

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against ALBERT ISIAKA USUMANU,
a Minnesota Attorney,
Registration No. 25180X.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 28, 1994. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On August 1, 2007, the Director issued an admonition to respondent for failing to notify an immigration tribunal of his change in address, resulting in his client's incarceration, denial of his client's appeal, and eventual deportation, and failing to maintain the required business account books and records.

B. On August 1, 2007, the Director issued a separate admonition to respondent for failing to attend a hearing on behalf of his client and for failing to inform his client that he would not be attending.

C. On April 2, 2002, the Director issued an admonition to respondent for failing to attend a hearing on behalf of his client.

D. On July 27, 2001, the Director issued an admonition to respondent for failing to diligently follow-up with a tribunal to verify his client's hearing date and failing to communicate with his client regarding the hearing.

COUNT ONE

Commingling, Use of Trust Account for Personal Funds When Unsatisfied Judgments and Child Support Arrearages Existed, Failure to Maintain Proper Trust Account Books and Records

1. On July 6, 2007, the Director received notice of a bank overdraft in respondent's trust account number 1-731-0122-8935 at US Bank. As set forth more fully in Count Two, below, respondent failed to cooperate with the inquiry into the overdraft, and therefore a formal disciplinary investigation was commenced. Ultimately, the Director reviewed respondent's trust account for the period June 1, 2007, through March 31, 2008 (the review period).

2. The Director's investigation revealed that during the review period respondent used his client trust account for personal transactions. Respondent deposited earned fees into his trust account and failed to promptly withdraw earned fees from his trust account. Respondent also paid those funds to himself and/or to personal creditors directly from the trust account.

3. From May 1, 2007, through March 31, 2008, respondent made more than 100 cash withdrawals from his trust account. Most of these withdrawals occurred after the inquiry into this matter began (*see* ¶ 1, above).

4. Respondent used his trust account in this manner knowing it was improper:

a. In July 2007 respondent received a copy of the trust account brochure published by the Director's Office.

b. On August 1, 2007, respondent was issued an admonition for, among other things, failing to maintain proper business account books and records.

c. In a November 2, 2007, letter to the Director, respondent stated that he had decided to "start putting my own earned income into my trust account, a decision I now regret" because he did not approve of the way his wife paid their bills.

d. In a December 3, 2007, letter to the Director, respondent stated that, as an immigration lawyer, his fees are earned upon receipt and "I used my trust account as any normal account and that I concede is wrong."

5. Notwithstanding the foregoing, respondent thereafter continued to use his trust account for personal funds and transactions.

6. During the review period, two unsatisfied monetary judgments existed against respondent, and at times respondent was in arrears on his child support obligations.

7. On December 12, 2007, respondent deposited a personal injury settlement check into his trust account on behalf of E.B. On December 17, 2007, respondent disbursed \$31,876.12 to E.B., leaving a balance of \$8,123.88 in respondent's earned fees in the trust account. Respondent failed to promptly withdraw his earned fees.

8. In light of the outstanding judgments and arrearages referenced in paragraph 6, above, respondent's deposit and retention of client funds with his own funds in the trust account placed the client funds at risk of attachment or garnishment by the judgment creditor. See *Matter of Anonymous*, 698 N.E.2d 808 (Ind. 1998); *Attorney Grievance Commission v. Webster*, 705 A.2d 1135 (Md. 1998); *People v. Shidler*, 901 P.2d 477 (Colo. 1995); *Vaughn v. State Bar of California*, 6 Cal. 847, 494 P.2d 1257 (Cal. 1972).

9. Although respondent was requested on multiple occasions to produce a checkbook register, documents showing monthly reconciliations, and any other

comprehensive set of records showing deposits and withdrawals, or to state if he did not maintain these records (*see* Count Two, below), respondent failed to produce any such documents or to state whether he maintained them. Upon information and belief, respondent failed to maintain these records.

10. Respondent's commingling, use of his client trust account for personal funds when unsatisfied judgments and child support arrearages existed, and failure to maintain proper trust account books and records violated Rule 1.15, Minnesota Rules of Professional Conduct (MRPC), as interpreted by Appendix 1, and Rule 8.4(c) and (d), MRPC.

COUNT TWO

Failure to Cooperate

11. As set forth in paragraph 1, above, on July 6, 2007, the Director received notice of an overdraft on respondent's trust account.

12. On July 10, 2007, the Director requested respondent within 10 days to either provide the information and documents requested in that letter regarding the overdraft or inform the Director if the requested documents and information would not be available within that period. Respondent failed to respond.

13. On July 17, 2007, respondent called the Director's Office and requested the trust account brochure created and distributed by the Lawyers Board. The Director's Office provided the brochure to respondent.

14. By letter dated August 16, 2007, the Director advised respondent that the Director had received no response to that July 10 letter and requested respondent to provide all of the information and documents requested in that July 10 letter, together with additional information, within 10 days. Respondent failed to respond.

15. By letter dated September 4, 2007, the Director advised respondent that the Director had received no response to the July 12 and August 16 letters and

requested respondent to provide all of the information and documents requested in those letters. On September 12, 2007, respondent requested and received a two-week extension of the time in which to respond. Respondent failed thereafter to respond.

16. By letter dated October 4, 2007, the Director advised respondent that the Director had received none of the information and documents requested in the July 10 and August 16 letters and again requested respondent to provide the requested information and documents. Respondent failed to respond.

17. On October 22, 2007, the Director mailed to respondent notice of investigation. The notice requested respondent to provide for the period from June 1, 2007, through October 22, 2007:

- client subsidiary ledgers;
- trial balances;
- monthly reconciliations;
- bank statements;
- cancelled checks;
- duplicate deposit slips;
- check book register or general ledger;
- any other records showing funds received and disbursed; and
- copies of the two checks causing the overdraft notices.

The notice also requested respondent to identify specifically any books or records which he did not maintain throughout the entire period, and to explain why he failed to respond to the July 10, August 16, September 4, and October 4, 2007, letters.

18. By letter dated October 26, 2007, respondent requested US Bank to provide to respondent copies of bank statements for the past two years. Respondent provided a copy of the letter to the Director, but failed to provide any of the requested information or documents.

19. On November 2, 2007, an Assistant Director telephoned respondent, who told the Director's Office that he would provide his response that day. Although respondent did provide a letter, respondent failed to provide any of the requested documents that day.

20. On November 8, 2007, respondent delivered documents to the Director's Office. The documents included bank statements for respondent's trust account for the months July through October 2007. Respondent failed to provide any other documents requested in the October 22, 2007, notice of investigation (§ 17, above).

21. By letter dated November 13, 2007, the Director advised respondent that the Director had not received all the requested information and documents; requested respondent to provide on or before December 3, 2007, and in writing the remainder of the information, and the remainder of the documents, requested in the notice of investigation; and advised respondent that the failure to cooperate with the investigation, including the failure to provide all requested information and documents, can constitute a separate ground for disciplinary action. On December 3, 2007, respondent provided various cancelled checks. Respondent failed to provide subsidiary ledgers, reconciliations, deposit slips, a checkbook register, copies of the checks creating the overdrafts or names of the payees with regard to those checks.

22. By letter dated December 20, 2007, the Director requested that on or before January 15, 2008, respondent either (1) provide the information and documents requested in that letter or (2) affirmatively identify the documents he did not have or was unable to provide. That December 20 letter also requested respondent to attend a meeting on January 23, 2008.

23. On January 2 and January 14, 2008, respondent left messages at the Director's Office that he would not be able to respond to the Director's requests by January 15, 2008, because he would be out of the country until January 21, 2008.

Respondent did not state when he would provide the requested information and documents and did not state whether he would appear for the scheduled meeting.

24. By letter dated January 15, 2008, the Director confirmed respondent's telephone messages and the January 23 meeting. Respondent failed to respond to the Director's January 15 letter, failed to provide the requested information and documents and failed to appear for the scheduled meeting.

25. On January 25, 2008, respondent telephoned, provided to an Assistant Director an explanation for failing to appear on January 23 and stated that he would provide the requested information and documents on or before February 1, 2008. On February 1, 2008, respondent delivered some, but not all, of the requested documents and failed to identify those documents he did not have or was unable to provide.

26. By letter dated March 6, 2008, the Director requested respondent to provide within three weeks the previously requested information and documents, together with additional information and documents. Respondent failed to respond.

27. By letters dated March 31, April 14, and April 22, 2008, the Director advised respondent that the Director had received no response to that March 6 letter and requested respondent to respond fully. Respondent failed to respond.

28. On April 29, 2008, respondent had a telephone conversation with an Assistant Director and stated he would deliver the requested documents on or before May 2, 2008. Respondent failed to do so.

29. On May 5, 2008, respondent delivered some, but not all, of the requested information and documents.

30. By letter dated June 16, 2008, the Director requested respondent to provide information and documents, much of which had been requested previously, and advised respondent that if the documents were not provided within 14 days, the Director intended to subpoena records from the bank and seek to hold respondent responsible for the cost of obtaining the records.

31. On July 9, 2008, respondent provided some, but not all, of the requested documents.

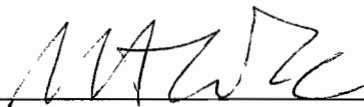
32. On July 29, 2008, the Director advised respondent that respondent failed to provide all requested documents, requested respondent to execute an authorization for the Director to obtain records from the bank, and stated that if respondent provided the executed authorization by August 5, 2008, then the Director would not seek to obtain records pursuant to subpoena. Respondent failed to respond.

33. The Director thereafter subpoenaed records from the bank.

34. Respondent's failure to cooperate violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

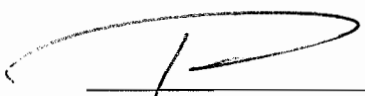
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: January 28, 2009.



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