FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against JAY GERARD SWOKOWSKI,
a Minnesota Attorney,
Registration No. 199710.

PETITION FOR DISCIPLINARY ACTION

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

Upon the approval of a Lawyers Professional Responsibility Board Panel Chair, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rules 10(d) and 12(a), Rules on Lawyers Professional Responsibility (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 12, 1989. Respondent is currently suspended from the practice of law.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's history of prior discipline is as follows:

By Supreme Court order dated June 11, 2009, respondent was suspended from the practice of law for a period of 90 days, effective June 25, 2009. Respondent's suspension was based on his failure to cooperate with the Director's investigation, failure to maintain the required trust account books and records, failure to adequately communicate or act with reasonable diligence in three client matters, allowing his non-lawyer assistant to engage in the unauthorized practice of law and improper handling of a client's retainer, in violation of Rules 1.3, 1.4(a)(3) and (4),

1.15(a) and (c)(5), 5.5(a) and 8.1(b), Minnesota Rules of Professional Conduct (MRPC), and Rule 25, RLPR.

FIRST COUNT

Forgery and Misappropriation of Client Funds

1. In approximately June 2008 John Favre retained respondent to represent him in a personal injury claim arising out of an automobile accident. Favre paid respondent a $300 retainer fee and entered into a fee agreement with respondent under which respondent would receive 25 percent of any recovery and Favre would receive 75 percent.

2. About August 2008 respondent sent a demand letter on Favre's behalf to the insurer for the other vehicle involved in Favre's accident.

3. About June 2009 Favre agreed to settle his personal injury claim for $1,000.

4. On June 15, 2009, the insurer faxed to respondent a release and stated, "Please have your client sign and forward the original release/signature to me. I will then forward the payment once your client has signed the release." On June 23, 2009, Favre visited respondent's office and signed the release.

5. Sometime thereafter, the insurance company tendered to respondent a $1,000 check made payable to "JOHN FAVRE AND HIS ATTORNEY OF RECORDS [sic] SWOKOWSKI LAW OFFICE, ONLY."

6. On or about June 29, 2009, respondent endorsed the settlement check by signing Favre's name, followed by "and Swokowski Law Office by its global power." Favre was not aware that respondent had endorsed his name to the check and had not authorized respondent to do so.

7. On June 29, 2009, respondent deposited the Favre settlement check into an unknown bank account and misappropriated the proceeds.

8. As of the date of this pleading, respondent has not paid to Favre any portion of the settlement check respondent received on Favre's behalf.

9. Respondent's conduct in forging Favre's name to a settlement check and misappropriating Favre's settlement funds, violated Rule 8.4(b) and (c), MRPC.

SECOND COUNT

Failure to Comply with Rule 26, RLPR

10. By Supreme Court order dated June 11, 2009, respondent was suspended from the practice of law for a period of 90 days, effective June 25, 2009. Respondent has not requested reinstatement and remains suspended at this time.

11. As a suspended lawyer, respondent was required by Rule 26, RLPR, to provide notification of his suspension to his clients, opposing counsel and parties, and tribunals before which client litigation was pending. Respondent was also required to specifically inform his clients of the need to seek prompt substitution of counsel and to make arrangements to deliver to his clients all papers and other property to which they were entitled.

12. Respondent failed to provide the required Rule 26 notification to clients Russell Cirelli, Christie Buschke and John Favre.

13. As a suspended lawyer, respondent was also required by Rule 26, RLPR, to provide the Director with an affidavit demonstrating compliance with the notification requirements described above, identifying the jurisdictions in which he was licensed to practice law and providing an address to which communications could be directed to him.

14. On June 24, 2009, the Director wrote to respondent to remind him of his obligations under Rule 26, RLPR. Respondent failed to respond to the Director's letter and failed to submit the required affidavit of compliance.

15. On July 21, 2009, the Director wrote again to respondent to request his affidavit of compliance with Rule 26, RLPR. Respondent failed to respond to the Director's letter and failed to submit the required affidavit of compliance.

16. On August 11, 2009, the Director filed an affidavit of non-compliance with Rule 26, RLPR, with the Supreme Court.

17. Respondent's conduct in failing to comply with the client notification and other requirements of Rule 26, RLPR, violated Rule 3.4(c), MRPC, and Rule 26, RLPR.

THIRD COUNT

Pattern of Neglecting Client Matters, Failing to Adequately Communicate with Clients and Failing to Return Client Property

18. As further detailed below, respondent engaged in a pattern of neglecting client matters, failing to adequately communicate with clients and failing to return client property.

Carol Williams Matter

19. In December 2008 Carol Williams retained respondent to represent her in a marriage dissolution proceeding. At the time she retained respondent, Williams had been served with a petition for dissolution of marriage. Williams paid respondent a $2,000 retainer and signed a retainer agreement.

20. On January 6, 2009, opposing counsel served respondent with interrogatories and requests for production of documents. Although Williams thereafter provided respondent with the information necessary to respond to the interrogatories and requests for production, respondent failed to do so.

21. A hearing in Williams' marriage dissolution was scheduled for January 9, 2009. Respondent attended the hearing on Williams' behalf.

22. Respondent failed to serve or file an answer or to take any further substantive action on Williams' behalf.

23. About March 2009 opposing counsel submitted to respondent a proposed marital termination agreement (MTA). Respondent provided a copy of the MTA to Williams and, on March 17, 2009, Williams faxed her response to respondent.

24. During the period March 23 to May 26, 2009, Williams left at least 17 telephone messages for respondent in an effort to reach him to discuss the proposed MTA. Respondent returned only two of Williams' calls, leaving messages for her on both occasions.

25. On May 6, 2009, Williams faxed a letter to respondent in which she asked him to contact her regarding her case. Respondent failed to respond.

26. Williams was never able to reach respondent to discuss the proposed MTA.

27. On May 8, 2009, Williams faxed a letter to respondent advising that she was terminating his representation. Williams requested that respondent provide her with a billing statement and a refund of any remaining retainer. Respondent failed to respond.

28. On May 27, 2009, Williams wrote again to respondent to request a billing statement and refund. Williams received a billing statement from respondent on June 2, 2009.

Paola Fuller Matter

29. In June 2008 Paola Fuller contacted respondent regarding a possible marriage dissolution proceeding. At that time, Fuller had not decided that she wanted to proceed with a marriage dissolution proceeding and told respondent she would like to think about it.

30. By October 2008 Fuller had decided to proceed with the marriage dissolution and contacted respondent. Respondent asked Fuller to meet with him in his office on Sunday, October 5, 2008. Respondent told Fuller that a $2,500 retainer would be required and asked her to bring that amount in cash with her to the meeting.

31. Fuller met with respondent as scheduled on October 5, 2008, and gave him the $2,500 cash retainer. Fuller signed a retainer agreement. Respondent asked Fuller to assemble and provide to him various financial and other documents.

32. Fuller assembled the documents requested by respondent and arranged to deliver those documents to respondent's office on October 27, 2008, at 1:00 p.m. When Fuller arrived at respondent's office, however, neither respondent nor any staff members were present. Fuller waited for approximately 1½ hours, but no one appeared. Fuller called respondent, expressed her frustration and arranged to deliver the documents the next morning.

33. Respondent subsequently prepared and served on Fuller's husband a petition for dissolution of marriage.

34. Respondent scheduled a meeting for November 25, 2008, with Fuller and her husband to discuss disposition of the marital assets. Although the meeting was set to begin at 1:30 p.m., respondent asked Fuller to arrive at 12:30 p.m. so that the two of them could talk before meeting with Fuller's husband. When Fuller arrived at 12:30 p.m., however, respondent stated that it was not necessary for them to talk.

35. During the course of respondent's representation, Fuller left many telephone messages for respondent that respondent failed to return. It was extremely difficult for Fuller to reach respondent to discuss her case.

36. By letter dated June 18, 2009, respondent informed Fuller that he was withdrawing from her representation. Fuller arranged to visit respondent's office and pick-up her file. Once again, when Fuller arrived for her appointment, however, neither respondent nor any staff members were present in respondent's office. Fuller again waited approximately 1½ hours. Eventually, respondent's secretary arrived and provided Fuller with her file.

Loren Anderson Matter

37. On June 4, 2008, Loren Anderson retained respondent to represent him in expunging from his record a 1991 misdemeanor domestic abuse conviction. Anderson signed a retainer agreement and paid respondent a $2,500 retainer. Respondent's

retainer agreement indicated that the retainer would cover all work necessary to complete the expunction.

38. Respondent represented Anderson regarding the expunction matter during the period June 4, 2008, to June 22, 2009. The only substantive work respondent performed during that period was to find the record of the misdemeanor conviction to be expunged and to obtain an affidavit from Anderson's former wife, the victim of the alleged domestic assault, retracting her allegations of assault. Respondent took no action to present the matter to the court for a determination.

39. During the period of respondent's representation, Anderson left many telephone messages for respondent in an effort to learn the status of his case. Respondent failed to return all or most of Anderson's messages. On the rare occasion that Anderson was able to speak to respondent, it was the result of his having called or visited when respondent was in his office.

40. As noted above, respondent was suspended from the practice of law effective June 25, 2009. On June 22, 2009, respondent wrote to Anderson, informing him of his suspension. In his letter, respondent suggested that Anderson consider retaining attorney Timothy Baland as substitute counsel.

41. After receiving the June 22, 2009, letter, Anderson called respondent. Anderson was concerned that he had paid respondent for representation through expunction, but that expunction had not yet been achieved or even requested. Respondent told Anderson that if he retained Baland as substitute counsel, respondent would pay the balance of Anderson's retainer to Baland.

42. Anderson thereafter met with Baland and informed Baland of respondent's agreement to forward his retainer balance. Baland stated that as soon as he received those funds, he would begin work on Anderson's case.

43. Following his meeting with Anderson, Baland attempted to reach respondent by telephone to discuss payment of the retainer. Baland was not able to

reach respondent and instead left a message requesting a return call. Respondent did not return Baland's call.

44. Anderson also attempted to reach respondent by telephone regarding the retainer balance. Eventually, Anderson reached a recording stating that respondent's telephone had been disconnected.

45. Respondent has not responded to Baland's or Anderson's attempts to reach him regarding the retainer balance and has not forwarded the retainer balance to either Anderson or Baland.

Russell Cirelli Matter

46. On January 15, 2009, Russell Cirelli retained respondent to prepare two Qualified Domestic Relations Orders ("QDROs") that were required by the judgment and decree entered in Cirelli's marriage dissolution proceeding. Respondent had also represented Cirelli in the marriage dissolution. Cirelli paid respondent a $1,500 retainer, which he understood would fully cover preparation and processing of the QDROs. Cirelli did not sign a retainer agreement.

47. During the period January to May 2009 respondent did not communicate with Cirelli regarding the QDROs. In May 2009 Cirelli began attempting to reach respondent by telephone to discuss the QDROs. Respondent failed to return any of Cirelli's messages.

48. In May 2009 Cirelli visited respondent's office unannounced and met with respondent, who happened to be there. Respondent told Cirelli that he had completed work on the QDROs and would be submitting them to the pension plan administrators the next day. Respondent gave Cirelli informational copies of the QDROs, which Cirelli did not immediately review.

49. When Cirelli reviewed the QDROs he discovered that they were improperly prepared and would likely not be approved by the pension plan

administrators. Respondent never submitted the QDROs to the plan administrators and did not complete the work for which Cirelli paid him the $1,500 retainer.

50. In August 2009 Cirelli again attempted to reach respondent by telephone to discuss the status of his QDROs, but learned that respondent's telephone had been disconnected.

51. In August 2009 Cirelli visited respondent's office and learned from another lawyer in the building that respondent had been suspended from the practice of law. Respondent had not informed Cirelli of his suspension.

52. After learning of respondent's suspension, Cirelli contacted his former wife's attorney regarding the QDROs. Cirelli understood from the attorney that the judgment and decree, as drafted, would not support issuance of the QDROs and would have to be amended. Cirelli and his former wife have since worked together to resolve matters regarding the QDROs.

Christie Buschke Matter

53. On February 11, 2009, Christie Buschke retained respondent to represent her in her marriage dissolution. Buschke paid respondent a $2,550 retainer. Buschke does not recall signing a retainer agreement.

54. Respondent prepared a summons and petition for dissolution and those documents were served on Buschke's husband on March 12, 2009. Respondent took no further substantive action on Buschke's behalf.

55. Beginning in mid-March 2009 Buschke made repeated efforts to reach respondent by telephone and email to discuss her case. During the period March to August 2009, Buschke was able to speak with respondent only once. On July 30, 2009, Buschke learned that respondent's telephone had been disconnected. An email Buschke sent to respondent that day was returned as undeliverable.

56. In August 2009 Buschke learned from her father that respondent had been suspended from the practice of law. Respondent had not informed Buschke of his suspension.

57. On August 25, 2009, Buschke's new lawyer wrote to respondent and requested Buschke's file and remaining retainer balance. Respondent failed to respond.

58. On August 26, 2009, Buschke wrote to respondent and requested that respondent refund $2,000 of her retainer. Respondent failed to respond.

59. Respondent did not provide to Buschke the original petition for dissolution of marriage or an affidavit of service reflecting service of the petition on Buschke's husband.

60. The petition respondent prepared contained numerous errors. For example, as part of the dissolution proceeding, Buschke wished to have her maiden name of Olson restored. The petition respondent drafted requested that Buschke's surname remain Buschke. As a result of this and other errors, it was necessary for Buschke's new attorney to re-draft and re-serve the petition.

Jerry Moinicken Matter

61. On October 1, 2008, Jerry Moinicken retained respondent to represent him in his marriage dissolution. Moinicken paid respondent a $2,350 retainer and signed a retainer agreement. Throughout the course of respondent's representation, Moinicken paid respondent a total of $4,700 for his services.

62. By November 20, 2008, respondent had prepared a petition for dissolution in Moinicken's case. Moinicken signed the petition on November 20, 2008, and respondent thereafter had it served on Moinicken's wife.

63. Other than meeting with opposing counsel on March 18, 2009, respondent took no further substantive action on Moinicken's behalf. Respondent did not file the matter with the court.

64. During the course of respondent's representation, Moinicken left numerous telephone messages for respondent that respondent failed to return.

65. By letter dated June 22, 2009, respondent notified Moinicken of his suspension. Subsequent to that date, respondent provided Moinicken with his file.

66. Moinicken retained substitute counsel to represent him in the marriage dissolution proceeding. The petition for dissolution of marriage respondent had prepared and served on Moinicken's behalf contained numerous omissions and errors.

67. Moinicken had become aware that his wife had hidden approximately $50,000 in income from him and it was extremely important to him that that issue be addressed as part of the dissolution proceeding. Respondent did not, however, mention this issue in the petition he prepared. Additionally, the petition respondent prepared failed to specify the parenting time Moinicken was requesting, which was another issue of great importance to Moinicken. Finally, the petition respondent prepared contained numerous typographical errors. It was necessary for Moinicken's new attorney to prepare, serve and eventually file an amended petition on Moinicken's behalf.

John Favre Matter

68. The Director re-alleges and incorporates herein by reference paragraphs 1 through 3, above.

69. During the periods June through August 2008 and August 2008 to June 2009, respondent failed to work diligently on Favre's personal injury matter.

70. During the period of respondent's representation, i.e., June 2008 to June 2009, respondent failed to return numerous telephone messages Favre left for him and failed to adequately communicate with Favre regarding his personal injury matter.

71. Respondent's conduct in engaging in a pattern of neglecting client matters, failing to adequately communicate with clients and failing to return client property, violated Rules 1.3, 1.4(a) and (b), and 1.16(d), MRPC.

FOURTH COUNT

Failure to Pay Law-Related Judgment

72. Mark Hegle provided court reporting services to respondent on November 9, 2007. Hegle's charge for those services was $463.

73. On November 21, 2007, March 17, 2008, June 10, 2008, August 13, 2008, September 25, 2008, November 12, 2008, and January 15, 2009, Hegle billed respondent for his court reporting services. Hegle's January 15, 2009, billing included notification that Hegle intended to commence a conciliation court action if respondent failed to pay the bill.

74. On September 25 and October 28, 2008, Hegle attempted to reach respondent by telephone to discuss his bill. On both of those occasions, Hegle left messages for respondent that respondent failed to return.

75. Respondent failed to pay Hegle's bills or to otherwise contact him regarding payment.

76. Hegle commenced an Anoka County conciliation court action against respondent seeking to recover the $463 due him from respondent. A hearing in the matter was scheduled for December 21, 2009. Respondent failed to appear for the hearing.

77. As a result of the hearing, a judgment was entered in Hegle's favor and against respondent in the amount of $523 ($463 for Hegle's court reporting services and $60 for the conciliation court filing fee).

78. Respondent has made no effort to pay this law-related debt.

79. Respondent's conduct in failing to pay a law-related judgment, violated Rule 8.4(d), MRPC.

FIFTH COUNT

Failure to Cooperate in the Director's Investigation

80. The Director received Carol Williams' complaint against respondent on July 6, 2009. On July 15, 2009, the Director mailed notice of investigation of Williams' complaint, together with a copy of the complaint itself, to respondent at his business address, 316 East Main Street in Anoka. This was the address the Director used in communicating with respondent in the disciplinary proceeding earlier that year and the address respondent maintained with lawyer registration. The Director's notice of investigation was not returned by the postal service as undeliverable. The notice requested respondent's written response to the complaint within 14 days. Respondent failed to respond.

81. The Director received Paola Fuller's complaint against respondent on July 15, 2009. On July 21, 2009, the Director mailed notice of investigation of Fuller's complaint, together with a copy of the complaint itself, to respondent at the Main Street address. The Director's notice of investigation was not returned by the postal service as undeliverable. The notice requested respondent's written response to the complaint within 14 days. Respondent failed to respond.

82. The Director received Loren Anderson's complaint against respondent on July 23, 2009. On July 29, 2009, the Director mailed notice of investigation of Anderson's complaint, together with a copy of the complaint itself, to respondent at the Main Street address. The Director's notice of investigation was not returned by the postal service as undeliverable. The notice requested respondent's written response to the complaint within 14 days. Respondent failed to respond.

83. The Director received Russell Cirelli's complaint against respondent on August 18, 2009. On August 24, 2009, the Director mailed notice of investigation of Cirelli's complaint, together with a copy of the complaint itself, to respondent at the Main Street address. The Director's notice of investigation was not returned by the

postal service as undeliverable. The notice requested respondent's written response to the complaint within 14 days. Respondent failed to respond.

84. Since the Director had not received responses to the notices of investigation he wrote to respondent at what the Director believed to be respondent's residential address, 1943 Parkmont Lane, Anoka, to request written responses to the Williams, Fuller, Anderson and Cirelli complaints. The Director's letter was returned on August 31, 2009, with a handwritten notation, "Does not Live Here. Never Has. Return to Sender."

85. The Director received Christie Buschke's complaint against respondent on September 8, 2009. On September 24, 2009, the Director mailed notice of investigation of Buschke's complaint, together with a copy of the complaint itself, to respondent at the Main Street address, the address he maintained with lawyer registration. The Director's notice of investigation was returned by the postal service as undeliverable on October 9, 2009.

86. The Director received Jerry Moinicken's complaint against respondent on September 29, 2009. On October 16, 2009, the Director mailed notice of investigation of Moinicken's complaint, together with a copy of the complaint itself, to respondent at the Main Street address. Although previous correspondence to respondent at this address had been returned, it was the only address the Director had for respondent. The Director's notice of investigation was returned by the postal service as undeliverable on October 21, 2009.

87. The Director received John Favre's complaint against respondent on October 13, 2009. On October 26, 2009, the Director mailed notice of investigation of Favre's complaint, together with a copy of the complaint itself, to respondent at the Main Street address. The Director's notice of investigation was returned by the postal service as undeliverable on October 30, 2009.

88. The Director received Mark Hegle's complaint against respondent on December 30, 2009. On January 13, 2010, the Director mailed notice of Hegle's complaint to respondent, together with a copy of the complaint itself, to respondent at the Main Street address, again the address he maintained with lawyer registration. The Director's notice of investigation was returned by the postal service as undeliverable.

89. In searching a public records database the Director discovered an address for a Jay Swokowski at 15494 Tungsten Street S.W. in Ramsey, Minnesota. So, on January 26, 2010, the Director mailed the Williams, Fuller, Anderson, Cirelli, Buschke, Moinicken, Favre and Hegle notices of investigation, together with copies of all the complaints, to respondent at the Tungsten Street address. The Director's letter requested respondent's written response to each of the complaints pending against him. The Director's letter was returned by the postal service as undeliverable.

90. On March 5, 2010, the Director attempted to reach respondent at a cellular telephone number the Director had located through the same public records database. A recording at that number, however, stated that it had been changed, disconnected or was not longer in service.

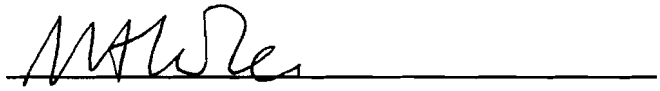
91. The Director subsequently located an address for a Jay Swokowski at 14446 N.W. Kerry Street in Andover, Minnesota. On March 5, 2010, the Director mailed the Williams, Fuller, Anderson, Cirelli, Buschke, Moinicken, Favre and Hegle notices of investigation, together with copies of all the complaints, to respondent at the Kerry Street address. The Director's letter requested respondent's written response to each of the complaints pending against him.

92. Eventually correspondence to the Kerry Street address was returned by the postal service with a notation "Return to Sender, Refused, Unable to Forward." Respondent has not provided a response to the complaints pending against him.

93. Respondent's conduct in failing to cooperate with the Director's investigation violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

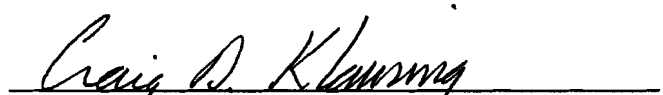
WHEREFORE, the Director respectfully prays for an order of this Court disbarring respondent or imposing otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: July 15, 2010.



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

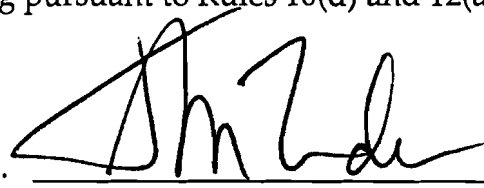
and



CRAIG D. KLAUSING
SENIOR ASSISTANT DIRECTOR
Attorney No. 202873

This petition is approved for filing pursuant to Rules 10(d) and 12(a), RLPR, by the undersigned Panel Chair.

Dated: July 19, 2010.



JAN M. ZENDER
PANEL CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD