

FILE NO. C9-98-1330

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against SAMUEL M. VAUGHT,
an Attorney at Law of the
State of Minnesota.

**AMENDED PETITION FOR
REVOCATION OF PROBATION
AND FOR FURTHER
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 pursuant to Rule 12(a), Rules on Lawyers Professional Responsibility. Respondent is currently on probation and has committed additional serious misconduct, described below.

INTRODUCTION - DISCIPLINARY HISTORY

1. Attorney Samuel M. Vaught, hereinafter respondent, was admitted to practice law in Minnesota on October 30, 1981. Respondent currently practices law in St. Paul, Minnesota. Respondent has the following disciplinary history:

a. The Minnesota Supreme Court publicly reprimanded respondent on September 21, 1998, and placed respondent on two years probation for failing to timely file state and federal individual income tax returns for the years 1992 through 1996, in violation of Rules 8.4(b) and (d), Minnesota Rules of Professional Conduct (MRPC).

b. Respondent received a private admonition on September 27, 1994, for failing to submit a post-trial brief on time and failing to withdraw from representing his client when illness prevented him from continuing the representation, in violation of Rules 1.3, 1.4, and 1.16, MRPC.

Respondent has committed the following unprofessional conduct warranting revocation of probation and further public discipline:

COUNT ONE

Taylor Matter

2. Respondent represented Vance Lee Crooks in various legal matters. Crooks died in a car accident on April 22, 1998. Thereafter, respondent began representing Crooks' fiancée, Tracy Jo Taylor, regarding the distribution of life insurance proceeds to Taylor, payment of Taylor's debts and other insurance claims, investigation of a dram shop claim on Taylor's behalf and investigation of a wrongful death action on behalf of Taylor's and Crooks' child. In each of the matters, respondent made preliminary inquiries and conducted some investigation; no lawsuits were initiated on Taylor's behalf.

3. During the months following Crooks' death, respondent also represented Crooks' estate and Crooks' three other children (from previous relationships) in their wrongful death claims. Respondent had Crooks' father appointed as personal representative and as trustee, respectively, in those cases.

4. Taylor received the proceeds of Crooks' life insurance policy of \$607,851.94 by mail on June 24, 1998. Respondent picked up Taylor at her home that day and took her to The Bank of St. Paul, where Taylor deposited the life insurance check. Respondent also gave Taylor a letter respondent had prepared, addressed from Taylor to respondent, and directing respondent to place \$52,851.94 of Taylor's funds into respondent's trust account (Exh. 1). The letter, which Taylor signed, directed respondent to use the funds to pay off two bank loans and a car loan on Taylor's Aurora and to pay any costs related to Taylor living in Crooks' home from the date of his death through June 1998, when Taylor moved out. The letter also authorized respondent to be paid for accrued legal fees, costs and disbursements incurred in representing Taylor in various matters through that date. The letter required respondent to provide Taylor with a statement of the accrued fees and charges within ten days and allowed respondent to disburse the funds to himself upon mailing of the statement to Taylor.

The letter also permitted respondent to retain an additional \$5,000 in his trust account as a retainer against future fees, which could be disbursed upon rendering invoices to Taylor. Any remaining funds were to be returned to Taylor no later than July 13, 1998, by depositing them in her account at The Bank of St. Paul.

5. In a discussion in respondent's office later that same day, Taylor also directed respondent to pay off the balance of a fourth loan to G.E. Capital for Taylor's second car, a 1994 Taurus. Taylor gave respondent the payment books for the loan, the outstanding principle for which she believed was about \$9,000.

6. Over the next several months, respondent worked on various matters for Taylor. Taylor did not receive any billing statements from respondent. In about July 1998, Taylor received a late payment notice from G.E. Capital regarding her Taurus loan. Taylor called respondent, who stated that he had been too busy to pay off the G.E. Capital loan but that he would do so. Taylor received a second late payment notice in September 1998, called respondent, and received the same explanation. When Taylor called respondent about a third notice in late November 1998, respondent told her that he had not paid off the loan because there were no longer sufficient funds in his trust account to cover the principal balance. Taylor then demanded an accounting of her funds.

7. In early December 1998, Taylor received by mail, for the first time, two bills from respondent, dated June 24, 1998, and November 30, 1998, and a letter dated December 2, 1998, purporting to account for how respondent had used the funds Taylor had given to him (Exhs. 2, 3 and 4).

a. The June 24, 1998, bill covered services from March through June 1998. The statement showed a balance due of \$17,256.40 for attorneys' fees and disbursements for four matters: negotiating an insurance claim on Taylor's previous car that was wrecked by Crooks, negotiating regarding the proceeds of

the life insurance, estate planning and will preparation, and investigation of wrongful death and dram shop actions on behalf of Taylor. *See* Exh. 2.

b. The November 30, 1998, bill identified work performed between July and November 1998, regarding a real estate purchase, negotiations with G.E. Capital, negotiation with The Bank of St. Paul regarding a new loan, and appointment of Crooks' father as trustee for the wrongful death action. The bill totaled \$4,178.98. *See* Exh. 3.

c. The December 2, 1998, letter incorporated respondent's accounting for the \$52,851.94 that Taylor deposited in respondent's trust account on June 24, 1998. Respondent did use a portion of Taylor's funds to pay off the two bank loans and the Aurora loan. The accounting reflects that respondent also used Taylor's funds to make mortgage payments for several months on Crooks' former homestead, that respondent disbursed over \$17,000 in accrued legal fees and costs to himself on the day he received the funds from Taylor, and that instead of paying off the G.E. Capital loan, respondent tendered payments to G.E. Capital on July 29, October 15, and December 1, 1998. Each payment was equal to about two monthly installments of the G.E. Capital loan. The accounting shows a \$954.95 balance of Taylor's funds remaining in the trust account. *See* Exh. 4.

8. Taylor discharged respondent and hired attorney James Berg to represent her. Berg wrote to respondent on December 22, 1998, to request an explanation of the various billing statements and to obtain a copy of Taylor's file (Exh. 5). Respondent did not respond. Berg again wrote to respondent on January 12, 1999, to request the file and enclosed an authorization from Taylor (Exh. 6). Berg also requested that respondent return the remaining funds of \$954.95 from respondent's trust account to Taylor.

9. In late January 1999 respondent provided Taylor's file to Berg. The file contained just over 200 pages of documents, some of which were duplicates. In

contrast, respondent's June and November billing statements charged Taylor for 2,642 copies. The file contained insufficient documents, correspondence or other materials to justify the time spent on Taylor's matters or the other costs expended.

10. In April 1999, Taylor brought a motion to have respondent removed as attorney for the estate of Vance Lee Crooks. At about the same time, Taylor filed her complaint with the Director's Office (Exh. 7). In early May 1999, respondent withdrew from representing the estate.

11. The Director obtained the bank statements, canceled checks and deposit slips for respondent's trust account at the Bank of St. Paul by subpoena in September 1999. In contrast to respondent's December 2, 1998, accounting for complainant's funds (Exh. 4), the records reveal:

a. From the deposit of the insurance proceeds of \$52,852.94, respondent properly arranged for the payment of complainant's two Bank of St. Paul loans totaling \$20,168.54 and disbursed to himself, on June 26, 1998, \$12,256.40 by a teller check annotated "Crooks fees and costs." Although the December 2, 1998, letter allocates an additional \$5,000 to respondent's fees rather than bank loan 506917.08, the actual disbursement properly paid the loan and is consistent with respondent's notation at the end of his June 24, 1998, bill. See Exh. 2. The item in the December 2 accounting labeled "Loan payoff (SMFCU)" was also properly disbursed on June 26, 1998.

b. The item "Investigative expenses," for \$2,063.35 was disbursed to John Samuelson and Associates, Inc., on June 30, 1998. Respondent later reimbursed himself for these same expenses from the Vance Crooks estate. See *infra* ¶ 19(a).

c. Respondent disbursed \$4,801.56 to Ocwen Federal Bank on June 26, 1998. The annotation for "Loan #0007387038" does not correspond to any bank

loans complainant authorized respondent to pay off but is reflected on a mortgage billing statement addressed to Vance (Exh. 8).

d. Respondent disbursed \$3,593.06 on July 15, 1998, to "Norman Crooks, Per. Rep. of Estate of Vance Lee Crooks" and annotated the check "Reimburse payoff of Aurora SMFCU" (Exh. 9). Although the check amount matches the entry for "Aurora payoff (SMFCU)" on the December 2, 1998, accounting, respondent failed to disclose to complainant that the loan had previously been paid off by a credit life insurance policy purchased by Vance Crooks, nor did respondent provide complainant with any calculation or explanation for the payment to the estate.

e. Respondent disbursed to himself \$3,000 on June 30, 1998, \$2,500 on July 10, 1998, and \$3,447.59 on July 13, 1998, all annotated "Crooks - fees" (Exh. 10). The total additional fees of \$8,947.59 exceeds by \$4,768.61 the amount disclosed as earned fees and costs in respondent's November 30, 1998, billing statement and the corresponding entry in respondent's December 2, 1998, letter. *See* Exhs. 3 and 4. In fact, contrary to the letter, no check for \$4,178.98 ever passed through respondent's trust account.

f. Respondent disbursed check number 2005 for \$701.20 to the Bank of St. Paul on July 29, 1998, annotated "Crooks/GE." Respondent also disbursed check 2015 for \$753.20 to the Bank of St. Paul on December 1, 1998. Both checks correspond to entries on the December 2, 1998, accounting. No check for \$753.20 cleared respondent's trust account in October or November 1998, contrary to the entry in the December 2, 1998, accounting labeled "10/15/98 Auto Payment (GE Capitol)." *See* Exh. 4.

g. Although by respondent's accounting \$954.95 of complainant's funds should have remained in respondent's trust account at all times, respondent's balance fell below this amount from August 10 to September 7,

1998, September 14 to November 1, 1998, February 8 to March 9, 1999, and May 28 to July 31, 1999, the last bank statement received by the Director (Exh. 11).

12. As of the date of this petition, respondent has failed to return to Taylor the \$954.95 purportedly remaining in his trust account and has not provided any additional information regarding the time respondent allegedly expended performing work for Taylor. The Director has been unable to verify whether respondent charged reasonable fees and costs to Taylor because respondent has failed to respond to the Director's requests for information. *See* Count Three, *infra*.

13. Respondent's conduct violated Rules 1.2, 1.4, 1.5(a), 1.7(b), 1.15(b), 1.16(d), 4.1, 8.4(c), and 8.4(c), MRPC, and Lawyers Professional Responsibility Board Opinions 13 and 15.

COUNT TWO

Improper Handling of Minor Settlement

14. After Vance Lee Crooks died, respondent petitioned the Scott County District Court to have Vance's father, Norman W. Crooks, appointed as trustee to act on behalf of all four of Vance's minor children. Respondent pursued claims on behalf of the children against Mark Warhol, the driver of the vehicle in which Vance was riding when he died and the childrens' potential dram shop claims against the bar in which Warhol had been drinking before the accident.

15. Respondent wrote to Warhol's insurer, State Farm, on November 25, 1998, and demanded payment of the policy limits of \$100,000 to the minor children. State Farm agreed and forwarded its settlement draft for \$100,000 to respondent on March 16, 1999.

16. On the same date respondent received the settlement check, respondent prepared a letter and a retainer agreement for Norman Crooks regarding the matter. The retainer agreement authorized respondent to charge a fee of \$38,500 for his representation of the wrongful death claims against Warhol. The agreement recites that

as further consideration for this fee, respondent would waive his claims against Vance's estate for an equal amount of fees owed to respondent for work respondent performed for Vance prior to his death. The agreement also provided for reimbursement of respondent's costs (Exh. 12).

17. Respondent did not inform the district court of the wrongful death settlement, did not seek court approval of his fees and costs, or arrange for the settlement funds to be deposited in a financial institution on behalf of the minor children, all in violation of Minnesota General Rule of Practice 145.

18. Respondent obtained Norman Crooks' endorsement on the settlement check and deposited the proceeds in his trust account on March 17, 1999. Respondent issued a check to the Estate of Vance Lee Crooks on March 23, 1999, for \$58,717.19, representing the \$100,000 settlement less \$41,807.81 for respondent's fees and costs.

19. Respondent provided Norman with a billing statement dated March 15, 1999, setting forth the fees and costs incurred in pursuing the wrongful death claim against Warhol (Exh. 13). In addition to respondent's fee of \$38,500, respondent improperly claimed the following amounts as costs:

a. Respondent charged \$2,063.50 for "Investigation services and fees John Samuelson and Associates." In fact, respondent had already paid this bill from the funds Tracy Crooks placed in trust with respondent in June 1998.

b. Respondent charged for a probate court filing fee of \$149, certified copies of probate letters for \$220, and publication of a probate notice for \$72. None of these costs were incurred in connection with the minors' settlement and should have been paid or reimbursed to respondent from Vance's estate.

c. Respondent charged \$525 for drafting wills for Norman, Linda, and Jodie Crooks. These matters were also unrelated to the minors' settlement.

20. Respondent disbursed the \$41,807.81 retained from the settlement funds between March 20 and April 15, 1999, in a series of check disbursements to himself or to the Bank of St. Paul.

21. Respondent's conduct violated Rules 1.4, 1.5(a), 1.7(b), 3.4(c), 4.1, 8.4(c) and 8.4(d), MRPC.

COUNT THREE

Non-Cooperation

22. The Director sent respondent a notice of investigation of Taylor's complaint on April 27, 1999. The notice asked respondent to respond to the complaint, to provide his trust account books and records for the previous year, to provide the complete files for all matters regarding his representation of Taylor, and to provide records supporting his billing statements. The Director asked for respondent's response within two weeks.

23. Respondent wrote to the Director on May 13, 1999, to ask for an extension of time to respond to the complaint. The Director agreed to an extension to June 1, 1999.

24. Respondent next contacted the Director's Office by telephone on June 8, 1999. Respondent stated that he had moved some of his records to an offsite storage facility three months earlier and was unable to find some of his billing records. Respondent asked whether he should send a partial response to the complaint and the Director's assistant informed him that he should. Respondent stated that the partial response would be received within a couple of days.

25. Respondent did not provide the partial response. The Director wrote to respondent on June 15, 1999, and asked respondent to provide his response no later than June 23, 1999.

26. Respondent failed to respond. The Director wrote to respondent by certified mail on June 25, 1999. The letter informed respondent that his probation might

be revoked if he failed to respond and informed respondent that a petition would be forthcoming if respondent's response was not received by July 6, 1999.

27. Respondent wrote to the Director on June 28, 1999. Respondent acknowledged that his response to the complaint was "long overdue." Respondent stated that he had underestimated the amount of time necessary to complete his response, that he had been detained by other client matters, and that he had canceled a vacation for the July 4 holiday weekend so that he could prepare his response and submit it by July 6, 1999.

28. Respondent wrote to the Director on July 7, 1999, to inform the Director that respondent had been ill for two days. Respondent stated that his response had been completed in draft form and that he only needed to type it before forwarding to the Director's Office. Respondent wrote to the Director again on July 9, 1999, to state that he had been ill all week but was now back in the office. Respondent stated he would complete his response and mail it so that the Director would receive it by Monday, July 12, 1999.

29. Respondent wrote to the Director again on July 12, 1999. Respondent stated that a good friend and client had died the previous Friday and that respondent was closely involved in funeral preparations and the ceremony itself, which would be conducted on July 14, 1999. Respondent stated that his response would be received on the day following the funeral.

30. Respondent called the Director's Office on July 21, 1999. Respondent stated that although he had avoided responding, his response was complete and that the relevant documents were on his desk. Respondent stated he would proofread his response and deliver it that day or the next.

31. The Director served respondent with the original petition for disciplinary action on July 26, 1999. Respondent did not serve and file an answer within 20 days, as set forth in Rule 15, RLPR. Instead, on August 18, 1999, respondent sent the Director a

letter in which he offered to "surrender" by agreeing to leave the practice of law on January 1, 2000, and "be placed on whatever status, short of disbarment, you deem appropriate." Respondent did not include with his letter any response to Taylor's complaint or any documents.

32. The Director replied to respondent by an August 19, 1999, letter that settlement discussions could not begin until respondent provided the information the Director has previously requested. The Director offered respondent an extension of time to submit his answer and, thereafter, the Director decided to subpoena respondent's trust account records. *See supra* ¶ 11. As of the date of this petition, the Director has not received a response from respondent to the allegations of Taylor's complaint or any of the documents the Director requested.

33. Respondent's conduct violated Rules 8.1(a)(3) and 8.4(d), MRPC, and Rule 25, RLPR.

WHEREFORE, the Director respectfully prays for an order of this Court revoking respondent's probation, disbaring respondent from the practice of law 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: November 16, 1999.



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