

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against SAMUEL M. VAUGHT,
a Minnesota Attorney,
Registration No. 131519.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

Upon the approval of Lawyers Professional Responsibility Board Panel Chair Wood R. Foster, Jr., 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 October 30, 1981. Respondent was suspended from the practice of law on January 7, 2002, and has not since been reinstated.

Further serious allegations of unprofessional conduct warranting public discipline have been brought to the Director's attention since respondent's suspension:

DISCIPLINARY HISTORY

Respondent's disciplinary history is as follows:

- a. A September 27, 1994, admonition for violation of Rules 1.3, 1.4, and 1.16, Minnesota Rules of Professional Conduct (MRPC).
- b. A September 21, 1998, public reprimand and two years probation for failing to file state and federal income tax returns, in violation of Rules 8.4(b) and (d), MRPC. *In re Vaught*, 583 N.W.2d 924 (Minn. 1998).

c. A January 7, 2002, indefinite suspension from the practice of law for a minimum period of three years for misappropriation of client funds, engaging in a series of conflicts of interest, failing to promptly return unearned fees, failing to seek court approval of a wrongful death settlement on behalf of minors, failing to keep the required trust account books and records, and failing to cooperate with the investigation of a client ethics complaint in violation of Rules 1.4, 1.7(b), 1.15, 1.16(d), 8.4(c) and 8.4(d), MRPC. *In re Vaught*, 637 N.W.2d 570 (Minn. 2002).

FIRST COUNT

Misappropriation of Client Funds and False Statements

1. Prior to his January 2002 suspension, respondent represented the Minneapolis On-Sale Liquor Pension and Trust Funds and the Minneapolis Culinary Beverage and Miscellaneous Employers-Employees Trust Fund (collectively referred to as "the Funds") for a period of approximately 20 years.

2. Among the matters respondent handled on behalf of the Funds was a federal district court lawsuit against Richard Bruce Van Tassel and Archie's Too, Inc. ("Archie's") for delinquent fringe benefit contributions. Respondent commenced the lawsuit in 1998.

3. On June 10, 1999, the Funds and Archie's settled their lawsuit. Pursuant to the terms of settlement, Archie's executed a \$45,000 promissory note in favor of the Funds and a confession of judgment. The promissory note required Archie's to pay \$5,000 to the Funds at the time of settlement and \$2,500 every month thereafter until the full \$45,000, plus any accrued interest or penalties, was paid in full.

4. On July 1, 1999, Archie's paid to respondent the first \$5,000 due under the promissory note. Respondent forwarded the check to the Funds.

5. During the period after July 1, 1999, respondent received \$12,500 in additional payments from Archie's, as follows:

August 26, 1999	\$2,500.00
October 11, 1999	\$2,500.00
October 29, 1999	\$2,500.00
December 10, 1999	\$2,500.00
June 8, 2000	<u>\$2,500.00</u>
Total:	\$12,500.00

6. Respondent failed to notify the Funds of his receipt of the above payments or to forward those payments to the Funds. Respondent misappropriated the payments for his own use and benefit.

7. On December 5, 2000, due to Archie's failure to make payments in accordance with the settlement, respondent served and filed a confession of judgment, together with an affidavit of counsel and an affidavit of default, identification, non-military status, amount due and costs and disbursements.

8. In the affidavit of counsel, respondent represented that since July 1, 1999, Archie's had "tendered . . . only five monthly installment payments . . . [Archie's has] not tendered . . . any payments since August, 2000." Respondent's affidavit implied that only \$10,000 in payments had been received when he represented that the remaining unpaid principal balance on the promissory note was \$30,000.¹

9. On December 13, 2000, judgment was entered against Archie's in the amount of \$36,732, comprised of the \$30,000 balance respondent represented to be due on the promissory note, plus interest and penalties.

¹ As detailed in ¶ 5, checks obtained by the Director reflect that prior to the entry of judgment, respondent received \$12,500 in Archie's monthly settlement payments. In his affidavit of counsel, however, respondent stated that the unpaid balance on the promissory note was \$30,000, indicating that he had received only \$10,000 in monthly settlement payments. Because respondent has not cooperated in the Director's investigation (see ¶¶ 32-35), the Director has been unable to resolve this discrepancy.

10. During the period after December 13, 2000, respondent received additional payments from Archie's totaling \$37,479.23, as follows:

February 19, 2001	\$10,000.00
March 15, 2001	\$6,000.00
April 16, 2001	\$6,000.00
May 16, 2001	\$6,000.00
June 18, 2001	\$6,000.00
July 16, 2001	<u>\$3,479.23</u>
Total:	\$37,479.23

11. Respondent failed to notify the Funds of his receipt of the above payments or to forward any of the payments to the Funds. Respondent misappropriated the payments for his own use and benefit.

12. On July 31, 2001, respondent filed a satisfaction of judgment regarding the Funds' December 13, 2000, judgment against Archie's.

13. On June 17, 2002, the Funds filed an ethics complaint against respondent alleging his failure to return their client file. In a "Final Invoice" dated January 8, 2002, but not provided to the Funds until October 22, 2002, respondent acknowledged receiving and retaining \$37,479.23 of settlement payments from Archie's.

14. Respondent's purported "Final Invoice" reflects that the \$37,479.23 in settlement payments was retained to satisfy respondent's attorney's fees and costs. In fact, however, respondent was not entitled to and misappropriated both the \$12,500 in monthly settlement payments he received on the Funds' behalf prior to the entry of judgment, and the \$37,479.23 he received after entry of judgment.

15. Respondent stated to Matt Winkel, a representative of the Funds' third party administrator, that he was authorized by the Funds' trustees including Daniel Kuschke, who is now deceased, to retain the settlement payments and to apply those payments against his fees and costs. In fact, however, respondent's retention of the

settlement payments was not authorized by the Funds and respondent's statements to Winkel are false.

16. Many of the entries on respondent's "Final Invoice" are either duplicative of entries on earlier invoices, which the Funds had paid, or are false. For example:

a. Respondent included 62.3 hours for "Drafting and redrafting summary plan description" in connection with the Funds' conversion from a fully insured health plan to self-insured health plan. In fact, however, lawyers for a related Fund had provided respondent with a summary plan description that was nearly identical to the one needed for the Funds. Respondent needed only to make relatively minor changes to the employer tax identification number, minor eligibility provisions and disability benefit terms. Further, the third-party administrator provided respondent with specific language for the minor eligibility provisions and disability benefit terms. A more reasonable estimate of respondent's time in preparing the Funds' summary plan description is less than 10 hours.

b. Respondent included "Monthly Retainers" for December 2000 and January 2001, for which he had already billed and been paid.

c. Respondent included additional December 2000 services for which he had already billed and been paid.

d. Respondent included costs, including two filing fees, for which he had already billed and been paid.

In addition, respondent's "Final Invoice" reflects an increase in respondent's hourly rate, from \$90 to \$125, that the Funds were not aware of and had not authorized.

17. Respondent's failure to notify the Funds of his receipt of settlement payments and his misappropriation of those payments violated Rules 1.4, 1.15(c), and 8.4(c) and (d), MRPC.

18. Respondent's false statements regarding authorization to retain settlement payments and false entries on his billing statement violated Rules 8.4(c) and (d), MRPC.

SECOND COUNT

Failure to Promptly Return Client Files

19. Paragraphs 1 to 18 above are incorporated herein by reference.

20. By letter dated January 11, 2002, respondent notified the Funds of his suspension from the practice of law and advised them of the need to retain substitute counsel. The Funds thereafter retained the Rosene, Haugrud & Staab law firm ("the Rosene Firm") to represent them.

21. In his January 11, 2002, letter, respondent stated, "It is my current intent to submit all papers which are the property of the Funds to the offices of the Fund Administrator no later than Friday, January 18, 2002, along with a final invoice for services provided to the Funds during the calendar year 2001." Respondent did not, in fact, deliver the Funds' files as promised.

22. In February 2002 the Rosene Firm contacted respondent and asked him to transfer the Funds' files to it. Respondent failed to do so.

23. During the period January 2002 to June 2002, the Rosene Firm left several voicemail messages for respondent regarding transfer of the Funds' files. In addition, the Rosene Firm wrote to respondent on May 22 and June 27, 2002, regarding the file transfer. Respondent failed to transfer the files or to even respond to the Rosene Firm's requests.

24. On June 17, 2002, the Rosene Firm filed a complaint with the Director regarding respondent's failure to respond to its requests for the Funds' files. On July 17, 2002, the Director issued a notice of investigation to respondent requesting his response to the complaint.

25. By letter dated August 2, 2002, respondent transferred three active files to the Funds' administrator. Respondent stated that he had hundreds of additional

archived files in his possession, but did not state whether he intended to return those files or where the files were located.

26. On August 20, 2002, respondent and the Rosene Firm reached an agreement regarding the Funds' remaining files. Respondent agreed to begin reviewing his closed files in order to locate all of the Funds' files. Respondent further agreed to contact the Rosene Firm by September 3, 2002, and advise whether the files were available for transfer to the Rosene Firm.

27. Respondent failed to contact the Rosene Firm on September 3, 2002, as agreed. On September 5, 2002, the Rosene Firm telephoned respondent. Respondent stated that he would call the Rosene Firm sometime during the week of September 9, 2002, to discuss the file transfer. Respondent failed to call the Rosene Firm as promised.

28. On or about September 27, 2002, the Rosene Firm served and filed a petition and order to show cause regarding the Funds' files. The hearing on the petition was scheduled for October 25, 2002.

29. At the October 25, 2002, hearing, respondent delivered the Funds' files to the Rosene Firm.

30. By order dated November 6, 2002, amended on November 12, 2002, respondent was ordered to pay \$1,612.50 in attorney's fees to the Rosene Firm. The order was reduced to judgment. To date, respondent has not affirmatively paid any portion of the judgment, although the Rosene Firm recently garnished \$81.89 from respondent's bank account.

31. Respondent's conduct in failing to timely deliver the Funds' files to substitute counsel violated Rule 1.16(d), MRPC.

THIRD COUNT

Failure to Cooperate

32. On January 16, 2003, the Director's Office wrote to respondent and requested documents and information regarding his alleged misappropriation of

settlement payments intended for the Funds. Respondent's response was due within two weeks. Respondent failed to respond.

33. On February 4, 2003, the Director's Office wrote respondent a second time requesting his response to the January 16 letter within one week. Respondent again failed to respond.

34. On March 18, 2003, the Director's Office wrote to respondent, again requesting his response to the January 16 letter and additional materials within one week. Respondent again failed to respond.

35. On April 18, 2003, the Director issued charges of unprofessional conduct herein. Also on April 18, 2003, pursuant to Rules 9(a) and 1(8), RLPR, the Director mailed to respondent a notice of a May 20, 2003, pre-hearing meeting.

36. On the morning of May 20, 2003, prior to the pre-hearing meeting, the Director received a letter from respondent stating that various personal (primarily his sister's illness and death and responsibilities related to her estate) and health (depression and diabetes-related difficulties) issues had prevented him from cooperating in the Director's investigation. Respondent did not, however, include in his letter an answer to the charges as required by Rule 9(b), RLPR.

37. Respondent appeared for the May 20, 2003, pre-hearing meeting. Among other things, respondent stated that although his diabetes-related health problems continued to affect him, he had improved sufficiently to work 25-30 hours per week as a business manager.

38. The Director continued the pre-hearing meeting to June 10, 2003, largely because respondent had not prepared an answer to the charges or, by his own admission, even reviewed them carefully. The Director provided respondent with copies of the January 16 and March 18, 2003, letters and several blank medical authorizations. The Director requested that respondent provide the information and documents requested in the letters and complete, sign and return the medical

authorizations by or before the date of the continued pre-hearing. In addition, the Director requested that respondent provide his answer to the charges at least seven days in advance of the continued pre-hearing, as required by Rule 9(b), RLPR. The Director confirmed these requests in a May 23, 2003, letter.

39. On May 28, 2003, the Director wrote to respondent to change the time of the June 10, 2003, pre-hearing from 10:00 a.m. to 1:00 p.m.

40. On June 4, 2003, the Director wrote to respondent noting that his answer to the charges had not been received and requesting that respondent provide his answer at his earliest opportunity. Respondent failed to provide the required answer.

41. On the morning of June 10, 2003, the Director received a letter from respondent in which he stated, among other things, that he was not available to attend that afternoon's pre-hearing meeting. Respondent also stated:

After much discussion with family and friends, my wife and I came to the decision last evening that, contingent upon being able to agree to a factual stipulation, I would accept disbarment as a consequence of and in resolution of the above-referenced charge.

It was a difficult decision as I am certain you must be aware. And it was not an easy decision because I find myself unable to agree with a number of the factual allegations. However, my behavior has been such that I do not disagree disbarment is an appropriate penalty.

42. On June 10, 2003, the Director faxed and mailed respondent a proposed petition for disciplinary action and stipulation for discipline. The Director scheduled a June 17, 2003, meeting for the alternative purposes of either executing the stipulation, if an agreement could be reached as to the facts, or to complete the pre-hearing meeting, if an agreement could not be reached. The Director asked respondent to either respond to the factual allegations in the proposed petition for disciplinary action or submit his answer to the charges and the other materials requested at the May 20, 2003, pre-hearing meeting, by June 12, 2003.

43. The Director received no further response from respondent and respondent did not appear for the June 17, 2003, continued pre-hearing meeting.

44. On June 18, 2003, the Director wrote again to respondent. The Director offered respondent "another opportunity to meet with us to discuss resolution of this matter" on June 26, 2003. Respondent failed to appear.

45. On July 1, 2003, the Director submitted to the Panel Chair, and served on respondent, a notice of motion and motion to Panel Chair, and supporting documents, requesting approval to bypass the Panel process and immediately file a petition for disciplinary action against respondent, pursuant to Rule 10(d), RLPR.

46. On July 22, 2003, the Director wrote to respondent indicating his continued willingness to discuss resolution of the matter and inviting respondent to contact him by or before July 28, 2003, for that purpose.

47. On or about August 1, 2003, Janet Lee, respondent's wife, telephoned the Director. Ms. Lee informed the Director that respondent was in the hospital and would likely require significant rehabilitative care following his discharge. Ms. Lee provided the Director with a letter from the hospital confirming this information. The Director agreed with Ms. Lee to hold the charges of unprofessional conduct in abeyance until such time as respondent was discharged from rehabilitative care and able to participate in the proceedings. The Director asked Ms. Lee to keep him informed of respondent's recovery progress.

48. On August 7, 2003, the Director withdrew his motion from the Panel Chair's consideration.

49. On September 19, 2003, Ms. Lee called the Director and stated that respondent's condition had improved, but he was still in the hospital and would be undergoing heart surgery.

50. Ms. Lee called the Director on November 17, 2003. She stated that respondent had been discharged from the hospital on October 31, 2003, and would require an additional three to six months to fully recover.

51. On November 25, 2003, the Director mailed to respondent, c/o Ms. Lee, medical authorizations and asked respondent to sign and return the authorizations within ten days. Respondent failed to return the signed authorizations or otherwise communicate with the Director.

52. On December 12, 2003, the Director wrote again to respondent, c/o Ms. Lee, requesting the signed medical authorizations. The Director stated:

Please note that if Mr. Vaught fails to cooperate in these efforts to obtain independent verification that his current medical condition prevents him from participating in these proceedings, we will have no choice but to go forward with these proceedings.

Respondent failed to return the signed authorizations or otherwise communicate with the Director.

53. On December 23, 2003, a paralegal in the Director's Office called respondent's home. The paralegal left a message on respondent's answering machine asking that he contact the Director's Office and state when the signed medical authorizations could be expected. Respondent failed to respond.

54. On December 29, 2003, the Director wrote again to respondent, c/o Ms. Lee, asking for the signed medical authorizations. Respondent failed to respond.

55. On January 5, 2004, a paralegal in the Director's Office again called respondent's home and left a message on respondent's answering machine concerning the medical authorizations. Respondent failed to respond.

56. On June 3, 2004, an assistant director in the Director's Office contacted respondent's home and left a message on respondent's answering machine requesting that he return the signed medical authorizations and provide documentation regarding his current medical condition. The Director informed respondent that if he did not

contact the Director within two days, that the disciplinary proceedings would be reinstated.

57. Since Ms. Lee's last telephone conversation with the Director on November 17, 2003, neither respondent nor Ms. Lee has made any effort to communicate with the Director.

58. Respondent's repeated failure to respond to the Director's letters and phone calls requesting information and failure to attend the pre-hearing meeting violated Rule 25, RLPR, and Rule 8.1(a)(3), MRPC.

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 13, 2004.



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