

FILE NO. A11-2038

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
Against BARRY V. VOSS,
a Minnesota Attorney,
Registration No. 113293.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION
FOR DISCIPLINE**

The above-captioned matter was heard on February 27, 28, and 29, 2012, by the undersigned acting as referee by appointment of the Minnesota Supreme Court. Siama Y. Chaudhary and Timothy M. Burke appeared on behalf of the Director of the Office of Lawyers Professional Responsibility (Director). Edward F. Kautzer appeared on behalf of respondent, Barry V. Voss, who was personally present throughout the proceedings.

The hearing was conducted on the Director's October 26, 2011, petition for disciplinary action ("petition"). The Director presented the live testimony of Eva Breyfogle, Roger Hawley, Shane McCann, Robert Beissel, Maxine Rossini, and Pamela Septon. By agreement of the parties, the Director presented the testimony of David Breyfogle, Bradley Lovstad, Devin Dugger, Martin Hernandez-Vega, Kou Moua, and Edward Septon by deposition, and the testimony of Patrick Dinneen by affidavit. Respondent testified at the hearing. Respondent also presented the live testimony of Steven Meshbesh, Joseph Kowalcik, and the Honorable James Rosenbaum.

Director's exhibits 1-147 were received into evidence. Respondent's exhibits 201-211, 213-240, 246 and 248-365 were received into evidence.

The parties were directed to submit on or before April 12, 2012, proposed findings of fact, conclusions of law, a recommendation for appropriate discipline and memorandum of law. The parties were directed to submit any reply memorandum no later than April 26, 2012.¹ The referee's findings of fact, conclusions of law and recommendation are due to the Supreme Court no later than May 31, 2012.

In his answer to the petition ("R. Ans."), respondent admitted certain factual allegations, denied others and stated he was "without sufficient information to admit or deny" other allegations. The findings and conclusions made below are based upon respondent's admissions, the documentary evidence the parties submitted, the testimony presented, the demeanor and credibility of respondent and the other witnesses as determined by the undersigned and the reasonable inferences to be drawn from the documents and testimony. If respondent's answer admits a particular factual finding made below, then even though the Director may have provided additional evidence to establish the finding, no other evidence will necessarily be cited. For each factual finding made below, the undersigned evaluated the relevant documents and testimony, accepted as credible the testimony consistent with the finding and did not accept the testimony inconsistent with the finding.

Based upon the evidence as outlined above, and upon all of the files, records and proceedings herein, the referee makes the following:

FINDINGS OF FACT

1. On September 29, 1978, respondent was admitted to practice law in Minnesota. Respondent has appeared *pro hac vice* in other states, but testified that he is not admitted to practice law in any state other than Minnesota. Respondent currently practices law in Edina, Minnesota. (R. Test.)

¹ Any reply memorandum was directed to be submitted in the form of a letter.

Edward Septon Matter

2. In June 2008, Edward Septon hired respondent to represent him in a criminal appeal in the United States Court of Appeals (R. Ans.; E. Septon Dep., pp. 6-7). Septon paid respondent \$25,000 to represent him in the action (R. Ans.; E. Septon Dep., p. 7).

3. In early July 2008, Septon paid respondent an additional \$12,400 which was to be held in respondent's trust account in anticipation of any potential civil suits resulting from the same factual circumstances, minus \$2,400 which was supposed to be returned to Septon immediately (E. Septon Dep., pp. 7-10; P. Septon Test.; Ex. 87). Respondent and Septon did not enter into a written retainer agreement (E. Septon Dep., p. 8; P. Septon Test.). Respondent did not return the \$2,400 as promised (E. Septon Dep., pp. 8-11; P. Septon Test.).

4. On March 12, 2009, the U.S. Court of Appeals affirmed the decision of the U.S. District Court (R. Ans.).

5. On June 17, 2009, Septon sent respondent a certified letter stating he no longer desired respondent's services for any potential civil suit and requesting the return of the \$12,400 that was to be held in trust for such representation. Septon further requested respondent return his criminal file. (R. Ans.; E. Septon Dep., pp. 14-16; Ex. 88.) An employee of respondent's law office signed for the letter on June 19, 2009 (R. Ans.; E. Septon Dep., p. 14; Ex. 88). Respondent failed to return Septon's file or the \$12,400 (R. Ans.; E. Septon Dep., pp. 16-17; Ex. 88).

6. On August 23, 2009, Septon sent respondent a second certified letter requesting respondent contact Septon's wife to let her know when his file and the \$12,400 would be available for Septon's wife to pick up. An employee of respondent's law firm signed the return receipt for the letter on August 25, 2009. (R. Ans.; E. Septon

Dep., pp. 17-18; Ex. 89.) Respondent failed to return Septon's file or the \$12,400 (R. Ans.; E. Septon Dep., pp. 18-19; Ex. 89).

7. In addition to Septon's June and August 2009 certified letters requesting the return of his file, between July and November 2009, Septon's wife sent several emails to respondent's law office requesting the return of Septon's files (R. Ans.; P. Septon Test.; E. Septon Dep., pp. 20-22; Ex. 90).

8. On November 4, 2009, Septon's wife was successful in retrieving a portion of his file from respondent's office (R. Ans.; P. Septon Test.; E. Septon Dep., pp. 16-17, 22).

9. On November 19, 2009, Septon's wife emailed respondent's office requesting information about the return of the \$12,400 (R. Ans.; P. Septon Test.; Ex. 91).

10. On November 20, 2009, Tiffini El, an employee of respondent's firm replied to Septon's wife, stating, "I did tell Mr. Voss of your concern and he informed me he would contact you personally about this matter." (P. Septon Test.; Ex. 91.) Respondent failed to contact Septon or Septon's wife. (P. Septon Test.; E. Septon Dep., pp. 23-24; Ex. 91).

11. Respondent implied that the oral fee arrangement agreement was a type of flat fee, and alleged that both he and an associate, a Bob Olson, performed substantial legal research on the civil matter, which research was transmitted with the file to Septon's wife. The referee does not credit Respondent's testimony regarding the civil fee matter.

12. Respondent has not returned any of the \$12,400 thereby misappropriating the funds to his own benefit. *See In re Lundeen*, No. A11-0896, 2012 WL 933102, at *4 (Minn. Mar. 21, 2012) (lawyer "misappropriated funds belonging to [clients] by performing no work on their matters and never returning the funds to the clients.").

Minnesota Department of Revenue Matter

13. Despite having employees and an obligation to do so, respondent failed to timely file and pay state employer withholding taxes for each quarter of 2008 (R. Ans.; Exs. 1, 2, 3, 5, 6, 9, 10 and 11). Respondent withheld money from his employees to pay these taxes, but failed to pay the money to the state. Instead, respondent spent the money. (R. Test.)

14. **1st Quarter 2008.** Respondent failed to timely file his employer withholding tax return for the first quarter of 2008, ending March 31, 2008, and due April 30, 2008. Respondent did not file his return until March 19, 2009, over ten months late. (R. Ans.; Ex. 10.) Respondent failed to timely pay his employer withholding tax owing in the amount of \$3,162.10 for the first quarter of 2008, and was assessed penalties and interest for his failure to pay (R. Ans.; Exs. 1, 2, 3, 5, 6, 9 and 11).

15. **2nd Quarter 2008.** Respondent failed to timely file his employer withholding tax return for the second quarter of 2008, ending June 30, 2008, and due July 31, 2008. Respondent did not file his return until March 19, 2009, over seven months late. (R. Ans.; Ex. 10.) Respondent failed to timely pay his employer withholding tax owing in the amount of \$3,291.74 for the second quarter of 2008, and was assessed penalties and interest for his failure to pay (R. Ans.; Exs. 1, 2, 3, 5, 6, 9 and 11).

16. **3rd Quarter 2008.** Respondent failed to timely file his employer withholding tax return for the third quarter of 2008, ending September 30, 2008, and due October 31, 2008. Respondent did not file his return until March 19, 2009, over four months late. (R. Ans.; Ex. 10.) Respondent failed to timely pay his employer withholding tax owing in the amount of \$3,014.10 for the third quarter of 2008, and was assessed penalties and interest for his failure to pay (R. Ans.; Exs. 1, 2, 3, 5, 6, 9 and 11).

17. **4th Quarter 2008.** Respondent failed to timely file his employer withholding tax return for the fourth quarter of 2008, ending December 31, 2008, and due March 2, 2009. Respondent did not file his return until March 19, 2009, over two weeks late. (R. Ans.; Ex. 10.) Respondent failed to timely pay his employer withholding tax owing in the amount of \$4,319.74 for the fourth quarter of 2008, and was assessed penalties and interest for his failure to pay (R. Ans.; Exs. 1, 2, 3, 5, 6, 9 and 11).

18. Respondent failed to timely file and pay his employer withholding taxes for each quarter of 2009 (R. Ans.; Ex. 11).

19. **1st Quarter 2009.** Respondent failed to timely file his employer withholding tax return for the first quarter of 2009, ending March 31, 2009. Respondent failed to pay his employer withholding tax owing in the amount of \$1,713.92 for the first quarter of 2009, and was assessed penalties and interest for his failure to pay. (R. Ans.; Ex. 11.)

20. **2nd Quarter 2009.** Respondent failed to timely file his employer withholding tax return for the second quarter of 2009, ending June 30, 2009. Respondent failed to pay his employer withholding tax owing in the amount of \$1,367.46 for the second quarter of 2009, and was assessed penalties and interest for his failure to pay. (R. Ans.; Ex. 11.)

21. **3rd Quarter 2009.** Respondent failed to timely file his employer withholding tax return for the third quarter of 2009, ending September 30, 2009. Respondent failed to pay his employer withholding tax owing in the amount of \$1,021.00 for the third quarter of 2009, and was assessed penalties and interest for his failure to pay. (R. Ans.; Ex. 11.)

22. **4th Quarter 2009.** Respondent failed to timely file his employer withholding tax return for the fourth quarter of 2009, ending December 31, 2009.

Respondent failed to pay his employer withholding tax owing in the amount of \$993.00 for the fourth quarter of 2009, and was assessed penalties and interest for his failure to pay. (R. Ans.; Ex. 11.)

23. Respondent failed to timely pay his employer withholding taxes for each quarter during 2010, and failed to timely file his quarterly returns for the first quarter of 2010 (R. Ans.; Ex. 11).

24. **1st Quarter 2010.** Respondent failed to timely file his employer withholding tax return for the first quarter of 2010, ending March 31, 2010. Respondent failed to pay his employer withholding tax owing in the amount of \$993.00 for the first quarter of 2010, and was assessed penalties, interest, and a lien filing fee for his failure to pay. (R. Ans.; Ex. 11.)

25. **2nd Quarter 2010.** Respondent failed to pay his employer withholding tax owing in the amount of \$993.00 for the second quarter of 2010, ending June 30, 2010. Respondent was assessed penalties and interest for his failure to pay. (R. Ans.; Ex. 11.)

26. **3rd Quarter 2010.** Respondent failed to pay his employer withholding tax owing in the amount of \$993.00 for the third quarter of 2010, ending September 30, 2010. Respondent was assessed interest, a lien filing fee, and an additional 25 percent penalty for his repeated failure to timely pay his employer withholding tax. (R. Ans.; Ex. 11.)

27. **4th Quarter 2010.** Respondent failed to pay his employer withholding tax owing in the amount of \$168.00 for the third quarter of 2010, ending December 31, 2010. Respondent was assessed interest and an additional 25 percent penalty for his repeated failure to timely pay his employer withholding tax. (R. Ans.; Ex. 11.)

28. Respondent failed to pay his employer withholding tax owing in the amount of \$307.00 for the first quarter of 2011, ending March 31, 2011. Respondent was assessed interest and an additional 25 percent penalty for his repeated failure to timely pay his employer withholding tax. (R. Ans.; Ex. 11.)

29. As of September 13, 2011, respondent's total outstanding state employer withholding tax liability for the years 2008, 2009, 2010, and 2011 was \$30,216.57.

(R. Ans.; Ex. 11.) As of January 25, 2012, respondent's outstanding state employer withholding tax liability, including penalties, interest and fees was \$37,266.93 (Ex. 201, p. 3).

30. Respondent has met with a tax attorney, filed all required tax returns through the third quarter of 2011, and signed a repayment agreement with the Minnesota Department of Revenue. (Joseph Kowalcik Test., Ex. 201)

Kenneth Tschetter Matter

31. On January 25, 2005, respondent called attorney Kenneth Tschetter and inquired whether Tschetter would be willing to serve as local counsel in South Dakota for one of respondent's clients. Respondent's client was facing criminal charges in both South Dakota and Minnesota but respondent was not licensed to practice in South Dakota. Tschetter, who is licensed to practice in South Dakota, agreed to assist respondent at his regular hourly rate of \$150. (R. Ans.)

32. On January 26, 2005, Tschetter wrote respondent confirming the agreement made over the phone on January 25, 2005 (R. Ans.; Ex. 12).

33. From January 26, 2005, Tschetter handled the criminal matter in South Dakota and respondent handled the criminal matter in Minnesota (Exs. 13, 14, 15, 16, 18, 19, 20, 21, 22, 23 and 28). Tschetter made court appearances in South Dakota on behalf of said client (Exs. 13, 20, 23 and 28).

34. Tschetter submitted written invoices to respondent (R. Ans.; Exs. 21, 22, 23, 24 and 28). Respondent paid \$2,704.82 toward the invoices submitted by Tschetter, but failed to make any further payments after July 5, 2005 (R. Test.; R. Ans.; Exs. 17, 21, 22, 23, 24 and 28).

35. In early October 2006, respondent left a message requesting Tschetter send to him copies of all Tschetter's invoices (R. Ans.; Ex. 28). On October 6, 2006, Tschetter sent copies of all invoices to respondent (R. Ans.; Exs. 22, 23 and 28).

36. On January 22, 2007, Tschetter wrote respondent expressing frustration at respondent's failure to return his calls and requesting prompt payment of the \$4,909.10 in fees respondent owed to Tschetter (R. Ans.; Ex. 24). Respondent did not respond to Tschetter and did not pay the outstanding attorney's fees (R. Ans.; Ex. 28).

37. Tschetter commenced a proceeding in small claims court against respondent for the unpaid fees (R. Ans.; Ex. 26). On November 20, 2009, the court entered judgment against respondent in favor of Tschetter in the amount of \$4,892.12 (R. Test.; R. Ans.; Exs. 25, 26, 27 and 28). Respondent did not appeal the judgment (R. Test.).

38. On December 30, 2009, CFO, a collections company owned by Tschetter, wrote respondent enclosing a copy of the judgment against him and requesting payment in full (R. Ans.; Exs. 27 and 28). Respondent did not respond to CFO and did not pay the judgment against him (R. Ans.; Ex. 28).

39. On March 31, 2011, respondent was served with a garnishee summons, affidavit and notice of levy in connection with Tschetter's judgment against respondent (R. Ans.; Ex. 29).

40. On May 2, 2011, Jason Adams, an attorney with Tschetter's law firm, filed an affidavit to release funds held by respondent at US Bank to satisfy Tschetter's judgment against respondent and costs related to the garnishment (R. Ans.; Ex. 30).

41. On May 4, 2011, the court ordered US Bank to release the sum of \$5,341.75 to Tschetter & Adams Law Office, P.C. US Bank subsequently released the funds to Tschetter & Adams Law Office, P.C., and a satisfaction of judgment was filed on August 18, 2011. (R. Test.; R. Ans.; Ex. 31.) Although Tschetter's judgment was

eventually satisfied through garnishment, respondent at no time made efforts to voluntarily pay the judgment (R. Test.).

Trust Account Matter

42. On October 28, 2009, the Director received notification from US Bank of an overdraft in respondent's trust account (R. Ans.; Ex. 32).

43. On November 2, 2009, the Director wrote to respondent regarding the overdraft notice. The Director instructed respondent to, within 10 days, "provide a written documented explanation for this overdraft." The Director also directed respondent to provide his August through October 2009 trust account books and records, unless "the overdraft was caused solely by bank error." (Emphasis in original.) (R. Ans.; Ex. 33.)

44. As set forth more fully in paragraphs 157 through 164 below, respondent failed to timely respond to the Director's November 2 request.

45. On December 14, 2009, the Director received respondent's response to the Director's inquiry into respondent's trust account overdraft, along with the relevant bank statements and client subsidiary ledgers. Respondent did not provide to the Director a complete check register for the period or monthly trial balances and reconciliations as requested in the Director's November 2 letter. (R. Admis.;² Ex. 35.)

46. In his response, respondent stated the overdraft in his trust account was a result of mistakenly issuing trust account check no. 2246 on October 15, 2009, in the amount of \$3,000 to his accountant, Glenn Eriksen, rather than issuing a check from his business account. On October 29, 2009, when respondent realized his mistake, he deposited \$2,000 in his account to remedy the error. (R. Ans.; Exs. 35 and 41.)

² During the hearing, respondent admitted paragraphs 34, 36 and 41-45 of the petition that he had not previously admitted. Those admissions are denoted as "R. Admis."

However, by this time, respondent's trust account had already become overdrawn (R. Ans.; Ex. 32).

47. Based on a review of the trust account books and records provided by respondent, the Director determined that prior to the October 23 overdraft respondent's trust account balance fell below that necessary to cover the balances respondent should have been holding in trust on behalf of clients (R. Admis.; Ex. 43).

48. The Director converted respondent's trust account overdraft inquiry into a formal disciplinary investigation and, on February 10, 2010, issued a notice of investigation to respondent. The notice requested respondent to produce his trust account books and records (bank statements, cancelled checks, deposit slips, checkbook register, client subsidiary ledgers, trial balances and reconciliations) for the period June to December 2009. (R. Ans.; Ex. 36.)

49. Respondent failed to timely respond to the Director's February 10, 2010, request as set forth more fully in paragraphs 169 through 198 below.

50. On September 13, 2010, the Director received from respondent's counsel trust account bank statements for May through July and November through December 2009 and client subsidiary ledgers for various clients from May through December 2009. Other than the documents previously provided to the Director during the initial inquiry, respondent did not provide cancelled checks, deposit slips, a checkbook register, or trial balances and reconciliations. (R. Ans.; Ex. 37.)

51. Based on the records received from respondent on December 14, 2009, and September 13, 2010, the Director audited respondent's trust account for the period May through December 2009. The Director's audit disclosed the deficiencies set forth below. (R. Ans.; Ex. 43.)

52. During the periods May 12 to June 29 and August 3 to December 17, 2009, the balance in respondent's trust account fell below that necessary to cover the

aggregate client balances. This shortage ranged in amount beginning at \$3,933.35 (on May 12) to a high of \$15,975.42 (on October 23). (R. Admis.; Ex. 43.)

53. On more than one occasion, respondent issued checks to clients for whom he had not deposited any funds on their behalf. For example, on or about September 17, 2009, respondent issued check nos. 2238, 2239, 2240, and 2242 to four separate clients on whose behalf respondent had not deposited funds to cover the disbursements. (R. Admis.; Exs. 40 and 43.) Each time one of these checks was cashed (September 25, September 30, October 1, and October 23), the shortage in respondent's trust account increased, from \$6,333.35 to \$15,975.42 (R. Admis.; Ex. 43). This conduct constituted misappropriation. It appears the misappropriation was caused by respondent's failure to maintain the required trust account books and records and did not benefit respondent personally. (R. Admis.)

54. On six occasions during the audit period (June 15, July 29, August 4, August 17, September 11, and November 16), respondent disbursed funds to himself that were not attributed to any client. These disbursements increased the shortage in respondent's trust account by a total of \$1,600. (R. Admis.; Ex. 43.)

55. On December 21, 2009, respondent deposited \$15,000 into his trust account to eliminate the shortage (R. Admis.; Exs. 38 and 43). Respondent's deposit created a surplus of \$3,824.58 in his trust account (R. Admis.; Ex. 43). These funds were not attributed to any client (Ex. 43). In so doing, between at least December 21 and December 31 (the end of the audit period), respondent commingled his own funds with those of clients and/or third parties. (R. Admis.)

56. From at least June 1, 2009, to December 31, 2009, respondent failed to maintain the trust account books and records required by Rule 1.15, MRPC, as interpreted by Appendix 1 thereto. Specifically, respondent failed to maintain trial balances and reconciliations. (R. Admis.)

Eva and David Breyfogle Matter

57. In April of 2009, Eva Breyfogle hired respondent to represent her son, David Breyfogle, in a post-conviction criminal proceeding. Eva Breyfogle paid \$5,000 to respondent toward the representation. The total agreed fee was \$10,000, but no further payment was subsequently requested by Respondent nor paid. Respondent sent a proposed retainer agreement to Eva Breyfogle several months after payment of the \$5,000. Neither she nor Respondent supplied a copy at the hearing. Respondent had not discussed the terms of any retainer agreement with Eva Breyfogle or David Breyfogle. (R. Ans.; E. Breyfogle Test.; D. Breyfogle Test.)

58. Sometime in the next few months after retaining respondent, respondent met with David Breyfogle, who was incarcerated at the time, to discuss his case (R. Ans.; D. Breyfogle Dep., pp. 9-10). Based on information and belief, respondent did little legal work on David Breyfogle's matter other than meeting with him in 2009 (D. Breyfogle Dep., pp. 26-27).

59. In the fall of 2009, Eva Breyfogle sent respondent documents regarding David Breyfogle's case (R. Ans.; E. Breyfogle Test.; D. Breyfogle Dep., p. 8).

60. Between fall of 2009 and spring of 2010, Eva Breyfogle called respondent's office several times requesting a status update and copies of any documents filed on David Breyfogle's behalf (R. Ans.; E. Breyfogle Test.). Eva Breyfogle left messages with respondent's secretary. Respondent failed to return Eva Breyfogle's calls. (E. Breyfogle Test.) During this time, respondent also failed to communicate with David Breyfogle, who did not know the status of his case (D. Breyfogle Dep., pp. 10-14, 17-20).

61. Sometime in the spring of 2010, Eva Breyfogle notified respondent she was terminating his services (R. Ans.; E. Breyfogle Test.).

62. In May of 2010, David Breyfogle wrote respondent confirming that he was terminating respondent's services and requested the return of the funds paid by Eva

Breyfogle (R. Ans.; D. Breyfogle Dep., p. 13; Ex. 47, p. 3). David Breyfogle also requested a copy of all work performed on his case and a detailed billing statement illustrating how the retainer was spent (R. Ans.; D. Breyfogle Dep., pp. 23-25; Ex. 47, p. 3).

63. On May 30, 2010, respondent wrote to Eva Breyfogle, confirming her desire to terminate his services. In his letter, respondent stated that he would review the file to approximate the amount of hours he spent working on David Breyfogle's case and charge \$350 per hour against the retainer paid by Eva Breyfogle. Respondent also indicated he would return the file to Eva Breyfogle by mail. (R. Ans.; Ex. 45.) Respondent failed to return David Breyfogle's file and failed to provide Eva Breyfogle with a breakdown of the hours spent on the file (E. Breyfogle Test.).

64. On June 13, 2010, Eva Breyfogle wrote respondent, acknowledging receipt of his May 30 letter and requesting David Breyfogle's file along with a detailed billing statement of work performed and a refund of the retainer (R. Ans.; E. Breyfogle Test.; Ex. 46). Eva Breyfogle sent her letter to respondent via certified mail. An employee from respondent's office signed for the letter on June 15, 2010. (R. Ans.; Ex. 46.)

65. In August 2010, David Breyfogle wrote respondent again requesting a refund (D. Breyfogle Dep., pp. 25-26; Ex. 47). Respondent failed to respond to David Breyfogle's requests (D. Breyfogle Dep., p. 27; Ex. 47).

66. Respondent never filed any petition for post-conviction relief nor credibly accounted for any services performed, other than meeting once with David Breyfogle for about one hour in prison. The referee does not credit Respondent's vague testimony claiming that he performed substantial undocumented research. (D. Breyfogle Test.; R. Test.)

67. Respondent's retention of the entire \$5,000 retainer constitutes an unreasonable fee as respondent did little work on David Breyfogle's matter beyond

meeting with David Breyfogle in prison, and did not file the post-conviction petition on his behalf. (See D. Breyfogle Dep., pp. 9, 11, 13.)

Bradley Lovstad Matter

68. In November 2004, Bradley Lovstad hired respondent to represent him in a criminal matter in the U.S. District Court, Western District of Missouri (R. Ans.; Lovstad Dep., p. 7).

69. As respondent was not licensed to practice in the Western District of Missouri, F. A. White, Jr., an attorney who was licensed in that court, filed a motion to have respondent admitted *pro hac vice* on December 9, 2004 (R. Ans.; Ex. 48). Other than filing the motion to have respondent admitted, White did not participate in the representation of Lovstad (R. Ans.).

70. During respondent's representation of Lovstad, Lovstad's family paid \$125,000 toward the representation in the following increments: \$28,000 on November 27, 2004; \$12,000 on December 13, 2004; \$35,000 on December 8, 2005; \$25,000 on May 3, 2006; and \$25,000 on May 4, 2006. Although these payments comprised a flat fee and were considered earned on receipt, respondent placed the funds into his law firm trust account. (R. Ans.; Ex. 49.)

71. In April 2006, an eight-day trial was held in the matter. On April 26, 2006, a jury found Lovstad guilty on four counts. On December 18, 2006, Lovstad was sentenced to 97 months in prison. (R. Ans.)

72. On December 26, 2006, respondent filed a notice of appeal with the U.S. Court of Appeals on Lovstad's behalf (R. Ans.).

73. On July 10, 2008, the Court of Appeals issued an order affirming the decision of the U.S. District Court (R. Ans.).

74. Sometime in early 2009, Lovstad and his wife began making requests to respondent to provide a copy of his file and an accounting of the funds paid toward the

representation (Lovstad Dep., p. 24). Respondent failed to provide a copy of the file or an accounting to Lovstad (R. Ans.; Lovstad Dep., pp. 13-14).

75. In early March 2009, Lovstad wrote respondent via certified mail requesting a copy of his file (R. Ans.; Lovstad Dep., pp. 10-11; Ex. 50). An employee of respondent's law office signed for the letter on March 10, 2009 (R. Ans.; Ex. 50). Respondent failed to respond to Lovstad's request (R. Ans.; Lovstad Dep., p. 13).

76. On June 19, 2009, Lovstad wrote respondent via certified mail requesting documents from his file as well as an accounting of the funds paid toward the representation (R. Ans.; Lovstad Dep., pp. 14-15; Ex. 51). An employee of respondent's law office signed for the letter on June 22, 2009 (R. Ans.; Ex. 51). Respondent failed to respond to Lovstad's request (R. Ans.; Lovstad Dep., p. 16).

77. On or about July 1, 2009, Lovstad sent a complaint against respondent to the Director's Office (R. Ans.).

78. On December 18, 2009, respondent wrote the Director, stating in part that he intended to provide Lovstad with his file shortly (Ex. 53, p. 6). As of the date of the hearing, respondent had not provided Lovstad with a copy of his file or an accounting of the funds paid toward the representation (R. Test.). While the fee arrangement appeared to be that of a flat fee, Lovstrand had a right for an accounting for the total amounts paid and their application, in order to weigh the reasonableness of the fee.

Roger Hawley/Devin Dugger Matter

79. On April 29, 2008, respondent was retained to represent Devin Dugger in a controlled substance matter in state court (R. Ans.; Dugger Dep., p. 7; Ex. 55). Roger Hawley, Dugger's step-father, signed the retainer agreement and paid respondent \$7,500 by personal check (R. Ans.; Dugger Dep., pp. 7-8; Ex. 55).

80. The retainer agreement signed by Hawley states in part, "I acknowledge that the retainer paid will not be placed in the Barry V. Voss, P.A. trust account but

instead will be deposited in the Barry V. Voss, P.A. general account." The retainer agreement was titled "Availability Retainer," and included a provision that "Whether or not I receive a refund of my retainer will be determined by what is considered a reasonable fee...". (R. Ans.; Ex 55). On May 1, 2008, respondent deposited the funds received from Hawley into his trust account (R. Ans.; Ex. 56).

81. On June 2, 2008, Dugger was indicted in federal court arising out of the same controlled substance incident. On June 10, 2008, the state court action was dismissed. (R. Ans.) On June 16, 2008, Hawley paid respondent an additional \$15,000 by personal check to represent Dugger in connection with the charges in federal court (R. Ans.; R. Test.; Dugger Dep., p. 8; Ex. 57).

82. From mid-August 2008 through early February 2009, Dugger placed many calls to respondent requesting information and action regarding his case (Dugger Dep., pp. 9-14; Ex. 58). Despite the high number of calls placed by Dugger, he did not speak to respondent by phone (Dugger Dep., pp. 9-15). Instead, Dugger spoke with Tiffini El, respondent's secretary. Dugger repeatedly asked El to have respondent get in touch with him. (Dugger Dep., pp. 11-12.) Respondent did not return Dugger's calls or write to Dugger to answer his questions or discuss possible courses of action (Dugger Dep., pp. 9-13).

83. A plea hearing in the matter was scheduled for October 20, 2008 (R. Ans.; Dugger Dep., p. 14). On the morning of October 20, 2008, a few minutes before the plea hearing, respondent met with Dugger to go over the plea agreement (R. Ans.). Dugger felt rushed and did not clearly understand the written plea agreement (Dugger Dep., p. 15).

84. At the October 20, 2008, plea hearing, Dugger refused to sign the plea agreement, and the matter was rescheduled to October 23, 2008, to give Dugger

additional time to meet with respondent to discuss the plea agreement (R. Ans.; Dugger Dep., pp. 15-16; Ex. 63, p. 5).

85. On October 22, 2008, respondent met with Dugger to review the plea agreement (R. Ans.; Dugger Dep., pp. 15-16). On October 23, 2008, Dugger signed the plea agreement in court (R. Ans.; Dugger Dep., p. 16; Ex. 63, p. 5).

86. On February 16, 2009, Dugger terminated respondent's services (R. Ans.; Dugger Dep., p. 17; Ex. 59; Hawley Test.).

87. On June 8, 2009, Hawley wrote respondent expressing his dissatisfaction with the representation. Hawley also requested an itemized billing reflecting where the funds paid were spent, and a refund for the remaining money. (Hawley Test.; Ex. 61.) Respondent failed to respond to Hawley (Hawley Test.).

88. On June 29, 2009, Hawley wrote respondent, again requesting an itemized billing and accounting (Hawley Test.; Ex. 62). Respondent failed to respond to Hawley (Hawley Test.).

Carolyn Nickolauson/Kirk Johnson Matter

89. On October 8, 2008, Carolyn Nickolauson retained respondent to represent her fiancé, Kirk Johnson, in a federal criminal matter. Nickolauson paid respondent a total of \$16,000 on Johnson's behalf. (R. Ans.)

90. The professional working relationship between respondent, Johnson, and Nickolauson deteriorated over time, and on August 28, 2009, respondent filed a motion to withdraw from representation along with a supporting affidavit detailing the breakdown of the relationship (R. Ans.).

91. On August 28, 2009, attorney Patrick Dinneen emailed respondent's office stating his intention to file a substitution of counsel in the Johnson matter and requesting the file from respondent (Dinneen Aff.; Ex. 66).

92. On September 9, 2009, Dinneen filed a notice of appearance as substitute counsel in the matter (R. Ans.; Dinneen Aff.).

93. On or about September 10, 2009, the court issued an order granting respondent's motion to withdraw from the case (*see* Dinneen Aff., ¶ 5; Ex. 67).

94. On September 10, 2009, Dinneen emailed respondent's office requesting respondent send the Johnson file to him as soon as possible (Dinneen Aff.; Ex. 67).

95. On September 17, 2009, Dinneen emailed respondent again, requesting the file (R. Ans.; Dinneen Aff.; Ex. 68).

96. On September 17, 2009, either respondent or an employee at his office emailed Dinneen, stating he/she would get the file together (R. Ans.; Dinneen Aff.; Ex. 68).

97. On January 5, 2010, either respondent or a representative of respondent's firm emailed Dinneen stating he/she would send the file to Dinneen right away (R. Ans.; Dinneen Aff.; Ex. 69). Respondent failed to send the file to Dinneen (Dinneen Aff.).

98. On June 12, 2010, respondent sent Nickolauson a copy of at least a portion of the file (R. Test.).

Shane McCann Matter

99. In early 2007, Shane McCann retained respondent to represent him in a criminal matter (R. Ans.).

100. On July 31, 2007, McCann entered a guilty plea, and on September 27, 2007, McCann was sentenced (R. Ans.).

101. Between September 27, 2007, and January 2009, McCann made verbal requests to respondent for a copy of his file. Respondent did not provide the file to McCann. (McCann Test.)

102. In early 2009, McCann had concerns about the conditions of his sentence and probation terms. As a result of these concerns, McCann again requested a copy of his file from respondent. Respondent did not provide the file to McCann. (*See R. Test.*)

103. On September 3, 2009, the Director's Office received a complaint against respondent from McCann (R. Ans.; McCann Test.; Ex. 70).

104. On September 10, 2009, McCann called respondent's office and requested copies of documents from his file (McCann Test.; Ex. 71).

105. On June 16, 2010, the Director wrote respondent's counsel asking, in part, whether respondent had returned McCann's file (R. Ans.; Ex. 72).

106. On September 27, 2010, respondent sent McCann a copy of his file (R. Ans.; McCann Test.).

Martin Hernandez-Vega Matter

107. In February 2007, Martin Hernandez-Vega retained respondent to represent him in a federal criminal matter (R. Ans.; Hernandez-Vega Dep., p. 7). Hernandez-Vega's wife paid \$9,000 toward the agreed fee of \$15,000 (R. Ans.; Hernandez-Vega Dep., p. 7; Ex. 73).

108. On or about March 12, 2007, respondent filed a notice of appearance with the court (R. Ans.; Exs. 74 and 77).

109. On March 28, 2007, respondent filed a waiver of a speedy trial demand on behalf of Hernandez-Vega (R. Ans.; Ex. 77, p. 2).

110. On May 9, 2007, respondent appeared in court at Hernandez-Vega's arraignment (R. Ans.; *see* Hernandez-Vega Dep., p. 8).

111. Between early March and mid-May 2007, respondent met with Hernandez-Vega three times; twice at the Sherburne County jail and once at the courthouse on May 9 before a hearing (R. Ans.; Hernandez-Vega Dep., p. 8).

112. Shortly after the May 9, 2007, hearing, respondent became aware that he had a conflict of interest in the matter as respondent had a longstanding agreement to represent one of Hernandez-Vega's co-defendants. Respondent was previously unaware this person was a co-defendant in this case. (R. Ans.) On May 23, 2007, respondent visited Hernandez-Vega in Sherburne County jail and informed him that he could no longer represent him due to the conflict of interest (R. Ans.; Hernandez-Vega Dep., pp. 8-9).

113. On May 23, 2007, respondent withdrew from the representation of Hernandez-Vega (R. Ans.).

114. In July 2007, Hernandez-Vega's relatives stopped by respondent's office twice in an attempt to obtain a refund of the retainer based on the short duration of the representation and respondent's withdrawal. Respondent was not in the office on those occasions. (R. Ans.)

115. During a subsequent hearing on October 22, 2007, Hernandez-Vega informed Judge Michael Davis that respondent owed him a refund of his retainer due to respondent's withdrawal (R. Ans.; Ex. 76, p. 3).

116. Later that day, respondent appeared in front of Judge Davis in connection with his representation of Hernandez-Vega's co-defendant. During the hearing, the judge asked respondent to submit a letter to the judge regarding his representation of Hernandez-Vega and the fee dispute. (R. Ans.) Respondent also agreed to visit Hernandez-Vega in jail and speak to him about a refund (Ex. 73, p. 11).

117. On October 29, 2007, respondent wrote Judge Davis. In his letter respondent claimed that he had made attempts to meet with members of Hernandez-Vega's family regarding the retainer. (R. Ans.; Ex. 77.) No such meeting ultimately occurred. Respondent did not visit Hernandez-Vega in jail or refund any portion of the retainer. (R. Ans.).

118. Hernandez-Vega subsequently filed a complaint against respondent with the Director's Office (R. Ans.; Hernandez-Vega Dep., pp. 11-12).

119. On July 30, 2008, Hernandez-Vega sent respondent a letter requesting reimbursement of \$9,000 plus interest (Hernandez-Vega Dep., pp. 13-15; Ex. 78). Respondent did not respond and did not refund any money to Hernandez-Vega (Hernandez-Vega Dep., p. 15).

120. On August 4, 2008, Hernandez-Vega sent respondent a second letter requesting reimbursement of \$9,000 plus interest (Hernandez-Vega Dep., pp. 15-16; Ex. 79). Respondent did not respond and did not refund any money to Hernandez-Vega (Hernandez-Vega Dep., pp. 15-16).

121. On August 5, 2008, Hernandez-Vega sent respondent a third letter via certified mail requesting reimbursement of \$9,000 plus interest (R. Ans.; Hernandez-Vega Dep., pp. 15-16; Ex. 80). Respondent did not respond and did not refund any money to Hernandez-Vega (R. Ans.; Hernandez-Vega Dep., pp. 15-16).

122. On August 28, 2008, Hernandez-Vega sent respondent a fourth letter requesting reimbursement (Hernandez-Vega Dep., pp. 15-16; Ex. 81). Respondent did not respond and did not refund any money to Hernandez-Vega (Hernandez-Vega Dep., pp. 15-16).

123. Despite requests from Hernandez-Vega and his family, respondent did not refund any portion of the \$9,000 paid by Hernandez-Vega's wife (R. Ans.; Hernandez-Vega Dep., p. 16).

124. On May 18, 2010, respondent's counsel wrote the Director. In the letter, respondent's counsel stated that respondent agreed Hernandez-Vega was entitled to a partial refund. (Ex. 82.) Respondent has not refunded any portion of Hernandez-Vega's fee (R. Test.).

Robert Beissel Matter

125. On or about August 26, 2004, Robert Beissel retained respondent to represent him in a criminal matter (R. Ans.; Beissel Test.).

126. On August 23, 2006, a hearing was held in the matter. During the hearing, Beissel agreed to waive his right to a trial. (R. Ans.) That same day, Beissel signed a document entitled stipulated facts trial, which was also approved and signed by the judge (R. Ans.; Beissel Test.).

127. Respondent continued to represent Beissel in appeals to the Minnesota Court of Appeals and the Minnesota Supreme Court in an attempt to suppress evidence in his criminal matter. These appeals were unsuccessful. (R. Ans.; Beissel Test.)

128. In September 2008, Beissel paid respondent \$15,000 to file a habeas corpus petition on his behalf in federal court. Respondent advised Beissel that they should act quickly to get the petition filed with the court. (Beissel Test.)

129. On March 17, 2009, Beissel was sentenced to 110 months in prison. On the day of the sentencing, respondent informed Beissel and Beissel's mother, Maxine Rossini, that the petition for habeas corpus was complete and he would be filing it within 30 days (Beissel Test.; Rossini Test.; Ex. 84). Respondent's statement was false as he had not completed the petition for habeas corpus (*see* Beissel Test.; Rossini Test.; R. Test.).

130. On March 27, 2009, Rossini spoke to respondent by telephone. During their conversation, respondent repeated his statement that the habeas corpus petition would be filed within 30 days of March 17, 2009. (Rossini Test.; Exs. 84 and 85.)

131. On April 27, 2009, Rossini spoke with respondent's receptionist, who indicated that respondent would file the habeas corpus petition but did not say when respondent would file it (Rossini Test.; Exs. 84 and 85).

132. On June 17, 2009, due to respondent's failure to file the habeas corpus petition on Beissel's behalf, Rossini hand-delivered a letter from Beissel to respondent's office requesting a refund of the \$15,000 Beissel paid respondent to file the petition (Rossini Test.; Ex. 83).

133. Also on June 17, 2009, Beissel filed a complaint against respondent with the Director's Office (R. Ans.; Beissel Test.).

134. In August 2009, Beissel wrote respondent requesting his file be provided to Rossini (R. Ans.; Beissel Test.; Ex. 86). Beissel's request was sent to respondent by certified letter. On August 13, 2009, someone at respondent's office signed for the certified letter. (R. Ans.; Ex. 86.)

135. Despite Beissel's request, respondent did not provide Beissel's file to Rossini until September 29, 2009, four days after the District Ethics Committee investigator in the Beissel matter specifically requested respondent to do so (R. Ans.; Beissel Test.).

136. Respondent testified that the \$15,000 payment was only for research, and none of it was for other court representation, but that he had no records of research time. The referee finds the claim not credible that the payment was agreed to be solely for research.

137. Respondent has not returned any portion of the \$15,000 Beissel paid respondent to file the habeas corpus petition (R. Ans.; R. Test.; Beissel Test.).

Joel Wells/Karolyn Nelson Matter

138. On August 20, 2009, Joel Wells retained respondent to represent him in a criminal matter in federal court and Karolyn Nelson, the girlfriend of Wells, paid respondent \$15,000 in cash. On or about September 26, 2009, Nelson paid respondent an additional \$15,000 in cash. (R. Ans.) Wells asked respondent to draft a retainer agreement (Exs. 93, 94 and 95).

139. Despite requests from Wells, respondent did not enter into a written fee agreement with Wells or Nelson (Exs. 93, 94 and 95). Respondent has not provided any original or copy of a retainer agreement. Respondent did not deposit the \$30,000 into his trust account (R. Test.; Ex. 38, pp. 6-8).

140. A hearing was scheduled for August 10, 2010. At the beginning of the hearing, respondent informed the court that he was going to move to withdraw. The court questioned Wells, who consented to the withdrawal. (R. Ans.)

141. After the August 10, 2010, hearing, Wells wrote respondent several times, requesting, in part, a retainer agreement, receipts for cash payments, and an accounting of the funds paid by Nelson. Respondent failed to provide these documents to Wells. (See Exs. 93, 94 and 95.)

Gregory Schaefer Matter

142. Gregory Schaefer retained respondent to represent him in a criminal matter. Schaefer paid respondent \$5,000 for the representation. (R. Ans.)

143. A hearing was scheduled in the matter for February 9, 2009 (Exs. 96 and 98). Respondent failed to attend the hearing and his client appeared without counsel (Ex. 96).

144. The court minutes from the February 9, 2009, hearing state in relevant part, "Put Voss on notice that if it has to be cont w/out advance notice and no appearance he will be charged for transportation costs." (Ex. 96.)

145. A hearing in the matter was scheduled for March 23, 2009 (Exs. 97 and 98). Respondent failed to attend the hearing and Schaefer again appeared without counsel (Ex. 97).

Kou Moua Matter

146. Some time prior to March 19, 2006, Kou Moua discussed with Respondent the possibility of Respondent representing him in a criminal post-conviction matter.

While discussing the case with Respondent, Moua emphasized that his main object was that Respondent take his case to the Supreme Court if necessary.

147. On March 19, 2006, Kou Moua retained respondent to represent him in the post-conviction matter (R. Ans.; Moua Dep., p. 6; Ex. 99). Respondent's retainer agreement was signed by Moua's cousin, Ge Vang (R. Ans.; Moua Dep., pp. 6-7; Ex. 99). The retainer agreement required that \$9,000 be paid to respondent that day (R. Ans.; Moua Dep., p. 10; Ex. 99).

148. A handwritten notation, signed by respondent, on the retainer agreement states, "This fee is for post-conviction relief in Ramsey County district court and may include appeal to the Minnesota Supreme Court if the post-conviction is denied." (R. Ans.; Ex. 99.) Based on this language and the fact that Moua did not actually sign respondent's retainer agreement or meet with him to discuss it, Moua reasonably understood respondent would appeal if his petition for post-conviction relief was denied at the district court level (*see* Moua Dep., pp. 7-8, 13-14).

149. Sometime after March 19, 2006, respondent received additional funds for Moua's representation. In total, respondent received \$14,000 to represent Moua. (R. Ans.; Moua Dep., pp. 12-13.)

150. Respondent filed Moua's motion for post-conviction relief on or about January 16, 2008 (R. Ans.). On April 28, 2008, Ramsey County District Court denied Moua's motion for post-conviction relief (R. Ans.; Moua Dep., pp.14-15; Ex. 101).

151. In a May 6, 2008, letter respondent provided Moua with a copy of the court's order. Respondent's letter stated, "Please notify me after you have read the order so we can discuss this. Please note that you have 60 days to file a notice of appeal with the Minnesota Court of Appeals if you are going to appeal from Judge Rosas' decision." (R. Ans.; Ex. 102.)

152. Moua's appeal had to have been filed on or before approximately June 27, 2008 (Ex. 102). Moua attempted, without success, to contact respondent before expiration of the appeal period (Moua Dep., pp. 15-17, 18-20).

153. Despite knowing time was of the essence, respondent did not respond to Moua or make any efforts to affirmatively ascertain whether Moua wanted to proceed with an appeal before expiration of the appeal period (*see* Moua Dep., pp. 15-16).

154. Respondent did not file an appeal on Moua's behalf (R. Ans.; Moua Dep., p. 21). Respondent claims to have sent Moua a letter on July 9, 2008, after the expiration of the appeal period, in which respondent acknowledged that Moua had been trying to contact him (R. Ans.; Ex. 103).

155. Moua denies receipt of respondent's July 9, 2008, letter (Moua Dep., p. 21). An incoming legal mail report from the Minnesota Department of Corrections Stillwater reveals that Moua did not receive a letter from respondent in July (Ex. 104). At no time did respondent explicitly state to Moua that he would not pursue the appeal on his behalf (Moua Dep., pp. 11, 17). Further, at no time did respondent attempt to clarify his retainer agreement (Moua Dep., pp. 10, 28).

156. Despite requests from Moua, respondent has not returned any portion of the \$14,000 Moua paid respondent (R. Test.).

Non-Cooperation

157. On October 14, 2009, the Director wrote respondent requesting additional information and documents regarding the complaint of Hernandez-Vega (R. Ans.; Ex. 105).

158. Also on October 14, 2009, the Director wrote respondent requesting additional information and documents regarding the complaint of Lovstad (R. Ans.; Ex. 106).

159. On October 16, 2009, the Director wrote respondent requesting additional information and documents regarding the complaint of Hawley (R. Ans.; Ex. 107).

160. On October 19, 2009, the Director wrote respondent, requesting additional information and documents regarding the Nickolauson matter (R. Ans.; Ex. 108).

161. As previously stated in paragraph 40 above, on October 28, 2009, the Director received notification from US Bank of an overdraft in respondent's trust account (R. Ans.; Ex. 32).

162. On November 2, 2009, the Director wrote to respondent regarding the overdraft notice, requesting a written explanation for the overdraft, and, if necessary, trust account books and records (R. Ans.; Ex. 33).

163. On November 3, 2009, respondent wrote the Director requesting an extension to respond to questions raised in the Nickolauson, Hawley, Lovstad and Hernandez-Vega matters (R. Ans.; Ex. 109). On November 6, 2009, the Director wrote respondent granting an extension to November 25, 2009 (R. Ans.; Ex. 110). Respondent failed to respond to the questions in the above-mentioned matters by November 25, 2009 (Ex. 112).

164. On November 17, 2009, the Director wrote respondent, requesting the information and documents previously requested in the Director's November 2 letter regarding respondent's trust account overdraft within five days (R. Ans.; Ex. 111).

165. On November 19, 2009, respondent called the Director and requested an extension to provide the previously requested information and documents relating to his trust account overdraft. The Director granted respondent an extension to November 30, 2009, to submit the requested information and documents. (R. Ans.)

166. On November 30, 2009, an employee at respondent's law firm called the Director, stating the Director would receive the information and documents requested in connection with respondent's trust account overdraft by December 2, 2009 (R. Ans.).

167. On December 4, 2009, the Director wrote respondent requesting information and documents relating in part to the Nickolauson, Hawley, Lovstad and Hernandez-Vega matters (R. Ans.; Ex. 112).

168. On December 9, 2009, an employee from respondent's office called the Director, asking if they could submit the written response to the trust account overdraft inquiry that day without the documents requested. The Director informed respondent's employee the response and the documents must be submitted by December 11, 2009, and that no further extensions would be granted. (R. Ans.)

169. On December 14, 2009, the Director received respondent's response to the Director's inquiry into respondent's trust account overdraft, along with relevant documents (R. Ans.; Ex. 35).

170. On December 16, 2009, the Director received responses from respondent regarding the Nickolauson, Hawley, and Lovstad matters (R. Ans.).

171. On December 29, 2009, the Director wrote respondent, requesting in part the previously requested information and documents in the Hernandez-Vega matter (R. Ans.; Ex. 114).

172. On January 15, 2010, the Director wrote respondent, reiterating the request for information and documents in the Hernandez-Vega matter (R. Ans.; Ex. 115).

173. On February 2, 2010, the Director spoke with respondent, who indicated he would submit the information and documents requested in the Hernandez-Vega matter by February 4, 2010 (R. Ans.).

174. On February 10, 2010, the Director sent respondent a notice of investigation arising out of the Director's previous trust account inquiry into respondent's trust account overdraft. As stated in the notice, respondent's written response was due within fourteen days. (R. Ans.; Ex. 36.)

175. On February 12, 2010, the Director wrote respondent again requesting the information and documents in the Hernandez-Vega matter (R. Ans.; Ex 116). Despite repeated requests, respondent failed to respond to the Director's request for information until May 19, 2010 (Exs. 82, 105, 110, 112, 114, 115, 116 and 119).

176. On February 17, 2010, the Director sent respondent a notice of investigation regarding the complaint of Eva Breyfogle. As stated in the notice, respondent's written response was due within fourteen days. (R. Ans.; Ex. 117.)

177. On March 2, 2010, the Director was notified that respondent had retained counsel (R. Ans.). On April 1, 2010, the Director wrote respondent's counsel asking whether respondent had provided Lovstad and Johnson (Nickolauson matter) with a copy of their files (R. Ans.; Ex. 118).

178. On April 15, 2010, the Director wrote respondent's counsel requesting, in part, a response to the notice of investigation in the Breyfogle matter and the Director's file regarding respondent's trust account overdraft, and verification as to whether Lovstad and Johnson (Nickolauson) had received copies of their files (R. Ans.; Ex. 119).

179. On April 15, 2010, the Director sent respondent's counsel a notice of investigation regarding the complaint of Tschetter. As stated in the notice, respondent's written response was due within fourteen days. (R. Ans.; 120.)

180. On April 16, 2010, the Director sent respondent's counsel a notice of investigation regarding the complaint of the Minnesota Department of Revenue. As stated in the notice, respondent's written response was due within fourteen days. (R. Ans.; Ex. 121.)

181. On April 29, 2010, the Director wrote respondent's counsel requesting a response to the notice of investigation in the Tschetter and Minnesota Department of Revenue matters, along with additional outstanding requests for information in other matters, including whether respondent had provided Lovstad and Johnson

(Nickolauson) with copies of their files (R. Amended Answer ("R. Am. Ans."); Ex. 122). Other than the May 18, 2010, letter regarding the Hernandez-Vega matter, respondent failed to respond to the Director's letter (R. Am. Ans.).

182. On June 7, 2010, the Director wrote respondent's counsel, requesting information regarding the Lovstad and Nickolauson complaints. The Director also requested written responses to the notices of investigation in the Breyfogle, Tschetter and Minnesota Department of Revenue matters, as well as the Director's file regarding respondent's trust account overdraft. (R. Am. Ans.; Ex. 123.) Respondent failed to respond to the Director's request (R. Am. Ans.).

183. On June 28, 2010, the Director wrote respondent's counsel regarding the outstanding requests for information as previously requested in the Director's April 1, April 15, April 29, and June 7, 2010, letters (R. Am. Ans.; Ex. 124). Respondent failed to respond to the Director's request (R. Am. Ans.).

184. On July 14, 2010, the Director received notice that respondent's counsel was no longer representing respondent. On July 22, 2010, the Director received notice that respondent had retained new counsel. (R. Ans.)

185. On July 23, 2010, the Director wrote respondent's new counsel informing him of respondent's overdue responses (R. Ans.; Ex. 125).

186. On July 28, 2010, the Director sent respondent's counsel a notice of investigation regarding the complaint of Wayne Ruoho. As stated in the notice, respondent's written response to the complaint was due within fourteen days. (R. Ans.; Ex. 126.)

187. On August 12, 2010, the Director wrote respondent's counsel requesting a meeting with respondent and counsel on August 25, 2010. The Director further requested that respondent bring to the meeting written responses to all outstanding requests. (R. Am. Ans.; Ex. 127.)

188. On August 25, 2010, respondent's counsel met with the Director. Respondent's counsel did not provide the written responses requested by the Director. Respondent did not attend the meeting. (R. Am. Ans.)

189. On September 2, 2010, the Director wrote respondent's counsel, requesting responses to the notices of investigation in the Breyfogle, Tschetter, Minnesota Department of Revenue, Ruoho, and the trust account overdraft matters. Additionally, the Director's letter requested supplemental information and/or documents regarding six other complaints against respondent. (R. Am. Ans.; Ex. 128.)

190. On September 13, 2010, the Director received a portion of the trust account books and records previously requested as set forth above (R. Ans.; Ex. 37).

191. On September 22, 2010, the Director wrote respondent's counsel, requesting, in part, additional trust account books and records to fulfill the Director's outstanding request for said records. The Director requested respondent to bring the records to a scheduled meeting at the Director's Office on September 30, 2010. (R. Ans.; Ex. 129.)

192. On September 30, 2010, the Director met with respondent and respondent's counsel. Respondent did not bring the trust account books and records as requested in the Director's September 22 letter. Respondent's counsel indicated the balance of the trust account books and records would be provided within two weeks. During the meeting, respondent expressed his intention to cooperate with the Director's Office going forward. (R. Ans.)

193. On October 21, 2010, the Director wrote respondent's counsel, requesting the previously requested trust account books and records, written responses to the notices of investigation in the Breyfogle, Tschetter, Ruoho, and the Minnesota Department of Revenue matters, along with additional information and documents in

three other matters (R. Am. Ans.; Ex. 130). Respondent failed to respond to the Director's request (R. Am. Ans.).

194. On November 12, 2010, the Director wrote respondent's counsel requesting the information and documents previously requested in the Director's October 21, 2010, letter (R. Am. Ans.; Ex. 131).

195. On November 23, 2010, more than nine months after the Director's request for complete trust account books and records, the Director received a phone call from an employee of Dave Christiansen, an accountant. The employee stated that their office had been retained to audit respondent's trust account. The employee further stated that they hoped to expedite the audit as quickly as possible. (R. Am. Ans.)

196. On November 30, 2010, respondent's counsel wrote the Director, stating that respondent hired Christiansen to do his books and records (R. Am. Ans.).

197. On December 9, 2010, respondent's counsel called the Director, asking whether the Director had heard from Christiansen. The Director informed respondent's counsel that respondent's retention of an accountant did not alleviate respondent of his responsibility to provide the requested trust account books and records. (R. Am. Ans.)

198. On February 7, 2011, the Director wrote respondent's counsel, requesting responses to the notices of investigation in the Breyfogle, Tschetter, and Minnesota Department of Revenue matters, as well as respondent's trust account books and records, and a status update on the outside review of respondent's trust account books and records (R. Am. Ans.; Ex. 132).

199. On March 4, 2011, the Director received a letter from Christiansen. In his letter, Christiansen explained that he was awaiting further information from respondent regarding his trust account, which had been requested by Christiansen on October 26, 2010. Due to the lack of complete information and the "tax season," Christiansen indicated that respondent's audit would be set aside until after April 15, 2011.

Christiansen further stated that if they received the requested information from respondent and had a break in their tax work for other clients, they would attempt to finish respondent's audit prior to April 15, 2011. (R. Ans.; Ex. 133.)

200. On June 6, 2011, respondent's counsel wrote the Director, stating that he was no longer representing respondent (R. Ans.).

201. On June 21, 2011, the Director received a letter from Christiansen. In his letter, Christiansen stated that he met with respondent on June 14, 2011. At that time, Christiansen provided respondent with a list of missing items he needed to complete respondent's audit. Christiansen further stated that respondent assured Christiansen that he would provide the missing information within two weeks, and that at that time Christiansen would "meet with [respondent] and resolve any open issues necessary to complete our work and have reports as soon as possible." (R. Ans.; Ex. 134.)

202. As of the date of the petition, respondent failed to provide written responses to the complaints of Breyfogle, Tschetter, and the Minnesota Department of Revenue (R. Test.).

203. On September 14, 2011, the Director received a letter from Christiansen. In his letter, Christiansen informed the Director that he was withdrawing from representing respondent. Christiansen stated, "We have made several attempts to obtain the necessary documentations to complete this project and have not received the information from [respondent]." (R. Ans.; Ex. 135.)

Aggravating And Mitigating Factors

1. Respondent has extensive experience in criminal defense practice.
2. Respondent has a history of prior discipline as follows:
 - a. On October 17, 2001, respondent was issued an admonition for entering into a business transaction with a client without written consent and failing to clarify to an unrepresented person respondent was

not representing her in violation of Rules 1.8 and 4.3, Minnesota Rules of Professional Conduct (MRPC) (R. Ans.; Ex. 147).

b. On August 7, 2003, respondent was issued an admonition for charging and collecting a total fee of \$18,638.39 from the recovery on a client's ALE and personal property damage claims, failing to hold the disputed portions of the claimed fees in trust until the dispute was resolved, and in requiring that the client sign a release of liability without first advising her that independent representation was appropriate, in violation of Rules 1.5(a), 1.8(h), and 1.15(b), MRPC (R. Ans.; Ex. 146).

c. On January 6, 2009, respondent was issued an amended admonition for failing to diligently handle a client's case, failing to clearly communicate the basis of the fees charged to the client for representation, and making a statement in a motion that lacked a good faith basis in fact in violation of Rules 1.3, 1.5(b), 3.1, and 8.4(d), MRPC (R. Ans.; Ex. 145).

3. Respondent's misconduct was intentional.
4. Respondent's misconduct consists of multiple acts of serious professional misconduct over an extended period of time and across multiple matters.
5. Respondent's conduct constitutes a pattern of misconduct.
6. Respondent's misrepresentations to Beissel and Rossini were made for a selfish purpose: to avoid detection of his neglect.
7. After disciplinary proceedings were commenced, respondent continued to fail to cooperate. On September 27, 2011, the Director served on respondent charges of unprofessional conduct (Ex. 136). Pursuant to Rule 9(a)(1), Rules on Lawyers Professional Responsibility (RLPR), respondent's answer to the charges was due within 14 days of the date of the charges (Ex. 136, p. A.1). Respondent failed to respond. On October 18, 2011, the Director filed a notice of motion and motion to panel chair for

approval to file a petition based on flagrant non-cooperation (Ex. 139). On October 25, 2011, the panel chair granted the Director's motion (Ex. 141).

8. Respondent refused to acknowledge his misconduct and exhibited no remorse for his misconduct (R. Test.). Respondent offered no evidence that he understood, regretted, or was sorry or remorseful for the wrongful nature of his conduct. To the contrary, respondent steadfastly maintained throughout the proceedings that he committed little, if any, misconduct (R. Ans.).

9. Respondent has now filed all required returns with the Minnesota Department of Revenue and signed a Repayment Agreement for all amounts due. Respondent has however neither claimed nor offered evidence of any other legally recognized mitigation of the sanction for his misconduct.

CONCLUSIONS OF LAW

1. Respondent's conduct in the Septon matter violated Rules 1.4, 1.5(a), 1.15(c)(3) and (4), 1.16(d) and 8.4(c), MRPC.

2. Respondent's conduct in failing to timely file employer withholding tax returns and pay those taxes violated Rule 8.4(d), MRPC (R. Ans.).

3. Respondent's conduct in failing to pay a law-related judgment against him in the Tschetter matter violated Rule 8.4(d), MRPC.

4. Respondent's conduct in disbursing funds from his trust account that created shortages in individual client ledgers and increased the overall shortage in his trust account resulting in negligent misappropriation, failing to perform the required trial balances and reconciliations, and commingling personal funds with client funds in his trust account violated Rule 1.15, MRPC, as interpreted by Appendix 1 thereto.

5. Respondent's conduct in the Breyfogle matter violated Rules 1.3, 1.4, 1.5(a) and 1.16(d), MRPC.

6. Respondent's conduct in the Lovstad matter violated Missouri Rules of Professional Conduct 4-1.15(a), 4-1.15(i) and 4-1.16(d).³
7. Respondent's conduct in the Hawley/Dugger matter violated Rules 1.4(a)(2) and (4), 1.4(b), 1.15(a) and 8.4(d), MRPC.⁴
8. Respondent's conduct in the Nickolauson/Johnson matter violated Rule 1.16(d), MRPC.
9. Respondent's conduct in the McCann matter violated Rule 1.16(d), MRPC.
10. Respondent's conduct in the Hernandez-Vega matter violated Rules 1.5(a) and 1.16(d), MRPC.
11. Respondent's conduct in the Beissel matter violated Rules 1.3, 1.5(a), 1.16(d), 4.1 and 8.4(c), MRPC.⁵
12. Respondent's conduct in the Wells/Nelson matter violated Rules 1.5(b), 1.15(a), (c)(3) and (5) and 1.16(d), MRPC.
13. Respondent's conduct in the Schaefer matter violated Rules 1.3, 3.2, 3.4(c) and 8.4(d), MRPC.
14. Respondent's conduct in the Moua matter violated Rules 1.1, 1.3, 1.4(a)(2) and (4), 1.4(b), 1.5(a) and 1.16(d), MRPC.
15. Respondent's failure to cooperate with the disciplinary investigation violated Rules 8.1(b) and 8.4(d), MRPC, and Rule 25, RLPR.

³ At the disciplinary hearing, the parties agreed to amend paragraph 69 of the petition. Missouri Rule of Professional Conduct 4-1.15 was amended in 2007 and 2009. Some of respondent's misconduct in the Lovstad matter occurred before the rule was amended; therefore, the rule in effect at the time of the conduct was Missouri Rule of Professional Conduct 4-1.15(a), not Missouri Rule of Professional Conduct 4-1.15(c), as stated in the petition.

⁴ The petition alleged respondent also violated Rule 1.16(d), MRPC, in this matter. That allegation has been withdrawn.

⁵ The petition alleged respondent also violated Rule 1.5(b), MRPC, in this matter. That allegation has been withdrawn.

16. Respondent's extensive experience in criminal defense practice aggravates the sanction for his misconduct.

17. Respondent's disciplinary history aggravates the sanction for respondent's misconduct.

18. Respondent's multiple acts of intentional misconduct aggravate the sanction for his misconduct.

19. Respondent's multiple acts of serious professional misconduct over an extended period of time and across multiple matters aggravate the sanction for respondent's misconduct.

20. Respondent engaged in a pattern of misconduct, which aggravates the sanction for respondent's misconduct.

21. Respondent's dishonest misconduct was committed for a selfish purpose: to hide his neglect. This aggravates the sanction for his misconduct.

22. Respondent's failure to cooperate after disciplinary proceedings were commenced aggravates the sanction for respondent's misconduct.

23. Respondent has filed his delinquent tax returns with the Minnesota Department of Revenue and signed a Repayment Agreement. There is no other factor which mitigates the sanction for respondent's misconduct.

RECOMMENDATION FOR DISCIPLINE

Based on the foregoing findings and conclusions, the undersigned recommends:

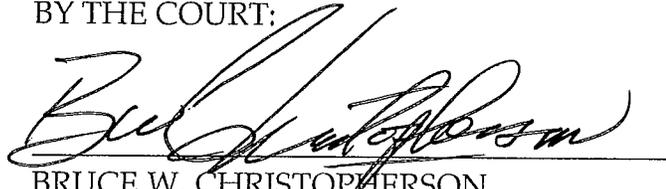
1. That respondent, Barry V. Voss, be indefinitely suspended for a minimum of two years, with remedial and other conditions deemed appropriate by the Court, such conditions to include without limitation ethical education, probation, and attorney supervision.

2. That respondent comply with Rule 26, RLPR.

3. That respondent pay \$900 in costs, plus disbursements, pursuant to Rule 24, RLPR.

Dated: May 29, 2012.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Bruce W. Christopherson", written over a horizontal line.

BRUCE W. CHRISTOPHERSON
SUPREME COURT REFEREE