

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against JILL M. WAITE,  
a Minnesota Attorney,  
Registration No. 191152.  
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**PETITION FOR  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on July 15, 1988. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

a. On January 27, 1995, respondent was issued an admonition for failing to ensure her client's documents were delivered to the bankruptcy trustee, failing to adequately respond to the trustee's inquiries on the status of the documents, failing to inform her client she would be charged the trustee fees, and failing to promptly search for the requested documents in violation of Rule 1.3, Minnesota Rules of Professional Conduct (MRPC).

b. On June 20, 2000, respondent was issued an admonition for failing to submit a summary requested by an arbitrator, failing to timely request a trial, failing to

communicate with her client and take action after judgment was entered in violation of Rules 1.3 and 1.4(a), MRPC.

FIRST COUNT

Failure to Timely File State Individual Income Tax Returns

1. Respondent had sufficient gross income in 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003 and 2004 to require her to file state individual income taxes.
2. Respondent failed to timely file her state individual income tax return for 1993. Respondent filed her 1993 tax return late on or about May 4, 2006.
3. Respondent failed to timely file her state individual income tax return for 1994. Respondent filed her 1994 tax return late on or about May 4, 2006.
4. Respondent failed to timely file her state individual income tax return for 1995. Respondent filed her 1995 tax return late on or about May 4, 2006.
5. Respondent failed to timely file her state individual income tax return for 1996. Respondent filed her 1996 tax return late on or about May 6, 2006.
6. Respondent failed to timely file her state individual income tax return for 1997. Respondent filed her 1997 tax return late on or about May 6, 2006.
7. Respondent failed to timely file her state individual income tax return for 1998. Respondent filed her 1998 income tax return late on or about October 18, 2005.
8. Respondent failed to timely file her state individual income tax return for 1999. Respondent filed her 1999 income tax return late on or about October 18, 2005.
9. Respondent failed to timely file her state individual income tax return for 2000. Respondent filed her 2000 income tax return late on or about August 30, 2005.
10. Respondent failed to timely file her state individual income tax return for 2001. Respondent filed her 2001 income tax return late on or about September 8, 2005.
11. Respondent failed to timely file her state individual income tax return for 2002. Respondent filed her 2002 income tax return late on or about September 27, 2005.

12. Respondent failed to timely file her state individual income tax return for 2003. Respondent filed her 2003 income tax return late on or about September 8, 2005.

13. Respondent failed to timely file her state individual income tax return for 2004. Respondent filed her 2004 income tax return late on or about August 22, 2005.

14. Due to respondent's failure to timely file and pay her taxes for the years 1994 through 2001, the Minnesota Department of Revenue (DOR) conducted an audit of respondent.

15. On August 16, 2004, the DOR sent respondent a tax order and summary explaining the results of their audit for the tax years of 1994 through 2001 and including tax returns generated by the DOR. The summary concluded that respondent has a tax liability of \$84,797.74, and requested respondent to pay in full by October 15, 2004. Also included with the order and summary was an appeal form with instructions on how to appeal the audit. Respondent did not complete the appeal form and did not pay the tax liability by October 15, 2004.

16. On January 28, 2005, February 3, 2005, and February 4, 2005, the DOR wrote respondent stating their intent to refer her unpaid tax liability to the U.S. Treasury Offset Program.

17. On February 9, 2005, the DOR sent respondent a demand for payment and an intent to levy wages regarding her unpaid tax liability.

18. On March 30, 2005, the DOR filed a tax lien against respondent in Hennepin County.

19. On April 5, 2005, the DOR wrote respondent informing her they sent a notice of levy to Twin City Co-ops Federal Credit Union (Twin City Co-ops), where respondent maintains a bank account.

20. On April 5, 2005, the DOR sent Stephen Schweckendieck a notice of third party levy, instructing him to pay to the DOR any money he owes respondent. Schweckendieck is respondent's tenant who rents an apartment owned by respondent.

21. On June 13, 2005, the DOR wrote respondent informing her that they sent a notice of levy to Twin City Co-ops.

22. On July 12, 2005, the DOR sent respondent a demand to file tax returns for the years 2002, 2003 and 2004.

23. On July 12, 2005, the DOR sent respondent notice of their intent to file a complaint with the Director's Office.

24. On September 21, 2005, the DOR filed a complaint with the Director's Office against respondent.

25. On December 2, 2005, the DOR sent respondent a notice of intent to offset her federal tax refunds based on respondent's delinquent tax liability for the years 2002 and 2003.

26. On December 14, 2005, the DOR sent respondent notice of correspondence to Matthew Guyer. Respondent had recently retained Guyer, a certified public accountant (CPA), to assist her in filing her taxes and resolving her tax liability.

27. On February 22, 2006, the DOR wrote respondent informing her they sent a new levy notice to Schweckendieck.

28. On September 29, 2006, the DOR filed a tax lien against respondent in Hennepin County for \$2,503.12.

29. Respondent's failure to timely file her state tax returns violated Rule 8.4(b) and (d), MRPC.

## SECOND COUNT

### Failure to Timely File Federal Individual Income Tax Returns

30. Respondent had sufficient gross income in 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003 and 2004 to require her to file federal individual income taxes.

31. Respondent failed to timely file her federal individual income tax return for 1993. Respondent filed her 1993 tax return late on or about April 27, 2006.

32. Respondent failed to timely file her federal individual income tax return for 1994. Respondent filed her 1994 tax return late on or about April 27, 2006.

33. Respondent failed to timely file her federal individual income tax return for 1995. Respondent filed her 1995 tax return late on or about April 27, 2006.

34. Respondent failed to timely file her federal individual income tax return for 1996. Respondent filed her 1996 tax return late on or about April 27, 2006.

35. Respondent failed to timely file her federal individual income tax return for 1997. Respondent filed her 1997 tax return late on or about April 27, 2006.

36. Respondent failed to timely file her federal individual income tax return for 1998. Respondent filed her 1998 tax return late on or about October 18, 2005.

37. Respondent failed to timely file her federal individual income tax return for 1999. Respondent filed her 1999 tax return late on or about October 18, 2005.

38. Respondent failed to timely file her federal individual income tax return for 2000. Respondent filed her 2000 tax return late on or about October 18, 2005.

39. Respondent failed to timely file her federal individual income tax return for 2001. Respondent filed her 2001 tax return late on or about October 18, 2005.

40. Respondent failed to timely file her federal individual income tax return for 2002. Respondent did not file her 2002 tax return prior to September 23, 2005.

41. Respondent failed to timely file her federal individual income tax return for 2003. Respondent filed her 2003 tax return late on or about October 10, 2005.

42. Respondent failed to timely file her federal individual income tax return for 2004. Respondent filed her 2004 tax return late on or about October 18, 2005.

43. On November 1, 2005, the Internal Revenue Service (IRS) filed a tax lien against respondent for tax year 2002.

44. On December 22, 2005, the IRS wrote the Director indicating that respondent had not yet filed tax returns for the years 1993, 1994, 1995, 1996 and 1997.

45. On January 12, 2006, the IRS sent respondent a final notice of intent to levy due to her unpaid tax liability totaling \$18,018.11 for the years 1998 through 2001, as well as 2003 and 2004.

46. On January 13, 2006, the IRS filed a tax lien against respondent in the amount of \$17,730.70 for the tax years 1998, 1999, 2000, 2001, 2003 and 2004.

47. On February 27, 2006, the IRS sent Twin City Co-ops a notice of levy against respondent in the amount of \$18,392.85.

48. Respondent's failure to timely file her federal tax returns violated Rule 8.4(b) and (d), MRPC.

### THIRD COUNT

#### Kenneth Thompson Matter

49. Respondent represented D.L. in a petition for an order of protection against C.D. on behalf of D.L. and C.D.'s minor children. Kenneth Thompson is C.D.'s brother.

50. On February 1, 2007, respondent filed with the court a document entitled "Petitioner's Attorney's Affidavit in Support of Petition for Order of Protection." In the body of respondent's affidavit, respondent states the following regarding Kenneth Thompson, "Kenneth Thompson has been charged with at least 14 criminal charges just since 2001." Respondent's affidavit went on to list some of the 14 criminal charges against Kenneth Thompson, which included interference with a 911 call, criminal damage to property, possession of narcotics, and fleeing a police officer.

51. Respondent attached to the above-mentioned affidavit a document entitled "Criminal Case Record Search Results" that she had printed from a computer terminal at the Scott County Courthouse. This document identified seven separate criminal matters involving a defendant named Kenneth Thompson.

52. The seven criminal matters, as itemized on the search results, listed three different Kenneth Thompsons with different birthdates and different middle initials.

53. Also attached to respondent's February 1 affidavit were documents entitled "Register of Actions." These documents contained the case histories for two of the seven criminal matters. The defendant listed on these registers is identified as Kenneth Steven Thompson of Bloomington, Minnesota.

54. Despite the discrepancies in the birthdates and middle names of the individuals listed as Kenneth Thompson and without any further effort to determine whether the defendant in any of these matters was in fact C.D.'s brother, respondent attached the results as they were and attributed the charges of all three Kenneth Thompsons to C.D.'s brother in the body of her affidavit.

55. On or about February 6, Thompson called respondent to complain about the inclusion of the criminal history of other persons named Kenneth Thompson in her affidavit and attachments. Respondent did not take any corrective action in response to Thompson's call.

56. On or about February 13, 2007, Thompson wrote respondent clarifying his date of birth as 6/15/62 and his full name as Kenneth James Thompson. In his letter, Thompson requested that respondent retract from the court record the portions of her affidavit and attachments which refer to the criminal history of Kenneth Steven Thompson, born 4/4/65, and Kenneth D. Thompson, born 5/13/48. Thompson included a notarized letter from one of his employees verifying Thompson's full name and address. Respondent failed to take any corrective action in response to Thompson's letter.

57. On April 3, 2007, an evidentiary hearing was held on the OFP matter. Attorney Edwin Holmes appeared at the hearing on behalf of Thompson. Holmes informed presiding Judge Leslie Metzen of the misrepresentations in respondent's affidavit and asked that they be struck from the court records. Judge Metzen asked Holmes to identify by motion the misrepresentations in detail and asked respondent to

respond to Holmes by April 12, 2007. Judge Metzen also scheduled a hearing in the matter for April 16, 2007.

58. On April 3, 2007, after the evidentiary hearing, Holmes served on respondent a motion for sanctions under Rule 11. Holmes also wrote respondent describing the misrepresentations in detail.

59. On April 4, 2007, respondent wrote Holmes requesting more information. Holmes was out of the country at the time but responded upon his return on April 10.

60. Respondent took no action to correct her erroneous February 1, 2007, affidavit until April 12, 2007. On April 12, 2007, respondent filed an affidavit correcting the February 1, 2007, affidavit.

61. On May 8, 2007, Judge Metzen issued an order granting Rule 11 sanctions against respondent in the amount of \$3,500.

62. On June 6, 2007, respondent, with the assistance of attorney Jill Clark, filed a motion to vacate the order for attorney sanctions. A hearing was held on this matter on June 20, 2007.

63. On July 9, 2007, Judge Metzen granted respondent's motion to vacate sanctions due to procedural error. In an attached memorandum, Judge Metzen states that the court stands by its earlier findings that respondent had actual notice in early February, that the facts in respondent's affidavit were incorrect and that respondent had a duty to correct them. Judge Metzen further describes respondent's conduct as "indefensible," but not sanctionable given the procedural history of the matter.

64. Respondent's conduct in submitting incorrect information about Kenneth Thompson's criminal history and failing to promptly correct the record violated Rules 3.3(a)(1), 4.4, and 8.4(d), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the

Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: August 29, 2008.

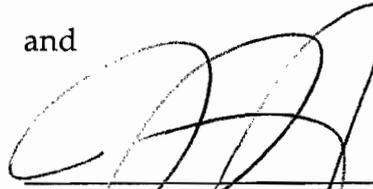


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