

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against SHANA GAIL BUCHANAN,
a Minnesota Attorney,
Registration No. 327311.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

Upon the approval of a Lawyers Professional Responsibility Board Panel Chair, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rules 10(d) 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 September 18, 2003. Respondent is currently not authorized to practice law.¹

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

On November 1, 2006, respondent was admonished for failing to deposit advance fee payments into a client trust account in violation of Rule 1.15(a), Minnesota Rules of Professional Conduct (MRPC).

¹ On October 31, 2011, respondent placed herself on inactive status with the Minnesota Board of Continuing Legal Education; and therefore, is unauthorized to practice law.

FIRST COUNT

Donald Guse Matter

2010 Appeal of Adverse Child Custody Disposition

1. Respondent represented Donald Guse in an appeal of an adverse child custody determination. Respondent had previously represented Guse on a motion to establish custody and modify parenting time at the district court level. After a trial in September 2009, the district court awarded sole legal and physical custody of the parties' minor child to Anne Hauble, the mother of the parties' minor child.

2. On February 5, 2010, respondent filed, by mail, a notice of appeal and a statement of the case with the clerk of appellate courts (hereinafter clerk). Respondent's filing was deficient. Respondent failed to include a notarized affidavit of service for the notice of appeal, a statement of the case, and a certified copy of the December 7, 2009, order from which the appeal was taken (hereinafter "order from which the appeal was taken") as required by Minn. R. Civ. App. P. 103.01, subdiv. 1(c) and (d)(1-4).

3. On February 10, 2010, by the notice of case filing, the clerk notified respondent of the deficiencies in her February 5, 2010, filing. The clerk directed respondent to file the affidavit of service and a certified copy of the order from which the appeal was taken within ten days. Respondent failed to do so.

4. On March 5, 2010, the court of appeals issued an order directing respondent to file a notarized affidavit of service and a certified copy of the order from which the appeal was taken by March 15, 2010.

5. Respondent's initial filings were also deficient in that she failed to file a certificate as to transcript pursuant to Minn. R. Civ. App. P. 110.02, subdiv. 2(a). On March 8, 2010, the court of appeals issued an order stating, in pertinent part, that a completed initial transcript certificate shall be filed by March 26, 2010.

6. On March 17, 2010, respondent filed the notarized affidavit of service. Respondent stated in her cover letter, dated March 15, 2010, that she was having

difficulty obtaining a certified copy of the order she was appealing, because district court administration could not locate the file. Respondent further stated she would mail a certified copy of the order from which the appeal was taken by March 16, 2010; however, respondent failed to do so.

7. On March 23, 2010, respondent filed a motion requesting an extension to March 26, 2010, to file a certified copy of the December 7, 2009, order. On March 25, 2010, the court of appeals issued an order granting respondent's request for an extension to March 26, 2010.

8. On March 29, 2010, respondent filed a second motion requesting an extension to submit a certified copy of the December 7, 2009, order and an initial transcript certificate. Respondent stated in her cover letter, dated March 26, 2010, that she had misplaced the court of appeals' March 8, 2010, order setting the March 26, 2010, deadline for the initial transcript certificate. Respondent further stated that she was recovering from the flu and requested an extension to March 31, 2010, to submit a certified copy of the December 7, 2009, order and the initial transcript certificate.

9. Also on March 26, 2010, respondent hand-delivered to the clerk a certified copy of the December 7, 2009, order despite her motion for an extension of time as described above.

10. On April 1, 2010, respondent filed an amended motion requesting, in pertinent part, an extension to April 5, 2010, to file the initial transcript certificate. Respondent stated in her motion, which was dated March 31, 2010, that the court reporter intended to forward the certificate to the clerk of court when he received payment. Respondent further stated that she had arranged for payment to be made on March 31, 2010.

11. On April 2, 2010, the court of appeals issued an order granting respondent an extension to file the initial transcript certificate and requiring that she file a certificate of filing and delivery by no later than April 7, 2010.

12. On April 5, 2010, the court of appeals received the initial transcript certificate. On April 7, 2010, the court of appeals received the certificate of delivery.

13. Pursuant to Minn. R. Civ. App. P. 131.01, subdiv. 1, respondent's brief in this matter was due on May 10, 2010. Respondent failed to submit her brief by May 10, 2010, and failed to timely request an extension.

14. On May 20, 2010, the court of appeals issued an order stating that respondent's brief be served and filed by June 1, 2010. The order also stated the oral argument previously requested by respondent was denied based on respondent's failure to timely file a brief.

15. On June 1, 2010, respondent filed a motion for an extension of time to file the brief to July 1, 2010. Respondent stated in her cover letter, dated May 27, 2010, that untimeliness was due to her lack of familiarity with the scheduling of civil appellate proceedings and her multiple professional obligations.

16. On June 7, 2010, the court of appeals issued an order denying respondent's motion for an extension to July 1, 2010, to file a brief. The order further stated that respondent shall file a brief by June 15, 2010, and failure to do so will result in dismissal of the appeal. Respondent failed to file a brief by June 15, 2010.

17. On June 21, 2010, respondent filed a motion and a supporting affidavit of respondent for leave to file a brief out of time. Respondent stated that the brief was not filed by June 15, 2010, due to respondent's severe sinus infection.

18. Also on June 21, 2010, respondent hand-delivered and filed a motion to stay the appeals proceeding and an affidavit of respondent in support of the motion. Respondent stated that during the course of researching and drafting the appeal in this matter, she "learned that the proper procedural course of action is to file a motion for post-judgment relief with the presiding judicial officer prior to removing the matter to the State Court of Appeals." Respondent further requested "an order staying this proceeding for the purpose of returning to district court to file a motion under rule

60.02 requesting an order vacating the Judgment based on a finding of excusable neglect.”

19. Accompanying her motions for an extension to file her brief and for stay of the appeals proceeding, respondent filed an affidavit of service claiming that she had mailed copies of the motions to Emily Cooper, who was opposing counsel, on June 21, 2010. Respondent’s statement in her affidavit of service was false. When Cooper did not receive respondent’s original filings, her firm contacted respondent to inquire about the status of her filings. On June 24, 2010, Cooper received copies of respondent’s motions, which were postmarked on the envelope as having been mailed on June 23, 2010, not June 21, 2010, as respondent claimed in her affidavit of service.

20. On June 23, 2010, the court of appeals issued an order denying respondent’s motion to stay the processing of the appeal, but permitted her to file her brief by no later than July 6, 2010. The order also stated, “failure to comply with this order with result in the dismissal of the appeal without further notice.” Respondent failed to file an appeal by July 6, 2010.

21. On July 15, 2010, the court of appeals issued an order dismissing the appeal based on respondent’s “failure to comply with this court’s orders establishing briefing deadlines.”

2011 Motion for Modification of Parental Access

22. On or about April 14, 2011, respondent served a motion to modify parental access on Hauble. Respondent’s motion stated that the basis for the motion was set forth in Guse’s affidavit and other exhibits attached to the motion. The motion that respondent served on Hauble failed to contain any affidavits or other exhibits. Respondent also failed to file the motion with the district court.

23. On May 17, 2011, Hauble met with attorney Elizabeth Sauer. During the initial meeting, Hauble provided Sauer with a notice from the court indicating that the

hearing date had been rescheduled from June 7, 2011, to June 10, 2011. Hauble ultimately retained Sauer to represent her.

24. By letter dated May 24, 2011, Sauer informed respondent of her representation. Sauer stated that respondent's motion was improper since the parenting time order required the parties to participate in mediation prior to filing further motions with the court. Sauer stated that respondent should withdraw her motion otherwise she would seek attorney's fees. Sauer further noted that respondent's motion had also failed to attach the referenced affidavits or other exhibits supporting the basis of her motion. As a result, the parties agreed to private mediation.

25. On May 30, 2011, Hauble faxed Sauer additional documents that she had received in the mail from respondent on May 24, 2011. These documents consisted of the same notice of motion and motion for parental access and a motion for modification that had been re-dated from April 14, 2011, to May 24, 2011. Ms. Buchanan again failed to attach the referenced supporting documents. The May 23, 2011, motions also continued to reference the incorrect hearing date of June 7, 2011.

26. On August 2, 2011, Hauble received notice from the district court that a motion hearing in her case had been rescheduled from September 14 to November 7, 2011. Hauble informed Sauer to this effect on August 19, 2011. This was the first notice that Sauer received of the new hearing date.

27. On September 21, 2011, the parties participated in a private mediation session but were unable to reach a satisfactory agreement.

28. On October 28, 2011, Sauer learned through MNCIS that the hearing date had been rescheduled from November 7, 2011, to November 10, 2011, at respondent's request.² Respondent had not provided notice to Sauer or Hauble thereof.

29. On November 3, 2011, Sauer served a responsive motion in anticipation of the November 10, 2011, hearing date. On November 4, 2011, Sauer checked MNCIS and

² Minnesota State Court Information Systems (MNCIS).

again learned that respondent had unilaterally moved the hearing date for the third time to February 9, 2012. Sauer attempted to follow-up with respondent but respondent had moved her law practice without leaving any forwarding address or phone number. Sauer later learned that respondent was not authorized to practice law.

30. Between January 6, 2011, and May 19, 2011, respondent was suspended from the practice of law for failure to pay her lawyer registration fee. Respondent's conduct in undertaking representation of Guse and serving a motion to modify parental access constituted the unauthorized practice of law.

31. On October 1, 2011, respondent placed herself on inactive status with the Minnesota Board of Continuing Legal Education. As a result, respondent was not authorized to practice law effective October 1, 2011. Respondent's continued representation of Guse, including contacting Sauer to discuss the case in October and November 2011 and repeatedly rescheduling the motion hearing in October and November 2011, constituted the unauthorized practice of law.

32. Respondent's conduct, including incompetency, neglect, failure to comply with multiple court orders resulting in dismissal of a client's appeal, false statements to the court about service of process, unilaterally rescheduling court hearings without notice to opposing counsel, and unauthorized practice of law violated Rules 1.1, 1.3, 3.2, 3.4(c), 4.1, 5.5(a), and 8.4(c) and (d), MRPC.

SECOND COUNT

Chaun Carridine Matter

32. In May of 2009, Chaun Carridine was convicted of first degree murder. In November 2009, Carridine hired respondent to pursue appellate relief.

33. Respondent stated that the initial cost of Carridine's appeal would be \$7,500. On November 18, 2009, Sandra Carridine, Carridine's mother, paid respondent \$5,000 by check no. 3827. Thereafter, Sandra Carridine made monthly payments of \$500 until the remaining balance was paid in full. These payments were made as follows:

check no. 3848 in the amount of \$500 on January 10, 2010; check no. 3731 in the amount of \$500 on February 2, 2010; check no. 3723 in the amount of \$500 on March 6, 2010; check no. 3761 in the amount of \$500 on March 6, 2010; and check no. 3907 in the amount of \$500 on May 20, 2010.

34. On December 31, 2009, respondent filed a motion with the Supreme Court for an extension of time to file a brief in the matter. On January 5, 2010, the Supreme Court issued an order granting respondent an extension until February 8, 2010, to file a brief in the matter.

35. On February 5, 2010, respondent filed a motion with the Court requesting an extension to file a brief until March 5, 2010. On February 10, 2010, the Supreme Court granted respondent an extension until March 5, 2010, to file a brief.

36. On March 11, 2010, respondent filed a motion requesting another extension to April 9, 2010. In her motion, respondent stated she was relatively inexperienced in these matters and that there was an unexpected family illness in February 2010.

37. On March 15, 2010, the Supreme Court issued an order granting respondent an extension to April 9, 2010, to file a brief. The order stated, "No further extensions will be granted." Respondent failed to file a brief by April 9, 2010.

38. On April 20, 2010, eleven days after the brief was due, respondent faxed a motion to the Supreme Court requesting to stay the appellate proceedings in order to file a petition for post-conviction relief.

39. On April 28, 2010, the Supreme Court issued an order stating "within 7 days of the date of this order appellant shall file with the clerk of appellate courts (hereinafter 'clerk') a response showing cause as to: (1) why appellant's counsel has failed to timely file appellant's brief, (2) specifically, why post-conviction proceedings are required, (3) why, after multiple extensions to file appellant's brief, appellant should

not be required to proceed with the direct appeal and (4) why oral argument should not be denied pursuant to Minn. Civ. App. P. 134.01(b)."

40. On May 5, 2010, respondent filed a response to the order to show cause stating that Carridine wanted her to file an ineffective assistance of counsel claim and that due to respondent's inexperience she mistakenly believed that claim was to be brought subsequent to a direct appeal. Respondent further stated that she had since determined that the proper course was to file a motion to stay the appellate proceedings for the purpose of filing a post-conviction petition raising an ineffective assistance of counsel claim. Respondent also stated that oral argument should not be denied, because it would punish Carridine for her mistake.

41. On May 26, 2010, the Supreme Court issued an order granting respondent's motion to stay the proceedings subject to certain conditions, among them that respondent file a petition for post-conviction relief and notify the clerk of the filing of said petition.

42. On June 24, 2010, Carridine signed a written fee agreement providing for an additional \$1,500 retainer for respondent to seek post-conviction relief on Carridine's behalf. Sandra Carridine paid the \$1,500 retainer as follows: check no. 3777 in the amount of \$500 on June 30, 2010; check no. 3788 in the amount of \$500 on July 20, 2010; and check no. 3737 in the amount of \$500 on August 7, 2010.³

43. On June 25, 2010, respondent filed a motion requesting an extension of time to file a petition for post-conviction relief. In an affidavit in support of the motion, respondent stated that she had not been retained by Carridine until June 25, 2010, for purposes of filing a petition for post-conviction relief.

³ On June 29, 2010, respondent sent Sandra Carridine a letter enclosing a copy of the June 24, 2010, retainer for the post-conviction relief. Respondent also enclosed a second version of the retainer agreement, dated the same day, for the appellate relief. It is unclear whether Carridine signed both agreements on the same day or whether respondent did not have a written retainer for the appellate matter and modified the post-conviction retainer.

44. On July 1, 2010, the Supreme Court issued an order granting a one time extension to file a petition for post-conviction relief until August 2, 2010. The Supreme Court's order further stated, in pertinent part, "If appellant does not file a petition for post-conviction relief on or before August 2, 2010, and file notice of the petition with the Clerk of Appellate Courts, this appeal will be reinstated and appellant's brief shall be served and filed no later than August 17, 2010." Respondent failed to file a petition for post-conviction relief by August 2, 2010.

45. On September 16, 2010, the Supreme Court issued an order reinstating the appeal in Carridine's matter. The Supreme Court further ordered that appellant's brief be served and filed by September 29, 2010, and reminded respondent that "depending on the specifics of the case, a failure to comply with a lawful order of the Court may constitute constructive contempt of court under Minn. Stat. § 588.01, sub. 3(3), and may constitute a violation of Minn. R. Prof. Conduct 3.4(c)." Respondent did not file a brief by September 29, 2010, and did not otherwise communicate with the Supreme Court regarding this matter.

46. On October 6, 2010, the Supreme Court issued an order for respondent to show cause by October 13, 2010, as to the following: (a) why respondent should not be permanently removed from representing appellant in this appeal or any post-conviction proceedings, (b) why respondent should not be required to refund all fees paid for this appeal or the post-conviction proceedings, (c) why respondent should not be sanctioned for failure to comply with the Supreme Court's September 16, 2010, order and (d) why Carridine's appeal should not be dismissed. The order further stated that by October 13, 2010, respondent should also file detailed documentation of all fees and costs in the matter, and documentation reflecting if and when respondent notified Carridine of each procedural order filed by the Supreme Court in this matter.

47. On October 15, 2010, respondent filed a response to the order to show cause requesting, among other things, that the Supreme Court refrain from

removing her as counsel in the Carridine matter, and grant her until October 18, 2010, to file a brief in the matter. Respondent further stated that she would immediately, per the October 6, 2010, order, file a list of dates in which she received payment for representing Carridine as well as documentation regarding how and when Carridine was notified of the procedural orders in this case. Respondent failed to provide the Supreme Court with this documentation.

48. On October 18, 2010, the Supreme Court issued an order reserving the issues in their October 6, 2010, order but granted respondent an extension to October 22, 2010. The order specifically stated that the clerk was to receive respondent's brief no later than the close of business on October 22, 2010.

36. Also, on or about October 18, 2010, respondent called Sandra Carridine stating that she had finalized the brief in the Carridine matter and that she required \$150 to cover the filing fees. On October 19, 2010, Sandra Carridine emailed respondent confirming that she had previously paid respondent \$1,500 to pursue post-conviction relief on behalf of her son and stated that she would immediately mail a check for the \$150 filing fee. In her rush to make payment, Sandra Carridine inadvertently sent respondent duplicate checks: check no. 3875 in the amount of \$150 and a second check no. 3876 in the amount of \$150. Respondent subsequently cashed both checks despite the duplicate payment.

49. Respondent's statement that she had completed a brief and needed \$150 for filing fees was false. Respondent never filed an appellate brief on behalf of Carridine and \$150 is not an appellate filing fee of record.

50. By email dated October 24, 2010, Sandra Carridine notified respondent of the duplicate payment of the requested filing fee. Respondent failed to respond. Sandra Carridine followed up with respondent by email dated November 23, 2010, and December 25, 2010, seeking a refund of the duplicate payment. By email dated December 26, 2010, respondent promised to send an accounting and claimed to have

used the \$150 to cover \$80 in copying costs and fees. Respondent stated she would provide receipts. Respondent has not refunded the duplicate payment or otherwise accounted for her receipt of the \$300. Respondent's conduct constitutes conversion.

51. On October 22, 2010, respondent filed a motion requesting an extension until October 28, 2010, to file a brief. In the motion, respondent stated that "between approximately September 22, 2010, and October 7, 2010, counsel was sick with a severe flu or cold which significantly slower [sic] counsel's progress on the direct appeal."

52. On October 27, 2010, the Supreme Court issued an order granting respondent until October 28, 2010, to file a brief in the matter. The order further stated, "If appellant's brief is not served and filed by October 28, 2010, this appeal will be dismissed." Respondent failed to file a brief.

53. On November 8, 2010, the Supreme Court issued an order removing respondent as counsel and dismissing the appeal "for repeated failure to file appellant's brief." The Court's order further provided, "Appellant may move, through counsel other than Shana G. Buchanan, for reinstatement of this appeal within 90 days of this order." Respondent did not return Carridine's client file or the transcripts from the criminal trial.

54. On January 27, 2011, Jodie Carlson, a public defender, was appointed to handle Carridine's appeal. Carlson's secretary, Carolyn Knapp, left telephone messages with respondent on January 27 and 30, 2011, seeking return of the transcripts. Respondent failed to respond. As a result, Carlson filed a motion with the Supreme Court on February 1, 2011, seeking an order compelling respondent to return the transcripts. The Supreme Court issued an order, dated February 4, 2011, requiring respondent to return the transcripts from the criminal trial to the state public defender's office. On February 9, 2011, Carlson sent respondent a letter enclosing a copy of the order.

55. On February 11, 2011, Carlson emailed respondent and again provided her with a copy of the February 4, 2011, order and requested that respondent make arrangements to provide the court-ordered transcripts.

56. On February 13, 2011, respondent sent Carlson an email stating, "I called your office on Friday to drop off the transcripts for you. They stated you would be out of the office for a couple of days. Call me first thing Monday or I will call you. We can arrange a time and place to drop off the transcripts." Carlson checked with staff at the public defender's office who confirmed that respondent had not called the office as claimed in her email.

57. Respondent emailed Carlson on February 14, 2011, and stated she would provide the transcripts the next day. Carlson also enlisted the help of attorney Gary Bryant Wolf, who had worked as co-counsel with respondent during the criminal trial, to seek his assistance in getting respondent to return the transcripts. Respondent finally provided the transcripts on February 16, 2011. Respondent's failure to provide the transcripts when first requested by the public defender's office further delayed Carridine's appeal.

58. In addition, respondent disregarded communications from Carridine. Between April and September 2010, Carridine sent multiple letters and emails to respondent seeking an update on his case, requesting to view respondent's appellate brief or any federal filings prior to filing, and otherwise requesting interaction with respondent on his legal matter. Respondent consistently disregarded Carridine's communications and failed to provide him with any tangible work product. Respondent also failed to inform Carridine about her requests for extensions or failure to comply with scheduling orders.

59. After respondent was removed as counsel by order of the Supreme Court, Carridine sent respondent multiple requests asking her to return file materials, including affidavits from witnesses containing information Carridine believed to be

exculpatory information relevant to his appeal. Respondent failed to return the affidavits or other documents provided by Carridine. On September 13, 2011, Carridine wrote to the Supreme Court seeking assistance in compelling respondent's return of the affidavits. Carridine has yet to receive the requested affidavits from respondent.

60. Respondent ultimately failed to perform any legal services on behalf of Carridine. Respondent never sought post-conviction relief or filed an appeal in Carridine's legal matter. Respondent has failed to refund the original \$7,500 retainer for the appeal, the \$1,500 she was paid to seek post-conviction relief, or the \$300 duplicate payments for filing fees. Respondent's conduct constitutes conversion.

61. Respondent's conduct, including incompetency, neglect and non-communication, failure to turn over transcripts and other client property to successor counsel, failure to comply with multiple court orders resulting in respondent's removal as counsel, conversion of client funds and fraudulently obtaining additional attorney's fees from Carridine's family violated Rules 1.1, 1.3, 1.4, 1.16(d), 3.2, 3.4(c), 4.4(a), and 8.4(c) and (d), MRPC.

THIRD COUNT

John Jefferson Matter

62. John Jefferson was federally convicted for wire fraud, money laundering and failure to file income taxes. On January 11, 2010, attorney Daniel Gerdts, who had previously represented Jefferson during the criminal trial, was appointed under the Criminal Justice Act to represent Jefferson on appeal to the Eighth Circuit Court of Appeals (hereinafter "Eighth Circuit").

63. On March 11, 2010, Gerdts filed an appellate brief on behalf of Jefferson. Jefferson was dissatisfied with Gerdts' representation during the criminal trial, so he decided to retain private counsel.

61. In March 2010, Jefferson retained respondent to appeal his criminal conviction. On or about March 19, 2010, Jefferson's wife, Catherine Jefferson, signed a

written fee agreement providing for a non-refundable retainer of \$10,000. Respondent did not obtain Jefferson's signature on the fee agreement as required by Rule 1.5(b), MRPC.⁴ The fee agreement appears to acknowledged receipt of a \$5,135 payment and stated that the remaining balance of \$4,865 was due by September 15, 2010.

62. On March 31, 2010, the clerk of court for the Eighth Circuit (hereinafter "clerk") entered respondent's appearance as counsel of record for Jefferson. Respondent failed to obtain Jefferson's complete client file from Gerdts, therefore, she did not have a complete record to review. Despite this fact, on April 19, 2010, respondent filed a motion requesting that the Eighth Circuit stay the proceeding, strike the brief that Gerdts had filed in March 2010, and instead allow respondent to file a brief on Jefferson's behalf.

63. On April 20, 2010, the Eighth Circuit issued an order withdrawing the brief that was filed by Gerdts, but denied respondent's request for a stay. The Eighth Circuit ordered respondent to file an opening brief by May 10, 2010.

64. On May 10, 2010, respondent filed a motion with the Eighth Circuit requesting an extension to June 15, 2010, to file her brief. On May 10, 2010, the Eighth Circuit issued an order giving respondent until May 24, 2010, to file her brief, which respondent failed to do.

65. As a result, on June 2, 2010, the Eighth Circuit issued an order to show cause, within 14 days, why Jefferson's appeal should not be dismissed for failure to prosecute.

66. After receiving the order to show cause, Jefferson sent respondent a letter dated June 7, 2010. Jefferson stated his concern about the order to show cause and asked respondent if she was representing him, because he had not received an entry of her appearance. Jefferson requested that respondent provide him an outline or draft

⁴ Respondent's misconduct is charged under the version of the Rules of Professional Conduct that were in effect at the time of the misconduct. On July 1, 2011, Rules 1.5 and 1.15, MRPC, were amended. The misconduct cited in this petition references the version of the rules prior to the July 1, 2011, amendment.

copy of her brief so that he could review it prior to filing. Jefferson also noted that respondent had failed to return several calls that he had made to both her office and cell phone numbers. Jefferson requested respondent contact him immediately.

67. Jefferson also sent the clerk a letter, which was received on June 15, 2010, affirming that he wanted to prosecute his appeal and stating that he had no explanation for respondent's failure to file a brief. Jefferson requested an extension to file a brief in the matter.

68. On June 16, 2010, respondent filed a response to the order to show cause. Respondent alleged that she did not file a brief in May due to medical issues. Respondent further stated that she was in the process of moving her office and had several other professional obligations that required her time. On June 17, 2010, the Eighth Circuit issued an order rescinding the order to show cause and granting respondent an extension to July 2, 2010, to file her brief.

69. On June 30, 2010, respondent filed a motion for an extension of time to file her brief to July 10, 2010. Respondent stated Jefferson's appeal involved numerous issues, that she is a solo practitioner who was busy with other matters, and that she was still relocating her law office.

70. On July 1, 2010, the Eighth Circuit issued an order granting respondent an extension to July 12, 2010, to file a brief. The order stated specifically that no further continuances would be granted. Respondent failed to file a brief by July 12, 2010.

71. On July 20, 2010, respondent filed a motion with the Eighth Circuit requesting an extension to August 15, 2010, to file a brief. Respondent claimed that she was still relocating her office, that she moved her residence in June, and that her grandfather had passed away.

72. On July 20, 2010, the Eighth Circuit issued an order granting respondent an extension to August 16, 2010, to file a brief. The order again stated that no further extensions would be granted. Respondent failed to file a brief by August 16, 2010.

73. On August 31, 2010, the Eighth Circuit issued an order to show cause, within 14 days, why Jefferson's appeal should not be dismissed for failure to prosecute. Respondent failed to respond.

74. On September 23, 2010, the clerk received a letter from Jefferson dated September 18, 2010. In his letter, Jefferson stated he had discovered that respondent had missed another court deadline to file a brief. Jefferson noted that respondent had also falsely informed family members that she had filed a brief in his matter. Jefferson also noted that he did not have additional funds to hire new counsel, but requested that the court appoint him a new attorney and permit substitute counsel time to file a brief.

75. On September 23, 2010, the Eighth Circuit issued an order directing respondent to show cause, within 14 days, why she should not be personally disciplined for failure to prosecute Jefferson's appeal and otherwise comply with court orders.

76. On September 30, 2010, the clerk received a letter from Jefferson stating that he had received a phone call from respondent on September 24, 2010, telling him to rescind his previous request for new counsel. Jefferson further stated that respondent admitted she had not started on his brief, despite previously advising his family that she had. Jefferson stated he did not want respondent as his attorney and asked the Eighth Circuit to appoint competent counsel.

77. On October 6, 2010, respondent filed a response to the order to show cause. Respondent cited family problems as the reason for her delay in filing a brief and expressed a willingness to continue to represent Jefferson. Respondent further stated that she believed Jefferson wanted her to continue the representation.

78. On October 12, 2010, the Eighth Circuit issued an order removing respondent from Jefferson's case and appointing new counsel. The order further provided, "The clerk is directed to remove Ms. Buchanan's name from the roster of CJA attorneys eligible for appointment to cases in this court."

79. In a June 8, 2010, billing statement, respondent acknowledged receipt of the following payments on behalf of Jefferson: a payment of \$5,135 on March 19, 2010; a payment of \$190 on May 28, 2010; a payment of \$110 on June 7, 2010; a payment of \$2,000 on June 8, 2010; and a payment of \$200 on June 8, 2010.⁵ These payments totaled \$7,635 towards the \$10,000 retainer due to respondent.

80. Of the \$7,635 respondent had received on behalf of Jefferson, Linda Johnson paid \$4,000 by way of three cashier's checks, consisting of cashier's check no. 00661 in the amount of \$2,000 on March 5, 2010; cashier's check no. 00625 in the amount of \$1,000 on March 18, 2010; and cashier's check no. 006662 in the amount of \$1,000 on April 30, 2010.⁶

81. The Jefferson International Legal Defense Fund provided respondent additional payments towards the \$10,000 retainer. The Jefferson International Legal Defense Fund gave respondent cashier's check no. 103502655 in the amount of \$1,900, which respondent received by certified mail on September 27, 2010. Respondent cashed the check that same day despite her September 24, 2010, conversation with Jefferson in which he had requested new counsel.

82. After respondent's discharge, Jefferson's family enlisted the assistance of Thomas Johnson, a family friend who resided in Minneapolis at the time, to retrieve the unearned retainer from respondent. During the month of November 2010, respondent and Johnson emailed back and forth about return of the \$1,900 paid by the Jefferson International Legal Defense Fund. In an email dated November 12, 2010, respondent stated in explanation for her failure to file a brief, "The funds were received on September 27, 2010. As of that date, I had not been paid pursuant to the terms of the contract. As such, the brief had not yet been filed."

⁵ Respondent's June 8, 2010, billing statement miscalculates the remaining balance due after receipt of the May 28, 2010, payment. Respondent's math is off by \$10. Respondent's billing statement indicates the remaining balance due as \$4,665 but it should be \$4,775 after the May 28, 2010, payment.

⁶ Cashier's check no. 06662 was made payable to Linda Johnson who endorsed it over to respondent who cashed it.

83. Respondent appears to have received in total \$9,535 to file an appeal on behalf of Jefferson. Respondent has refused to refund any portion of the \$9,535 despite not having performed the legal services for which she was retained. Respondent's conduct constitutes conversion.

84. Respondent's conduct, including incompetency, neglect, non-communication, failure to obtain a client's signature on a non-refundable fee agreement, failure to respond to court orders resulting in her removal as counsel, and conversion of client funds violated Rules 1.1, 1.3, 1.4, 1.5(b), 3.2, 3.4(c), and 8.4(c) and (d), MRPC.

FOURTH COUNT

Robert Cindrich Matter

84. Robert Cindrich was convicted of second degree murder. In or about November 2010, Cindrich contacted respondent about retaining her to seek post-conviction relief. At the time, Cindrich was serving a criminal sentence at the Stillwater Correctional Facility. Respondent agreed to meet Cindrich at the prison to discuss his legal case if he would send her \$100 to cover the cost of her travel. Upon information and belief, Cindrich provided respondent with such funds.

85. Shortly thereafter, respondent met with Cindrich at the prison. Respondent stated that she had handled similar cases and promised that she could reduce Cindrich's sentence. Respondent quoted Cindrich a legal fee of \$2,000 and stated she would pursue a writ of habeas corpus once the full retainer was paid.

86. Cindrich began to make piecemeal payments to respondent through friends and family members. On January 9, 2011, respondent sent Cindrich a letter confirming receipt of payments totaling \$800, which were comprised of: a January 3, 2011, payment in the amount of \$100; a January 7, 2011, payment in the amount of \$200; and January 10, 2011, payments in the amounts of \$200 and \$300. Respondent also

forwarded Cindrich a copy of a written fee agreement and stated that she would begin representation once the remaining \$1,200 was received.

87. Upon information and belief, Cindrich paid the remaining \$1,200 retainer. Respondent and Cindrich signed a written fee agreement whereby respondent acknowledged receipt on February 2, 2011, of payment of at least \$1,900.⁷ Respondent thereafter sent Cindrich a copy of the signed fee agreement and stated in her cover letter that she acknowledged receipt of the \$1,900 payment.

88. Between December 2010 and April 2011, respondent failed to communicate with Cindrich or advise him on the status of his case. As a result, Cindrich filed an ethics complaint against respondent on May 3, 2011. On May 9, 2011, the Director sent respondent a notice of investigation in connection with Cindrich's complaint. Sometime after receiving the notice, respondent contacted Cindrich and arranged to meet with him in June 2011.

89. Respondent met again with Cindrich in August 2011. At that time, respondent had yet to file a writ of habeas corpus or otherwise pursue any post-conviction relief on Cindrich's behalf.

90. On October 1, 2011, respondent placed herself on CLE inactive status without informing Cindrich that by doing so she was no longer authorized to practice law. Respondent abandoned Cindrich's legal matter without having performed any of the legal services for which she was retained. Respondent has not refunded any of the \$2,000 paid to her. Respondent's conduct constitutes conversion. Respondent further has failed to return documents and transcripts that Cindrich provided to her.

91. Respondent's conduct, including incompetency, neglect and non-communication, unauthorized practice of law, and conversion of client funds violated Rules 1.1, 1.3, 1.4, 5.5(a), and 8.4(c) and (d), MRPC.

⁷ The February 2, 2011, retainer agreement originally stated \$2,000, which was the agreed upon retainer, but respondent crossed out \$2,000 and wrote in \$1,900. It is unclear whether respondent failed to account for the original \$100 paid by Cindrich.

FIFTH COUNT

Non-Cooperation

Robert Cindrich Complaint

92. On May 3, 2011, Robert Cindrich filed an ethics complaint against respondent. On May 9, 2011, the Director sent respondent a notice of investigation to her law firm address at Barristers Trust Building, 247 3rd Avenue South, Minneapolis, Minnesota (hereinafter “Barristers Trust Building address”). At the time, this was respondent’s address listed with lawyer registration. The notice of investigation was returned to the Director by the post office as “return to sender . . . address unknown.”

93. On May 16, 2011, the Director called respondent seeking an updated address. Respondent provided her home address at 56 Clarence Avenue, #2, Minneapolis, Minnesota (hereinafter “Clarence Avenue address”). On May 17, 2011, the Director forwarded the notice of investigation to respondent at this address. Respondent failed to respond within fourteen days of the notice of investigation.

94. Respondent sent letters to the Director dated May 23, 2011, and June 5, 2011, and continued to list the Barristers Trust Building as her current address.

95. On May 26, 2011, the Director sent respondent another follow-up request for a response to the Cindrich complaint to the Clarence Avenue address and the Barristers Trust Building address.⁸ Respondent was to submit a response by May 31, 2011. Respondent failed to respond.

96. On June 7, 2011, the Director received respondent’s response to the Cindrich complaint. Respondent’s letter, dated June 5, 2011, continued to list the Barristers Trust Building address as current. In addition, respondent’s response was unresponsive to the substantive allegations raised by Cindrich.

97. On June 8, 2011, the Director mailed a letter to respondent seeking additional information, in particular a copy of the fee agreement, an accounting of the

⁸ The Director’s letter to the Barristers Trust Building address was returned by the post office as “return to sender, unable to forward.” The letter to the Clarence Avenue address was not returned.

fees received and the legal work she had performed on behalf of Cindrich, and an explanation regarding her apparent neglect. The Director mailed the letter to the Barristers Trust Building address since it was used by respondent in her June 7, 2011, correspondence. On June 13, 2011, the letter was again returned by the post office as "return to sender . . . address unknown."

98. On June 14, 2011, the Director re-sent the letter to the Clarence Avenue address and reminded respondent of her obligation to provide the Director with a current mailing address. Respondent was to provide a response within ten days. Respondent failed to respond.

99. On July 7, 2011, respondent left a message with the Director acknowledging that her correspondence was overdue and that a response would be forthcoming. By letter dated July 8, 2011, the Director wrote respondent giving her until July 13, 2011, to provide her response. The letter was sent to respondent at the Clarence Avenue address. In addition, respondent was again informed that mail was being returned from the Barristers Trust Building, 247 3rd Avenue South, Minneapolis, Minnesota, address and that she was obligated to maintain a current address with the Director. Respondent failed to respond.

100. On August 8, 2011, the Director received a letter from respondent indicating that she hoped to complete Cindrich's matter by the end of the month. Respondent did not provide an accounting of her legal work, answer the Director's request for documentation of the amount of attorney's fees she had received or whether she had maintained them in trust. Respondent stated she had moved the previous month and the letter listed a new address for her law firm, 842 Raymond Avenue, Suite 200, St. Paul, Minnesota (hereinafter "Raymond Avenue address").

101. On August 24, 2011, the Director again sent respondent a request for an accounting and documentation regarding attorney's fees she had received. The letter was mailed to the Raymond Avenue address. Respondent failed to respond. The

Director sent respondent a follow-up letter to the same address on September 14, 2011. This was the Director's fourth request for such information.

102. On October 12, 2011, the Director received a letter from respondent on the Cindrich matter. Respondent failed to provide a copy of her fee agreement or bank records showing her deposit and handling of legal fees in the Cindrich matter.

103. On November 2, 2011, the Director made a fifth request for a copy of respondent's fee agreement and bank statements and deposit slip showing deposit of Cindrich's retainer into her trust account. The Director further requested that respondent provide the current balance of Cindrich's funds in her trust account. The letter was mailed to the Raymond Avenue address. Respondent failed to respond.

104. On November 23, 2011, respondent called the Director and requested an extension to provide outstanding documents. The Director informed respondent that multiple extensions had been granted, that her responses to multiple complaints were overdue, including the Cindrich complaint, and that no further extensions would be granted. Respondent stated she would email her responses, but ultimately failed to respond. Respondent also did not inform the Director that her address had changed.

105. The Director sent respondent a follow-up request by letter dated November 29, 2011, which was sent to the Raymond Avenue address. On December 6, 2011, the letter was returned to the Director indicating that respondent was no longer at that address and a forwarding address was unknown.

Chaun Carridine Complaint

106. On August 22, 2011, Chaun Carridine filed an ethics complaint against respondent. On August 25, 2011, the Director sent respondent a notice of investigation to the Raymond Avenue address. Respondent's response was due fourteen days from the date of the notice. Respondent failed to respond.

107. On September 14, 2011, the Director sent respondent a second letter to the same address requesting her response to Carridine's complaint. Respondent's response

was due within ten days upon receipt of the Director's September 14, 2011, letter. Respondent failed to timely respond.

108. On October 12, 2011, respondent hand-delivered to the Director's Office a response to the Carridine complaint. Respondent's response was non-responsive to the underlying issues in the ethics complaint.

109. On November 2, 2011, the Director sent respondent a letter requesting that respondent explain her failure to provide the affidavits Carridine had requested, a copy of her fee agreement with Carridine, and an accounting of her legal fees as requested by the Supreme Court. The letter was sent to the Raymond Avenue address. Respondent failed to respond.

110. On November 23, 2011, respondent called the Director and requested an extension to provide outstanding documents. The Director informed respondent that multiple extensions had been granted, that her responses to multiple complaints were overdue, including the Carridine complaint, and that no further extensions would be granted. Respondent failed to respond. Respondent also did not inform the Director that her address had changed.

111. On November 29, 2011, the Director sent another letter to respondent at the Raymond Avenue address requesting a response to the November 2, 2011, letter. On December 6, 2011, the letter was returned to the Director indicating that respondent was no longer at that address and a forwarding address was unknown.

Sandra Carridine Complaint

112. On September 26, 2011, Sandra Carridine, who is the mother of Chaun Carridine, filed an ethics complaint against respondent. On September 26, 2011, the Director sent respondent a notice of investigation to the Raymond Avenue address. Respondent's response was due within fourteen days from the date of the notice. Respondent failed to respond.

113. On November 23, 2011, respondent called the Director and requested an extension to provide outstanding documents. The Director informed respondent that multiple extensions had been granted, that her responses to multiple complaints were overdue, including the Sandra Carridine complaint, and that no further extensions would be granted. Respondent failed to respond.

114. On November 29, 2011, the Director sent respondent a letter requesting a response to Sandra Carridine's complaint. The letter was sent to the Raymond Avenue address, but was returned by the post office. To date, respondent has not submitted a response to Sandra Carridine's complaint.

Elizabeth Sauer Complaint

115. Elizabeth Sauer is opposing counsel in the motion for modification of parental access that respondent filed on behalf of Donald Guse in 2011. On November 9, 2011, Sauer filed an ethics complaint against respondent. On November 9, 2011, the Director sent a notice of investigation to respondent at the Raymond Avenue address. Respondent's response was due fourteen days from the date of the notice. Respondent failed to respond.

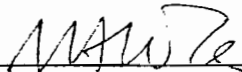
116. On November 23, 2011, respondent called the Director and requested an extension to provide outstanding documents. The Director informed respondent that multiple extensions had been granted, that her responses to multiple complaints were overdue, including the Sauer complaint, and that no further extensions would be granted. Respondent failed to respond. To date, respondent has not submitted a response to the Sauer complaint.

117. Respondent's non-cooperation with the Director's 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 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: January 9, 2012.



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and



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This petition is approved for filing pursuant to Rules 10(d) and 12(a), RLPR, by the undersigned Panel Chair.

Dated: January 11, 2012. 

SHERIDAN HAWLEY
PANEL CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD