

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against KARA JANE JENSEN ZITNICK,  
a Minnesota Attorney,  
Registration No. 0317469.  
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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 (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 10, 2002. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Coleman Matter

1. On August 6, 2012, Emily Coleman retained respondent to represent her in the submission of a trademark application to the United States Patent and Trademark Office ("USPTO"). Respondent and Coleman signed a "Legal Services Engagement Agreement," providing for an advance payment of \$500 for legal fees and \$325 for the USPTO's filing fees. On or about August 13, 2012, Coleman paid the required \$825 fee and cost advance through "PayPal." Respondent did not deposit any portion of Coleman's fee or cost advance into her trust account.

2. On September 14, 2012, respondent transferred Coleman's fee and cost advance from her "PayPal" account into her operating account.

3. On September 24, 2012, respondent submitted Coleman's trademark application, along with a \$275 filing fee, to the USPTO. Respondent did not deposit the remaining \$50 (\$325 minus \$275) of Coleman's funds into her trust account.

4. Instead, respondent transferred to herself and retained the \$50 balance of Coleman's funds.

5. On January 22, 2013, the USPTO issued an "Office Action" regarding Coleman's trademark application. The "Office Action" requested the provision of additional information regarding the application and an additional \$50 filing fee by July 22, 2013. Respondent failed to notify Coleman of the USPTO's "Office Action."

6. In approximately late March 2013, in reviewing the status of her trademark application at the USPTO's website, Coleman discovered the "Office Action." During the period April through May 2013, Coleman sent several email communications to respondent, to which respondent did not respond. Coleman also left respondent a voicemail message, to which respondent likewise did not respond.

7. Coleman determined to terminate respondent's representation and to submit the requested additional information and filing fee on her own. On June 18, 2013, Coleman informed the USPTO of her termination of respondent's representation and submitted the additional materials. Also on June 18, 2013, Coleman sent an email to respondent requesting a partial refund of her retainer. Respondent did not respond.

8. Respondent states that she discovered Coleman had terminated her representation in reviewing Coleman's trademark application on the USPTO's website on approximately June 25, 2013. Respondent further states that, at that time, she found at least one of Coleman's email communications in her email "SPAM" folder, the others apparently having been automatically deleted by her email system. Respondent did not attempt to contact Coleman upon discovering her email.

9. Respondent contends that, on or about July 23, 2013, she sent Coleman a \$50 refund check. Respondent issued the check from her trust account, even though respondent had not deposited any portion of Coleman's fee or cost advance into that

account. In a November 20, 2013, letter, the Director informed respondent that Coleman did not receive the refund check.<sup>1</sup> Respondent did not issue Coleman a replacement check until November 19, 2014.

10. Respondent's conduct in the Coleman matter violated Rules 1.4(a)(3) and (4), 1.15(a), 1.16(d), and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

## SECOND COUNT

### Trust Account Violations

11. During the course of the Director's investigation of the Coleman matter, the Director requested and respondent provided trust account books and records for the period January 2013 through July 2014. All the client subsidiary ledgers, trial balance reports and reconciliation reports provided by respondent for this period had been reconstructed by respondent's counsel.

12. During the period from at least January 2013 to at least November 2014, respondent failed to contemporaneously maintain the trust account books required by Rule 1.15, MRPC, as interpreted by Appendix 1 thereto. In particular, respondent failed to maintain contemporaneous client subsidiary ledgers, monthly trial balance reports and monthly reconciliation reports.

13. During the period July 2013 to November 2014, the balance in respondent's trust account was continuously short of that necessary to cover aggregate client balances. The shortage in respondent's trust account ranged in amount from \$18.89 to \$508.89, and was the result of the following transactions:

a. On July 16, 2013, respondent transferred \$96 from her trust account into her operating account as earned fees on behalf of respondent's client Arevalo. At the time, however, the Arevalo balance in respondent's trust account was only \$71.12 and the transfer created a \$24.88 (\$71.12 minus \$96) negative balance in Arevalo's subsidiary ledger. At the time, however, respondent's trust account contained a \$25 balance of "Law Firm" funds

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<sup>1</sup> Coleman has never received this check and it has never cleared respondent's trust account.

belonging to respondent, which was, in effect, reduced to \$.12 (\$25 minus \$24.88) by respondent's excess disbursement of Arevalo funds.

b. On July 18, 2013, respondent transferred \$645 from her trust account into her operating account for earned fees on behalf of respondent's client Kinder-craze. At the time, however, the Kinder-craze balance in respondent's trust account was only \$625.99 and the transfer created a \$19.01 (\$625.99 minus \$645) negative balance in Kinder-craze's subsidiary ledger. In addition, after application of respondent's remaining "Law Firm" funds balance, the transfer created an \$18.89 overall shortage in respondent's trust account (\$.12 minus \$19.01).

c. On August 2, 2013, respondent transferred \$60 from her trust account into her operating account as a purported draw against her "Law Firm" funds balance. As described above, however, respondent's "Law Firm" funds had, by this time, effectively been exhausted. As a result, the transfer increased the overall shortage in respondent's trust account to \$78.89 (\$18.89 plus \$60).

d. On January 2, 2014, respondent transferred \$155 from her trust account into her operating account for earned fees on behalf of respondent's client L.D. At the time, however, the L.D. balance in respondent's trust account was only \$50 and the transfer created a \$105 (\$50 minus \$155) negative balance in L.D.'s subsidiary ledger and increased the overall shortage in respondent's trust account to \$183.89 (\$78.89 plus \$105).

e. On January 29, 2014, respondent transferred \$500 from her trust account into her operating account for earned fees on behalf of respondent's client M.A. At the time, however, the M.A. balance in respondent's trust account was only \$475 and the transfer created a \$25 (\$475 minus \$500) negative balance in M.A.'s subsidiary ledger and increased the overall shortage in respondent's trust account to \$208.89 (\$183.89 plus \$25).

f. On March 24, 2014, respondent transferred \$250 from her trust account into her operating account for earned fees on behalf of respondent's client N.P. At the time, however, the N.P. balance in respondent's trust account was only \$242.45 and the transfer created a \$7.55 (\$242.45 minus \$250) negative balance in N.P.'s subsidiary ledger and increased the overall shortage in respondent's trust account to \$216.44 (\$208.89 plus \$7.55).

g. On March 26, 2014, respondent deposited \$150 of her own funds into the trust account. This deposit reduced the overall shortage in respondent's trust account to \$66.44 (\$216.44 minus \$150).

h. Also on March 26, 2014, respondent deposited additional M.A. funds into her trust account, eliminating the \$25 negative balance in M.A.'s subsidiary ledger and further reducing the overall shortage in respondent's trust account to \$41.44 (\$66.44 minus \$25).

i. On April 1, 2014, respondent transferred \$35 from her trust account into her operating account for earned fees on behalf of respondent's client M.A. At the time, however, the M.A. balance in respondent's trust account was only \$10 and the transfer created a \$25 (\$10 minus \$35) negative balance in M.A.'s subsidiary ledger and increased the overall shortage in respondent's trust account to \$66.44 (\$41.44 plus \$25).

j. On May 9, 2014, respondent transferred \$225 from her trust account into her operating account for earned fees on behalf of respondent's client J.G. Because respondent had not, however, deposited any funds into her trust account for J.G., the transfer created a \$225 negative balance in J.G.'s subsidiary ledger and increased the overall shortage in respondent's trust account to \$291.44 (\$66.44 plus \$225).

k. On May 12, 2014, respondent deposited additional N.P. funds into her trust account, eliminating the \$7.55 negative balance in N.P.'s subsidiary

ledger and reducing the overall shortage in respondent's trust account to \$283.89 (\$291.44 minus \$7.55).

l. On May 16, 2014, respondent transferred an additional \$225 from her trust account into her operating account for earned fees on behalf of her client J.G. Again, however, because respondent had not deposited any funds into her trust account for J.G., the transfer increased the negative balance in J.G.'s subsidiary ledger to \$450 and increased the overall shortage in respondent's trust account to \$508.89 (\$283.89 plus \$225).

m. On November 20, 2014, respondent deposited \$580 of her own funds into the trust account. This deposit eliminated all the negative client subsidiary ledger balances and the overall shortage in respondent's trust account.

14. Respondent's conduct as described above constituted the negligent misappropriation of client funds.

15. Respondent's conduct in failing to maintain proper trust account books and records and creating shortages in her trust account violated Rule 1.15(a), (c)(3) and (h), MRPC, as interpreted by Appendix 1 thereto.

### THIRD COUNT

#### Failure to Cooperate

16. On June 18, 2013, the Director received Coleman's complaint against respondent. On June 26, 2013, the Director issued notice of investigation of Coleman's complaint. The notice informed respondent and Coleman that the matter was being referred for investigation to the First District Ethics Committee ("DEC") and requested respondent to provide her complete written response to the DEC within 14 days. Respondent failed to do so.

17. On July 15, 2013, the DEC investigator wrote to respondent and requested her written response to Coleman's complaint. On July 24, 2013, respondent provided her response.

18. On July 30, 2013, the DEC investigator wrote to respondent to request additional information and documents. Respondent failed to respond.

19. On August 12, 2013, the DEC investigator wrote again to respondent. The investigator enclosed a copy of a letter he had received from Coleman and requested respondent's response to both Coleman's letter and the investigator's July 30 letter. Respondent failed to respond.

20. On September 12, 2013, the DEC investigator wrote again to respondent requesting her response to his July 30 and August 12, 2013, letters.

21. On September 24, 2013, respondent sent an email to the DEC investigator in which she stated that her "response [was] forthcoming." Respondent failed to provide her response.

22. On November 4, 2013, the DEC investigator sent an email to respondent requesting her response by the next day. Respondent failed to respond. On November 8, 2013, the DEC forwarded the investigator's report and file to the Director.

23. On November 20, 2013, the Director wrote to respondent. The Director enclosed a copy of, and requested respondent's response to, the DEC investigator's report. The Director also requested respondent's response to the DEC investigator's July 30 and August 12, 2013, letters and information additional to that requested by the DEC investigator. Respondent failed to respond.

24. On December 11, 2013, the Director wrote again to respondent to request her response to the Director's November 20, 2013, letter. Respondent failed to respond.

25. On December 24, 2013, the Director wrote for a third time to respondent to request her response to the Director's November 20, 2013, letter. On December 26, 2013, respondent's counsel informed the Director that respondent had retained him regarding Coleman's complaint. Respondent responded to the Director's November 20, 2013, letter, through counsel, on January 13, 2014.

26. On January 16, 2014, the Director wrote to respondent, through counsel, and requested additional information and documents. Respondent responded to the Director's January 16, 2014, letter, through counsel, on March 26, 2014.

27. On August 12, 2014, the Director wrote to respondent, through counsel, and requested additional information and documents. The Director requested respondent to provide the requested materials within three weeks. On September 19, 2014, counsel emailed the Director and stated that he would try to respond to the Director's August 12, 2014, letter after October 6, 2014.

28. The Director wrote again to respondent, through counsel, to request her response to the Director's August 12, 2014, letter on October 15, 2014. On November 4, 2014, counsel emailed the Director and stated that he had compiled the requested records but still needed to confirm details with respondent.

29. The Director wrote again to respondent, through counsel, to request her response to the Director's August 12, 2014, letter on November 6 and 20, 2014. Respondent responded partially to the Director's August 12, 2014, letter, through counsel, on November 25 and 26, 2014.

30. On January 22, 2015, the Director requested respondent, through counsel, to provide the remaining information and documents that had been requested in the Director's August 12, 2014, letter.

31. On January 30, 2015, the Director learned that respondent had been suspended on January 20, 2015, for failing to comply with her CLE requirements. On that date, the Director also requested respondent, through counsel, to provide information regarding her practice of law since January 20, 2015.

32. On February 10, 2015, the Director wrote to respondent, through counsel, and noted that she had issued her refund check to Coleman from her trust account. The Director requested respondent to state whether she had deposited funds on Coleman's behalf into her trust account prior to issuing the refund check and to provide certain trust account books and records.

33. Respondent failed to respond to the Director's January 22, January 30 or February 10, 2015, communications.

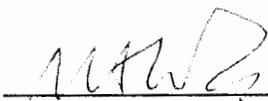
34. On March 4, 2015, the Director wrote to respondent, through counsel, and again requested her response to the Director's January 22, January 30 and February 10, 2015, communications. On March 13, 2015, counsel emailed the Director and stated that he would respond as soon as possible. Counsel further stated that respondent had resolved her CLE status.<sup>2</sup>

35. To date, respondent has failed to respond to the Director's January 22, February 10, and March 4, 2015, letters.

36. Respondent's conduct in failing to cooperate with the disciplinary investigation violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent or imposing other 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: April 30, 2015.

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

  
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SENIOR ASSISTANT DIRECTOR  
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<sup>2</sup> On April 9, 2015, counsel withdrew from the representation of respondent.