

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against VINCENT FRANCIS WATERS,
a Minnesota Attorney,
Registration No. 225964.

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 May 8, 1992. Respondent currently practices law in St. Paul, Minnesota. Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

In considering whether public discipline is warranted it is appropriate, pursuant to Rule 19(b)(4), Rules on Lawyers Professional Responsibility (RLPR), to consider respondent's prior discipline. Respondent's history of prior discipline, including admonitions, is as follows:

A. In 2003 respondent filed a lawsuit on behalf of his clients claiming \$196,500 in damages on a new home construction with serious defects.

Respondent failed to inform the court of a material change in damages when the home sold for a loss to his clients of only \$2,500. The insurance company for the builder filed a complaint against respondent. Respondent told the Director he did not normally do civil litigation and was not aware of his duty to inform the

court of the material change in damages. The Director found respondent violated Rule 1.1, Minnesota Rules of Professional Conduct (MRPC), and issued an admonition to respondent in June 2005.

B. In December 2010, respondent received an admonition for failing to communicate with his client, J. C., in violation of Rule 1.4, MRPC.

FIRST COUNT

Jonathan and Amy Hamel Matter

1. In 2006, complainants Jonathan and Amy Hamel (the Hamels) retained the law firm of Waters and Scott, P.L.L.P. to represent them against various building contractors regarding serious defects in the construction of their home. The matter involved 14 opposing parties, eight attorneys and nine insurance companies.

2. Respondent filed a summons and complaint on April 2, 2009. The matter survived summary judgment and the court set trial for March 1, 2010.

3. Respondent scheduled mediation to take place on February 9, 2010. However, there was confusion about the mediation date. Respondent believes that he told the Hamels about the mediation, but the Hamels do not recall this. On the day of the mediation respondent was able to reach Jon Hamel (Hamel) by telephone and attempted to negotiate settlements via telephone. However, after an initial settlement conversation, respondent lost the connection and no further communications were held between Hamel and respondent. A final agreement was not reached by all parties that day. Respondent left a voice mail message for the Hamels, stating an agreement had not been reached.

4. Without the Hamels' full knowledge or consent, negotiations continued over the next several days. Eventually, without any further input from the Hamels, respondent negotiated a universal settlement with all defendant parties. Respondent did not have his clients' permission to settle with the various defendants.

5. On February 17, 2010, the mediator sent respondent a copy of the final settlement agreement, together with a list showing each party and their respective

settlement amounts to be paid. Respondent failed to promptly provide the Hamels with this information.

6. Also on February 17, 2010, unaware that a settlement agreement had been reached, Hamel sent an email message to respondent asking for an update and inquiring how the case was going. The Hamels continued to be unaware that their case had settled. Although Hamel asked respondent to call him, respondent did not do so.

7. Respondent then left for a Florida vacation and failed to tell to the Hamels that their case had settled in its entirety. Respondent did not inform the Hamels of the amount of the total settlement, nor did respondent tell them that they did not need to appear in court on March 1, 2010, their previously scheduled trial date.

8. On February 22, 2010, Hamel sent an email message to respondent asking about preparations for trial and asking respondent for an update on negotiations with the various parties.

9. On February 25, 2010, Hamel again sent an email message to respondent stating his belief that they had a court appearance on Monday (*i.e.* March 1, 2010), and stating they were not prepared.

10. On February 26, 2010, respondent forwarded to the Hamels a copy of the settlement agreement and a listing of the settlement amounts entitled "Exhibit A – Consideration Jonathan and Amy Hamel Agree to Accept" (hereinafter, Exhibit A). Respondent failed to provide an explanation for the settlement agreement or the settlement amounts.

11. Hamel reviewed the documents sent to him and noted that a party was missing from the listing. In addition, during Hamel's telephone conversation with respondent on the day of the mediation, Hamel had approved a \$10,000 settlement amount for the sub-contractor who had provided the drain tiling. On Exhibit A, Hamel noted that respondent had settled the Hamels' claim for \$4,500. Hamel did not agree to settle with the sub-contractor for that amount.

12. As late as February 28, 2010, the Hamels were unclear as to the status of their lawsuit and continued to believe they needed to appear in court on March 1, 2010, the next day. Hamel sent email messages to respondent stating the aggregate settlement amount was not sufficient and indicated he was not agreeing with the terms of the settlement.

13. On March 1, 2010, the Hamels accessed the court's calendar and learned their trial date had been removed from the court's calendar. Hamel again emailed respondent expressing his opposition to the settlement agreement and stated, "we cannot accept this offer."

14. On March 4, 2010, respondent met with Hamel to obtain signatures on the settlement agreement and to have them endorse one of the settlement checks. Hamel again voiced his concern regarding the couple's lack of participation in negotiating the settlement, together with the final settlement amount. Hamel stated he would not sign the settlement agreement. Respondent threatened to withdraw from the case if Hamel did not sign the agreement. Hamel eventually signed the agreement. Later that same day Amy Hamel also signed.

15. On February 19, 2010, respondent deposited \$16,000 and on March 8, 2010, respondent deposited \$6,000 in settlement checks from the various defendants. Respondent failed to inform the Hamels that the funds had been received. Without his clients' knowledge or consent, respondent disbursed \$2,000 to himself on March 8, 2010.

16. By March 18, 2010, respondent had received an additional \$5,750 in settlement checks. Without his clients' knowledge that funds had been received, respondent deposited \$3,750 into his trust account and kept \$2,000 for himself. Respondent then disbursed \$868.43 to pay the mediator's invoice. Respondent disbursed these funds without his clients' knowledge or consent.

17. On March 9, 2010, the Director received a complaint against respondent from another client, J. C. The Director initiated an investigation into the J. C. matter. In that regard, on March 18, 2010, respondent disbursed \$3,450 of the funds he held in his

trust account on behalf of the Hamels, to reimburse J. C. Although paid directly from his trust account to J. C., respondent considered the \$3,450 as funds respondent had earned during his representation in the Hamel matter. However, contrary to J. C.'s retainer agreement, respondent did not hold any funds belonging to J. C. in his trust account.

18. On March 29, 2010, without informing the Hamels, respondent deposited into his trust account \$4,500 in settlement checks and removed \$1,000 to pay himself. Respondent again disbursed the Hamels' funds without their knowledge or consent. On March 30, 2010, respondent deposited the final \$3,000 of settlement funds owed to the Hamels, without informing them of the receipt of those funds.

19. As of April 1, 2010, respondent had collected \$35,250 on behalf of the Hamels and had disbursed \$9,318.43 without their knowledge or consent, including \$868.43 for the mediator and \$8,450 for himself (including the \$3,450 disbursed to J. C.).

20. On April 13, 2010, Hamel sent an email message to respondent asking why it was taking so long for respondent to receive the checks. Hamel asked respondent to contact to him. Respondent told Hamel he would look into where the money was. Respondent did not inform Hamel that he had already collected \$35,250 from the various defendants in their matter.

21. On April 18, 2010, Hamel sent an email message reminding respondent that the Hamels had not received a check and asked respondent, "Have you received any checks?" Respondent failed to respond.

22. On April 19, 2010, Hamel emailed respondent stating he had not heard anything from respondent and again asked "Were you paid the checks?" Although respondent replied that he would call Hamel by the end of the week, respondent failed to do so. On April 20, 22 and 26, 2010, Hamel sent email messages to respondent.

23. On April 26, 2010, respondent emailed Hamel and told Hamel he would call him the next day. Respondent failed to do so.

24. On May 6, 2010, Hamel emailed respondent and provided him with the Hamels' new telephone number.

25. On May 18, 2010, the court filed its order and entry of judgment and closed the court file.

26. On May 15 and May 28, 2010, Hamel sent email messages to respondent stating it would be nice if the settlement funds came soon in that he was having issues with his job. In response, on May 28, 2010, respondent replied to Hamel and stated that he would have a check for them "next week." Hamel responded, "That's awesome news. We are anxious to get some stuff done." Nonetheless, respondent failed to disburse any funds to the Hamels.

27. On May 29, 2010, Amy Hamel emailed respondent with their new telephone number and also commented on the "good news" that respondent would have a check for them "next week."

28. On June 3, 2010, Hamel sent an email message to respondent reminding respondent that he told Hamel a check would be disbursed sometime that week. Nonetheless, respondent did not provide the Hamels with their settlement monies, did not tell the Hamels he had received all of their funds and did not tell them he had disbursed funds.

29. On June 8, 2010, Hamel sent an email message to respondent stating he would like to complete the matter. Respondent did not respond.

30. On June 9, 2010, Hamel sent an email message to respondent stating the construction workers were getting ready to start fixing the house and were on tight schedules. Hamel asked respondent to contact him and let him know when he could expect the settlement funds. Respondent failed to respond.

31. On June 13, 2010, Hamel wrote to respondent stating he had not heard anything and requested respondent to update him. Respondent failed to do so.

32. On June 15, 2010, Hamel wrote, "I have copies of emails sent on 6/3/10; 6/8/10; 6/9/10; and 6/13/10; and now today's all requesting that you get back to us which

you have not responded. I am calling the courthouse.” Respondent replied within minutes, stating, “I am waiting for the court to sign the order.” In fact, the order had been signed and filed a month earlier.

33. Also on June 15, 2010, Hamel asked respondent how long it would take to receive the funds. Respondent did not respond. On June 18, 2010, Hamel again asked how long it would take. Respondent failed to provide Hamel with any information.

34. On June 25, 2010, Hamel emailed respondent, “Is there anything we can do to speed up the process? Many shingles are off the roof from past storm, need to get the ball rolling before it leaks. Guys are banging on the door and we can’t do anything until we get the check.” Respondent’s reply was that he was waiting for the final order and that he would contact the judge’s clerk. Shortly thereafter, the Hamels filed a complaint with the Director’s Office.

35. Although the Hamels filed a complaint on July 8, 2010, respondent continued to hold the Hamels’ settlement funds and failed to provide a reasonable explanation as to why he would not disburse their funds to them.

36. On August 18, 2010, Hamel sent an email message to respondent asking about the status of the settlement funds. Hamel still believed respondent was waiting for a court order to be signed.

37. On August 30, 2010, respondent sent an email message to Hamel stating he did not have their telephone number and asking that Hamel send it to him. In fact the Hamels had twice provided respondent with their new telephone number.

38. On or about September 10, 2010, five months after receiving the funds, and three months after the court closed their file, respondent disbursed \$23,641.92 to the Hamels.

39. The final invoice respondent provided to the Hamels, together with their settlement check, contained false and misleading statements. The invoice indicated the settlement check was paid into the firm’s account on May 9, 2010. That entry is false. The eleven settlement checks were deposited over a period of six weeks. All settlement

checks were received by respondent and deposited into his trust account by no later than March 30, 2010.

40. The invoice showed disbursements for the court reporter, mediator, respondent's attorney's fees and the Hamels' settlement check were all disbursed on September 9, 2010. Those entries, except for the disbursements to the Hamels, are false. Respondent paid the mediator \$868.43 and Mr. J. C. \$3,450 from the Hamels funds on March 18, 2010; the court reporter was paid \$607.40 on May 6, 2010; and respondent paid himself on March 6, March 18, March 29 and September 9, 2010.

41. In December 2010, the Hamels requested respondent to provide them with copies of all settlement checks received and deposited into respondent's trust account on their behalf. Respondent asked the Hamels if they thought he had stolen from them. Respondent stated they got the money they were entitled and told them to "Move on." Respondent did not provide the Hamels with copies of the checks.

42. During the course of this investigation, respondent made misleading statements to the investigator and to the Director.

43. On March 6, 2010, Hamel sent an email message to respondent stating that the Hamels had paid the costs of transcripts and filings fees with the Dakota County District Court.

44. On March 18, 2010, respondent used the Hamels' settlement funds to pay the mediator and on May 6, 2010, respondent used the Hamels' settlement funds to pay the court reporter.

45. Nonetheless, on August 27, 2010, respondent falsely stated in his answer to the complaint that respondent had paid the costs associated with the case, including filing fees, cost of deposition transcripts and mediator's fee.

46. On March 31, 2011, respondent, through his counsel, told the Director that as a professional courtesy to the Hamels, respondent had reduced his contingency fee of 33 1/3% to 30%.

47. On November 2, 2011, the Director requested a copy of the Hamels' retainer agreement. The retainer agreement indicated respondent would receive 30% recovery, not 33 1/3% as respondent told the Director. In addition, the retainer agreement called for an upfront, non-refundable deposit retainer of \$2,600.

48. In respondent's answer to the Hamels' complaint, respondent stated that "[t]he choice of mediator and location were not decided until the last week in January 2010."

49. However, review of the mediator's invoice indicates that the mediator opened his firm's mediation file on January 4, 2010.

50. Respondent's statements that he paid out-of-pocket expenses, that as a professional courtesy he reduced his retainer, and that the mediator was chosen the last week in January 2010 were false and misleading.

51. Respondent's failure to keep his clients reasonably informed regarding the status of their matter, the mediation, and the settlement, together with respondent's failure to comply with his clients' reasonable requests for information violated Rules 1.2(a) and 1.4, MRPC.

52. Respondent's failure to notify the Hamels of the receipt of the settlement funds and respondent's failure to promptly pay the Hamels those funds for which they were entitled violated Rules 1.3, 1.15(b), 1.15(c)(1) and 1.15(c)(4), MRPC.

53. Respondent's use of the Hamel funds to refund monies due to J. C. violated Rule 1.15, as interpreted by Appendix 1, MRPC, and Rule 8.4(c), MRPC.

54. Respondent's statements that he was looking into the status of the settlement checks when he knew the settlement checks had been deposited into his trust account and partially distributed and by providing the Hamels with an invoice dated September 2010, and dating all transactions regarding their settlement funds on September 9, 2010, when those dates were untrue, were meant to mislead the Hamels and violated Rule 8.4(c), MRPC.

SECOND COUNT

I. C. Matter

55. On February 17, 2010, J. C. retained respondent for representation in three separate legal matters: 1) a marriage dissolution/separation matter; 2) a mechanic's lien issue; and 3) a real estate issue concerning J. C.'s mortgage. On February 18, 2010, J. C. paid respondent a \$3,450 retainer. Pursuant to their written agreement, \$3,000 represented a non-refundable fee, and \$450 was paid to cover estimated costs. Respondent did not place J. C.'s \$450 for costs into his trust account, as stated in his retainer agreement.

56. Shortly thereafter respondent left on his trip to Florida. (See ¶ 7 above.) Upon his return, respondent learned that J. C. had terminated his representation and filed a complaint with the Director. On March 18, 2010, respondent disbursed \$3,450 from his trust account to refund J. C.

57. Respondent did not hold \$3,450 in his trust account belonging to J. C.

58. In respondent's answer to J. C.'s complaint, respondent provided the Director with a copy of a trust account check refunding J. C.'s money, thereby misrepresenting the origin of the refund to the Director.

59. The Director had no reason to question whether or not respondent had properly deposited J. C.'s costs into respondent's trust account, nor could the Director have known respondent used the Hamels' funds to repay J. C. without the Hamels' knowledge or consent.

60. Given respondent's prompt refund to J. C., the Director issued an admonition to respondent for his failure to communicate with J. C., but did not address respondent's failure to deposit J. C.'s unearned expenses into his trust account due to evidence presented showing J. C. was refunded with a trust account check.

61. Respondent's failure to place J. C.'s \$450 for estimated costs into his trust account violated Rules 1.15(a) and Rule 8.4(c), MRPC.

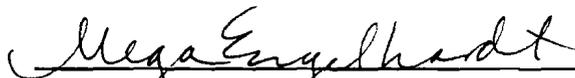
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: May 1, 2012.



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