interest in the LLC.

23. On April 23, 2001, at the hearing on U. S. Bank Trust's petition, respondent testified that the handwritten notations were placed on the Transfer of Partnership document at the time it was executed and that Burow, at all times, had retained a 100% ownership interest in the LLC.

24. Respondent's conduct in altering the Transfer of Partnership Interest document by adding a handwritten provision altering the nature of the document after it was executed, and in providing conflicting statements to others about when the handwritten notations were placed on the Transfer of Partnership Interest, violated Rules 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

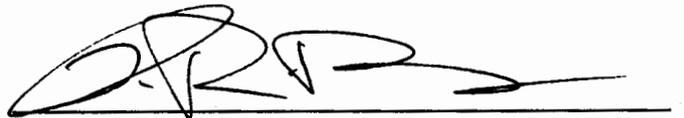
the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: November 1, 2002.



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