

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

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

**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 5, 1973. Respondent currently practices law in Golden Valley, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Trust Account Shortages and Failure to Promptly Cure Overdraft

1. At all times relevant, respondent has maintained US Bank trust account no. 1 811 0260 3642 ("trust account").
2. On October 14, 2005, respondent's trust account became overdrawn, a fact that US Bank reported to the Director pursuant to Rule 1.15(j)-(o), Minnesota Rules of Professional Conduct (MRPC). Respondent thereafter explained that the overdraft had been caused by the return of a client's check, which respondent had already deposited into his trust account and from which respondent had disbursed funds, thereby creating a shortage in the trust account.

3. Respondent did not deposit funds sufficient to eliminate the overdraft in his trust account until November 9, 2005. In other words, respondent allowed a negative balance to exist in his trust account for the period October 14 to November 9, 2005.

4. Based on trust account books and records produced by respondent during the course of the overdraft inquiry and the subsequent disciplinary investigation, the Director audited respondent's trust account for the period January 2004 to August 6, 2007.

5. The Director's audit reflected that respondent used his trust account almost exclusively to deposit fee and cost advances he received from clients. Most of the checks respondent issued on his trust account were made payable to respondent as and for earned fees.

6. The Director's audit also reflected that a shortage, *i.e.*, an actual account balance that was insufficient to cover aggregate client balances, existed in respondent's trust account during virtually the entire audit period. By August 6, 2007, the shortage in respondent's trust account had been substantially eliminated.

7. One of the clients affected by respondent's mishandling of his trust account was S.K. Respondent represented S.K. in the purchase of a business from R.F. and A.F. On February 2, 2004, respondent deposited into his trust account \$5,000 in earnest money he received from S.K. Respondent was supposed to hold the earnest money in his trust account pending the closing on the business purchase.¹

8. During various periods in and after July 2004, the balance in respondent's trust account was not sufficient to cover even the S.K./R.F. and A.F. earnest money, let

¹ Ultimately, the S.K./R.F. and A.F. transaction did not close and litigation between S.K. and R.F. and A.F. regarding entitlement to the \$5,000 in earnest money ensued. Respondent was eventually ordered to remit the earnest money to R.F. and A.F. On August 1, 2005, in accordance with that order, respondent issued his trust account check no. 8733 in the amount of \$5,000 to R.F. and A.F. That check cleared respondent's trust account on August 3, 2005.

alone the total client funds respondent was supposed to be holding in his trust account. In other words, at various points during the period July 2004 to August 2005, respondent disbursed some or all of the S.K./R.F. and A.F. earnest money for purposes other than those for which the funds were intended.

9. The shortages in respondent's trust account appear to have been caused by respondent's (1) disbursement of fees on behalf of individual clients that exceeded the funds respondent had deposited into his trust account for those clients, (2) issuance of trust account checks on behalf of individual clients before respondent had deposited funds into his trust account for those clients, and (3) failure to maintain the proper trust account books and records.

10. Respondent's conduct in allowing shortages to exist in his trust account and failing to promptly deposit funds to eliminate an overdraft in that account violated Rules 1.15(c)(3) and (h), MRPC, as interpreted by Appendix 1 thereto, and 8.4(d), MRPC.

SECOND COUNT

Failure to Maintain Required Trust Account Books and Records

11. As part of the inquiry regarding the October 14, 2005, overdraft, the Director asked respondent to produce various of his trust account books and records, including bank statements, checkbook register, client subsidiary ledgers, trial balances and reconciliations, for the period August through October 2005. The Director requested these materials from respondent on October 19, 2005, November 30, 2005, January 11, 2006, and February 2, 2006.

12. On February 28, 2006, respondent produced client subsidiary ledgers, which he stated he had generated from his *Timeslips* computer program. Respondent stated that given the limited availability of his bookkeeper, since 2004, "I had her do only billing and did not have her maintain, on a monthly basis, by [sic] trust account records."

13. Respondent also stated that when he attempted to reconstruct his client subsidiary ledgers, there had been a "major flaw" in his computer program, which he and a computer consultant had been unable to correct. Respondent did not, at that time, produce any of the other trust account books and records requested by the Director, *i.e.*, bank statements, checkbook register, trial balances or reconciliations. The Director requested these missing materials from respondent on March 21, 2006.

14. On April 3, 2006, respondent produced some of the requested trust account books and records. Respondent did not, however, produce proper client subsidiary ledgers, trial balances or reconciliations. In his cover letter to those materials, respondent acknowledged that a \$1,575 shortage existed in his trust account. Based on respondent's statement, the Director converted the overdraft inquiry into a formal disciplinary investigation. On April 27, 2006, the Director requested that respondent produce a comprehensive set of his trust account books and records for the period January 2005 through April 2006. On June 9, June 19, August 10, August 11, August 14, September 15 and October 17, 2006, respondent produced many of these materials. Respondent did not, however, produce proper client subsidiary ledgers, trial balances or reconciliations.

15. The Director wrote to respondent on November 13, 2006. The Director requested, among other things, that respondent produce his May through October 2006 trust account books and records (bank statements, checkbook register, client subsidiary ledgers, trial balances and reconciliations), "so that we may confirm that you are now maintaining your trust account in the required manner."

16. Respondent failed to provide a timely response to the Director's November 13, 2006, letter. The Director wrote again to request respondent's response on December 1, 2006.

17. On December 11, 2006, respondent stated that the balance in his trust account falling below that necessary to cover the S.K./R.F. and A.F. funds was likely the

result of (a) errors made in the posting of withdrawals to his trust account books, and (b) his failure to properly record the S.K./R.F. and A.F. deposit in his trust account books. Respondent did not produce the requested May through October 2006 trust account books and records, stating, "I have purchased a new computer, which now gives me accurate subsidiary ledgers. I have attempted trial balances [sic] for the succeeding months and the amounts still do not balance."

18. On December 18, 2006, the Director again requested respondent to produce his May through November 2006 trust account books and records, and, so that the Director might determine the original cause of the shortage in respondent's trust account, his January through December 2004 trust account books and records.

19. On December 22, 2006, the Director issued charges of unprofessional conduct against respondent.

20. On January 19 and 23, 2007, respondent, through counsel, produced many of the requested 2004 and 2006 trust account books and records.² Among the materials missing from respondent's submission were respondent's September 2006 trust account bank statement and cancelled checks, which the Director required in order to complete the audit of respondent's trust account. Also, respondent did not produce proper client subsidiary ledgers, trial balances or reconciliations. On March 9, 2007, the Director requested that respondent bring these materials to the March 12, 2007, pre-hearing meeting that had been scheduled pursuant to Rule 9(b), RLPR.

21. Respondent did not produce, either before or during the March 12, 2007, pre-hearing meeting, the missing September 2006 trust account materials. (Respondent's bank faxed the September 2006 trust account materials to the Director after hours on March 12, 2007.) Respondent stated during the pre-hearing meeting that he had hired an accountant to assist him in reconstructing his trust account. Based on

² Respondent is no longer represented by counsel.

respondent's statement, and the belief that respondent would soon determine the amount of and eliminate the shortage in his trust account, the pre-hearing meeting was continued to April 2, 2007.

22. The Director thereafter completed the audit of respondent's trust account for the period through November 2006. The audit reflected a continuing shortage in respondent's trust account as of November 30, 2006.

23. On March 21, 2007, the Director provided respondent's counsel with a copy of the Director's audit of respondent's trust account. The Director requested, among other things, that respondent produce verification that he had eliminated the shortage reflected by the Director's audit. To this end, the Director listed the client balances the audit indicated were in respondent's trust account as of November 30, 2006, and asked respondent to state whether he had, in fact, earned and was entitled to any of these client balances and, if so, to produce verification thereof.

24. On April 2, 2007, the date of the parties' continued pre-hearing meeting, respondent produced revised and updated client subsidiary ledgers he had generated from his *Timeslips* computer program. The client subsidiary ledgers were inaccurate and incomplete and were not sufficient to enable the Director to complete the audit or to determine whether a shortage continued to exist in respondent's trust account. Respondent did not produce proper trial balances or reconciliations. For these reasons, the pre-hearing meeting was again continued.

25. On April 18, 2007, the Director informed respondent's counsel of the inadequacy of the materials received from respondent on April 2, and requested, among other things, that respondent produce his December 2006 through March 2007 trust account books and records.

26. Over the next several months, respondent submitted additional trust account books, records and information at the Director's request.

27. Respondent's failure to maintain required trust account books and records violated Rule 1.15(c)(3) and (h), MRPC, as interpreted by Appendix 1 thereto.³

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: October 4, 2007.



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³ Portions of respondent's misconduct predate the October 1, 2005, amendments to the MRPC. Respondent's failure to maintain required trust account books and records prior to October 1, 2005, violated Rule 1.15, MRPC, as further interpreted by Lawyers Board Opinion 9, which was subsequently incorporated into the amendments to Rule 1.15 and into Appendix 1 of the MRPC.