

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against RANDALL D. TIGUE,
a Minnesota Attorney,
Registration No. 110000.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

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

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 5, 1973. Respondent currently practices law in Golden Valley, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's history of prior discipline, including admonitions, is as follows:

A. On October 29, 2007, the Minnesota Supreme Court publicly reprimanded respondent and placed him on two years of probation for allowing a shortage in his trust account, allowing his trust account to become overdrawn, failing to promptly cure the overdraft and failing to maintain the required trust account books and records, in violation of Rules 1.15(c)(3) and (h) (as interpreted by Appendix 1 thereto) and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

FIRST COUNT

Trust Account Matter

1. On January 13, 2012, respondent's US Bank trust account no. -3642 became overdrawn in the amount of \$149.44. Pursuant to Rule 1.15(j) through (o), MRPC, US Bank reported the overdraft to the Director.

2. In response to the Director's inquiry regarding the overdraft, respondent explained that it had been the result of calculation errors he committed during the period October to December 2011. More specifically, as is further described below, the overdraft was the result of respondent's failure to reconcile his trust account in the manner required by Rule 1.15, MRPC, as interpreted by Appendix 1 thereto.

3. The Director's review of the trust account books and records respondent submitted in the context of the overdraft inquiry indicated a failure to maintain the required trust account books and records, shortages in the trust account and a nominal trust account balance for which respondent was unable to account. The Director determined to convert the overdraft inquiry into a formal disciplinary investigation.

4. By notice of investigation dated April 23, 2012, the Director requested respondent's complete trust account books and records for the period October 2009 to the present.

5. On May 8, 2012, respondent responded to the Director's notice of investigation by stating that he must "retrieve several bank statements and cancelled checks from the bank."

6. On June 19, 2012, after obtaining the bank statements and cancelled checks from his bank, respondent produced the trust account books and records requested by the Director's notice of investigation.

7. The Director audited respondent's trust account for the period October 1, 2009, through August 2012. The Director's audit, and respondent's own trust account books and records, revealed that, during the period May 5, 2010, to June 14, 2012, the

balance in respondent's trust account was continuously short of that necessary to cover aggregate client balances. This shortage ranged in amount from \$.30 to \$481.80 and, in each instance, was caused by respondent's issuance of a check to himself that exceeded the amount of funds available for disbursement, as follows:

a. On May 5, 2010, the balance in respondent's trust account included \$190 for respondent's client S.K. On that date, respondent's trust account check 9042 in the amount of \$190.30, which respondent issued to himself in the S.K. matter, cleared respondent's trust account. Because check 9042 exceeded by \$.30 (\$190 minus \$190.30) the balance of S.K. funds in respondent's trust account, payment of that check created a \$.30 negative balance in the S.K. ledger and an overall trust account shortage of \$.30. Respondent's conduct in this regard constituted the negligent misappropriation of client funds.

b. On June 10, 2011, the balance in respondent's trust account included \$78 for respondent's client "1709 E. Lake." On that date, respondent's trust account check 9085 in the amount of \$150, which respondent issued to himself in the 1709 E. Lake matter, cleared respondent's trust account. Because check 9085 exceeded by \$72 (\$78 minus \$150) the balance of 1709 E. Lake funds in respondent's trust account, payment of that check created a \$72 negative balance in the 1709 E. Lake ledger and increased the overall shortage in respondent's trust account to \$72.30 (\$.30 plus \$72). Respondent's conduct in this regard constituted the negligent misappropriation of client funds.

c. On June 15, 2011, respondent's trust account check 9086 in the amount of \$50, which respondent issued to himself in the 1709 E. Lake matter, cleared respondent's trust account. Because the 1709 E. Lake balance was already negative, payment of check 9086 increased that negative balance and increased the overall shortage in respondent's trust account to \$122.30 (\$72.30

plus \$50). Respondent's conduct in this regard constituted the negligent misappropriation of client funds.

d. On October 11, 2011, the balance in respondent's trust account included \$60.50 for respondent's client J.C. On that date, respondent's trust account check 9069 in the amount of \$70, which respondent issued to himself in the J.C. matter, cleared respondent's trust account. Because check 9069 exceeded by \$9.50 (\$60.50 minus \$70) the balance of J.C. funds in respondent's trust account, payment of that check created a \$9.50 negative balance in the J.C. ledger and increased the overall shortage in respondent's trust account to \$131.80 (\$122.30 plus \$9.50). Respondent's conduct in this regard constituted the negligent misappropriation of client funds.

e. On January 3, 2012, the balance in respondent's trust account included \$205 for respondent's client R.B. On that date, respondent's trust account check 9107 in the amount of \$455, which respondent issued to himself in the R.B. matter, cleared respondent's trust account. Because check 9107 exceeded by \$250 (\$205 minus \$455) the balance of R.B. funds in respondent's trust account, payment of that check created a \$250 negative balance in the R.B. ledger and increased the overall shortage in respondent's trust account to \$381.80 (\$131.80 plus \$250). Respondent's conduct in this regard constituted the negligent misappropriation of client funds.

f. Also on January 3, 2012, the balance in respondent's trust account included \$12.50 for respondent's client R.U. On that date, respondent's trust account check 9109 in the amount of \$112.50, which respondent issued to himself in the R.U. matter, cleared respondent's trust account. Because check 9109 exceeded by \$100 (\$12.50 minus \$112.50) the balance of R.U. funds in respondent's trust account, payment of that check created a \$100 negative balance in the R.U. ledger and increased the overall shortage in respondent's

trust account to \$481.80 (\$381.80 plus \$100). Respondent's conduct in this regard constituted the negligent misappropriation of client funds.

g. These series of negative balances and trust account shortages led to the January 13, 2012, overdraft in respondent's trust account.

h. On February 6, February 24, April 4, June 13 and June 14, 2012, respondent made deposits to his trust account that reduced, and eventually eliminated, the overall shortage in the account. Thus, the balance in respondent's trust account continued to be short of that necessary to cover aggregate client balances for a period of six months following the overdraft.

8. During the period from approximately October 2009 to approximately June 2012, respondent failed to maintain the trust account books and records required by Rule 1.15, MRPC, as interpreted by Appendix 1 thereto. In particular, respondent failed to maintain monthly trust account trial balances and reconciliations.

9. Respondent acknowledged his failure in this regard in letters to the Director dated April 4, 2012 ("after I completed my prior probation, I let my trust account record-keeping slide"), May 18, 2012 ("upon discharge from my probation, . . . I cease[d] . . . reconciling the total of [my client subsidiary ledgers] with my bank balance and book balance"), and June 19, 2012 ("I realize that if I had been maintaining the books and records as required, these errors either would have not occurred or would have been caught much sooner and that I am subject to discipline for that failure.").

10. Respondent's conduct in failing to maintain the required trust account books and records and failing to retain his trust account bank records for the required period of time, violated Rule 1.15(c)(3) and (h), MRPC, as interpreted by Appendix 1 thereto.

11. Respondent's conduct in negligently misappropriating client funds violated Rule 1.15, as interpreted by Appendix 1 thereto, and Rule 8.4(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: March 13, 2013.



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