

FILE NO. A13-0519
STATE OF MINNESOTA
IN SUPREME COURT

In Re Petition for Disciplinary Action Against
Randall D. Tigue
a Minnesota Attorney, Registration No. 110000

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND
RECOMMENDATION FOR DISCIPLINE

This matter was heard at the Minnesota Judicial Center in St. Paul, Minnesota,
on July 2, 2013, by the undersigned Referee.

Julie E. Bennett, Senior Assistant Director, appeared on behalf of the Director of
the Office of Lawyers Professional Responsibility (Director).

Randall D. Tigue (Respondent) appeared personally and represented himself.

The Director called the following witness to testify at the hearing: Lynda Nelson.
Further, the Director offered Exhibits 1 through 14 into evidence, all of which were
received without objection by Respondent.

Respondent testified at the hearing and called the following additional witnesses
to testify: Rachel Nelson and Carol Phegley. Further, Respondent offered Exhibits 100

through 104 into evidence, all of which were received without objection by the Director.

At the conclusion of the hearing, the undersigned Referee instructed both the Director and Respondent to submit written arguments and proposed findings of fact, conclusions of law, and recommendations for discipline on or before July 19, 2013.

This matter was taken under advisement by the undersigned Referee on July 19, 2013.

Based upon the Petition for Disciplinary Action herein, Respondent's Answer to Petition, the exhibits received into evidence, the testimony presented, and the written arguments submitted by both the Director and Respondent, the undersigned Referee makes the following Findings of Fact, Conclusions of Law and Recommendation for Discipline:

FINDINGS OF FACT

1. Respondent was admitted to practice law in Minnesota on October 5, 1973, and is currently engaged in the practice of law in Golden Valley, Minnesota.
2. At all times relevant to this proceeding Respondent was a licensed attorney in Minnesota.
3. On October 25, 2007, Respondent was publicly disciplined for allowing his trust account to become overdrawn, failing to promptly cure the overdraft, and failure to maintain required trust account books and records. The October 25, 2007, Order publicly reprimanded Respondent and placed him on unsupervised probation for a period of two years. Among the conditions of the Order was a requirement that Respondent maintain law office trust account books and records in compliance with Rule 1.15 and Appendix 1 thereof, Minnesota Rules of Professional Conduct (MRPC).

4. The Order publicly reprimanding Respondent in October 2007 resulted from an overdraft in Respondent's trust account which occurred in 2005 and the Director's subsequent investigation of it.

5. Respondent testified that the overdraft occurred during a time that Respondent had an employee keeping his financial records utilizing a computer program marketed under the name "Timeslips." Respondent further testified that he was not sufficiently familiar with the operation of the Timeslips computer program to know how to utilize that computer program to generate the records he was required to maintain for his trust account.

6. After accepting employment in the state of Virginia, Respondent terminated his private practice of law in Minnesota in January 2007. While in Virginia, Respondent consulted with a Timeslips consultant regarding the operation of the Timeslips computer program and the responses Respondent was obligated to submit to the Director's inquiries in the investigation which ultimately resulted in the October 2007 public reprimand.

7. Prior to his move to Virginia, Respondent had three computers. One computer was used in Respondent's home. A second computer was at Respondent's office and was dedicated to billing and financial records. The third computer was also at Respondent's office and was dedicated to word processing. When Respondent moved to Virginia, he gave his home computer to his son, moved the billing and financial records computer to his home for domestic use, and took the word processing computer to his office in Virginia.

8. Respondent's employment in Virginia ended in July 2007. Respondent

returned to Minnesota where he again established a private law practice. When he returned to Minnesota, Respondent set up the word processing computer in his office but left the billing and financial records computer at his home.

9. Because his billing and financial records computer was at his home, Respondent testified that he was required to spend three days at home and away from his law practice each month to enter billing data and to generate billing statements for clients. Respondent further testified that he was required to spend an additional day at home and away from his law practice each month to generate the records required with respect to properly maintaining his trust account.

10. Respondent successfully completed his two year probation in October 2009.

11. Very shortly following the completion of his probation, Respondent quit maintaining the necessary books and records for his trust account. In his testimony Respondent very candidly admitted that he "let it slide" because he was no longer on probation and no longer had an obligation to submit his trust account books and records to the Director.

12. On January 13, 2012, Respondent's trust account at US Bank became overdrawn in the amount of \$149.44.

13. In compliance with the MRPC, US Bank reported the overdraft to the Director.

14. In response to The Director's inquiry regarding the overdraft, Respondent explained that the overdraft was the result of calculation errors he made between October and December 2011.

15. In fact, the overdraft was the result of Respondent's failure to reconcile his

trust account in the manner required by Rule 1.15, and Appendix 1 thereto, MRPC.

16. The Director's review of the trust account books and records submitted by Respondent in the course of the overdraft inquiry indicated a failure to maintain required trust account books and records, shortages in the trust account, and a nominal trust account balance for which Respondent was unable to account.

17. The Director converted the overdraft inquiry into a formal disciplinary investigation.

18. By notice of investigation dated April 23, 2012, the Director requested that Respondent submit complete trust account books and records for the period October 2009 to the then present date.

19. On May 8, 2012, Respondent responded to the Director's notice of investigation indicating that it would be necessary for him to first retrieve bank statements and canceled checks from his bank.

20. On June 19, 2012, Respondent produced the trust account books and records requested in the Director's notice of investigation.

21. The Director audited Respondent's trust account for the period October 1, 2009, through August 2012.

22. The Director's audit of Respondent's 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 amount necessary to cover aggregate client balances.

23. The Director's audit of Respondent's trust account books and records established that the aggregate shortage ranged in amount from \$.30 to \$481.80. In

each instance the shortage was caused by Respondent issuing a check to himself in an amount which exceeded the amount of funds available for disbursement.

24. 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 had issued to himself in the S.K. matter, cleared Respondent's trust account. Because check 9042 exceeded by \$.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.

25. 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 the balance of the 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.

26. 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.

27. 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 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.

28. 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 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.

29. 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 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.

30. In each of the transactions cited in Findings 24 through 29, Respondent's conduct constituted the negligent misappropriation of client funds.

32. The series of negative balances and trust account shortages cited in Findings 24 through 29 led to the January 13, 2012, Overdraft in Respondent's trust account.

33. Although Respondent made deposits to his trust account between February 6, 2012, and June 14, 2012, to reduce and eventually eliminate the overall shortage in his trust account, the balance in Respondent's trust account continued to be short of the amount necessary to cover aggregate client balances for a period of five months following the January 13, 2012, overdraft.

34. During the period from approximately October 2009 to June 2012, Respondent failed to maintain the trust account books and records required by Rule 1.15, and Appendix 1 thereto, MRPC.

35. Although not required to do so, commencing with the trust account books and records for the month of June 2012, Respondent has provided copies of his trust account books and records to the Director's office on a monthly basis. At the hearing of this matter there was no indication that these trust account books and records were not in compliance with the MRPC.

36. Since the initiation of this matter, respondent has moved his billing and financial records computer to his office and hired personnel in whom he has confidence as to their knowledge and ability to handle that aspect of his law practice.

37. Respondent admits that his 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), and Appendix 1 thereto, MRPC.

38. Respondent admits that his conduct in negligently misappropriating client funds violated Rule 1.15, and Appendix 1 thereto, and Rule 8.4(d), MRPC.

39. Respondent disputes only the Director's recommendation for discipline herein.

Aggravating Factors

40. Respondent's misconduct in this matter is a repetition of conduct for which respondent was publicly disciplined in 2007.

41. Respondent's misconduct in this matter began almost immediately following his completion of probation in 2009.

42. There was a period of five months following Respondent's January 13, 2012, overdraft during which the balance in Respondent's trust account continued to be short of the amount necessary to cover aggregate client balances.

43. Having been admitted to the practice of law in October 1973, and considering the nature of the misconduct here involved, Respondent's nearly 40 years of practice is an aggravating factor in this matter.

Mitigating Factors

44. Respondent has forthrightly admitted his misconduct in this matter.

45. Without being required to do so, Respondent has submitted to the Director, on a monthly basis, from June 2012 through June 2013, trust account records showing current compliance with applicable rules.

46. There is no indication that any client sustained a loss or that any client was even aware of Respondent's trust account irregularities.

CONCLUSIONS OF LAW

1. 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), and Appendix 1 thereto, MRPC.

2. Respondent's conduct in negligently misappropriating client funds violated

Rule 1.15, and Appendix 1 thereto, and Rule 8.4(d), MRPC.

RECOMMENDATION FOR DISCIPLINE

1. That Respondent be publicly reprimanded and placed on supervised probation for a period of three years. The supervision should require that Respondent maintain law office and trust account books and records in compliance with Rule 1.15 and Appendix 1 thereto, MRPC. Such books and records shall be made available to the Director at such intervals as the Director deems necessary to determine compliance. The supervision should further require that Respondent retain the services of a certified public accountant familiar with the requirements of the Minnesota Rules of Professional Conduct with respect to attorney trust accounts and approved by the Director. Respondent's books and records relating to his trust account(s) should be maintained under the direct supervision of the certified public accountant. Respondent should be required to provide the Director a monthly certification signed by the certified public accountant indicating that all required trust account books and records are being maintained, that all such records are in proper order, and that no checks have been drawn on the trust account(s) which exceed the amount indicated in the client ledger. The books and records contemplated by this recommendation include the following: client subsidiary ledger(s), checkbook register(s), monthly trial balances, monthly trust account reconciliation, bank statements, canceled checks, duplicate deposit slips, and bank reports of interest, service charges, and interest payments to the Lawyer Trust Account Board.

2. That respondent cooperate fully with the Director's Office in its efforts to monitor compliance with Respondent's probation, including: timely response to the

Director's correspondence and telephone calls, cooperation with the Director's investigation of any allegation of professional misconduct that may come to the director's attention during the term of Respondent's probation, and providing authorization for release of information and documentation to verify compliance with the terms of probation upon the Director's request.

3. That Respondent abide by the Minnesota Rules of Professional Conduct.

4. That respondent pay to the Director \$900 in costs, plus disbursements, pursuant to Rule 24, Rules of Lawyers Professional Responsibility.

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Dated: July 26, 2013

Frederick J. Casey
Referee

MEMORANDUM

Respondent claims to have self-reported all of the circumstances in which funds were improperly paid from his trust account. In fact, these circumstances came to light as a result of the Director's audit of records produced by Respondent. While respondent did produce the records, this referee does not find that to be self-reporting as claimed by Respondent. Accordingly, self-reporting is not included as a mitigating factor.

Respondent claims that full cooperation with the Director's investigation should be considered a mitigating factor. Respondent's full cooperation is required by the rules. The fact that he complied with the rules in this respect is not considered by this

referee to be a mitigating factor.

Respondent claims to have promptly replaced all deficiencies in the trust account. The facts in this matter do not support that assertion. Accordingly, prompt replacement of deficiencies in the trust account is not included as a mitigating factor.

Respondent claims that the purchase of a new computer and the hiring of personnel to handle the financial record keeping aspect of Respondents law practice to be a mitigating factor. Accurate and complete financial record keeping, including those records related to trust account matters, are an obligation a practicing attorney. Taking steps to accomplish this is not considered by this referee to be a mitigating factor.

F.J.C.