

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 REVOCATION OF
PROBATION AND FOR FURTHER
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rule 12(a), Rules on Lawyers Professional Responsibility (RLPR), and pursuant to this Court's July 27, 2012, order in the matter.

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.

INTRODUCTION

By July 27, 2012, order this Court suspended respondent for a period of 30 days. A copy of the Court's order is attached as Exhibit 1. The basis of respondent's suspension was non-communication with a client, negotiating a settlement agreement without the client's knowledge or consent, failing to inform clients about his receipt of settlement funds, failure to timely remit settlement funds, using client funds from one client to refund money due to another client, making false statements to a client and providing false billing invoices, and failing to place client funds into trust in violation of Rules 1.2(a), 1.3, 1.4, 1.15(a), (b), and (c)(1) and (4), and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

Respondent subsequently filed an affidavit seeking reinstatement; however, prior to his reinstatement the Director filed a second petition for discipline. Respondent

and the Director stipulated to a public reprimand and that respondent be reinstated to the practice of law but that he be placed on probation for three years. The parties' stipulation for discipline was approved by order of this Court, dated December 12, 2012. A copy of the Court's order is attached as Exhibit 2.

Respondent's public reprimand was based upon neglect of a client matter, non-communication with a client, failure to expedite litigation, and failure to provide clients opposing counsel, and tribunals with timely notice of his prior suspension in violation of Rules 1.3, 1.4(a)(3) and (5), 3.2, 3.4(c), and 8.4(d), MRPC.

Among the conditions of respondent's probation were the following:

a. Respondent shall cooperate fully with the Director's Office in its efforts to monitor compliance with his probation and promptly respond to the Director's correspondence by the due date. Respondent shall provide to the Director a current mailing address and shall immediately notify the Director of any change of address. Respondent shall cooperate with the Director's investigation of any allegations of unprofessional conduct which may come to the Director's attention. Upon the Director's request, respondent shall provide authorization for release of information and documentation to verify compliance with the terms of this probation; and

b. Respondent shall abide by the Minnesota Rules of Professional Conduct.

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

FIRST COUNT

1. On December 5, 2012, the Director received a notice of overdraft from US Bank on respondent's trust account no. x-xxx-xxxx-9190 indicating that on November 29, 2012, an overdraft occurred in the amount of \$16.39.

2. As a result, the Director sent respondent a letter, dated December 7, 2012, enclosing the notice of overdraft and requesting that respondent provide a written

explanation for the overdraft along with trust account bank statements and books and records for the month in which the overdraft occurred and the two previous months. Respondent's response was due within ten days. Respondent failed to respond.

3. On December 12, 2012, the Director received two additional notices of overdraft from US bank on respondent's trust account indicating that overdrafts occurred on December 3 and 6, 2012.

4. By letter dated December 31, 2012, the Director again requested that respondent provide a written explanation for the overdrafts on his trust account along with the requested trust account bank statements and books and records.

5. On January 3, 2013, respondent called the Director and claimed that US Bank had permitted automatic withdrawals from his trust account without his authorization. When asked to identify the withdrawals, respondent stated the withdrawals were made by Netflix and iTunes, third party creditors. Respondent alleged that he had other accounts with US Bank and that US Bank processed the payments to his trust account in error. Respondent was directed to provide a statement from US Bank in support of his claim.

6. On January 8, 2013, respondent called the Director and claimed that PayPal was the source of the withdrawals. When asked how PayPal could have had access to his trust account number for billing purposes, respondent stated he did not know. Respondent stated that he was slated to meet with a US Bank representative that same day.

7. Respondent did not provide a statement from US Bank so the Director sent respondent a third letter, dated January 22, 2013, requesting that respondent provide the statement from US Bank.

8. On January 31, 2012, respondent provided a statement from US Bank stating that "[h]e [respondent] did not authorize the charges that led to his overdraft in his account and reported them to us when he realized it." The letter did not indicate how the third party creditors in question had received respondent's trust account

information for billing purposes or whether respondent had provided his trust account information to the third party creditors.

9. The Director contacted the US Bank representative and inquired whether there was any evidence that the withdrawals were fraudulent other than respondent's claim they were unauthorized. The US Bank representative stated he could not state how or why the withdrawals were made.

10. On February 4, 2013, the Director sent respondent a letter requesting the previously requested trust account banks statements and books and records. The Director stated that the letter from US Bank confirmed only that respondent asserted the withdrawals were not authorized but did not address whether respondent had in fact given his trust account information to a third party creditor to pay personally incurred bills. Respondent was also directed to "state the dates and amounts of all the unauthorized, automatic withdrawals, and state whether those withdrawals were paid to an account in your name or that of a third party." Respondent failed to respond.

11. On February 27, 2013, the Director sent respondent another letter requesting the same information. The Director also reminded respondent that the terms of his public probation, Rule 8.1(b), MRPC, and Rule 25, RLPR, required his cooperation with the Director's request for information and that if he failed to respond, the Director would have no choice but to convert the matter to a disciplinary investigation.

12. When respondent again failed to respond, the Director opened a disciplinary investigation and sent him a notice of investigation dated March 21, 2013. Respondent was given two weeks to provide trust account bank statements and books and records from October to February 2013. Respondent failed to respond.

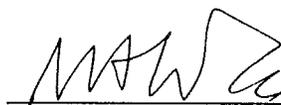
13. On April 8, 2013, the Director sent respondent another letter requesting his trust account information. When respondent again failed to respond, the Director obtained an investigatory subpoena for respondent's trust account statements pursuant to Rule 8(c), RLPR.

14. Pursuant to the subpoena request, US Bank provided respondent's trust account records to the Director on June 4, 2013. The records confirmed that between November and December 2012 there were ten electronic withdrawals from respondent's trust account totaling \$165.51. At the time of these withdrawals, respondent's trust account had contained \$109.01. Since respondent has failed to cooperate with the Director's investigation, the Director has been unable to determine whether this amount consisted of any client funds. Respondent's trust account was closed by US Bank in January 2013.

15. Respondent's conduct violated Rules 3.4(c), 8.1(b), and 8.4(d), MRPC, and Rule 25, RLPR, and the terms of the Court's December 12, 2012, probation order.

WHEREFORE, the Director respectfully prays for an order of this Court revoking respondent's probation, suspending respondent's license to practice law or imposing otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

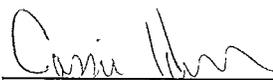
Dated: June 26, 2013.



MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY

Attorney No. 148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and



CASSIE HANSON
SENIOR ASSISTANT DIRECTOR
Attorney No. 303422