FILE NO. A08-2006

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against JAY G. SWOKOWSKI, a Minnesota Attorney, Registration No. 199710.	**AMENDED AND SUPPLEMENTAL 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 amended and supplemental petition for disciplinary action pursuant to Rules 10(e) and 12(a), Rules on Lawyers Professional Responsibility (RLPR).

Respondent is currently the subject of a November 10, 2008, petition for disciplinary action. The Director has investigated further allegations of unprofessional conduct against respondent.

The Director alleges that respondent has committed the following additional unprofessional conduct warranting public discipline:

FIRST COUNT

Failure to Cooperate with the Director's Office

1. On October 30, 2006, the Director received notification from TCF Financial Corporation (TCF) of an overdraft in respondent's attorney trust account.

2. On October 31, 2006, the Director wrote to respondent regarding the overdraft notice. The Director instructed respondent to, within 10 days, provide "a written documented explanation for this overdraft." The Director also directed respondent to provide his August through October 2006 trust account books and records, unless "the overdraft was caused solely by bank error." (Emphasis in original.)

3. On November 20, 2006, the Director received respondent's response. Respondent explained that the overdraft in his trust account was not due to any checks written by him, but rather appeared to be an unauthorized payment to American Express. Respondent did not include with his response his August through October 2006 trust account books and records.

4. On November 22, 2006, the Director wrote to respondent reiterating his request for respondent's August through October 2006 trust account books and records. The Director directed respondent to provide those materials within 10 days. Respondent failed to respond.

5. On December 13, 2006, the Director wrote again to respondent to request respondent's August 2006 to October 2006 trust account books and records within one week.

6. On December 21, 2006, respondent provided bank statements for a period of time that the Director had not requested (June 2005 through November 2005) and a few check stubs, but none of the other materials requested by the Director. In other words, respondent did not provide trust account bank statements, client subsidiary ledgers, trial balances or reconciliations for the period August through October 2006.

7. In his December 21, 2006, letter respondent explained that he had talked with his bookkeeper "with regard to the other requested materials, and I will forward what I have as soon as possible." Respondent also explained that with "the Holidays, vacations, and admitting [a family member] into in-patient drug treatment -- first at the Riverside Stop Program, and secondly, at Riverside Chisago City -- my priorities have allied with my family in this Holiday season." Respondent apologized for the delay and asked "that I be able to produce further documentation to you **no later than January, 21, 2007**." (Emphasis added.)

8. On January 9, 2007, the Director granted respondent an extension of time until January 21, 2007, within which to produce the remaining trust account books and

records. The Director also requested at that time that respondent provide an update regarding the status of TCF's efforts to determine the cause of the unauthorized withdrawal from his trust account.

9. On January 19, 2007, respondent wrote to the Director indicating that his bookkeeper "has been unable to obtain the requested documentation at present. She needs more time, and she should be able to have this information ready to send to you by the 2nd week in February." Respondent then requested an extension of time to provide the information until February 15, 2007, "or sooner if at all possible."

10. On January 22, 2007, the Director wrote to respondent granting the extension.

11. On January 25, 2007, TCF informed the Director that the overdraft in respondent's trust account was caused by a transaction "that was suppose to come out of another account." On February 1, 2007, the Director informed respondent of his receipt of TCF's letter, but stated that, despite the letter, "we will continue to require that you submit the trust account books and records that were requested in my November 22, 2006, letter and not enclosed with your December 21 letter."

12. On February 12, 2007, Nicole Bowen from respondent's office called the Director to request an additional extension of time within which to provide the required materials. A representative of the Director's Office called Bowen that same day and agreed that respondent could have until March 15, 2007, to provide the requested materials. Respondent did not, however, provide the materials by the March 15, 2007, deadline.

13. On March 19, 2007, the Director again wrote to respondent setting out the history of requests for respondent's trust account books and records and respondent's failures to provide those documents. Respondent was advised "that no further extensions will be granted in this matter."

14. On March 26, 2007, respondent wrote to the Director providing documents entitled, "Funds with Running Balances," and "Funds Transaction Listing" for August, September, and October 2006, and trust account bank statements for the period July 19 – October 19, 2006. Respondent still had not provided the requested client subsidiary ledgers, trial balances, or reconciliations, which would enable the Director to determine whether respondent was appropriately handling client funds.

15. Concerning his failure to provide all of the records requested by the Director, respondent explained that Bowen was undergoing "physical therapy and will be having back surgery in the near future." Respondent also explained that in "October of 2003" his partner left the firm and when he did so, he gave respondent responsibility for the trust account which his partner had formerly handled. Finally, respondent stated that he was having eye surgery on May 22, 2007, and would be out of his office for four weeks thereafter.

16. On May 9, 2007, the Director wrote to respondent noting that despite specific requests for trust account books and records, respondent had not produced those documents. The Director stated that pursuant to the Minnesota Rules of Professional Conduct (MRPC), as interpreted by Appendix 1 thereto, respondent was required to maintain client subsidiary ledgers reflecting deposit and check activity for individual clients, trial balances which reflected a listing and totaling of all the balances reflected by client subsidiary ledgers prepared at the time of monthly reconciliation, and reconciliations of the bank statement, checkbook and trial balances. The Director noted that to date "you have not produced any of these books in the proper form and, as noted above, you have not produced a copy of your trust account bank statement reflecting the overdraft." The Director also noted that the Office was not prepared to wait until after respondent's scheduled eye surgery to receive that information. The Director instructed respondent to appear at the Director's Office on May 15, 2007, to discuss respondent's failure to provide prompt and complete responses to the

Director's requests, and respondent's obligation to comply with the trust account books and records requirements.

17. On May 15, 2007, respondent met with an Assistant Director in the Director's Office. After that meeting, the Director faxed respondent a letter setting out the additional trust account documents that respondent needed to produce (mid-October 2006 to mid-May 2007 bank statements, checkbook register for the period August 2006 to the present, "Funds with Running Balances" report for the period November 2006 to the present, and a trial balance as of his mid-May 2007 bank statement), and a deadline for producing those documents (May 22, 2007), and providing respondent with various resources to assist him in maintaining the required books and records.

18. Later that same day, respondent mailed his mid-October 2006 to mid-April 2007 trust account bank statements and additional trust account check stubs to the Director. Respondent indicated that he would produce his mid-May 2007 trust account bank statement, the "Funds with Running Balances" report and a trial balance during the time he was recovering from eye surgery. Once again, however, respondent did not produce these books and records.

19. On July 11, 2007, the Director wrote again to respondent. The Director stated that respondent was to produce records reflecting the appropriate client attribution of activity in his trust account for the period from November 1, 2006, to the present, and trial balances as of the date of the May 2007 trust account bank statement.

20. On July 19, 2007, respondent replied that his bookkeeper was on medical leave and was unable to type or prepare monthly bills. Respondent also indicated that he was continuing to recover from his eye surgery. While stating that he wished he "could be more cooperative with your investigation, but I just don't know when I can generate the requested reports."

21. On July 25, 2007, the Director wrote to respondent informing him that he had until August 20, 2007, to produce the requested materials.

22. On August 17, 2007, respondent wrote to the Director indicating that the requested documents "should be to your office on November 5, 2007." This was more than two months after the Director's most recent deadline.

23. On August 28, 2007, the Director granted respondent an extension of time until November 5, 2007, to produce the required materials. However, November 5, 2007, passed without respondent producing the required materials.

24. On November 13, 2007, the Director wrote to respondent and again requested that he produce his trust account books and records. Respondent failed to respond.

25. Based upon respondent's repeated and ongoing failure to cooperate with the inquiry of the Director's Office, the Director converted the overdraft inquiry into a disciplinary file on November 30, 2007. On December 12, 2007, the Director issued a notice of investigation, requiring respondent to respond to concerns "relating to the maintenance of your trust account, including failure to maintain client ledgers." The notice of investigation required respondent to produce his complete trust account books and records for the period August 2006 to the present within 14 days, i.e., by December 28, 2007.

26. On December 26, 2007, respondent wrote that his bookkeeper had quit on December 10, 2007, without sending him all of the material in his possession. Respondent further described his own health difficulties and stated that "correspondence from my physician, Dr. Bryan Greteman, will follow under separate cover." Respondent did not indicate when he would be able to provide the requested books and records, but only that he was "expected back in the office during the first week of January 2008." Respondent never produced any information from Dr. Greteman.

27. On January 16, 2008, the Director received a complaint against respondent from Allen McIntire. On February 4, 2008, the Director sent McIntire's complaint to respondent, together with a notice of investigation requesting respondent's written response to the complaint within 14 days. Respondent failed to respond.

28. On February 19, 2008, the Director received a facsimile transmission from Judith Bloch, a legal assistant to respondent. In her letter, Bloch offered various reasons for respondent's failure to produce the requested books and records. Bloch attributed the failure to medical problems experienced by Nicole Bowen (respondent's bookkeeper), the difficulties Bloch was having with the computer software program, and to her own health issues. Bloch asserted that respondent was not "trying to be evasive by not producing the material that the Board is requesting to review." Bloch indicated that they would "work toward producing the requested information to you within the next months."

29. On February 21, 2008, the Director wrote to respondent and again requested his written response to the McIntire complaint. On February 22, 2008, respondent called the Director's Office claiming that he had never received the McIntire complaint or the notice of investigation (although he had arranged a meeting with the McIntires for that very afternoon) and requesting that the Director re-send the notice of investigation. The Director re-sent the notice of investigation that same afternoon.

30. On March 19, 2008, the Director issued charges of unprofessional conduct against respondent. A pre-hearing meeting pursuant to Rule 9(a), Rules on Lawyers Professional Responsibility (RLPR), was scheduled for April 7, 2008. Respondent appeared for the pre-hearing meeting.

31. During the April 7, 2008, pre-hearing meeting, the Director requested, and respondent agreed to provide, (a) a written response to the McIntire complaint, (b) a specific description of respondent's current efforts to access the *Timeslips* data saved to the CD created by his former bookkeeper, including contact information for those he

consulted or retained to assist in those efforts, (c) a specific description of respondent's efforts to establish a new trust account bookkeeping system, and (d) verification that he has closed his TCF trust account and opened a new trust account. The Director confirmed these requests in an April 8, 2008, letter to respondent.

32. On April 18, 2008, the Director received notice of an April 14, 2008, overdraft on respondent's TCF trust account.

33. On April 21, 2008, respondent produced the documents and information requested during the April 7 pre-hearing meeting and in the Director's April 8 letter. Among other things, respondent stated that he had consulted with C.F., a computer expert, regarding accessing his *Timeslips* trust account data. C.F. recommended that respondent purchase new *Timeslips* software. Respondent stated that he had contacted *Timeslips* and indicated that he would be purchasing new software, which would include technical support that he hoped would enable him to access the data saved to the CD.

34. Also in his April 21, 2008, letter, respondent stated that he would continue to maintain his trust account books and records using *Timeslips* and would keep an accompanying manual bookkeeping system.

35. Respondent also stated in his April 21, 2008, letter that he had opened a new trust account at Wells Fargo Bank, but had been unable to close the TCF trust account "because it has a negative balance." Respondent explained that the overdrafts on his trust account had been caused by periodic, unauthorized American Express credit card charges and that he would close the TCF trust account as soon as American Express made restitution for the unauthorized charges.

36. On April 22, 2008, the Director wrote to respondent to request an explanation for and various trust account books and records related to the April 14, 2008, overdraft on his TCF trust account. On April 24, 2008, respondent called the Director and spoke with a paralegal in that Office. Respondent stated that the April 14,

2008, overdraft had been the result of the unauthorized American Express charges. He had spoken with American Express and believed the problem to have been corrected and was waiting for American Express to process a refund to the trust account. Respondent further stated that there were no client funds in the account during the month in which the overdraft occurred.

37. In an April 24, 2008, fax transmission to the Director, respondent produced copies of the April 14 overdraft notice and American Express "Merchant Financial Activity Statements." In addition, respondent incorporated by reference the applicable portions of his April 21, 2008, letter.

38. On April 28, 2008, the Director wrote to respondent and requested that he produce by May 15, 2008, a copy of his April 2008 trust account bank statement and either verification that American Express had made the appropriate refund to his trust account and that he had closed the TCF trust account, or a description of his efforts to obtain the American Express refund. Respondent failed to respond.

39. On April 29, 2008, respondent wrote to the Director and stated that he had spoken to his former bookkeeper, who advised that she had not saved respondent's *Timeslips* records in an electronic form. Respondent stated, "My hopes have dwindled trying to recreate the histories and ledgers you have asked for."

40. Also on April 29, 2008, the Director called C.F., the computer expert respondent had consulted. C.F. stated that he was a former client of respondent's and that because he is a computer consultant, respondent periodically asked him for assistance with computer issues, including retrieval of trust account data from respondent's *Timeslips* account. C.F. stated that respondent's assistant had been attempting to access a CD to which the *Timeslips* data had been saved. C.F. observed that respondent's assistant was able to run the program on a laptop but, because she had not been trained in the program was not able to access the data.

41. Respondent had a manual regarding *Timeslips*, but neither respondent nor his assistant had apparently reviewed it. C.F. suggested that respondent purchase a new version of *Timeslips* and use the free technical support that comes with it to access the data on the CD. C.F. stated that another option was for respondent to hire him or another computer consultant to read the manual and attempt to work with the program.

42. On May 6, 2008, the Director wrote to respondent describing the substance of the paralegal's telephone conversation with C.F. The Director requested that within 45 days respondent access the data saved to his *Timeslips* program and produce reconstructed trust account client subsidiary ledgers, trial balances and reconciliations for the period August 2006 to the present. Respondent failed to respond.

43. On May 20, 2008, the Director wrote to respondent requesting a response to the Director's April 28, 2008, letter. Respondent failed to respond.

44. On June 10, 2008, the Director wrote to respondent again requesting a response to the Director's April 28, 2008, letter. Respondent responded on June 17, 2008. Respondent claimed that he had not received the Director's April 28 or May 20, 2008, letters. Respondent further stated that he had closed his trust account on June 5, 2008, and enclosed an online print-out of the activity in the account during the period March 4 to June 10, 2008. Finally, respondent stated that he did not have possession of the April 2008 trust account bank statement, but would request it from the bank and forward it to the Director upon receipt.

45. On June 12, 2008, the Director mailed respondent a notice of investigation in the complaint of Marcus and Katina Sarazin. The notice requested respondent's written response to the complaint within 14 days. Respondent failed to respond.

46. On June 19, 2008, the Director wrote to respondent. Among other things, the Director asked respondent why he was unable to produce a copy of the April 2008 trust account bank statement and why, if respondent closed the TCF trust account on

June 5, 2008, the online print-out he produced reflected a $510 credit to the account. The Director requested that respondent produce his April through June 2008 trust account bank statements and explain the discrepancy between his statement that he closed the trust account on June 5 and the June 10 credit to the account. Respondent failed to respond. The Director converted the informal inquiry regarding the April 14, 2008, overdraft into a formal disciplinary investigation.

47. On July 15, 2008, the Director wrote to respondent to again request his written response to the Sarazin complaint. On July 16, 2008, respondent called the Director and left the following message: "Darrell Jensen is investigating and he has a conflict with him. Could someone else be assigned?" In fact, Darrell Jensen had not been assigned to investigate the Sarazin complaint. Rather, Darrell Jensen is the fee arbitration chair in the Sarazins' area and his name was included in the notice of investigation only to alert the Sarazins to their possible fee arbitration remedies.

48. On August 5, 2008, the Director wrote to respondent to clarify the above and to again request his written response to the Sarazin complaint. To date, respondent has not responded.

49. Since they were first requested of respondent on October 31, 2006, respondent still has not produced trust account books and records sufficient to establish the clients for whom he was supposed to be holding funds in his trust account during the period in and after August 2006, the amounts of those client funds or whether his trust account balance was appropriate, given those client balances.

50. On December 2, 2008, the Director received a complaint of unprofessional conduct against respondent from Greg C. Goetze.

51. On December 8, 2008, the Director mailed to respondent a notice of investigation pursuant to Rule 8(a), RLPR. Respondent was instructed to provide a written response within 14 days of the notice. On January 6, 2009, when the Director had not received a response to his earlier notice of investigation, he again wrote to

respondent. In his letter, the Director reminded respondent of his obligation to respond within 14 days and requested that a response be sent immediately. Respondent did not reply.

52. On January 27, 2009, the Director sent a follow-up letter to respondent regarding the Goetze complaint. The Director told respondent that if there was some reason why he was unable to provide a written response, he should telephone the Director so that issue could be addressed. Respondent did not respond.

53. On February 4, 2009, the Director received additional documentation from Goetze concerning his complaint. On February 20, 2009, that information was forwarded to respondent. In his cover letter, the Director informed respondent that the Director would be seeking Lawyers Board Chair permission to amend the petition to include this additional non-cooperation. However, the Director also indicated that he would refrain from seeking to amend the petition to include the substance of the Goetze complaint for 14 days, to provide respondent with additional time within which to respond to Goetze's allegations.

54. As of the date of this amended and supplemental petition, respondent has not provided any information in response to the Goetze complaint.

55. Respondent's conduct in failing to respond to lawful demands for information from the Director's Office violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

SECOND COUNT

Failure to Maintain the Appropriate Books and Records

56. From at least August 1, 2006, to the present, respondent has failed to maintain the trust account books and records required by Rule 1.15, MRPC, as interpreted by Appendix 1 thereto, formerly Lawyers Professional Responsibility Board Opinion No. 9. Specifically, respondent failed to maintain client subsidiary ledgers, trial balances and reconciliations.

57. Respondent's conduct in failing to maintain trust account client subsidiary ledgers, trial balances and reconciliations violated Rule 1.15, MRPC, as interpreted by Appendix 1 thereto (formerly Lawyers Professional Responsibility Board Opinion No. 9).

THIRD COUNT

Neglect and Inadequate Communication

McIntire Matter

58. On September 25, 2007, Allen and Mary Lou McIntire retained respondent to represent them in seeking custody of their twelve-year-old granddaughter. The McIntires' granddaughter had lived with them all of her life. She had never lived with her mother, the McIntires' daughter, who had died in May 2007. The McIntires paid respondent a $2,500 retainer. After obtaining the necessary information from the McIntires, respondent told them he would prepare the necessary motion papers and contact them upon completion of those papers.

59. Respondent did not contact the McIntires. Beginning in late October 2007, Mary Lou unsuccessfully attempted to reach respondent by telephone on more than 40 occasions. On each occasion, Mary Lou left a message for respondent. Respondent failed to return any of Mary Lou's calls.

60. After the McIntires submitted their complaint against respondent to the Director's Office, respondent's secretary called the McIntires and scheduled a meeting with respondent for February 8, 2008. At respondent's request, the meeting was rescheduled on two subsequent occasions. The McIntires finally met with respondent on February 22, 2008.

61. On that date, respondent presented the McIntires with drafts of their motion papers. The papers were not very complete and the McIntires spent approximately four hours in respondent's office as he supplemented and corrected

them. The McIntires signed the papers and respondent told the McIntires that he would file them during the week of February 25, 2008. Respondent failed to do so.

62. Respondent did not file the McIntires' motion papers with the court until March 21, 2008, after the Director issued charges of unprofessional conduct against him. The hearing on the McIntires' motion was originally scheduled for July 7, 2008. On approximately June 25, 2008, and without consulting with the McIntires, respondent cancelled the hearing and rescheduled it for September 6, 2008. Respondent informed the McIntires that he had out-of-town plans that conflicted with the hearing.

Sarazin Matter

63. On May 28, 2007, Marcus Sarazin retained respondent to represent him in a criminal matter. Sarazin's wife signed a "Criminal Defense Fee Agreement" and paid respondent a $3,000 retainer.

64. A hearing in Sarazin's case was scheduled for May 29, 2007. Respondent advised Sarazin that he would meet with him prior to the hearing to prepare. However, respondent failed to do so and was inadequately prepared for the hearing. In recognition of his lack of preparation, respondent issued Sarazin a nominal refund of his retainer.

65. Another hearing in Sarazin's case was scheduled for July 19, 2007.

66. During the period between the May 29 and July 19, 2007, hearings, Sarazin had great difficulty in reaching respondent to discuss his case. Sarazin and his wife left numerous telephone messages for respondent that respondent failed to return. Sarazin's wife visited respondent's office on three occasions and found the office vacant and locked. Eventually, respondent informed Sarazin that he had been absent from the office because he had had surgery. Respondent had not provided Sarazin with advance notice of his surgery or informed him that he would be inaccessible for any extended period of time.

67. Sarazin scheduled two appointments with respondent prior to the July 19, 2007, hearing. Respondent failed to appear for the first appointment. Respondent appeared for the second appointment, but was unfamiliar with the facts and circumstances of Sarazin's case and unprepared to adequately represent his interests.

68. Respondent informed Sarazin that the July 19, 2007, hearing was scheduled for 1:00 p.m., and directed Sarazin to meet him at the courthouse at 12:45 p.m. that day. In fact, however, the hearing was scheduled for 8:30 a.m., on July 19, 2007. When neither Sarazin nor respondent appeared at that time, the court issued a warrant for Sarazin's arrest. At respondent's request, the arrest warrant was subsequently quashed.

69. Sarazin hoped and expected to resolve the matter at the July 19, 2007, hearing and so informed respondent. However, respondent advised Sarazin that the prosecutor was not willing to discuss a resolution, that the judge was difficult and that they should instead proceed to the omnibus hearing scheduled for September 20, 2007.

70. At that point, Sarazin terminated respondent's services and hired another lawyer. Sarazin requested that respondent refund his retainer. Respondent refunded $400 to Sarazin.

71. At the September 20, 2007, omnibus hearing, Sarazin's new attorney was able to negotiate a satisfactory resolution with the prosecutor.

Goetze Matter

72. Greg Goetze obtained respondent's name through a legal referral service operated by Ceridian. During the week of October 30, 2008, Goetze telephoned respondent regarding respondent's representing him in a motion to modify child support. Respondent instructed Goetze that he should bring in his paperwork and sign a retainer agreement as soon as possible so that respondent could have the motion filed.

73. On November 7, 2008, Cathryn Goetze, Goetze's wife, met with respondent at his office. At that time, she signed a retainer agreement for a

representation involving modification of child support. Cathryn Goetze also paid respondent $1,510.

74. On November 10, 2008, Goetze telephoned respondent to request a copy of the retainer agreement. At that time, respondent told Goetze that he would forward completed financial information needed for the motion for Goetze's review.

75. On November 17, 2008, when he had not received the promised documentation, Goetze again called respondent. Respondent indicated that he had no idea why Goetze had not received the information from his office, but he would get it to Goetze right away.

76. Over the next several weeks, Goetze made numerous attempts to contact respondent regarding the status of his case. On December 2, 2008, Goetze submitted a complaint to the Director's Office regarding respondent's conduct.

77. On December 10, 2008, Cathryn Goetze went to respondent's office and spoke to his secretary. Respondent's secretary informed Cathryn Goetze that respondent would be in the office that afternoon. Later that day, Greg Goetze telephoned respondent's office and was able to speak to respondent. Respondent informed Goetze that he would proceed with the filing of the motion.

78. On December 12, 2008, Goetze did receive a pleading entitled "Notice of Motion and Motion to Modify Child Support" from respondent. However, the document was unsigned by respondent and Goetze was uncertain as to what he was to do with the document.

79. On December 23, 2008, Goetze spoke to respondent. Goetze explained to respondent his lack of confidence in respondent's ability to represent him. Respondent replied that he would file the motion on December 24, 2008, and finish the case by January 22, 2009, with no additional charges to Goetze. Goetze, however, believed respondent had cost him money by not filing the motion for child support and he

preferred to hire a new lawyer. Respondent replied that he was still working on his November billing and would call Goetze with the refund amount.

80. Over the course of the next several weeks, Goetze made numerous efforts to contact respondent. Finally, on January 31, 2009, Goetze received his papers from respondent's office. In his cover letter, respondent apologized for any inconvenience, but offered no explanation for the delay in filing the motion. Respondent never refunded any portion of Goetze's fee although Goetze was reimbursed the total amount of his retainer by Ceridian.

81. Respondent's conduct in neglecting the McIntire, Sarazin and Goetze matters and failing to adequately communicate with the McIntires, Sarazin and Goetze violated Rules 1.3 and 1.4(a)(3) and (4), MRPC.

FOURTH COUNT

Assisting in the Unauthorized Practice of Law and Improper Handling of a Retainer

82. As noted above, Sarazin's wife signed a "Criminal Defense Fee Agreement" on May 28, 2007. Respondent's non-lawyer assistant, Judith Bloch, signed the agreement on respondent's behalf. Respondent's conduct in permitting his non-lawyer assistant to enter into a fee agreement with a client constitutes assisting that individual in the unauthorized practice of law.

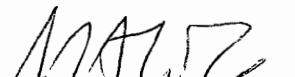
83. The "Criminal Defense Fee Agreement" required Sarazin to pay a $3,000 retainer, which Sarazin paid on May 28, 2007. The agreement did not state that the retainer was non-refundable and would not be deposited into a trust account. Nonetheless, respondent did not deposit the Sarazin retainer into his trust account.

84. Respondent's conduct in permitting his non-lawyer assistant to enter into a retainer agreement with Sarazin and his failure to deposit the Sarazin retainer into his trust account, violated Rules 1.15(a) and (c)(5) and 5.5(a), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent or imposing otherwise appropriate discipline, awarding costs

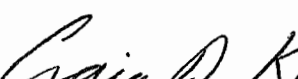
and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: March 11, 2009.



MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and



CRAIG D. KLAUSING
SENIOR ASSISTANT DIRECTOR
Attorney No. 202873

This amended and supplemental petition is approved for filing pursuant to Rule 10(e), RLPR, by the undersigned.

Dated: March 12, 2009.

KENT A. GERNANDER
CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD