

RICHARD A. BERGESEN
(Disbarment)

On October 31, 2011, the Idaho Supreme Court issued a Disciplinary Order disbarring Boise attorney Richard A. Bergesen from the practice of law in the State of Idaho. The Idaho Supreme Court's Order followed a stipulated resolution of an Idaho State Bar disciplinary proceeding in which Mr. Bergesen admitted that he violated Idaho Rules of Professional Conduct ("I.R.P.C.") 1.5(a) (unreasonable fees), 1.5(b) (failure to communicate basis or rate of fees and expenses), 1.5(f) (failure to provide accounting), 1.7 (conflict of interest), 1.8(f) (accepting compensation from third person where there is interference with attorney-client relationship), 1.15(a) (failure to hold client property separate), 1.15(b) (failure to deposit legal fees into trust), 1.16(d) (failure to refund unearned fees upon termination), 4.1(a) (false statement of material fact or law to third person), 4.2 (communication with person represented by counsel), 4.4(a) (respect for rights of third persons), 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and 8.4(d) (conduct prejudicial to the administration of justice).

On October 22, 2010, the Idaho State Bar filed with the Idaho Supreme Court a Petition for Interim Suspension of License to Practice Law. On November 16, 2010, the Idaho Supreme Court entered an Order granting the Petition and placed Mr. Bergesen on interim suspension effective November 15, 2010.

On December 10, 2010, the Idaho State Bar filed an Amended Complaint against Mr. Bergesen, alleging nine counts of professional misconduct. With respect to Count One, Mr. Bergesen admitted he violated I.R.P.C. 1.7, 4.2 and 4.4 in connection with his representation of D.B. D.B. was an 82-year-old woman who paid Mr. Bergesen \$5,000 to provide criminal defense representation to a young man, A., who had befriended her and to whom she had provided over \$10,000 in "loans." D.B.'s sister, P., petitioned for a conservatorship based on A.'s undue influence and was named temporary conservator. Mr. Bergesen sought to represent D.B. in the conservatorship proceeding and filed an ex parte motion to release \$7,000 from D.B.'s account for his retainer fee. The Court declined to authorize payment of the retainer fee and instructed Mr. Bergesen to submit his request for payment of hourly fees to P. Two days later, Mr. Bergesen drove D.B. to P.'s home, demanded immediate payment of his retainer fee and threatened to have P. thrown in jail for contempt. P. telephoned her attorney, who reiterated to Mr. Bergesen the Court's instruction that requests for payment of hourly fees be submitted in writing. Mr. Bergesen then filed a Notice of Appearance for D.B. and a motion to release her funds based on a fee agreement she signed earlier that day. P. moved to disqualify Mr. Bergesen based on a conflict of interest, with specific reference to A.'s alleged exploitation of D.B. and Mr. Bergesen's recent court appearance for A. on strangulation charges. Mr. Bergesen ultimately withdrew and the Court appointed P. as guardian and conservator for D.B., who was deemed incapacitated due to significant dementia.

With respect to Count Two, Mr. Bergesen admitted he violated I.R.P.C. 1.5(a), 1.5(f), 1.16(d), 4.1(a), 8.4(c) and 8.4(d), in connection with his representation of J.C. J.C. was a 75-year-old woman charged with multiple criminal counts. J.C. signed Mr. Bergesen's fee agreement providing for a \$200,000 fixed fee for lifetime representation. By the terms of the fee agreement, the \$200,000 fee was due within three weeks and

deemed earned upon receipt. J.C. paid Mr. Bergesen \$50,000 by check and instructed her bank to issue Mr. Bergesen a check for \$102,653, reflecting all remaining funds in her checking and savings accounts. Mr. Bergesen drove J.C. to the bank and obtained the check, which he cashed later that day. One day after that payment, J.C. instructed her bank to liquidate her retirement and annuity accounts and issue a \$100,000 check to Mr. Bergesen. A bank representative advised J.C. to withhold a portion of those funds to pay her tax obligations. Mr. Bergesen called the representative and demanded that no funds be withheld because the prosecutor in J.C.'s criminal case demanded upfront restitution and J.C. purportedly needed all available funds as a "bargaining chip" to stay out of prison. The bank representative advised that no payment would be issued until Mr. Bergesen verified the funds would be held in trust. Mr. Bergesen falsely informed the representative that J.C.'s previous payments of over \$152,000 had been deposited into his trust account. Prior to the final payment, J.C. retained other counsel and sent Mr. Bergesen a letter terminating his services, demanding an itemized accounting and refund, and requesting that he refrain from contacting her. Mr. Bergesen did not provide an accounting or refund and continued to contact J.C. against her wishes. Thereafter, Mr. Bergesen did not respond to repeated requests from J.C.'s new counsel for an accounting and refund of her payments.

With respect to Count Three, Mr. Bergesen admitted he violated I.R.P.C. 1.5(a), 1.5(f), 1.16(d), 4.1(a), 4.4(a), 8.4(c) and 8.4(d) in connection with his representation of C.S. in two cases. C.S. retained Mr. Bergesen pursuant to a \$25,000 fixed fee agreement. Her friend, J., paid \$15,000 of the retainer fee and agreed to pay the remainder two months later. One week after he was retained, Mr. Bergesen requested that C.S. pay the final \$10,000. C.S. declined and, one week later, terminated the representation and requested a \$14,000 refund. Mr. Bergesen refused to provide a refund and informed C.S. that he had filed court documents alleging she was mentally incompetent. That day, he filed a Notice of Appearance and a motion for an examination to determine C.S.'s mental competency. Mr. Bergesen then contacted J.'s assistant, G., to demand the final \$10,000 payment. G. was unaware that C.S. had terminated the representation or that the final payment was not due and therefore provided Mr. Bergesen with a \$5,000 check, which he cashed that day. After a public defender was appointed to represent C.S., Mr. Bergesen continued to call G. to demand the final \$5,000 payment and falsely informed her that his representation of C.S. continued. J. contacted Mr. Bergesen, advised him that G. had erroneously provided the \$5,000 check based on misrepresentations and requested an accounting and refund. Mr. Bergesen falsely informed J. that C.S. had been ruled incompetent, threatened to sue J. if the \$5,000 balance was not paid and refused to provide an accounting or refund.

With respect to Count Four, Mr. Bergesen admitted he violated I.R.P.C. 1.5(a), 1.5(f), 1.16(d) and 4.4(a) in connection with his representation of T.A. T.A.'s 93-year-old father, R., retained Mr. Bergesen to represent T.A. in three criminal cases for a \$3,000 fixed fee. After R. declined Mr. Bergesen's repeated requests for additional fees, Mr. Bergesen negotiated with T.A. in jail to represent her in three other criminal cases for a \$10,000 fee. T.A. signed documents prepared by Mr. Bergesen granting him power of attorney to handle her legal and financial affairs while she was in custody and instructing her financial advisor to liquidate her accounts and wire \$10,000 to Mr. Bergesen. Two days after the \$10,000 transfer was completed, T.A. terminated Mr. Bergesen's

representation and requested a \$13,000 refund. Mr. Bergesen refused to provide an accounting or refund.

With respect to Count Five, Mr. Bergesen admitted he violated I.R.P.C. 1.5(a), 1.15(a), 1.15(b), 1.5(f) and 1.16(d) in connection with his representation of R.C. R.C. retained Mr. Bergesen to represent him in a DUI case for a \$10,000 fee. R.C.'s friend initially paid that fee by check, which Mr. Bergesen cashed. Several days later, R.C. attempted to terminate the representation and requested an accounting and refund. Mr. Bergesen threatened to have R.C. institutionalized, told him he could not "switch attorneys" because it would constitute breach of contract and filed a Notice of Appearance. Mr. Bergesen subsequently executed a Substitution of Counsel but refused to provide an accounting or refund.

With respect to Count Six, Mr. Bergesen admitted he violated I.R.P.C. 1.5(a), 1.5(b), 1.8(f), 1.15(a), 1.15(b), 1.16(d), 4.1(a), 4.4(a), 8.4(c) and 8.4(d), in connection with his representation of R.M. R.M.'s elderly father, F., retained Mr. Bergesen to represent R.M. in two criminal matters through sentencing. The fee agreement provided for a \$25,000 fixed fee, which F. paid by check. Thereafter, F. paid Mr. Bergesen an additional \$25,000, based on Mr. Bergesen's representation that the funds were purportedly needed to pay physicians to evaluate R.M. for Mental Health Court. Mr. Bergesen did not deposit those funds into a client trust account. When Mr. Bergesen later contacted F. to request additional payments for physicians' costs, F. informed Mr. Bergesen that he did not have the money because he was providing hospice care for his wife. Mr. Bergesen then visited R.M. in jail and requested an additional \$20,000 to obtain a physician's evaluation for Mental Health Court. F. ultimately sent Mr. Bergesen a \$5,000 check but reconsidered and stopped payment. Mr. Bergesen advised F. that he would report him to the police for writing a bad check unless he submitted a \$2,500 payment immediately. F. declined and requested a refund. Mr. Bergesen refused to refund any portion of the \$50,000.

With respect to Count Seven, Mr. Bergesen admitted he violated I.R.P.C. 1.5(a), 1.5(b), 1.5(f), 1.8(f), 1.15(a), 1.15(b), 1.16(d), 4.1(a), 4.4(a), 8.4(c) and 8.4(d) in connection with his representation of K.L. in a criminal case. K.L.'s father, B., retained Mr. Bergesen to represent her for a \$40,000 fixed fee. B. paid that fee in cash installments as Mr. Bergesen requested over a three-month period. Mr. Bergesen subsequently requested that B. pay an additional \$50,000 because K.L.'s "life and freedom [were] at stake." B. paid Mr. Bergesen \$47,500 in additional fees by cash deposit. Thereafter, Mr. Bergesen's live-in girlfriend, Brenda, whom he identified only as his "investigator," requested that B. wire an additional \$10,000 to her bank account so that she could conduct research at the University of Idaho law library. B. deposited \$10,000 into Brenda's bank account and paid Mr. Bergesen an additional \$2,500, by cash deposit, based on Mr. Bergesen's false representation that funds were needed for a grand jury transcript. Mr. Bergesen then requested an additional \$15,000 for final trial preparations. B. paid Mr. Bergesen an additional \$5,000. Shortly thereafter, K.L. accepted a plea offer and Mr. Bergesen requested an additional \$10,000 to represent K.L. at sentencing. B. declined and requested an accounting and refund. Mr. Bergesen refused to provide an accounting or refund of B.'s payments totaling over \$100,000.

With respect to Count Eight, Mr. Bergesen admitted he violated I.R.P.C. 1.5(a), 1.8(f) and 1.16(d) in connection with his representation of W.T. in a criminal case. W.T. was arrested after his girlfriend, M., contacted the police, directed them to W.T. and his methamphetamine and requested that he be held in police custody because he had threatened her and her family. Thereafter, W.T. retained Mr. Bergesen. M. signed Mr. Bergesen's fee agreement and paid \$1,000 of his \$3,000 fixed fee. Mr. Bergesen withdrew from W.T.'s case before any action was taken, citing the conflict of interest resulting from M.'s identification as a State's witness. Despite his withdrawal, Mr. Bergesen refused to provide a refund of unearned fees.

With respect to Count Nine, Mr. Bergesen admitted he violated I.R.P.C. 1.15(a) and (b), by using funds held in his client trust account for personal expenses, including payments to a local restaurant, jeweler and running shop.

Based on the admitted violations, discussed above, the Idaho Supreme Court disbarred Mr. Bergesen and ordered that he shall not apply for admission to the Idaho State Bar sooner than five years from the effective date of the disbarment. If Mr. Bergesen applies for admission, he will have the burden of overcoming the rebuttable presumption of "unfitness to practice law." The Court further ordered that prior to any such admission, Mr. Bergesen must reimburse the Client Assistance Fund all monies paid by the Fund as a result of his dishonest conduct and refund all unearned fees to clients and third parties named in the Amended Complaint who did not receive full reimbursement through the Client Assistance Fund, criminal restitution or as the result of any civil case.

This disbarment notice shall be published in the Advocate, the Idaho Statesman and the Idaho Reports.

Inquiries about this matter may be directed to: Bar Counsel, Idaho State Bar, P.O. Box 895, Boise, Idaho 83701, (208) 334-4500.