

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against WILLARD L. WENTZEL, JR.,  
a Minnesota Attorney,  
Registration No. 13160X.  
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**PETITION FOR  
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 upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 30, 1981. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

**MISAPPROPRIATION OF CLIENT FUNDS**

1. At all times relevant, respondent has maintained IOLTA client trust account no. 83097 at Associated Bank (hereinafter "trust account").<sup>1</sup>
2. Pursuant to Rule 1.15(j) to (o), Minnesota Rules of Professional Conduct (MRPC), Associated Bank reported an April 28, 2004, overdraft on respondent's trust account to the Director.

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<sup>1</sup> Respondent's trust account was with Signal Bank until June 2002, at which time Signal Bank apparently merged with or was acquired by Associated Bank.

3. In response to the Director's inquiry concerning the overdraft, respondent acknowledged that his trust account "became overdrawn due to the advance payment of fees issued to my firm, W.L. Wentzel, Jr. & Associates, PLLC on cases settled and cases anticipated to be settled within the near term of the date that the checks were issued."

4. The Director converted the overdraft inquiry to a formal disciplinary investigation and audited respondent's trust account for the period January 1, 2001, to June 4, 2004. The Director's audit revealed the misappropriation, and resultant trust account shortages, detailed below. After receiving notice of the overdraft inquiry from the Director, respondent obtained a \$62,500 bank loan on or about May 19, 2004, and deposited the loan proceeds into his trust account to rectify shortages caused by his repeated misappropriation of client funds over the preceding two years.

5. Throughout the Director's audit period, respondent repeatedly issued trust account checks: (a) to himself without attribution to, or entitlement from, any client, (b) attributed to payment of specific client fees and costs, but for which client funds were never deposited to the trust account, and (c) in payment of client fees and costs, but before depositing the underlying client funds in support of the payments. Respondent's issuance of trust account checks in all of these situations constitutes misappropriation.

6. As a result of respondent's misappropriation, the actual balance in respondent's trust account was continuously less than that necessary to cover the total amount of client funds that should have been in the account (aggregate client balances) during the periods January 23 to January 26, 2001, and April 25, 2002, to at least June 4, 2004. These shortages ranged in amount from \$1,559.83 to \$87,957.01. At the end of the audit period (June 4, 2004) respondent's trust account still reflected a \$3,242.25 shortage even after respondent deposited the \$62,500 loan proceeds into the account.

**A. Funds Taken without Attribution or Entitlement.**

7. On February 27, 2004, respondent issued himself trust account check no. 1647 for \$10,000, without attribution to, or entitlement from, any client. The bank paid check no. 1647 on March 1, 2004. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1647 was paid entirely with client funds, increasing the trust account shortage by \$10,000. This shortage continued to exist in the account until respondent deposited the \$62,500 loan proceeds into his trust account 79 days later on May 19, 2004.

8. On March 3, 2004, respondent issued himself trust account check no. 1631 for \$5,000, without attribution to, or entitlement from, any client. The bank paid check no. 1631 on March 4, 2004. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1631 was paid entirely with client funds, increasing the trust account shortage by \$5,000. This shortage existed in the account until respondent deposited the \$62,500 loan proceeds into the account 76 days later on May 19, 2004.

9. On March 9, 2004, respondent issued himself trust account check no. 1634 for \$5,000, without attribution to, or entitlement from, any client. The bank paid check no. 1634 on March 11, 2004. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1634 was paid entirely with client funds, increasing the trust account shortage by \$5,000. This shortage existed until respondent deposited the \$62,500 loan proceeds into his trust account 69 days later on May 19, 2004.

10. On March 12, 2004, respondent issued himself trust account check no. 1648 for \$5,000, without attribution to, or entitlement from, any client. The bank paid check no. 1648 on March 15, 2004. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1648 was paid entirely with client funds, increasing the trust account shortage

by \$5,000. This shortage existed until respondent deposited the \$62,500 loan proceeds into his trust account 65 days later on May 19, 2004.

**B. Funds Taken from Trust Account with no Supporting Deposit.**

11. Client E.A. On April 24, 2002, respondent issued trust account check nos. 1343 and 1344 for \$1,400 and \$5,600 to his client E.A. The bank paid check no. 1344 on April 25, 2002, and check no. 1343 on April 30, 2002. As of April 25 and 30, however, E.A. was not entitled to any funds from respondent's trust account, respondent having previously disbursed all of E.A.'s funds. As a result, check nos. 1343 and 1344 were paid through a combination of the unattributed funds then in the account (\$4,040.17) and other client funds, resulting in a \$2,959.83 trust account shortage. By the end of the audit period, *i.e.*, June 4, 2004, respondent had not deposited funds to eliminate the shortages caused by check nos. 1343 and 1344.

12. Client Ma.C. On November 4, 2003, respondent issued trust account check no. 1602 for \$302.08 on behalf of his client Ma.C. The bank paid check no. 1602 on November 6, 2003. As of November 6, however, Ma.C. was not entitled to any funds from respondent's trust account, respondent having previously disbursed all of Ma.C.'s funds. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1602 was paid entirely with other client funds and increased the trust account shortage by \$302.08. By the end of the audit period, *i.e.*, June 4, 2004, respondent had not deposited funds to rectify the trust account shortage caused by check no. 1602.

13. Client C.R. On January 12, 2004, respondent issued himself trust account check no. 1640 for \$5,000 for fees in the C.R. matter.<sup>2</sup> The bank paid check no. 1640 on January 13, 2004. As of January 13, however, C.R. was not entitled to any funds from respondent's trust account, respondent having previously disbursed all of C.R.'s funds.

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<sup>2</sup> Respondent's C.R. subsidiary ledger indicates that respondent was ultimately entitled to only \$2,552.46 in fees and costs.

Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1640 was paid entirely with other client funds, increasing the trust account shortage by \$5,000. Respondent deposited the \$62,500 loan proceeds into his trust account on May 19, 2004, attributing a portion of the proceeds in repayment of check no. 1640 and thus rectifying the shortage caused by check no. 1640.

14. Client P.M. On March 22, 2004, respondent issued himself trust account check no. 1653 for \$10,000 for fees in the P.M. matter. The bank paid check no. 1653 on March 23, 2004. As of March 23, however, respondent had not deposited any funds into his trust account for P.M. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1653 was paid entirely with other client funds, increasing the trust account shortage by \$10,000. Respondent deposited the \$62,500 loan proceeds into his trust account on May 19, 2004, attributing a portion of the proceeds in repayment of check no. 1653 and thus rectifying the trust account shortage caused by check no. 1653.

15. Client B.H. On March 26, 2004, respondent issued himself trust account check no. 1657 for \$2,500, attributing it to fees in the B.H. matter. Although B.H. was entitled to \$9,579.89 from respondent's trust account as of March 29, that balance was intended for payment of B.H.'s medical bills. Respondent had no entitlement to the \$2,500. Respondent deposited the \$62,500 loan proceeds into his trust account on May 19, 2004, attributing a portion of the proceeds in repayment of check no. 1657 and thus rectifying the trust account shortage caused by check no. 1657.

16. Client R.Y. On April 1, 2004, respondent issued himself trust account check no. 1662 for \$10,000 for fees in the R.Y. matter.<sup>3</sup> The bank paid check no. 1662 on April 2, 2004. As of April 2, however, respondent had not deposited any funds into his

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<sup>3</sup> Respondent's R.Y. subsidiary ledger indicates that respondent was ultimately entitled to only \$1,433 in fees and costs.

trust account for R.Y. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1662 was paid entirely with other client funds, increasing the trust account shortage by \$10,000. Respondent deposited the \$62,500 loan proceeds into his trust account on May 19, 2004, attributing a portion of the proceeds in repayment of check no. 1662 and thus rectifying the shortage caused by check no. 1662.

17. Client S.M. On April 16, 2004, respondent issued himself trust account check no. 1671 for \$10,000 for fees in the S.M. matter. The bank paid check no. 1671 on April 19, 2004. As of April 19, however, respondent had not deposited any funds into his trust account for S.M. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1671 was paid entirely with other client funds, increasing the trust account shortage by \$10,000. Respondent deposited the \$62,500 loan proceeds into his trust account on May 19, 2004, attributing a portion of the proceeds in repayment of check no. 1671 and thus rectifying the trust account shortage caused by check no. 1671.

**C. Funds Paid From Account Prior to Deposit of Supporting Funds.**

18. Client J.K. On January 23, 2001, respondent issued himself trust account check no. 1210 for \$7,815.74 for fees and costs in the J.K. matter. The bank paid check no. 1210 on January 23, 2001. As of January 23, however, respondent had not deposited any funds into his trust account for J.K. As a result, check no. 1210 was paid through a combination of the unattributed funds then in the account (\$4,040.18) and \$3,775.56 in other client funds, resulting in a \$3,775.56 shortage in respondent's trust account. Respondent did not deposit J.K. funds into his trust account until three days later on January 26, 2001, to rectify the trust account shortage caused by check no. 1210.

19. Client H.L. On July 3, 2002, respondent issued himself trust account check no. 1415 for \$3,000 for attorney fees in the H.L. matter. The bank paid check no. 1415 on July 5, 2002. As of July 5, 2002, however, respondent had not deposited any funds into

his trust account for H.L. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1415 was paid entirely with other client funds and increased the trust account shortage by \$3,000.

20. On July 11, 2002, respondent issued himself trust account check no. 1425 for an additional \$1500 for fees in the H.L. matter. The bank paid check no. 1425 on July 12, 2002. As of July 12, however, respondent still had not deposited any funds into his trust account for H.L. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1425 was paid entirely with other client funds and increased the trust account shortage by \$1500. Respondent did not deposit H.L. funds into his trust account until July 17, 2002, to rectify the shortages caused by check nos. 1415 and 1425.

21. Client M.L. On July 8, 2002, respondent issued himself trust account check no. 1422 for \$1,000 for fees in the M.L. matter. The bank paid check no. 1422 on July 8, 2002. As of July 8, however, respondent had not deposited any funds into his trust account for M.L. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1422 was paid entirely with other clients' funds and increased the trust account shortage by \$1,000. Respondent deposited M.L. funds into his trust account four days later on July 12, 2002, thus rectifying the shortage caused by check no. 1422.

22. Client Mi.C. On July 15, 2002, respondent issued himself trust account check no. 1430 for \$500 for fees in the Mi.C. matter. The bank paid check no. 1430 on July 16, 2002. As of July 16, however, respondent had not deposited any funds into his trust account for Mi.C. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1430 was paid entirely with other client funds and increased the trust account shortage by \$500.

23. On July 18, 2002, respondent issued himself trust account check no. 1429 for \$500 for additional fees in the Mi.C. matter. The bank paid check no. 1429 on July 19, 2002. As of July 19, however, respondent still had not deposited any funds into his trust account for Mi.C. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1429 was paid entirely with other client funds and increased the trust account shortage by \$500. Respondent did not deposit Mi.C. funds into his trust account until July 25, 2002, to rectify the trust account shortages caused by check nos. 1429 and 1430.

24. Client Ma.C. On October 22, 2003, respondent issued himself trust account check no. 1598 for \$1,148.35 for fees and costs in the Ma.C. matter. The bank paid check no. 1598 on October 22, 2003. As of October 22, however, respondent had not deposited any funds into his trust account for Ma.C. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1598 was paid entirely with other client funds and increased the trust account shortage by \$1,148.35. Respondent did not deposit Ma.C. funds into his trust account until two days later on October 24, 2003, to rectify the shortage caused by check no. 1598.

25. Client J.S. On October 30, 2003, respondent issued himself trust account check no. 1601 for \$4,000 for fees in the J.S. matter. The bank paid check no. 1601 on October 31, 2003. As of October 31, however, respondent had not deposited any funds into his trust account for J.S. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1601 was paid entirely with other client funds, increasing the trust account shortage by \$4,000.

26. On November 5, 2003, respondent issued himself trust account check no. 1603 for an additional \$5,000 for fees in the J.S. matter. The bank paid check no. 1603 on November 6, 2003. As of November 6, however, respondent still had not deposited any

funds into his trust account for J.S. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1603 was paid entirely with other client funds, increasing the trust account shortage by \$5,000. Respondent did not deposit J.S. funds into his trust account until November 11, 2003, to rectify the shortages caused by check nos. 1601 and 1603.

27. Client S.B. On December 17, 2003, respondent issued himself trust account check no. 1620 for \$10,088.05 for fees in the S.B. matter. The bank paid check no. 1620 on December 17, 2003. As of December 17, however, the balance of S.B. funds in respondent's trust account was only \$7,000. Due to previous misappropriations, the overall balance in the account was already short of funds to cover aggregate client balances. As a result, \$3,088.05 of check no. 1620 (\$10,088.05 minus \$7,000) was paid with other client funds, increasing the trust account shortage by \$3,088.05.

28. On December 11, 2003, respondent issued himself trust account check no. 1617 for \$706.82 for fees and costs in the S.B. matter. The bank paid check no. 1617 on December 23, 2003. As of December 23, however, S.B. was not entitled to any funds from respondent's trust account, respondent having previously disbursed all of S.B.'s funds. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1617 was paid entirely with other client funds, increasing the trust account shortage by \$706.82.

29. On December 17, 2003, respondent issued trust account check no. 1618 for \$1,277.35 on behalf of S.B. The bank paid check no. 1618 on December 30, 2003. As of December 30, however, S.B. was still not entitled to any funds from respondent's trust account, respondent having previously disbursed all of S.B.'s funds. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1618 was paid entirely with other client funds, increasing the trust account shortage by \$1,277.35. Respondent did not deposit

S.B. funds into his trust account until January 14, 2004, to rectify the shortages caused by check nos. 1617, 1618, and 1620.

30. Client H.L.T. On December 26, 2003, respondent issued himself trust account check no. 1623 for \$6,000 for fees in the H.L.T. matter. The bank paid check no. 1623 on December 29, 2003. As of December 29, however, H.L.T. was not entitled to any funds from respondent's trust account, respondent having previously disbursed all of H.L.T.'s funds. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1623 was paid entirely with other client funds, increasing the trust account shortage by \$6,000. Respondent did not deposit H.L.T. funds into his trust account until 44 days later on February 11, 2004, to rectify the overall shortage caused by check no. 1623.

31. Client D.K. On December 30, 2003, respondent issued himself trust account check no. 1630 for \$5,000 for fees in the D.K. matter. The bank paid check no. 1630 on December 31, 2003. As of December 31, however, respondent had not deposited any funds into his trust account for D.K. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1630 was paid entirely with other client funds, increasing the trust account shortage by \$5,000.

32. On December 31, 2003, respondent issued himself trust account check no. 1635 for an additional \$6,000 for fees in the D.K. matter. The bank paid check no. 1635 on January 2, 2004. As of January 2, however, respondent still had not deposited any funds into his trust account for D.K. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1635 was paid entirely with other client funds, increasing the trust account shortage by \$6,000.

33. On April 16, 2004, respondent issued himself trust account check no. 1667 for an additional \$3,666.66 for fees in the D.K. matter. The bank paid check no. 1667 on

April 19, 2004. As of April 19, however, respondent still had not deposited any funds into his trust account for D.K. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1667 was paid entirely with other client funds, increasing the trust account shortage by \$3,666.66. Respondent did not deposit D.K. funds into his trust account until May 4, 2004, to rectify the trust account shortages caused by check nos. 1630, 1635 and 1667.

34. Client D.S. On January 27, 2004, respondent issued himself trust account check no. 1643 for \$5,000 for costs in the D.S. matter. The bank paid check no. 1643 on January 28, 2004. As of January 28, however, respondent had not deposited any funds into his trust account for D.S. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1643 was paid entirely with other client funds, increasing the trust account shortage by \$5,000. Respondent did not deposit D.S. funds into his trust account until seven days later on February 4, 2004, to rectify the trust account shortage caused by check no. 1643.

35. Client D.B. On March 16, 2004, respondent issued himself trust account check no. 1650 for \$3,333.33 for fees in the D.B. matter. The bank paid check no. 1650 on March 17, 2004. As of March 17, however, D.B. was not entitled to any funds from respondent's trust account, respondent having previously disbursed all of D.B.'s funds. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1650 was paid entirely with other client funds, increasing the trust account shortage by \$3,333.33. Respondent did not deposit D.B. funds into his trust account until five days later on March 22, 2004, to rectify the trust account shortage caused by check no. 1650.

36. Client R.A. On April 8, 2004, respondent issued himself trust account check no. 1665 for \$10,000 for fees and costs in the R.A. matter. The bank paid check no.

1665 on April 9, 2004. As of April 9, however, respondent had not deposited any funds into his trust account for R.A. Due to previous misappropriations, the balance in the account was already short of funds to cover aggregate client balances. As a result, check no. 1665 was paid entirely with other client funds, increasing the trust account shortage by \$10,000. Respondent did not deposit R.A. funds into his trust account until 24 days later on May 3, 2004, to rectify the trust account shortage caused by check no. 1662.

37. Respondent's conduct violated Rules 1.15 and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

WHEREFORE, the Director respectfully prays for an order of this Court disbarring respondent from the practice of law, 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: April 22, 2005.

  
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