

FILE NO. A13-1963
STATE OF MINNESOTA
IN SUPREME COURT

OFFICE OF
APPELLATE COURTS
AUG 12 2014
FILED

In Re Petition for Disciplinary Action
against MARK ALAN GREENMAN,
a Minnesota Attorney,
Registration No. 228990.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDATION FOR
DISCIPLINE**

The above-captioned matter was heard on July 18, 2014, by the undersigned acting as referee by appointment of the Minnesota Supreme Court. Siama Y. Chaudhary appeared on behalf of the Director of the Office of Lawyers Professional Responsibility (Director). Respondent, Mark Alan Greenman, appeared *pro se*.

The hearing was conducted on the Director's August 29, 2013, petition for disciplinary action ("petition"), and January 13, 2014, supplementary petition for disciplinary action ("supplementary petition"). The Director presented the live testimony of Preston Kelley, Julie Staum and respondent. Respondent testified on his own behalf.

Director's Exhibits 1-147 were received into evidence. Respondent did not offer any exhibits.

The parties were instructed to submit on or before July 28, 2014, proposed findings of fact, conclusions of law, recommendation for appropriate discipline and memoranda of law both electronically and by US Mail. The referee's findings of fact, conclusions of law and recommendation are due to the Supreme Court no later than August 11, 2014.

In his answers to the petition ("R. Ans.") and to the supplementary petition ("R. Supp. Ans."), respondent admitted a majority of the factual allegations and denied

¹ In a letter dated January 7, 2014, and received by the Director's Office on February 18, 2014, respondent admitted all of the allegations of the supplementary petition. That letter is being treated and referred to as respondent's answer to the supplementary petition.

others. The findings and conclusions made below and the attached Memorandum are based upon respondent's admissions, the documentary evidence the Director submitted, the testimony presented, the demeanor and credibility of respondent and the other witnesses as determined by the undersigned and the reasonable inferences to be drawn from the documents and testimony. If respondent's answer admits a particular factual finding made below, then even though the Director may have provided additional evidence to establish the finding, no other evidence will necessarily be cited. For each factual finding made below, the undersigned evaluated the relevant documents and testimony, accepted as credible the testimony consistent with the finding and did not accept the testimony inconsistent with the finding.

Based upon the evidence as outlined above, and upon all of the files, records and proceedings herein, the referee makes the following:

FINDINGS OF FACT

1. Respondent was admitted to practice law in Minnesota on October 23, 1982 (R. Test.).

Timothy Collins Litigation

2. Paul Strong and his children, Heidi, Andy and Eric Strong, own Waconia Dodge, a car dealership in Waconia, Minnesota (R. Ans.; Ex. 15, pp. 1-2). In January 2001, Timothy Collins married Heidi Strong (R. Ans.; Ex. 15, p. 2).

3. In 2005, Waconia Dodge initiated participation in Chrysler's Business Link marketing program, which required that Waconia Dodge have a Business Link manager and an outside sales representative/consultant (R. Ans.; Ex. 15, pp. 2-3). Collins was employed as the Business Link outside sales representative (R. Ans.; Ex. 15, p. 3).

4. In July 2006, Collins and Heidi separated (R. Ans.; Ex. 15, p. 7).

5. On September 18, 2006, Collins was taken into custody following an altercation with Heidi and charged with misdemeanor domestic assault, first degree

burglary and terroristic threats (R. Ans.; Ex. 15, p. 8). Collins pled not guilty (R. Ans.; Ex. 15, p. 8). On December 19, 2007, Collins was tried and acquitted of all charges (R. Ans.; Ex. 15, p. 8).

6. Collins filed for divorce on or about February 15, 2007 (R. Ans.; Ex. 33). After a contentious proceeding, Collins and Heidi Strong were divorced on July 25, 2007 (R. Ans.; Ex. 33).

7. On or about January 28, 2008, Collins submitted a demand for payment to Waconia Dodge for \$51,749 for services rendered (R. Ans.; Ex. 1; Ex. 15, p. 9). Waconia Dodge did not pay Collins (R. Ans.).

8. On February 4, 2008, Collins, acting *pro se*, initiated a lawsuit against Waconia Dodge alleging, among other things, that Waconia Dodge failed to compensate him for services he provided as the Business Link outside sales representative (R. Ans.; Ex. 1).

9. On February 21, 2008, Waconia Dodge served its answer denying Collins' claims and asserting, among other defenses, that Collins failed to state a claim upon which relief could be granted, failed to effectuate service of process of his summons and complaint upon Waconia Dodge, and that Collins' claims were barred, in whole or in part, by the applicable statute of limitations (R. Ans.; Ex. 3). Waconia Dodge also served notice that it intended, pursuant to Minn. Stat. § 549.211, to seek reimbursement for all costs and expenses incurred in defending Collins' lawsuit because his claims were asserted in bad faith and without any legal basis (R. Ans.; Ex. 4).

10. On March 25, 2008, Collins retained respondent (R. Ans.; Ex. 5).

11. On April 22, 2008, the court issued a scheduling order (R. Ans.).

12. On June 18, 2008, Waconia Dodge served a notice of motion and motion for summary judgment (R. Ans.; Ex. 6).

13. Minn. R. Civ. P. 15.01 provides that after service of a responsive pleading, “a party may amend a pleading only by leave of court or by written consent of the adverse party” (R. Ans.; Ex. 145.)

14. On or about July 7, 2008, respondent served an amended complaint upon Waconia Dodge (Ex. 7, pp. 2-3). On July 12, 2008, respondent filed the amended summons and complaint with the Carver County District Court (Ex. 34). Respondent did not, prior to serving Collins’ amended complaint upon Waconia Dodge, obtain the required leave of court or written consent from Waconia Dodge (R. Ans.; Ex. 10).

15. On August 1, 2008, Waconia Dodge served notice that it intended, pursuant to Minn. Stat. § 549.211, to seek reimbursement for attorneys’ fees and expenses incurred in defending against Collins’ complaint and amended complaint unless Collins dismissed his complaint and amended complaint within 21 days (Ex. 9).

16. On August 13, 2008, the court denied Waconia Dodge’s motion for summary judgment because, at a minimum, there was a question of material fact regarding the effective service of the original summons and complaint (R. Ans.; Ex. 10). The court also held that the amended summons and complaint respondent filed on July 12, 2008, was invalid and specifically voided since respondent never received written consent from Waconia Dodge or leave of court to amend Collins’ initial summons and complaint (R. Ans.; Ex. 10). The court granted Collins one week after receipt of the August 13, 2008, order to request leave to amend his initial summons and complaint (R. Ans.; Ex. 10, p. 2).

17. On August 22, 2008, respondent mailed to Anoka County District Court a notice of motion and motion for leave of court to amend Collins’ complaint (Ex. 11). The lawsuit, however, was venued in Carver County District Court (Ex. 34). On August 29, 2008, respondent filed Collins’ notice of motion and motion to amend Collins’ complaint with Carver County District Court (Ex. 12).

18. Trial began on February 23, 2009 (R. Ans.; Ex. 34, p. 2). At that time, respondent provided opposing counsel with a copy of the amended complaint and filed the amended complaint with the court (R. Ans.; Ex. 15, p. 10).

19. At the close of Collins' evidence, Waconia Dodge moved the court for sanctions against Collins (Ex. 15, p. 13). On June 3, 2009, the court issued findings of fact, conclusions of law, and order for judgment denying all of Collins' claims (Ex. 15).

In its findings of fact, the court made the following findings, among others:

- Effective service of process of the amended complaint was not made until February 23, 2009. (Ex. 15, p. 10.)
- Sanctions were appropriate. (Ex. 15, p. 13.)
- The evidence and testimony established that Collins pursued his lawsuit against Waconia Dodge "as a vendetta." (Ex. 15, p. 13.)
- "[T]here is no evidence to support [Collins'] claim in this matter and that upon reasonable discovery, the futility of this case should have been readily apparent." (Ex. 15, p. 13.)

20. The court concluded that Collins "failed to provide any objective and credible evidence supporting the existence of an agreement to perform services as an outside sales representative" (R. Ans.; Ex. 15, p. 14) and without a meeting of the minds as to the essential terms of the contract, no contract existed (R. Ans.; Ex. 15, p. 15). The court denied and dismissed Collins' claim for breach of contract (R. Ans.; Ex. 15, pp. 15, 19). The court found that Collins was adequately compensated for all time he spent working on or in connection with the Business Link program (R. Ans.; Ex. 15, pp. 11, 16). The court denied and dismissed Collins' claim for violations of Minn. Stat. §§ 181.13 and 181.145 (R. Ans.; Ex. 15, pp. 16-17, 19; Exs. 139 and 140).

21. The court also found that under either, or both, Minn. Stat. § 549.211 or Rule 11, Collins' pursuit of his lawsuit against Waconia Dodge and refusal to dismiss the claims after a request to do so, required "significant sanctions." (R. Ans.; Ex. 15, p. 17; Exs. 142 and 143.) The court continued:

The combined effect of the statute and the Rule is to place ‘an affirmative duty . . . on counsel to investigate the factual and legal unpinnings [sic] of a pleading.’ [Citation omitted.] In this case, it is clear that [respondent] accepted as true all of the various claims of [Collins] and failed to adequately investigate either the ‘factual [or] legal underpinnings’ of the claims asserted against [Waconia Dodge]. . . . [Respondent] failed to understand and appreciate the ill-will that continued to exist between Heidi Strong and [Collins]. Rather than concede that there was no factual or legal basis for the claims against [Waconia Dodge] in this lawsuit, [Collins] attempted to make up for the factual/legal deficiency by simply ‘piling on’ more allegations.

(Ex. 15, p. 18.)

22. “[Collins] was not deterred from pursuing baseless—and expensive—litigation against [Waconia Dodge], despite the notice . . . of its intent to seek sanctions.”

(Ex. 15, p. 18.) The court ordered Waconia Dodge to provide its itemization of defense costs and fees within 20 days (Ex. 15, p. 19).

23. On February 3, 2010, after notice and a hearing on the issue of sanctions, the district court issued amended findings ordering sanctions in the amount of \$15,000 against Collins (R. Ans.; Ex. 16).

24. On April 5, 2010, respondent filed a notice of appeal with the Minnesota Court of Appeals seeking review of the February 3, 2010, order (R. Ans.; Exs. 17, 18 and 35; Ex. 25, p. 1, ¶ 1). Respondent, however, failed to: file a notice of appeal with an original signature; include proof of service of the notice of appeal on the district court; and provide an affidavit of service for Collins’ statement of the case (R. Ans.; Ex. 18; Ex. 25, p. 1, ¶ 1). That same day, the clerk of appellate courts acknowledged receipt of Collins’ appeal, identified the filing deficiencies, and informed respondent that failure to correct the deficiencies within ten days may result in the imposition of sanctions (R. Ans.; Ex. 18).

25. On April 7, 2010, the Court of Appeals ordered the parties to serve and file informal memoranda addressing whether judgment had been entered pursuant to the June 3, 2009, order for judgment on the merits and, if not, whether Collins’ appeal

should be dismissed as taken from a non appealable, partial judgment (R. Ans.; Ex. 19, p. 2, ¶ 1). "If, after completion of research, [Collins] concludes this court lacks jurisdiction over the appeal, [Collins] shall immediately file a notice of voluntary dismissal." (R. Ans.; Ex. 19, p. 2, ¶ 4.)

26. On April 14, 2010, Carver County District Court entered the June 3, 2009, findings of fact, conclusions of law and order for judgment² (Ex. 20).

27. On April 16, 2010, Waconia Dodge filed its memorandum in support of dismissal for lack of jurisdiction alleging that the June 3, 2009, order was not an entered judgment because judgment had not been entered pursuant to the June 3, 2009, order (R. Ans.; Ex. 21).

28. On or about April 21, 2010, respondent filed a notice of voluntary dismissal (R. Ans.; Exs. 22 and 35).

29. On June 11, 2010, respondent filed a second appeal on behalf of Collins seeking review of the judgment entered on April 14, 2010 (R. Ans.; Exs. 24, 25 and 36). Respondent also filed a motion to waive the filing fee because Collins had already paid the required filing fee with the premature April 5, 2010, appeal (R. Ans.; Ex. 25, p. 2, ¶ 5; Ex. 36).

30. On June 18, 2010, the Court of Appeals issued an order identifying several deficiencies in respondent's June 11, 2010, filing (Exs. 25 and 36).

31. Specifically, respondent filed an affidavit of service indicating that the June 11, 2010, notice of appeal was served on April 2, 2010 (more than two months earlier); respondent filed an affidavit of service regarding the statement of the case that did not indicate the statement of the case was served upon opposing counsel; respondent again failed to provide a certified copy of the April 14, 2010, judgment from

² The order was dated May 28, 2009, but filed June 3, 2009, and is referred to herein as the June 3, 2009, order (Ex. 15).

which the appeal was taken; and respondent again failed to file a notice of appeal with an original signature (Ex. 25, p. 2).

32. The Court of Appeals denied respondent's request for a waiver of the filing fee stating, "The fact that [Collins] paid a filing fee in connection with appeal A10-610 does not justify waiver of the filing fee in this appeal. The Clerk of the Appellate Courts has been required to open two files and this court has been required to issue orders on the deficiencies in both files." (R. Ans.; Ex. 25, p. 2, ¶ 6.)

33. On January 11, 2011, the Court of Appeals affirmed the district court's imposition of sanctions (R. Ans.; Exs. 27 and 36).

34. On February 3, 2011, respondent filed with the Minnesota Supreme Court Collins' petition for further review (Exs. 28 and 30). Respondent did not file an affidavit of service of the petition for review upon Waconia Dodge as required by Minn. R. Civ. App. P. 125.02 (Exs. 28, 30 and 147).

35. On February 4, 2011, the appellate clerk's office called respondent requesting that respondent file his affidavit of service of Collins' petition upon Waconia Dodge (Ex. 30). Respondent failed to respond (Ex. 30).

36. On February 24, 2011, the appellate clerk's office wrote to respondent informing him that his check no. 2999 drawn on Farmers State Bank of Hamel was returned because the account was closed (R. Ans.; Ex. 30). The clerk's office instructed respondent to file the \$50 filing fee via cash or money order within five days (R. Ans.; Ex. 30). Respondent was further instructed to file his affidavit of service of Collins' petition upon Waconia Dodge within five days (R. Ans.; Ex. 30).

37. On March 2, 2011, respondent filed his check for \$50 and an affidavit of service upon Waconia Dodge for his petition to correct the deficiencies noted by the appellate court clerk (R. Ans.; Ex. 36).

38. On March 15, 2011, the Supreme Court denied Collins' petition (R. Ans.; Ex. 31).

39. On April 18, 2011, the Court of Appeals entered judgment for Waconia Dodge and against Collins in the amount of \$300 for costs and disbursements incurred (R. Ans.; Exs. 32 and 36). Collins, as of the date of the petition for disciplinary action against respondent, had paid the judgment (R. Ans.; Exs. 32 and 36).

Brenda Jann Matter

40. On February 19, 2009, Brenda Jann retained respondent in an employment matter (R. Ans.; Ex. 38).

41. On March 27, 2009, respondent filed Jann's complaint, alleging, among other things, that Jann's former employer, Interplastic Corporation (Interplastic), violated various statutes when it terminated her after she requested a leave of absence for surgery in the near future (Ex. 39). Ivan M. Levy represented Interplastic (Ex. 40).

42. On May 1, 2009, Interplastic moved the court for an order dismissing Jann's complaint and compelling arbitration based on a provision in the employment agreement between Interplastic and Jann (R. Ans.; Exs. 40 and 41).

43. On July 7, 2009, the court granted Interplastic's motion to compel arbitration, ordered Jann to arbitrate her claims against Interplastic and dismissed Jann's complaint without prejudice (R. Ans.; Ex. 41).

44. On September 9, 2009, respondent filed a demand for arbitration with the American Arbitration Association (R. Ans.; Ex. 42).

45. On February 11, 2010, Richard A. Ross, the arbitrator assigned to the matter, held a management conference and scheduled a hearing for April 16, 2010 (R. Ans.; Ex. 43; Ex. 64, p. 1). During the management conference, Levy stated his intent to bring a summary judgment motion (R. Ans.; Ex. 43; Ex. 64, p. 1).

46. On March 22, 2010, Interplastic served its notice of motion, motion, memorandum of law, and various affidavits in support of summary judgment (R. Ans.; Ex. 44).

47. Due to discovery disputes, Ross held a second conference call on March 25, 2010, modified the briefing schedule and rescheduled the arbitration hearing to May 14, 2010 (R. Ans.; Exs. 45, 46 and 47).

48. On April 22, 2010, respondent served by email Jann's memorandum in opposition to Interplastic's motion for summary judgment (R. Ans.; Ex. 50). Although respondent referenced Jann's declaration 15 times in the April 22, 2010, memorandum, respondent did not include a copy of Jann's declaration with the memorandum (R. Ans.; Exs. 50 and 52).

49. By email sent May 6, 2010, Ross informed respondent that Jann's declaration had not been received (R. Ans.; Ex. 52). By email sent that same day, respondent provided Ross and Levy with a PDF version of Jann's declaration, with an indication that it had been electronically signed by Jann on April 22, 2010 (R. Ans.; Exs. 52 and 53).

50. On May 7, 2010, Ross granted Interplastic's motion for summary judgment as to Jann's Americans with Disabilities Act and Minnesota Human Rights Act claims and denied summary judgment as to Jann's Family and Medical Leave Act claims (R. Ans.; Ex. 54).

51. On May 14, 2010, a formal arbitration hearing was held (Ex. 61). At the hearing, Jann testified under oath that, among other things, she had not signed the declaration, was not certain that she had ever seen the declaration and that the declaration included at least one untrue statement (Exs. 55 and 56). Specifically, Jann testified that contrary to the declaration, the appointment with the surgeon was to discuss the possibility of surgery, not that she needed the surgery (Exs. 55 and 56; Ex. 61, p. 7; Ex. 62).

52. On May 18, 2010, Ross emailed respondent and asked for a detailed explanation of how the declaration was prepared, whether Jann had read her

declaration and for clarification of the discrepancy between Jann's testimony and the declaration (R. Ans.; Ex. 56; Ex. 62, p. 2).

53. On May 20, 2010, respondent emailed Ross and stated that he "read the declaration to Ms. Jann and she confirmed it was accurate. I do not believe that she contradicted the declaration. It said she needed surgery. While Ms. Jann was exploring all options, her doctor told her she needed surgery." (Ex. 58; Ex. 62, p. 2.)

54. On May 28, 2010, respondent submitted Jann's post-trial memorandum, to which he attached another copy of Jann's April 22, 2010, declaration which now included a fax notation date of May 27, 2010, and Jann's handwritten signature below the electronic signature (R. Ans.; Ex. 60; Ex. 62, p. 2).

55. On June 4, 2010, Ross issued his findings of fact and conclusions of law and determination dismissing Jann's demand and complaint (Ex. 61). Ross specifically addressed Jann's declaration as follows:

It is extremely troublesome to this Arbitrator that a document, not signed by Jann, maybe never seen by Jann and containing misstatement of facts, but purportedly sworn to by Jann was submitted in this proceeding. It is also very troubling to this Arbitrator that in conjunction with filing her Post-Hearing Brief, Jann's counsel resubmitted the Declaration with Jann's signature on it, without any indication as to when or why she signed a statement which she testified under oath was not entirely true.

(Ex. 61, p. 7, n.7.)

Preston Kelley Matter

56. From October 2006 until February 2007, Preston Kelley was employed by Taher Inc. Acquisitions (Taher) (R. Ans.; Ex. 65; Ex. 66, p. 1, ¶ 1). On July 31, 2007, Kelley filed a charge with the Minnesota Department of Human Rights (MDHR), alleging that while employed by Taher, he was discriminated against on the basis of sex in violation of Minn. Stat. § 363A.08, subdiv. 2(2) and (3) (R. Ans.; Ex. 65; Ex. 66, p. 1, ¶ 2; Ex. 79, p. 2; Ex. 141). On July 18, 2008, after an investigation, the MDHR found no probable cause for Kelley's charge (R. Ans.; Ex. 66, p. 1, ¶ 4; Ex. 79, p. 2).

57. On July 28, 2008, Kelley filed a request for reconsideration (R. Ans.; Ex. 66, p. 1, ¶ 5). On August 12, 2008, the MDHR affirmed its prior determination and issued a 45-day right-to-sue letter (R. Ans.; Ex. 66, p. 2, ¶ 11; Ex. 79, p. 2). On September 3, 2008, the U.S. Equal Employment Opportunity Commission (EEOC) adopted the MDHR's findings, dismissed Kelley's charge, and notified Kelley that any lawsuit under Title VII must be brought within 90 days (R. Ans.; Ex. 67).

58. On December 1, 2008 (111 days after the MDHR's August 12, 2008, 45-day right-to-sue letter), Kelley, acting *pro se*, initiated a lawsuit against Taher by service of a summons and complaint alleging violations of Minnesota employment law and seeking punitive damages (R. Ans.; Ex. 68; Ex. 79, pp. 2, 4).

59. On January 6, 2009, Taher filed its answer asserting, among other defenses, that Kelley's suit was untimely under the applicable statute of limitations (R. Ans.; Ex. 69, p. 1).

60. On January 8, 2009, Kelley retained respondent for representation in the matter (R. Ans.; Ex. 70).

61. Despite the fact that Kelley's lawsuit alleging violations of Minnesota employment law was untimely, respondent did not seek leave of court to amend Kelley's lawsuit to bring a discrimination claim under federal law until April 24, 2009 (Ex. 72).

62. On March 23, 2009, Taher served request for admissions upon respondent (R. Ans.; Ex. 71; Ex. 79, p. 2). Pursuant to Minn. R. Civ. P. 36.01, a "matter is admitted unless within 30 days after service of the request . . . the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney . . ." (R. Ans.; Ex. 146.) Respondent did not, at any time, serve Kelley's responses to Taher's request for admissions (R. Ans.; Ex. 79, pp. 2-3; Ex. 80A).

63. On April 24, 2009, respondent brought a motion to amend Kelley's complaint to plead Kelley's discrimination claim under federal law (R. Ans.; Exs. 72 and 75). Respondent's memorandum accompanying that motion stated, "[Kelley] should have pled a federal discrimination claim under Title VII pursuant to the EEOC's 90-day right to sue letter. Instead, [Kelley] brought state law claims after the expiration of the 45-day letter from the MDHR." (Ex. 72; R. Ans.) Respondent scheduled the hearing on Kelley's motion for May 8, 2009, at 2:30 p.m. (R. Ans.; Ex. 72).

64. Respondent did not provide Kelley with a copy of the notice of motion and motion to amend the complaint and did not inform Kelley of the date of the hearing on that motion (Kelley Test.).

65. On April 30, 2009, eight days before a hearing on respondent's motion to amend the complaint, respondent terminated his representation of Kelley (Kelley Test.; Ex. 73). Respondent did not file a notice of withdrawal of counsel with the court and remained Kelley's counsel of record (Staum Test.; Ex. 80).

66. Respondent failed to notify Kelley of the May 8, 2009, hearing on the motion to amend and failed to inform Kelley that he needed to appear at the May 8, 2009, hearing (Kelley Test.).

67. Respondent did not communicate to Kelley that he needed to respond to Taher's March 23 request for admissions and that Taher's request for admissions could be deemed admitted if Kelley failed to timely respond to the request (Kelley Test.).

68. On May 8, 2009, the court held a hearing on the motion to amend Kelley's complaint filed by respondent (Exs. 75 and 80). Neither respondent (R. Ans.) nor Kelley appeared (Kelley Test.; Ex. 75; Ex. 79, p. 4). The court denied Kelley's motion "for failure to prosecute." (Ex. 75; Ex. 79, pp. 3-4.)

69. The court mailed its May 8, 2009, order denying Kelley's motion to amend the complaint to respondent (Ex. 76). Respondent failed to forward the order to Kelley (Kelley Test.).

70. On May 29, 2009, Taher filed a motion to dismiss pursuant to Minn. R. Civ. P. 12.02(e) (Kelley Test.; Exs. 77, 80 and 144).

71. On June 26, 2009, Kelley, acting *pro se*, filed his motion in opposition (Ex. 78). On July 14, 2009, Kelley appeared *pro se* at the hearing on Taher's motion (Ex. 79). Kelley provided opposing counsel with his responses to Taher's request for admissions (Kelley Test.).

72. On July 24, 2009, the court granted Taher's motion and dismissed Kelley's complaint in its entirety (Exs. 79 and 80). The court, among other things, stated that:

[Kelley] failed to amend his complaint to add federal law claims, which would not have been time barred by Minnesota statutes. [Kelley] failed to appear at the hearing on his motion, and it was dismissed for failure to prosecute. Therefore, [Kelley's] sexual harassment/hostile environment claim is untimely. [Taher's] motion to dismiss is granted on this count.

(Ex. 79, p. 4.)

Stouten & Associates Matter

73. On January 20, 2010, Stouten & Associates (Stouten) provided court reporting services for the deposition of respondent's client⁷ (R. Ans.; Exs. 81 and 86).

74. At the conclusion of the deposition, respondent ordered a condensed copy of the transcript (Exs. 81 and 86).

75. On February 2, 2010, Stouten provided respondent with one copy of the deposition transcript and billed him \$493.25 (R. Ans.; Ex. 82).

76. Respondent did not pay the invoice nor did he dispute its validity (Ex. 83) except as noted below.

77. On March 4, 2011, Stouten sent respondent a copy of the February 2, 2010, invoice, with a cover letter that indicated the invoice was over one year past due and

⁷ Tracy Schmitz, employed by Stouten at the time the deposition was taken, was the court reporter on January 20, 2010 (Ex. 81). Part of the collection efforts were undertaken by Stouten, but were later turned over to Schmitz (*see* Exs. 83 and 84). Schmitz and Stouten are used interchangeably herein for ease of reference.

⁸ The deposition began on November 6, 2009, but due to time constraints was not completed until January 20, 2010 (Ex. 85).

that “several rebills of [the] invoice” had been sent (R. Ans.; Ex. 83). The letter further indicated that if respondent failed to pay the invoice by March 18, Stouten would file a claim in Hennepin County small claims court (R. Ans.; Ex. 83).

78. Respondent sent Stouten’s March 4, 2011, letter back to Stouten with a handwritten notation that stated, “I did not order this transcript. I don’t order my clients transcripts b/c the [defendant] always includes it in motion papers.” (R. Ans.; Ex. 84.)

79. On May 6, 2011, Stouten wrote to respondent again and stated that respondent did in fact order the transcript and had already paid for Volume I (R. Ans.; Ex. 85). The letter further indicated that respondent had made no attempt to return the transcript which he was now claiming he did not order (R. Ans.; Ex. 85). Stouten requested that respondent make payment within two weeks or Stouten would file a claim in small claims court (R. Ans.; Ex. 85). Respondent failed to pay the invoice (R. Ans.; Ex. 86).

80. On January 13, 2012, Stouten wrote to respondent again and requested that he pay the invoice on or before January 31, 2012 (R. Ans.; Ex. 86). His failure to do so would result in Stouten filing the matter with the court on February 1, 2012 (R. Ans.; Ex. 86). Respondent failed to pay the invoice (R. Ans.; Ex. 87).

81. On February 22, 2012, Stouten filed a claim with Hennepin County Conciliation Court (R. Ans.; Ex. 96). Respondent failed to appear for the April 30, 2012, hearing on Stouten’s claim (R. Ans.; Ex. 87). On or about May 1, 2012, judgment was entered against respondent in favor of Stouten in the amount of \$563.25 (R. Ans.; Ex. 87). The judgment was stayed until May 24, 2012 (R. Ans.; Ex. 87).

82. On August 10, 2012, Stouten removed the matter to Hennepin County District Court (R. Ans.; Ex. 97). On September 10, 2012, the judgment against respondent was docketed (R. Ans.; Ex. 88).

83. On November 13, 2012, the court issued an order for disclosure requiring respondent to disclose his personal finances within ten days after service of the order (R. Ans.; Ex. 89). Respondent did not make the court-ordered disclosures and did not pay the judgment (R. Ans.; Ex. 90, p. 2).

84. By check dated January 9, 2013³, respondent paid \$380 towards the \$563.25 judgment (R. Ans.; Ex. 91). On January 11, 2013, Stouten wrote to respondent and informed him that the \$380 was being accepted as partial payment and provided him with an updated invoice reflecting a balance of \$228.25, which included additional fees Stouten incurred in collection efforts (R. Ans.; Ex. 92). By check dated January 17, 2013, respondent paid \$193.25 towards the \$563.25 judgment (R. Ans.; Ex. 93).

85. On January 22, 2013, Stouten wrote to respondent again, acknowledged receipt of his \$193.25 payment and enclosed another updated invoice for the remaining balance of \$35 (R. Ans.; Ex. 94).

86. On or about February 13, 2013, respondent paid the remaining \$35 owed to Stouten (R. Ans.; Ex. 95).

Jamie Gilmore Matter

87. Respondent represented Jamie Gilmore in an employment matter (R. Ans.; Ex. 109). During June 2008, Gilmore and the opposing party entered into a stipulation to settle Gilmore's claim (R. Ans.; Exs. 99 and 109).

88. Respondent placed Gilmore's closed file in the basement storage vault of the Minneapolis Grain Exchange (MGX) (R. Ans.; Exs. 101 and 110). During July 2008, respondent moved out of the MGX, but continued to store Gilmore's closed file in the MGX vault (R. Ans.; Ex. 101).

89. During December 2008, Michael G. Phillips, respondent's former suitemate, questioned whether the MGX storage vault was contaminated by asbestos

³The 2012 date on respondent's check appears to be a typographical error.

after observing what he concluded was broken insulation around a heating pipe (R. Ans.; Ex. 111).

90. On January or about 27, 2009, the MGX vault tested negative for asbestos contamination (Exs. 102 and 111).

91. By email dated May 7, 2009, Ruth Y. Ostrom, respondent's former partner, informed respondent that Gilmore wanted her file, but he needed to coordinate its retrieval himself (Ex. 101, p. 4).

92. By email messages dated May 8, 2009, Ostrom informed respondent she was "still suspicious of the asbestos in the old vault. neither [sic] [their administrative assistant] nor i [sic] will go in there. if [sic] you want to go in, feel free," but "there [was] a report that supposedly says all clear" and her administrative assistant could give respondent the combination to the vault and the number of the box where Gilmore's file was stored if he wanted to retrieve the file (R. Ans.; Ex. 102).

93. By letter dated, June 4, 2009, Keith D. Johnson, Gilmore's new attorney, asked respondent, pursuant to Gilmore's authorization, to forward Gilmore's file (R. Ans.; Ex. 103).

94. By email sent June 29, 2009, at 1:00 p.m., respondent informed Johnson that his file storage room was contaminated with asbestos and it was not safe to enter the room (R. Ans.; Ex. 104).

95. In a responsive email sent June 29, 2009, at 1:07 p.m., Johnson reminded respondent of his obligation to provide Gilmore with her file and asked how he intended to provide Gilmore with her file (R. Ans.; Ex. 104).

96. By email sent June 29, 2009, at 1:44 p.m., respondent told Johnson to "[f]eel free to contact [Ostrom's administrative assistant by telephone] if you want to make arrangements to enter the contaminated vault." (Ex. 104.)

97. By email sent June 29, 2009, at 2:36 p.m., Johnson again reminded respondent that it was his obligation to provide Gilmore with her file (R. Ans.; Ex. 104). Respondent did not forward Gilmore's file to Johnson (R. Ans.; Ex. 105).

98. On August 3, 2009, Johnson wrote to respondent stating that if "adequate arrangements [were] not made within the next two weeks," he would recommend to Gilmore that she file an ethics complaint against respondent (R. Ans.; Ex. 105).

99. On August 19, 2009, respondent emailed Johnson stating, "As I previously informed you, the storage vault at the Grain Exchange North Building has been exposed to significant asbestos and entering the vault is a health risk." (R. Ans.; Ex. 106.)

100. On September 24, 2009, respondent notified Johnson that if Johnson wanted to go into the vault, respondent would make arrangements (Ex. 108).

101. Respondent did not provide Johnson with Gilmore's file (R. Ans.; Ex. 109). Gilmore filed an ethics complaint against respondent on October 16, 2009 (Ex. 109).

102. On October 14, 2010, Ostrom informed respondent by email that she had located the Gilmore file (R. Ans.; Ex. 101).

103. By email sent October 29, 2010, more than sixteen months after Johnson began requesting Gilmore's file, respondent informed Gilmore that all the files had been cleaned of asbestos and her file was available for retrieval at her convenience (R. Ans.; Ex. 98).

P.K. Matter

104. Respondent represents P.K. in a matter venued in federal court (R. Supp. Ans.; Ex. 112).

105. An April 23, 2013, notice of settlement conference required the parties to submit by July 10, 2013, confidential letters to the court setting forth each party's settlement position prior to the settlement conference (R. Supp. Ans.; Ex. 113). Respondent failed to submit a letter to the court (R. Supp. Ans.; Ex. 113).

106. Respondent and his client failed to appear at the July 17, 2013, settlement conference (R. Supp. Ans.; Ex. 113). The court and the opposing party/ defendant waited 30 minutes before adjourning (R. Supp. Ans.; Ex. 113).

107. On July 18, 2013, the court issued an order requiring respondent to “show cause in writing, on or before August 1, 2013 why the Court should not require him to reimburse Defense counsel for all costs and fees incurred in attending the aborted settlement conference.” (R. Supp. Ans.; Ex. 113.) Respondent did not respond to the court’s order (R. Supp. Ans.; Ex. 114).

108. On August 6, 2013, the court issued an order finding that respondent’s client had not complied with the court’s July 18, 2013, order and ordering respondent’s client to pay \$800 to the defendant (R. Supp. Ans.; Ex. 114).

T.V. Matter

109. Respondent represents T.V. in a matter venued in Hennepin County District Court (R. Supp. Ans.; Ex. 115).

110. On June 6, 2013, the court issued a scheduling order, which required the parties to complete mediation by April 4, 2014 (R. Supp. Ans.; Exs. 115 and 116). The June 6, 2013, scheduling order stated, “All mediation sessions must be attended, in person, by the attorneys who will try the case [and] the parties involved in the litigation” (R. Supp. Ans.; Ex. 116.)

111. On September 30, 2013, respondent and his client failed to appear for a previously scheduled mediation session with retired Judge Allen Oleisky, who was selected as mediator (R. Supp. Ans.; Exs. 117, 118 and 119). Judge Oleisky, opposing counsel and representatives of the opposing party appeared as scheduled (R. Supp. Ans.; Exs. 117 and 118).

112. After waiting approximately 15 minutes, Judge Oleisky attempted to reach respondent by telephone (R. Supp. Ans.; Exs. 117 and 118). Respondent did not answer and his voicemail service reported that his voicemail box was full (R. Supp.

Ans.; Exs. 117 and 118). Judge Oleisky also emailed respondent, but did not receive a reply (R. Supp. Ans.; Ex. 117). After waiting at least one hour for respondent to appear, the mediation session was terminated (R. Supp. Ans.; Exs. 117 and 118).

113. Judge Oleisky emailed respondent again on September 30 and stated, "We need to set up another time and date to mediate this matter. Please contact me and Tom [opposing counsel] to arrange this." (R. Supp. Ans.; Ex. 117.) Respondent failed to respond to the email and did not contact Judge Oleisky or opposing counsel (R. Supp. Ans.).

114. On October 2, 2013, Judge Oleisky emailed respondent and stated, "Please contact Tom Sheran or myself ASAP as to why you and your client did not show up at my office on Monday, Sept. 30th at 9:30 a.m. for the mediation that had been set for that time, place and date." (R. Supp. Ans.; Ex. 117.) Respondent failed to respond to the email and did not contact Judge Oleisky or opposing counsel (R. Supp. Ans.; Ex. 117).

115. On October 2, 2013, opposing counsel also emailed respondent and requested that respondent contact him (R. Supp. Ans.; Ex. 117). Respondent did not respond to the email and did not contact opposing counsel (R. Supp. Ans.; Ex. 117).

116. On October 7, 2013, opposing counsel filed a motion for sanctions and for a revised mediation order (R. Supp. Ans.; Ex. 117). The motion was scheduled to be heard on October 22, 2013 (R. Supp. Ans.; Ex. 117). Respondent did not file a response to the motion (R. Supp. Ans.; Ex. 119).

117. On October 21, 2013, opposing counsel filed a motion for summary judgment scheduled to be heard on November 21, 2013 (R. Supp. Ans.; Exs. 115 and 121).

118. On October 22, 2013, respondent and his client failed to appear for the hearing on opposing counsel's motion for sanctions and for a revised mediation order (R. Supp. Ans.; Ex. 119).

119. On October 22, 2013, the court issued an order granting the motion for sanctions (R. Supp. Ans.; Ex. 119). Respondent was ordered to pay \$500 to Judge Oleisky and \$522 in costs to the opposing party for T.V.'s failure to attend the September 30, 2013, mediation (R. Supp. Ans.; Ex. 119). Additionally, the court lifted the requirement that the parties mediate the case before filing a motion for summary judgment (R. Supp. Ans.; Ex. 119).

120. Respondent has not paid the sanctions imposed by the court's October 22, 2013, order (R. Test.).

121. On November 13, 2013, respondent stated to opposing counsel during a telephone conference that he was in rehabilitation, had not seen the summary judgment motion papers and was not able to discuss settlement of the issues raised in the summary judgment motion papers (R. Supp. Ans.; Ex. 120). Respondent did not request a continuance from, or otherwise communicate with, the court (R. Supp. Ans.; Ex. 115).

122. On November 21, 2013, respondent appeared for the hearing on the opposing party's summary judgment motion (R. Supp. Ans.; Ex. 121). Respondent informed the court that he had been at a residential treatment program out of state, had only returned to Minnesota a few days earlier and had been unable to file a written response (R. Supp. Ans.; Ex. 121). Respondent requested a continuance of the hearing (R. Supp. Ans.; Ex. 121). The court continued the hearing to December 20, 2013, and granted respondent until December 12, 2013, to file a response to the summary judgment motion. Respondent filed his response on December 17, 2013 (R. Supp. Ans.; Ex. 121).

D.T. Matter

123. Respondent represents D.T. in a matter venued in Hennepin County District Court (R. Supp. Ans.; Ex. 122).

124. The opposing party moved to dismiss, or alternatively for summary judgment (R. Supp. Ans.; Ex. 123). In response, respondent mailed to the judge, but did not file, a memorandum opposing summary judgment (R. Supp. Ans.; Ex. 135). Respondent also submitted to the judge an affidavit of his client bearing only an electronic signature (R. Supp. Ans.; Exs. 124 and 135).

125. A motion hearing was scheduled for September 12, 2013 (R. Supp. Ans.; Exs. 122 and 135). Respondent contacted the judge's chambers the afternoon before the hearing (on September 11, 2013) to notify the court that he would be unable to attend the hearing in person due to a family emergency, but that he could appear by telephone (R. Supp. Ans.; Ex. 135). Respondent provided the court with a telephone number (R. Supp. Ans.; Ex. 135).

126. On September 12, 2013, at 8:30 a.m., the court called respondent at the number he provided the previous day (R. Supp. Ans.; Ex. 135). Respondent failed to answer the call and did not, at any time thereafter, contact the court to explain his failure to participate in the hearing (R. Supp. Ans.; Ex. 135).

Non-Cooperation

127. On May 23, 2013, the Director sent to respondent notice of investigation of the complaint of Ruby Clinkscale (R. Supp. Ans.; Ex. 126). Respondent was requested to provide to the assigned district ethics committee (DEC) investigator a complete written response to Clinkscale's complaint within 14 days (R. Supp. Ans.; Ex. 126).

128. On June 3, 2013, the Director issued a notice of reassignment of investigation of Clinkscale's complaint (R. Supp. Ans.; Ex. 127). Respondent was requested to provide to the new DEC investigator a complete written response to Clinkscale's complaint within 14 days of the reassignment (R. Supp. Ans.; Ex. 127). Respondent failed to respond (R. Supp. Ans.; Exs. 128, 129 and 131).

129. On July 15, 2013, the DEC investigator wrote to respondent, stated that respondent's response was overdue and asked that respondent provide his response as

quickly as possible (R. Supp. Ans.; Ex. 128). The DEC investigator informed respondent of his duty to cooperate with the investigation (R. Supp. Ans.; Ex. 127). Respondent failed to respond (R. Supp. Ans.; Exs. 129, 131 and 132).

130. On September 3, 2013, the DEC investigator wrote to respondent again, reminded him of his duty to cooperate with the investigation, asked respondent to contact him immediately and stated that if respondent failed to do so, he would recommend that respondent be disciplined for failure to cooperate (R. Supp. Ans.; Ex. 129).

131. On September 23, 2013, the Director sent to respondent notice of investigation of the complaint of Brian Hile (R. Supp. Ans.; Ex. 130). Respondent was requested to provide a complete written response to Hile's complaint within 14 days (R. Supp. Ans.; Ex. 130). Respondent failed to respond (R. Supp. Ans.; Ex. 134).

132. On September 24, 2013, respondent called the Director's Office and left a message with the receptionist indicating only that he would like a one week extension to respond (R. Supp. Ans.). Respondent did not indicate in which matter he required an extension (R. Supp. Ans.). The assigned Assistant Director returned respondent's call later that same day, but received a message that respondent's voicemail box was full (R. Supp. Ans.). The assigned Assistant Director left a callback number on respondent's pager (R. Supp. Ans.).

133. On September 25, 2013, the assigned Assistant Director attempted to return respondent's call again, but again received a message that respondent's voicemail box was full and could not accept new messages (R. Supp. Ans.).

134. On or about September 25, 2013, respondent left a message for the DEC investigator in the Clinkscale matter (R. Supp. Ans.; Ex. 132). The DEC investigator returned respondent's call and left a message for him asking respondent to call him back and submit a response right away (R. Supp. Ans.; Ex. 132). Respondent failed to respond (R. Supp. Ans.).

135. On or about October 16, 2013, the Director received the DEC's findings and recommendation in the Clinkscale matter (R. Supp. Ans.; Exs. 131 and 132).

136. On October 17, 2013, respondent called the Director's Office and stated he was presently in chemical dependency treatment and would not be back in Minnesota until November 20 (R. Supp. Ans.).

137. On October 23, 2013, the Director wrote to respondent, enclosed a copy of the DEC's findings and recommendation and noted respondent's failure to provide a written response to Clinkscale's complaint (R. Supp. Ans.; Ex. 133). The Director also noted respondent's indication that he was seeking chemical dependency treatment out of state and would not return to Minnesota until approximately November 20 (R. Supp. Ans.; Ex. 133). The Director requested that respondent submit a written response no later than December 6, 2013 (R. Supp. Ans.; Ex. 133). Respondent failed to respond (R. Supp. Ans.; Ex. 138).

138. On October 24, 2013, the Director wrote to respondent and indicated that his response to Hile's complaint was overdue (R. Supp. Ans.; Ex. 134). The Director noted respondent's indication that he was seeking chemical dependency treatment out of state and would not return to Minnesota until approximately November 20 (R. Supp. Ans.; Ex. 134). The Director requested that respondent submit a complete written response to Hile's complaint no later than December 9, 2013 (R. Supp. Ans.; Ex. 134). Respondent failed to respond (R. Supp. Ans.; Ex. 138).

139. On November 7, 2013, the Director sent to respondent notice of investigation of the T.V. and D.T. matters (R. Supp. Ans.; Ex. 135). Respondent was requested to provide a complete written response to the notice of investigation within three weeks (R. Supp. Ans.; Ex. 135). Respondent failed to respond (R. Supp. Ans.; Exs. 137 and 138).

140. On November 19, 2013, the Director sent to respondent notice of investigation of the P.K. matter (R. Supp. Ans.; Ex. 136). Respondent was requested to

provide a complete written response to the notice of investigation within three weeks (R. Supp. Ans.; Ex. 136). Respondent failed to respond (R. Supp. Ans.; Ex. 138).

141. On December 6, 2013, the Director wrote to respondent, noted that he failed to respond to the notice of investigation into the T.V. and D.T. matters and requested that he submit his complete written response to the notice of investigation within one week (R. Supp. Ans.; Ex. 137). Respondent failed to respond (R. Supp. Ans.; Ex. 138).

142. On December 17, 2013, following a telephone conversation with respondent on December 16, 2013, the Director wrote to respondent and requested that he submit his written responses to the Clinkscale, Hile, P.K., T.V. and D.T. matters on or before December 31, 2013 (R. Supp. Ans.; Ex. 138). Respondent failed to respond (R. Supp. Ans.).

143. As of the date of the supplementary petition, respondent had not provided written responses to the Clinkscale, Hile, P.K., T.V. and D. T. matters (R. Supp. Ans.; R. Test.).

Aggravating and Mitigating Factors

144. Respondent has extensive experience in the practice of law.

145. Respondent's misconduct as set forth above and in this proceeding indicates a complete lack of concern about procedural rules.

146. Respondent's misconduct consists of multiple acts of professional misconduct over an extended period of time and across multiple matters.

147. Respondent's conduct constitutes a pattern of misconduct.

148. Respondent refused to acknowledge his misconduct and exhibited no remorse for his misconduct (R. Test.). Respondent offered no evidence that he understood, regretted, or was sorry or remorseful for the wrongful nature of his

conduct. To the contrary, respondent steadfastly maintained throughout the proceedings that he committed little, if any, misconduct (R. Ans.; R. Test.).

149. Respondent presented no evidence that similar misconduct will not occur in the future.

150. Respondent appears to be claiming alcohol dependency in mitigation of the sanction for his misconduct as alleged in the supplementary petition; however, respondent has not met his burden of proof with respect to his mitigation claim.

151. Respondent offered no other evidence to support a legally recognized claim of mitigation of the sanction for respondent's misconduct.

CONCLUSIONS OF LAW

1. Respondent's conduct in the Collins matter violated Rules 1.1, 3.1, 3.4(c), and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

2. Respondent's conduct in the Jann matter violated Rule 8.4(c) and (d), MRPC.

3. Respondent's conduct in the Kelley matter violated Rules 1.1, 1.3, 1.4(a)(3) and (b), 1.16(c) and (d), 3.2, 3.4(c), and 8.4(d), MRPC.

4. Respondent's conduct in the Stouten matter violated Rule 8.4(d), MRPC.

5. Respondent's conduct in the Gilmore matter violated Rule 1.16(d), MRPC.

6. Respondent's conduct in the P.K. matter violated Rules 1.1, 1.3, 3.2, 3.4(c), and 8.4(d), MRPC.

7. Respondent's conduct in the T.V. matter violated Rules 1.3, 3.2, 3.4(c), and 8.4(d), MRPC.

8. Respondent's conduct in the D.T. matter violated Rules 1.3, 3.2, 3.4(c), and 8.4(d), MRPC.

9. Respondent's failure to cooperate with the disciplinary investigation violated Rules 8.1(b), MRPC, and Rule 25, Rules on Lawyers Professional Responsibility (RLPR).

10. Respondent's failure to recognize the wrongful nature of his misconduct, refusal to acknowledge committing wrongdoing and lack of remorse aggravate the sanction for his misconduct.

11. Respondent's substantial experience in the practice of law aggravates the sanction for his misconduct.

12. Respondent's multiple acts of intentional misconduct aggravate the sanction for his misconduct.

13. Respondent's multiple acts of professional misconduct over an extended period of time and across multiple matters aggravate the sanction for his misconduct.

14. Respondent engaged in a pattern of misconduct, which aggravates the sanction for respondent's misconduct.

15. The absence of evidence that misconduct will not occur in the future aggravates the sanction for respondent's misconduct.

16. There is no factor which mitigates the sanction for respondent's misconduct.

RECOMMENDATION FOR DISCIPLINE

Based on the foregoing findings and conclusions, the undersigned recommends:

1. That respondent, Mark Alan Greenman, be indefinitely suspended from the practice of law, ineligible to apply for reinstatement for a minimum of six months from the date of the Court's suspension order.

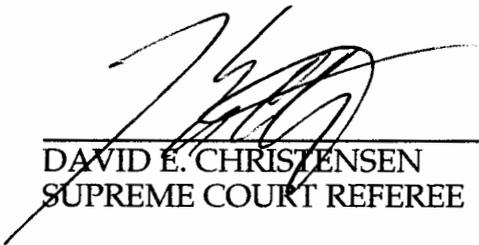
2. That the reinstatement hearing provided for in Rule 18, RLPR, not be waived.

3. That reinstatement be conditioned upon:

- a. Completion of the minimum period of suspension;
- b. Compliance with Rule 26, RLPR;
- c. Payment of \$900 in costs, plus disbursements, pursuant to Rule 24, RLPR;
- d. Successful completion of the professional responsibility examination pursuant to Rule 18(e), RLPR;
- e. Satisfaction of the CLE requirements pursuant to Rule 18(e), RLPR; and
- f. Proof by respondent by clear and convincing evidence that he has undergone moral change; that he is fit to practice law and that future misconduct is not apt to occur.

Dated: August 11, 2014.

BY THE COURT:



DAVID E. CHRISTENSEN
SUPREME COURT REFEREE

MEMORANDUM

This Referee has, after carefully reviewing the exhibits and considering the brief testimony submitted at the contested Hearing, adopted the Proposed Findings of Fact submitted by the Director as his own, with a few exceptions.

The original Petition for Disciplinary Action contained five counts: The Timothy Collins Litigation, The Brenda Jann Matter, The Preston Kelly Matter, The Stouten & Associates Matter and the Jamie Gilmore Matter. The Supplementary Petition contained four counts that Respondent admitted to in their entirety.

The first Count related to the Timothy Collins litigation. The facts are clearly set forth in the Findings. This Referee would only note that it is hard to imagine a case with more procedural errors than occurred here, made by an attorney who claims to specialize in litigation.

Count Two of the Petition is the Brenda Jann matter. Respondent admits that he filed a Declaration in the Arbitration matter that appeared to have been signed by his client electronically, when in fact the client had not signed it. Respondent argues that although the Declaration was not signed, his client did in fact sign it later, even though she testified in the Arbitration matter that the Declaration was not entirely true.

The Third Count is the Preston Kelly matter and is the only matter that Respondent seriously contested at the hearing before this Referee. At issue is whether or not Respondent gave his client notice that he was withdrawing from his representation shortly before a hearing which Respondent had scheduled. Kelly testified that he received no notice of the withdrawal, and Respondent testified that he called Kelly and advised him of the withdrawal. Having heard the testimony of both Kelly and Respondent, this Referee finds that Kelly's testimony is more believable. Kelly was so involved with his case that this Referee believes that had he, in fact, been given notice of the withdrawal, he would have personally appeared at the hearing. As a result of no appearance having been made, the matter was dismissed for failure to prosecute.

Counts Four and Five are not discussed in this memorandum because Respondent presented no evidence in regard to them at the hearing.

As noted above, Respondent admitted all of the allegations in the Supplementary Petition. At the hearing before this Referee, Respondent testified that in 2013 he was depressed and suffering from alcoholism. Having been through a 12-step program for alcoholism in 2007 and having felt that it was not successful, he decided to enroll in a non 12-step program and entered an inpatient treatment program in California in October of 2013. He further testified that he is now sober and is resolving the cases that languished during his treatment. He provided no collaborating testimony, no medical documentation and provided no aftercare plans from the treatment facility.

Respondent further provided no defense to the matter of Non-Cooperation. As a practical matter, the non-cooperation continued throughout this matter. On at least two occasions, this Referee required that Respondent provide discovery. Respondent did not provide a witness list or exhibit list, in spite of a scheduling order that required such disclosure. At the hearing, Respondent borrowed a copy of the proposed exhibits because he failed to bring his copy with him, and he borrowed a pen from the court reporter. In lieu of filing proposed Findings of Fact, Conclusions of Law, Recommendations and a Memorandum both electronically and by US Mail, Respondent emailed a letter indicating that Respondent felt the Referee should recommend no discipline, or at most a private reprimand. Attached was a single page, without a heading, requesting a few specific findings.

Considering all of the above, including the Findings of Fact and Conclusions of Law, this Referee is of the opinion that Respondent should not be practicing law at the present time. DEC