

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against LOUIS ANDREW STOCKMAN,
a Minnesota Attorney,
Registration No. 241210.

**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 22, 1993. Respondent currently practices law in Duluth, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

On January 15, 2009, respondent was issued an admonition for failing to obtain his client's consent before making a settlement demand to an insurer, failing to notify the client of the insurer's counter-offer, failing to diligently handle the client's case and failing to keep the client reasonably informed about the status of his case, in violation of Rules 1.2(a), 1.3, and 1.4(a)(1) and (3), Minnesota Rules of Professional Conduct.

FIRST COUNT

Negligent Misappropriation of Client Funds, Mishandling of Client Funds, Commingling, Failure to Maintain Required Trust Account Books and Sharing Legal Fees with a Non-Lawyer Assistant

Introduction

1. At all times relevant, respondent has maintained trust account no. -2471 at Beacon Bank (hereinafter, "respondent's trust account"). Respondent opened his trust account in August 2006.

2. At all times relevant, respondent has maintained operating account no. -7141 at Beacon Bank (hereinafter, "respondent's operating account").

Trust Account Shortages

3. During the periods September 1 to November 30, 2006; December 12, 2006, to June 3, 2009; July 27 to 29, 2009; November 24 to December 1, 2009; April 14 to 27, 2010; April 28 to June 29, 2010; July 7 to August 25, 2010; and October 4 to 8, 2010, the balance in respondent's trust account was short of that necessary to cover client balances, resulting in the negligent misappropriation of client funds. This shortage, which is further detailed below, ranged in amount from \$22 (on October 4, 2010) to more than \$31,000 (on September 25, 2008).

4. Attached as Exhibit A is a chart reflecting the shortages in respondent's trust account during the period September 1, 2006, to October 8, 2010. Some of the transactions that constituted the negligent misappropriation of client funds and contributed to the shortage were for respondent's own personal and/or professional benefit. Those transactions are identified on the chart by an asterisk (*) in the "AMOUNT OF TRANSACTION" field.

Commingling in Trust Account

5. During the periods November 30 to December 7, 2006; June 3 to July 27, 2009; July 29 to November 24, 2009; December 1, 2009, to April 14, 2010; April 27 to 28, 2010; and June 29 to July 7, 2010, respondent's trust account balance included both substantial amounts of earned fees to which he was entitled and client funds. During those periods, respondent thus commingled client funds and his own funds in his trust account.

6. Attached as Exhibit B is a chart reflecting the occasions on which respondent commingled his own funds with client funds in his trust account during the period November 30, 2006, to July 7, 2010.

Mishandling of Client Funds and Commingling in Operating Account

7. On multiple occasions during the period January 2007 to June 2010, respondent deposited client funds directly into his operating account, or transferred client funds from his trust account into his operating account, and disbursed the funds to the clients from his operating account.¹ Respondent's actions in this regard constituted the improper handling of client funds and resulted in the commingling of client funds with respondent's own funds in his operating account.

8. Attached as Exhibit C is a chart reflecting the occasions on which respondent *deposited* client funds directly into his operating account and disbursed those funds to clients and others from his operating account.

9. On the following occasions, respondent *transferred* client funds from his trust account into his operating account and disbursed the funds to the clients from his operating account:

¹ It also appears respondent disbursed the client funds he deposited or transferred into his operating account to client medical and other creditors.

<u>DATE</u>	<u>CLIENT</u>	<u>TRANSFERS</u>	<u>DISBURSEMENTS</u>
12/11/06	P.H.	\$9,588.92	Ck (TA) 2040 to P.H. for \$7,191.69 cleared 12/12/06
01/02/07	G.B.	\$1,305.82	Ck 1503 to G.B. for \$870.54 cleared 01/03/07
01/09/07	J.B.	\$3,444.00	Ck 1521 to J.B. for \$2,250.53 cleared 01/19/07
01/09/07	T.H.	\$4,200.00	Ck 1522 to T.H. for \$2,773.89 cleared 01/24/07
01/09/07	M.M.	\$1,800.00	Ck 1515 to M.M. for \$1,200.00 cleared 01/11/07
01/09/07	M.G.	\$6,500.00	Ck (TA) 2046 to M.G. for \$3,904.89 cleared 1/10/07
02/23/07	J.S.	\$1,000.00	Ck 1560 to J.S. for \$494.69 cleared 03/01/07
03/09/07	A.T.	\$5,000.00	Ck 1567 to A.T. for \$2,684.36 cleared 03/16/07
03/21/07	L.H.	\$18,000.00	Ck 1578 to L.H. for \$5,713.76 cleared 03/23/07
03/23/07	G.B.	\$862.40	Ck 1583 to G.B. for \$579.94 cleared 03/26/07
03/23/07	M.G.	\$3,500.00	Ck 1582 to M.G. for \$2,333.34 cleared 3/23/07
04/19/07	R.T.	\$7,500.00	Ck 1618 to R.T. for \$4,700.12 cleared 04/19/07
09/20/07	J.D.	\$16,250.00	Ck 1797 to J.D. for \$10,072.79 cleared 09/24/07
10/05/07	J.G.	\$25,000.00	Ck 1814 to J.G. for \$16,321.18 cleared 10/10/07
10/30/07	A.M.E.	\$72,000.00	Ck 1851 to A.M.E. for \$40,000 cleared 10/31/07
11/12/07	L.K.	\$6,398.67	Ck 1869 to L.K. for \$2,498.67 cleared 11/28/07
08/22/08	E.S.	\$32,100.00	Ck 2264 to E.S. for \$20,838.78 cleared 08/25/08
01/30/09	D.H.	\$68,698.72	Ck 2562 to R. Karwt for \$17,000 cleared 02/05/09 Ck 2560 to Phia Gr. for \$11,500 cleared 02/09/09 Ck 2561 to W. Vasil for \$550 cleared 02/09/09 Ck 2563 to R. Ulleberg for \$13,022.22 cleared 02/19/09
05/18/09	C.N.	\$3,733.34	Ck 2761 to C.N. for \$3,733.34 cleared 05/18/09

10. As a result of the deposits and transfers of client funds identified in paragraphs 7 through 9 above, respondent commingled client funds with his own funds in his operating account during the following periods of time: December 11 to 12, 2006; January 2 to 3, 2007; January 9 to 24, 2007; February 23 to March 1, 2007; March 9 to 16, 2007; March 23 to 28, 2007; April 4 to 20, 2007; April 24 to May 1, 2007; May 4 to 11, 2007; May 21 to June 13, 2007; July 31 to August 1, 2007; August 10 to 14, 2007; September 4 to 6, 2007; September 20 to 24, 2007; September 28 to October 3, 2007; October 5 to 10, 2007; October 22 to 24, 2007; October 30 to 31, 2007; November 2 to 6, 2007; November 12 to 28, 2007; December 3 to 7, 2007; January 3 to 4, 2008; March 6, 2008, to February 26, 2009; March 6 to 12, 2009; July 20 to 22, 2009; August 3 to 4, 2009;

August 28 to September 1, 2009; September 2 to 4, 2009; September 21 to October 1, 2009; October 8 to 19, 2009; October 23 to 27, 2009; December 2 to 17, 2009; December 24 to 28, 2009; January 8 to 13, 2010; January 26 to February 10, 2010; February 15 to 19, 2010; March 2 to 30, 2010; April 5 to 7, 2010; and May 27 to 28, 2010.

11. The client funds respondent commingled in his operating account ranged in amount from \$157 (on September 4, 2007) to \$43,821 (on February 2, 2009).

Failure to Maintain Required Trust Account Books

12. During the period August 2006 to approximately August 2010, respondent failed to maintain the trust account books and records required by Rule 1.15, Minnesota Rules of Professional Conduct (MRPC), as interpreted by Appendix 1 thereto. In particular, respondent failed to maintain a trust account checkbook register, client subsidiary ledgers, trial balances or reconciliations.

Sharing of Legal Fees with a Non-Lawyer Assistant

13. On September 21, 2009, respondent deposited into his operating account \$1,200 in funds he received from or on behalf of his client Pfeffer.

14. Also on September 21, 2009, operating account check no. 3091 for \$400, which respondent issued to Edward Myers, a non-lawyer assistant in respondent's office, cleared the account. Respondent annotated the check, "Pfeffer Referral."

15. Respondent's conduct in negligently misappropriating client funds in his trust account, failing to safeguard client funds by depositing or transferring client funds into his operating account, commingling client funds with his own funds in both his trust and business accounts, failing to maintain the required trust account books and sharing legal fees with a non-lawyer assistant, violated Rules 1.15(a), (b), (c)(5) and (h), 5.4(a) and 7.2(b), MRPC.

SECOND COUNT

Loans to Clients

16. On numerous occasions, respondent issued operating account checks to clients before he had deposited any funds on the client's behalf to either his operating or trust account. Respondent's issuance of these operating account checks constituted short-term loans to clients. Attached as Exhibit D is a list of the operating account checks respondent issued to clients under these circumstances and the dates on which respondent deposited covering funds into his operating account.

17. Respondent made the following additional loans to clients:

- a. On November 28, 2007, check no. 1884 for \$1,400, which respondent issued to his client R.W. as an advance on R.W.'s anticipated recovery, cleared respondent's operating account. Respondent received funds on R.W.'s behalf (from which respondent's loan to R.W. was presumably repaid) and deposited them into his trust account on December 20, 2007.
- b. On December 12, 2007, check no. 1905 for \$700, which respondent issued to his client R.W. as an advance on R.W.'s anticipated recovery, cleared respondent's operating account. Respondent received funds on R.W.'s behalf (from which his loan to R.W. was presumably repaid) and deposited them into his trust account on December 20, 2007.
- c. On December 19, 2007, check no. 1920 for \$2,000, which respondent issued to his client R.W. as an advance on his anticipated recovery, cleared respondent's operating account. Respondent received funds on R.W.'s behalf (from which his loan to R.W. was presumably repaid) and deposited them into his trust account on December 20, 2007.

- d. On February 20, 2009, check no. 2600 for \$2,000, which respondent issued to his client E.A. as an advance on her anticipated recovery, cleared respondent's operating account. Respondent received funds on E.A.'s behalf (from which his loan to E.A. was presumably repaid) and deposited them into his trust account on July 23, 2009.
- e. On May 14, 2009, check no. 2781 for \$100, which respondent issued to his client M.S. as an advance on his anticipated recovery, cleared respondent's operating account. It is unknown whether or when respondent received funds on M.S.'s behalf from which this loan was repaid.
- f. On July 3, 2009, check no. 2917 for \$1,000, which respondent issued to his client M.S. as an advance on his anticipated recovery, cleared respondent's operating account. It is unknown whether or when respondent received funds on M.S.'s behalf from which this loan was repaid.
- g. On August 24, 2009, check no. 3025 for \$155, which respondent issued to his client M.S. as an advance on his anticipated recovery, cleared respondent's operating account. It is unknown whether or when respondent received funds on M.S.'s behalf from which this loan was repaid.

18. Respondent's conduct in loaning funds to clients violated Rules 1.8(a) and (e), MRPC.

THIRD COUNT

Francis Barney Matter

19. On May 29, 2006, Frances Barney's minor sons, J.J. and C.B., were injured when a vehicle ran over a tent in which they were sleeping. Immediately following the accident, J.J. and C.B. were transported to MeritCare Hospital ("MeritCare") in Fargo, North Dakota.

20. On June 16, 2006, Barney retained respondent on behalf of her sons.

21. American Family Insurance Group ("American Family") insured the vehicle involved in the accident.

22. On September 22, 2006, American Family sent to respondent its check for \$20,000, made payable to respondent and Barney, in payment of C.B.'s no-fault claim.

23. On November 3, 2006, American Family sent to respondent its check for \$16,999.95, made payable to respondent and Barney, in payment of J.J.'s no-fault claim.

24. Respondent obtained Barney's endorsement on both no-fault checks and, on November 28, 2006, deposited them into his trust account. On December 7, 2006, respondent transferred \$12,399.56 of the no-fault proceeds from his trust account into his operating account in payment of a contingent fee.

25. The Vogel Law Firm ("Vogel") represented MeritCare regarding amounts owed it for medical care provided to C.B. and J.J. On February 13, 2007, Vogel wrote to respondent to confirm matters they discussed during a February 9 telephone conversation. Vogel stated, "[y]ou informed me that you have taken receipt of [C.B.]'s no-fault medical payment in the amount of \$20,000.00 from American Family and that those funds remain in your possession in their entirety."

26. In a March 5, 2007, telephone conversation with Vogel, respondent offered to give MeritCare priority over C.B. and J.J.'s other health care providers if it agreed to respondent's retention of his one-third contingency fee. By letter dated March 20, 2007,

Vogel rejected respondent's offer. In that letter, Vogel stated that respondent's payment of a contingent fee from the no-fault benefits was "contrary to our understanding of Minnesota's no-fault laws and is unacceptable to MeritCare."

27. MeritCare thereafter commenced a lawsuit against Barney seeking recovery of the no-fault benefits. On April 2, 2007, Vogel mailed a summons and complaint to respondent and requested that he sign and return an admission of service on behalf Barney. At or about that time, Vogel also arranged for personal service of the summons and complaint on Barney. Barney was personally served with the summons and complaint on June 13, 2007. Respondent failed to answer the complaint on Barney's behalf.

28. On April 13, 2007, MeritCare filed and served a motion for an injunction enjoining Barney from using or otherwise dissipating any of C.B. and J.J.'s no-fault benefits and to require her to deposit those benefits into court pending a determination of what medical providers were entitled to the benefits and in what amounts.

29. In a June 6, 2007, letter, Vogel informed respondent that the hearing on MeritCare's motion had been rescheduled.

30. Neither respondent nor Barney appeared at the hearing on MeritCare's motion for an injunction. On July 9, 2007, the court issued an order enjoining Barney from "using, removing, transferring, assigning or otherwise disposing of the subject no-fault benefits pending further order of the Court." Vogel mailed a copy of the court's order to respondent on July 9, 2007.

31. On July 11, 2007, not having received an answer to the complaint, Vogel filed and served on respondent a motion for default judgment. Respondent made no response on Barney's behalf. As a result, on August 8, 2007, the court entered a \$67,996.17 default judgment against Barney.

32. On October 3, 2007, Vogel served respondent with a garnishment summons and other documents in an effort to learn what portion of C.B. and J.J.'s no-fault benefits remained in respondent's possession. Respondent failed to respond.

33. On November 19, 2007, Vogel filed and served an application for a default judgment against respondent based on his failure to respond to the garnishment papers. Respondent failed to respond.

34. As a result, on December 3, 2007, a \$69,492.68 default judgment was entered against respondent.

35. On March 5, 2008, respondent transferred the \$24,745.31 balance of C.B. and J.J. funds that remained in his trust account into his operating account. That same day, respondent issued to MeritCare an operating account check in the amount of \$32,394.74. That check cleared respondent's operating account on March 11, 2008. Vogel filed and served a partial satisfaction of judgment with regard to the judgments against both Barney and respondent.

36. During the period June 17, 2009, to January 11, 2010, respondent made additional payments to MeritCare from his own funds in complete satisfaction of the judgment. On March 4, 2010, Vogel filed and served a satisfaction of judgment with regard to the judgment against respondent.

37. Respondent failed to take action to ensure that the judgment against Barney was fully satisfied. In fact, a judgment, the principal amount of which is \$40,342.20, remains outstanding against Barney.

38. Respondent's conduct in failing to diligently resolve matters regarding disbursement of the C.B. and J.J. no-fault benefits prior to the granting of default judgments against Barney and respondent, and failing to return his contingent fee into trust after MeritCare disputed his entitlement to that fee, violated Rules 1.3 and 1.15(c), MRPC.

FOURTH COUNT

Bradley Hellesvig Matter

39. On January 27, 2007, Bradley Hellesvig retained respondent with regard to two separate automobile accidents: a February 17, 2006, accident ("February accident"), which involved both liability and workers' compensation claims, and a March 22, 2006, accident ("March accident"), which involved only liability claims, including a claim for uninsured motorist benefits.

40. Respondent presented and Hellesvig signed two retainer agreements on January 27, 2007. The first retainer agreement specifically concerned respondent's representation of Hellesvig with regard to his workers' compensation claim and provided for respondent to receive his statutory attorney's fees and reimbursement of his costs. The second retainer agreement appears to have concerned Hellesvig's liability claims and provided for respondent to receive a contingent fee and reimbursement of his costs. The second agreement is ambiguous, in that it failed to indicate which of Hellesvig's accidents, or which of the various potential claims arising from those accidents, it was intended to cover.

41. Prior to retaining respondent, Hellesvig had received from his automobile insurance carrier \$28,500 in uninsured motorist benefits based on the March accident. Respondent stated to Hellesvig that no additional uninsured benefits were available based on the March accident. Hellesvig, on the other hand, believed that, since his automobile insurance policy allowed for total uninsured motorist benefits of \$100,000 per accident, \$71,500 (\$100,000 minus \$28,500) in such benefits remained available to him with regard to the March accident.

42. Since he and respondent did not agree on the viability of any additional claim for uninsured benefits based on the March accident, Hellesvig understood that the second retainer agreement he entered into with respondent concerned his liability

claims only with regard to the February accident. Inasmuch as respondent paid himself a contingent fee from the March accident proceeds, *see* paragraph 43 below, it appears respondent had a different understanding of his fee arrangement with Hellesvig.

43. Respondent first discussed with Hellesvig's insurer payment of the remaining uninsured motorist benefits in late April or early May 2007. Thereafter, and into December 2008, respondent periodically communicated with the insurer regarding payment of uninsured motorist benefits. By January 26, 2009, the insurer had agreed to pay those benefits.

44. On approximately January 29, 2009, respondent received on Hellesvig's behalf the \$71,500 in remaining uninsured motorist benefits based on the March accident. Respondent deposited the funds into his trust account.

45. On February 5, 2009, respondent transferred \$32,495.83 of the uninsured motorist benefits from his trust account into his operating account. This \$32,495.83 was comprised of a \$23,833.33 contingent fee on the uninsured motorist benefits, and reimbursement for \$8,662.50 in out-of-pocket costs. During the period February 5 to April 30, 2009, respondent disbursed to Hellesvig the remaining balance of the uninsured motorist benefits.

46. At the time respondent paid himself the contingent fee, he did not inform Hellesvig that he had done so. Further, at no time did respondent present Hellesvig with a written settlement statement showing the total amount of the recovery, the remittance to the client and the method by which that remittance was determined.

47. In October 2006, prior to retaining respondent, Hellesvig had initiated a lawsuit against the other driver involved in the February accident, with respect to the liability claims arising from that accident.

48. Owen Sorenson represented the other driver and insurer in the liability lawsuit arising from the February accident. On May 26, 2009, Sorenson offered to settle Hellesvig's liability claim for \$10,000.

49. Hellesvig preferred to proceed to trial on the February accident liability claim, rather than accept the settlement offer, and the offer was not accepted.

50. On approximately June 15, 2009, Sorenson offered to settle Hellesvig's liability claim arising from the February accident for \$5,000.

51. Once again, Hellesvig preferred to proceed to trial on the February accident liability claim, but respondent advised against doing so. As a means of persuading Hellesvig to accept Sorenson's \$5,000 offer and not insist on proceeding to trial, respondent offered to pay Hellesvig \$3,000 of his own funds, in addition to the \$5,000 that the insurer would be paying. Hellesvig agreed to accept respondent's offer.

52. On July 17, 2009, respondent issued to Hellesvig his operating check no. 2952 in the amount of \$3,000.

53. On July 20, 2009, respondent deposited the \$5,000 he received from the insurer into his trust account on Hellesvig's behalf. On July 23, 2009, respondent issued to Hellesvig his trust account check no. 2189 for \$5,000.

54. Respondent's conduct in failing to clearly communicate to Hellesvig the basis and rate of his fee with regard to Hellesvig's liability claims, failing to provide Hellesvig with a settlement statement with regard to the uninsured motorist recovery, and remitting to Hellesvig \$3,000 of his own funds, violated Rules 1.2(a), 1.4(a)(1), 1.5(b) and (c), 1.7(a)(2) and 1.8(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.

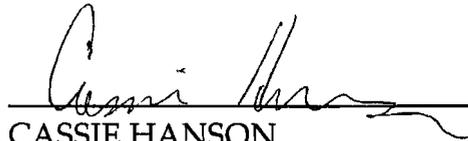
Dated: March 31, 2011.



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