

FILE NO. C3-99-815

STATE OF MINNESOTA

IN SUPREME COURT

COPY

In Re Petition for Disciplinary
Action Against JAMES T. HANVIK,
an Attorney at Law of the
State of Minnesota.

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION

The above entitled matter was tried on August 20, 1999, before the Hon. Warren E. Litynski acting as referee by appointment of the Minnesota Supreme Court.

Appearing at the trial were:

Eric T. Cooperstein, Senior Assistant Director for the Office of Lawyers
Professional Responsibility;
Michael J. Hoover, Attorney representing Respondent;
James T. Hanvik, Respondent.

The Court agreed to leave the record open to allow Respondent to present the testimony of an expert by deposition. The deposition took place on August 25, 1999, and the Court received the original transcript shortly thereafter.

The parties submitted proposed Findings of Fact, Conclusions of Law, Recommendation for Discipline and written argument, the last of which was received on September 10, 1999.

Based on the evidence presented to the referee and the entire file, the referee makes the following Findings of Fact, Conclusions of Law and Recommendation for Discipline:

FINDINGS OF FACT

FIRST COUNT
Conrad Estate

1. Respondent, James T. Hanvik, was admitted to practice law in Minnesota on October 17, 1984. He has no prior disciplinary history.
2. Respondent currently practices law in Edina, Minnesota.
3. Kevin Conrad (hereafter Conrad) died in a November 1994 accident after leaving a bar. His mother, Sharon Henke (hereafter Henke), retained Respondent to pursue a dram shop action against the bar and to handle the estate. By letter dated January 30, 1995, Respondent advised Henke that he would pursue the dram shop claim on a one-third contingency basis. Exhibit #4. There was no agreement as to compensation, if any, for the probate. No retainer agreement was signed.
4. Henke was appointed personal representative of Conrad's estate.

11/27/99

5. Conrad's employer issued a final payroll check for \$887.78 and forwarded it to Henke. Henke gave the check to Respondent during their first meeting. Respondent wrote to the employer and requested a new check made out to Henke as the Personal Representative of Conrad's estate. Exhibit #2.
6. On or about February 1, 1995, the employer issued a new check made out to Henke as personal representative of Conrad's estate and forwarded it to Respondent. Exhibit #3.
7. Without authority, Respondent endorsed the check by signing Henke's name. On February 8, 1995, he deposited the check in his trust account. On the same date, Respondent issued a trust account check to himself for the entire amount. Exhibit #29, pp. 20-21; Exhibit #30, p. 1. (Exhibit #29, p. 21, shows the check dated 2/7/95. This conflicts with Exhibit #30 by one day.)
8. On February 15, 1995, Respondent wrote to Henke. Exhibit #4. The letter began, "As we discussed, I will place Kevin's last check in my trust account, and I will withdraw monies from that account as fees and costs accrue in probating Kevin's estate." Respondent's statement was false. Respondent knew by this date that he had already withdrawn the funds from his trust account.
9. Respondent testified that he had no billing statements or time records to consult regarding whether he had accrued sufficient fees and costs to earn the entire \$887.78 by February 8, 1995. Respondent testified, based on his experience in other probate cases, that he might have spent up to one hour to drive to and from the courthouse, one hour to meet with the probate registrar, one hour to draft the probate petition, and 45 minutes to draft notices to survivors and other documents. Respondent testified that costs of \$252.80, identified in the draft final account (Exhibit #9), were advanced before February 8, 1995. Based on Respondent's stated hourly rate of \$125.00, his estimated fees and costs total \$721.55 (3.75 hours x \$125.00, plus \$252.80). Further, the draft final account, prepared by Respondent and sent to Henke in May 1996, lists total fees and costs of \$887.78. It is not credible that Respondent expended this amount by February 8, 1995, and then did not charge for any additional work over the next 15 months. Respondent knew that he was not entitled to the entire \$887.78 when he disbursed these funds to himself on February 8, 1995, and when he wrote to Henke on February 15, 1995.
10. Between March and September, 1995, Henke inquired several times about Conrad's last paycheck but could not get a direct response from Respondent.
11. The dram shop action was settled with Henke's consent for \$8,500.00. Respondent received the settlement check and deposited it to his trust account on December 14, 1995. Exhibit #29, pp. 46-47. Respondent's records indicate that he issued three previous checks to himself, \$1,000.00 on November 14, 1995, \$500.00 on November 20, 1995, and \$500.00 on December 1, 1995, all attributed to the Conrad settlement. Exhibit #29, pp. 45, 47. Exhibit #30, p. 3. Respondent misappropriated funds belonging to other clients in order to distribute these fees to himself.
12. Respondent sent a disbursement schedule to Henke. Exhibit #6. From the \$8,500.00 settlement, Respondent deducted \$2,833.33 for attorney's fees and

\$337.70 for costs incurred. Of the costs, Respondent attributed \$264.00 to filing fees. The dram shop action was not filed and Respondent incurred no filing fees. Respondent's entry in the disbursement schedule regarding the filing fees was false.

13. On December 14, 1995, Respondent issued a trust account check to himself on December 14, 1995, for \$1,171.03 which represented his fees and costs after deducting the \$2,000.00 he previously distributed to himself. Exhibit #29, p. 47. Of the net proceeds to the estate of \$5,328.97, Respondent forwarded \$5,000.00 directly to Henke on December 23, 1995. Exhibit #7. Respondent wrote to Henke that he had retained \$328.97 from the settlement "to take care of any final expenses that might arise as we wind up the administration." *Id.*
14. Between December 1995 and November 1996, Henke inquired several more times about Conrad's last paycheck but could not get a response from Respondent. In May 1996 Respondent forwarded a draft of the final account to Henke. Exhibits #8 and #9.
15. Respondent decided to withdraw from representing Henke. In his December 9, 1996, closing letter to Henke, Respondent acknowledged Henke's concern regarding the final paycheck. Exhibit #10. Respondent wrote, "First, your vague accusations regarding some sort of ethical lapse are entirely unfounded. These accusations apparently stem from claims that Kevin's final paycheck was used by me for improper purposes." *Id.* Respondent went on to state; "Notwithstanding the fact that we had, and have, every right to pay out those funds for services and costs, in reviewing my trust account records, I discovered that I have not expended any funds from the deposit of Kevin's check." *Id.*
16. This statement was inaccurate because Respondent had disbursed the paycheck proceeds to himself on February 8, 1995. Although Respondent did not submit any billing at the time he withdrew the funds, he had by that date incurred a probate court filing fee, publication fees, miscellaneous fees for certified copies of letters, and the like. In addition, Respondent had expended a number of hours in drafting probate paperwork, appearing before the Probate Court Registrar, and arranging for the required notices and publications associated with probate administration.
17. With Exhibit #10, Respondent enclosed a check for \$1,216.75, which included both the Conrad paycheck of \$887.78 and the \$328.97 retained from the dram shop recovery. *Id.* Henke filed her complaint with the Director's Office a few days before receiving Respondent's check. Exhibit #11.
18. During the investigation by the district ethics committee, Respondent produced a subsidiary ledger for the Henke representation which recorded only the deposit of the payroll check, the deposit of the retained funds from the dram shop recovery, and the disbursement of those funds to Sharon Henke. Exhibit #12. The entries on the reverse side of the ledger reflect the disbursements for the dram shop settlement. The ledger is misleading. The ledger omits any reference to Respondent's withdrawal of \$887.78 on February 8, 1995. The ledger does not comport with Respondent's other trust account records and was not prepared contemporaneously as the transactions occurred. Respondent failed to disclose to the investigator that the ledger was not accurate and did not respond to the investigator's request for additional

information about the ledger. Exhibits #13 and #14.

19. Notwithstanding Respondent's misconduct regarding Henke's funds, it does not appear that she suffered any loss, except loss of use of the funds and interest on money she should have received earlier.

SECOND COUNT

J.B. Personal Injury Settlement

20. Respondent represented client J.B. in a personal injury action. Respondent settled the claim with J.B.'s consent in November 1994 for \$5,000.00. Exhibit #16. Respondent was aware that Medicare held a subrogation claim of \$3,090.80 on J.B.'s settlement. Respondent falsely told the Medicare claims agent, Karen Holst, that the case was settled for \$3,500.00. On that basis, Medicare agreed to reduce its claims to one-third of the purported settlement amount, \$1,166.67. Exhibit #22.
21. Respondent gave J.B. a settlement statement that reflected a deduction of \$1,166.67 for the Medicare subrogation payment and a separate deduction for litigation expenses of \$208.75. J.B. signed the statement on November 25, 1994, and received her distribution. Exhibit #17. Respondent disbursed fees and costs of \$1,875.42 to himself on November 22, 1994. Exhibit 29, p. 2.
22. Respondent did not forward the subrogation amount to Medicare. On August 3, 1995, Holst wrote to Respondent in inquire regarding the status of J.B.'s settlement. Exhibit #18. Respondent replied with an August 10, 1995, letter in which he stated that he had been unable to contact J.B. and could not provide Holst with any information regarding the status of the case. Exhibit #19. Respondent's statement was false. Respondent had no reason to contact J.B. at this time and there was no reason why he could not inform Holst that the personal injury action had been settled.
23. On March 1, 1996, Respondent issued a trust account check to himself for \$250.00, with the notation "[B] Cost Reimburse." Exhibit #29, p. 57. Respondent knew that he had already reimbursed himself for the costs in J.B.'s case, that there had been no activity on the file during the preceding 15 months, and that all of the funds remaining in his trust account for the J.B. case were owed to Medicare. On March 10, 1996, Respondent issued a trust account check to himself for \$500.00, with the notation "Blum fees." Exhibit #29, p. 58. Respondent knew he was not entitled to any additional fees from the J.B. case.
24. Holst wrote to Respondent again on January 29, 1997, to determine the status of J.B.'s personal injury action. Exhibit #21. Respondent did not contact Holst until April 1997, when he telephoned her to discuss payment of the subrogation claim. Respondent followed up with an April 22, 1997, letter to Holst, in which Respondent stated that the delay was caused by "unexpected expenses" and Respondent's inability to communicate with J.B. regarding settlement of the subrogation claim. Exhibit #22. Respondent's statements were false. In fact, no such expenses had occurred and Respondent had neither attempted to communicate with J.B. nor was any communication necessary.
25. In the April 22, 1997, letter, Respondent deducted from Medicare's subrogation claim \$150.00 for a knee brace purchased by J.B. and \$104.38 for

one-half of the costs of the lawsuit. Based on those deductions, Respondent sent Medicare a check for \$912.29. Respondent knew that J.B. had paid for the knee brace out-of-pocket in 1993. Respondent did not forward the \$150.00 to J.B., nor has he ever held those funds in his trust account in anticipation of forwarding them to J.B. See Exhibit #29, pp. 107-11. Respondent also knew that he had already been reimbursed for his litigation expenses by J.B., as noted on her settlement statement. At the time Respondent paid Medicare \$912.29, he did not have sufficient funds in his trust account to pay the entire subrogation claim. See Exhibit #32. At that time only \$416.67 remained from J.B.'s settlement funds.

26. Prior to the hearing Respondent sent a check to Medicare for \$500.00 representing one-third of the \$1,500.00 which Respondent wrongfully kept. Respondent testified that he believes his client is entitled to the \$150.00 for the knee brace and \$104.38 for one-half of the litigation costs which he assessed against Medicare. Respondent claims he is unable to locate his client.

THIRD COUNT
T.K. Dissolution Matter

27. Respondent met with T.K. on May 8, 1996, to discuss representing T.K. in a divorce. The meeting did not exceed one hour. T.K. gave Respondent a \$500.00 retainer but told Respondent not to proceed any further as T.K. was not sure he wanted to proceed with the divorce. T.K. instructed Respondent to hold the retainer and not perform any work until T.K. contacted him again. Further, Respondent was not to contact T.K. because T.K. did not want his wife to know that he was considering a divorce.
28. T.K. did not contact Respondent again. Respondent drafted a form retainer letter which he placed in his file but which was never given to or shown to T.K. Exhibit #24. At some point Respondent also prepared a billing statement dated June 15, 1996, which stated that Respondent had met with T.K. and prepared "all necessary documents including summons, petitioner [sic] and acknowledgement of service." Exhibit #25. The billing statement is false in that it suggests that Respondent had earned T.K.'s \$500.00 retainer. Respondent had not in fact prepared the documents or incurred the costs he listed. The billing statement was never sent to T.K. but was submitted to the Director with Respondent's file.
29. Respondent deposited the \$500.00 retainer in his trust account. There were no withdrawals corresponding to T.K.'s funds during the audit period. Respondent's trust account balance fell to \$108.23 in April, 1998, and there were no further deposits. By letter dated July 14, 1998, Respondent notified the Director that he had earned all of T.K.'s retainer and no funds were owed to T.K. Exhibit #36. Respondent's statement was false.
30. T.K. has never asked Respondent to return any part of the retainer.
31. Based on the work performed by Respondent, he would be entitled to keep a portion of the retainer as fees. On the date of the hearing, Respondent made restitution to T.K. of the entire \$500.00 plus \$130.00, which Respondent considered to be interest.

FOURTH COUNT

Failure to Maintain Trust Account Books and Records and Misappropriation

32. Respondent certified on his 1995, 1996, 1997 and 1998 attorney registration statements that he properly maintained his trust account books and records. Exhibit #28. Respondent's certifications were false. Between November 1994 and August 1998, Respondent failed to maintain subsidiary client ledgers and performed no reconciliations of his trust account with his bank statements.
33. The Director conducted an audit of Respondent's trust account at Park National Bank for the period November 1994 through August 1998. Exhibit #32. The audit revealed the following discrepancies:
- a) Of the account balance at the beginning of the audit period, the Director was able to attribute all but \$297.71 to specific client transactions. According to Respondent's files, Respondent's trust account should have had a minimum balance of \$2,000.00 corresponding to funds received in June 1993 on behalf of Land Office Realty, Inc. (LORI), a client of Respondent's associate. In June 1995 these funds became part of the subject of an action in bankruptcy court, *Lundquist v. The Land Office Realty, Inc.*, BKY 93-43864-NCD. At all relevant times during this lawsuit, Respondent, through his associate, maintained that the \$2,000.00 was held in the trust account. In fact, from at least November 1994 through May 1996 no more than \$297.71 remained in trust of the original \$2,000.00. After a trial on the merits in March 1996, the bankruptcy court determined that the \$2,000.00 belonged to LORI. Respondent issued a trust account check to LORI for \$2,000.00 on May 17, 1996.
 - b) Respondent over-disbursed funds to himself of \$75.00 from client Gamble by issuing two checks for \$50.00 each on November 18 and 20, 1996. The amount of the checks exceeded the funds deposited on behalf of the client and resulted in Respondent's misappropriation of other client funds.
 - c) Respondent received payments over several years from a judgment debtor on behalf of client T.H. In April 1998 Respondent issued a check to T.H. for \$950.00. Respondent's records show that he should have paid T.H. \$1,025.00.
 - d) Respondent earned but failed to withdraw retainers for the following clients:

<u>Client</u>	<u>Amount</u>	<u>Deposit Date</u>	<u>Earned Date</u>
Hoffer	\$125.00	4/24/96	May 1996
Kotzen	700.00	6/23/95	Unknown
McDaniel	500.00	12/20/96	Unknown
Pyles	500.00	10/29/96	February 1, 1997
Sando	25.00	8/22/96	Prior to Sept. 1996
Stensrud	475.00	3/25/96	May 1996
Woodwards	93.75	9/5/96	January 1997

Respondent also deposited earned fees of \$275.00 to his trust account on January 17, 1997. In calculating the shortages in Respondent's trust

account, the Director has credited these earned fees at the earliest dates Respondent could have earned them.

- e) Respondent used the earned fees identified above, and the unearned retainer of client T.K., to issue checks to Henke (\$1,216.75), Medicare (\$912.29) and T.H. (\$950.00) between December 1997 and April 1998.
- f) The shortage in Respondent's trust account, after applying earned fees, existed continuously from November 1994 through August 1998. The shortage began at \$1,702.29 in November 1994, and totaled \$466.94 at the end of the audit period. Although the Director's audit shows a nominal surplus in February and March 1997, that surplus does not reflect the funds owed to Medicare that Respondent previously disbursed to himself. During the audit period, the shortages were reduced only because Respondent retained earned fees in his trust account. Respondent never deposited his own funds for the express purpose of reducing the shortage.

- 34. During the course of the Director's investigation of Respondent's trust account, Respondent wrote a letter to the Director on April 13, 1998. Exhibit #35. In that letter Respondent stated that he had never deliberately taken money from the trust account when it was not actually owing, that he was aware at all relevant times of what the balance of the account should be, and that the closing balance was what he expected it to be. *Id.* Respondent's statements were false.
- 35. On July 14, 1998, Respondent replied to other information requests from the Director. Exhibit #36. Respondent repeated several false statements from his April 13, 1998, letter regarding the balance in his trust account, falsely stated that he had reviewed the balances of all clients for whom he had held funds in his trust account, and falsely described the delay in payment of Medicare in the J.B. matter. *Id.*

AGGRAVATING FACTORS

- 36. Respondent presented a false letter to the DEC investigator and made false statements to the Director. Exhibits #12, #35 and #36.
- 37. Respondent made false statements to Medicare in April 1997 while he was under investigation regarding the Henke complaint.

MITIGATING FACTORS

- 38. Respondent claims his misconduct is mitigated because he made restitution to Henke, J.B., T.K. and Medicare.
 - a) Restitution to Henke was made only after a number of demands to Respondent for an accounting of the payroll check and after Henke had complained to the Director.
 - b) Restitution to J.B. has not yet been made, purportedly because Respondent cannot reach his client.
 - c) Restitution to T.K. was not made until the day of trial.

- d) Restitution to Medicare was made after the commencement of disciplinary proceedings.
39. No prior disciplinary history.
40. No loss to Henke, T.K. or Medicare.
41. Small loss to J.B.

CONCLUSIONS OF LAW¹

1. Conrad Estate:
- a) Respondent's misappropriation of Conrad's last paycheck violated Rule 8.4(c), Minnesota Rules of Professional Conduct (MRPC).
 - b) Respondent's false statements to Henke in his February 15, 1995, and December 9, 1996, letters and failure to respond to Henke's questions about her son's last paycheck violated Rules 1.4, 1.15(b), 4.1 and 8.4(c), MRPC;
 - c) Respondent's misappropriation of \$2,000.00 by issuing himself three checks prior to receipt of the dram shop settlement violated Rule 8.4(c), MRPC;
 - d) Respondent's false billing for filing fees in the dram shop settlement violated Rules 1.15(b), 4.1 and 8.4(c), MRPC; and
 - e) Respondent's conduct in providing an incomplete and inaccurate subsidiary ledger to the DEC investigator violated Rules 1.15(g), 4.1, 8.1(a)(1) and 8.4(c), MRPC.
2. J.B. Personal Injury Settlement:
- a) Respondent's false statements to Holst that J.B.'s case had settled for \$3,500.00, and false statements in his August 10, 1995, and April 22, 1997, letters violated Rules 4.1 and 8.4(c), MRPC; and
 - b) Respondent's misappropriation of \$750.00 in March 1996 by issuing two trust account checks to himself violated Rules 1.15(a) and 8.4(c), MRPC.
3. T.K. Dissolution Matter:
- a) Respondent's conduct in preparing a false billing statement and providing it to the Director violated Rules 8.1(a)(1), MRPC; and
 - b) Respondent's failure to hold T.K.'s \$500.00 retainer in his trust account violated Rule 1.15(a) and 8.4(c), MRPC.
4. Failure to Maintain Trust Account Books and Records and Misappropriation:

¹ The Director has suggested using MRCP as renumbered August 1, 1999. This referee has used the numbering system set forth in the 1999 Minnesota Court Rules.

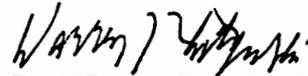
- a) Respondent's failure to maintain proper books and records violated Rules 1.15(a), 1.15(b), and 1.15(g), MRPC.;
- b) Respondent's false certification on his 1995 to 1998 attorney registration statements violated Rules 1.15(h) and 8.4(c), MRPC; and
- c) Respondent's false statements in his April 13 and July 14, 1998, letters to the Director violated Rules 8.1(a)(1) and 8.4(c), MRPC.

RECOMMENDATION

This referee recommends the following discipline:

- 1) Indefinite suspension.
- 2) Payment of the Director's costs and disbursements pursuant to Rule 24, RLPR.
- 3) Before reinstatement, take a course and pass the multi-state examination on professional responsibility.
- 4) Reimburse J.B. In the event Respondent is unable to locate J.B. after a good faith effort, the funds which Respondent holds should be placed in escrow.
- 5) Compliance with the client notification requirements of Rule 26 RLPR.

Dated this 29 day of September, 1999.



Warren E. Litynski
Judge of District Court

MEMORANDUM

Mitigating Factors

The referee has considered and rejected a number of mitigating factors advanced by Respondent.

- 1) Remorse. Respondent testified that he was apologetic. The Court did not detect any real remorse. In fact, while Respondent admitted wrongdoing regarding the Henke matter, it appears that he was trying to justify his actions.
- 2) Depression. While Respondent suffers from a moderate form of depression, it does not rise to the level of a severe psychological disorder. His current depression cannot be related back to any significant depression at the time of the Henke, J.B. and T.H. incidents. Further, records and testimony indicate that at the time in question Respondent was competently engaging in the practice of law and otherwise maintaining trust account records.
- 3) Pro bono work. Respondent did no more than what is generally expected of any attorney.
- 4) Volunteer activities for the Bar Association. Again, this is comparable to services performed by other attorneys who have an interest in Bar Association activities. It cannot be related to mitigation for unethical behavior.

Discipline

There are only two possible sanctions; i.e., indefinite suspension or disbarment. Had Respondent's misconduct not included J.B., this referee would clearly opt for suspension. However, the blatant dishonesty which actually involved a theft of funds by misrepresentation moves the pendulum toward disbarment.

Both counsel have submitted a number of cases in support of their respective positions. However, in reading the cases, no clear line can be drawn, nor does it appear that the Supreme Court has ever attempted to establish a bright line between indefinite suspension and disbarment. In Re Pyles, 421 N.W.2d 321 (Minn. 1988).²

Several cases are instructive. In In Re Pucel, 588 N.W.2d 741 (Minn. 1999),

² " Concepts of fairness dictate that consistency in the imposition of sanctions be an important goal in meting out disciplinary sanctions. However, we recognize that each case comes to us bearing its own unique factual circumstances. By analogy prior decisions are helpful to us in arriving at the appropriate sanction. However, on occasion, unusual or special circumstances may justify some deviation from the holdings of those precedents." Pyles at p. 325.

an indefinite suspension was ordered for neglect of a client's matter, failure to maintain a client's retainer and costs advanced in trust, failure to provide an accounting of a client's funds, failure to return the unearned portion of a client's funds, and failure to cooperate with the disciplinary investigation.

On the other hand, misappropriation of client's funds and engaging in elaborate cover-up of misappropriation warranted only a four-year suspension. In Re Bernstein, 404 N.W.2d 804 (Minn. 1987). While misappropriation of funds is grounds for disbarment, the Court was apparently persuaded by the fact that this was an isolated case of a relatively small sum of money, for a short period of time, followed by full restitution.

In In Re Pyles, supra, respondent had engaged in unprofessional behavior " by misappropriating client funds on three separate occasions; by making false representation to a client; by failing to maintain adequate financial records in his law practice and falsely certifying to this court that he had; by handling a matter when he had a conflict of interest with a client; and by failing to timely file income tax returns."

While the Supreme Court stated that there was ample precedent for disbarment, and misappropriation alone ordinarily furnishes sufficient grounds, the Court was apparently swayed by Respondent's psychological problems, even though the referee rejected this as a grounds for mitigation.

On the other hand, in In Re LaChapelle, 491 N.W.2d 17 (Minn. 1992), the Court ordered disbarment for Respondent who intentionally misappropriated client funds; made misrepresentations to the client about such funds; made misrepresentations to the district ethics committee investigator and the director's office to avoid detection of the misappropriation; failed to maintain proper client trust account records; failed to supervise a person in his office responsible for maintaining the client trust account records; and falsely certified to the Supreme Court that such trust account books were, in fact, maintained properly.

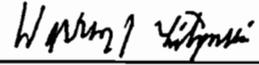
In Pyles, respondent misappropriated \$45,000.00 on one occasion and \$15,000.00 on another. However, all of the funds were repaid. In LaChapelle, respondent misappropriated \$16,177.66. It appears that he later repaid the money from fees earned from another client. The Supreme Court stated;

" In this case, the referee found intentional misappropriation in conjunction with intentional misrepresentations to the client and the director in order to cover up the misappropriation."

Further, the Court found significant that respondent failed to maintain proper trust account procedures and falsely certified same to the Supreme Court,

even though someone else was responsible for maintaining the records. The only mitigating circumstance was no prior disciplinary history.

While it appears that Respondent's case could go either way, given the fact of no disciplinary history, no loss to anyone but J.B., and the small amount of money involved, this referee opts for indefinite suspension rather than disbarment.



Warren E. Litynski
Judge of District Court