

FILE NO. A13-0435

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against TEDMAN JOHN HEIM,
a Minnesota Attorney,
Registration No. 286047.

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

The above-captioned matter was heard on October 2, 2014, by the undersigned acting as Referee by appointment of the Minnesota Supreme Court. Cassie Hanson, Senior Assistant Director, appeared on behalf of the Director of the Office of Lawyers Professional Responsibility (Director). Eric L. Newmark appeared with and on behalf of respondent, Tedman John Heim.

The hearing was conducted on the Director's February 25, 2013, petition for disciplinary action ("petition") and the Director's June 6, 2014, supplementary petition for disciplinary action ("supplementary petition"). Counts one and three of the petition and count four of the supplementary petition were deemed admitted based upon Rule 19(a), Rules on Lawyers Professional Responsibility (RLPR), and respondent's admissions on these counts as contained in his July 18, 2014, answer.

A contested hearing was held regarding count three of the petition and as to aggravating and mitigating circumstances. The Director presented the testimony of Jacob Allen. Respondent also testified at the hearing and, in addition, presented the testimony of Jesse Bandy. Director's exhibits 1-30 were received into evidence. Respondent submitted no exhibits.

The parties were directed to submit, should they chose to do so, proposed findings of fact, conclusions of law, a recommendation for appropriate discipline and a memorandum on October 16, 2014. Both parties did so in a timely fashion.

The findings and conclusions made below are based upon respondent's admissions, the documentary evidence the parties 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 to the petition and supplementary petition ("R. ans.") 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.

Based upon the evidence received and upon all of the files, records, and proceedings herein as well as the arguments of counsel, the Referee makes the following:

FINDINGS OF FACT

Disciplinary History

1. On September 30, 2005, respondent was issued an admonition for undertaking a representation adverse to a former client and failing to diligently pursue the matter in violation of Rules 1.3 and 1.9, Minnesota Rules of Professional Conduct (MRPC). (Ex. 30.)

Background

2. In 1998, respondent graduated from William Mitchell College of Law. Respondent was admitted to practice law in Minnesota on October 30, 1998. (R. Test.)

3. On September 28, 2006, respondent opened business checking account no. xxx xxx 5538 at Home Federal Bank titled "Tedman J Heim DBA Heim Law Office"

("Home Federal business account"). At that time, respondent was a solo practitioner doing business as Heim Law Office. (R. ans.; R. Test.)

4. On or about May 22, 2007, respondent formed a partnership with Jacob Allen and thereafter practiced law under the assumed name of Allen & Heim Law Office ("Allen & Heim"). Respondent and Allen did not enter into a formal partnership agreement, but agreed to equally share income and expenses. (Allen Test.) The firm's main area of practice was criminal law along with a county contract for legal services doing civil commitments. (R. ans.; Allen Test.)

5. Through the summer of 2007, respondent and Allen used the Home Federal business account as their business checking account, but later opened trust and business accounts under Allen & Heim at another bank ("Allen & Heim business and trust accounts"). Respondent continued to maintain his Home Federal business account without Allen's knowledge. Respondent was the only signatory on the account and thus received and maintained all records for the account. (R. ans.)

6. After February 2008, with the exception of monthly service charges, respondent's Home Federal business account remained inactive until January 2012. As of December 31, 2011, the balance in respondent's Home Federal business account was \$21.15. (R. ans.; Exs. 24-25.)

7. Within the Allen & Heim law firm, respondent handled the firm finances, paid bills, issued checks and received and opened most of Allen & Heim's incoming mail, including monthly credit card statements. With the exception of a monthly review by an outside accountant, respondent was responsible for the Allen & Heim business and trust account books and records with little or no oversight from Allen. (R. ans.; Allen Test.)

8. Allen & Heim support staff had access to the Allen & Heim trust and business accounts books and records for the purpose of preparing deposits, drafting

checks and recording transactions. Allen & Heim support staff, however, did not know about respondent's continued maintenance of the Home Federal business account and did not have access to the account. (R. ans.)

Count One: Misappropriation, Forgery, False Statements and
Related Misconduct in the Thomas Bandy Wrongful Death Matter

9. On May 11, 2011, Thomas Bandy died as a result of injuries sustained in a motorcycle accident in Rochester, Minnesota.

10. Respondent was close friends with Jesse Bandy, Thomas Bandy's eldest son. On May 20, 2011, Jesse Bandy retained respondent to pursue a wrongful death action on behalf of the heirs and next of kin of Thomas Bandy against the driver responsible for the crash. Jesse Bandy was to be appointed trustee. (R. ans.; Bandy Test.; Ex. 3.)

11. That same day, respondent had Jesse Bandy sign two separate retainer agreements: (1) agreeing to pay Allen & Heim a flat, nonrefundable fee of \$2,000 for preparation and filing the documents needed to appoint a trustee in the wrongful death action, and (2) agreeing to pay Heim Law Office a contingency fee equal to one-third of any monies received in the wrongful death matter, whether by settlement or verdict. (R. ans.; Exs. 1-2.)

12. On May 25, 2011, respondent filed a petition requesting that the court appoint Jesse Bandy as trustee in the wrongful death matter. (Ex. 3.) On June 7, 2011, respondent filed executed waivers of objection to appointment of Jesse Bandy as trustee from Thomas Bandy's parents, other adult children and the guardian for Thomas Bandy's minor child. (Ex. 6.) On June 9, 2011, the court appointed Jesse Bandy trustee. (Ex. 7.)

13. Respondent first pursued a liability claim through the at-fault driver's insurer, Progressive Northern Insurance Company ("Progressive"). Respondent negotiated a settlement with Progressive for the policy limit of \$50,000. (R. ans.; Ex. 5.)

14. On October 17, 2011, Progressive issued a draft in the amount of \$50,000 payable to "Jesse Thomas Bandy, individually and as trustee appointed for the wrongful death of Thomas Edward Bandy, and attorney, Allen and Heim, only." Progressive requested that respondent "execute the [settlement] release and return it" before disbursing the settlement funds. (R. ans.; Exs. 9-10.)

15. Respondent informed Jesse Bandy of his receipt of the Progressive draft in October 2011. Regardless, throughout the remainder of the representation he falsely stated the funds were held in the Allen & Heim trust account, as further outlined in paragraph 26, below. (R. ans.; Bandy Test.) Respondent also did not notify Progressive of his ultimate disbursement of the funds or provide an executed settlement release prior to disbursement. (R. ans.)

16. Respondent did not immediately deposit the Progressive draft when he received it in October 2011. Respondent had suggested to Jesse Bandy that he, respondent, hold onto the check because of the expectation of settlement with a separate insurance company and that all the funds could be disbursed at the same time. Respondent later deposited the Progressive draft on January 11, 2012, when he forged Jesse Bandy's signature on the check and deposited it into his Home Federal business account. (R. ans.; Exs. 10, 24-25.) Respondent did not inform Jesse Bandy at that time that he had deposited the Progressive draft. (R. Test.; Bandy Test.)

17. Beginning January 17, 2012, respondent misappropriated almost all of the \$50,000 in Progressive funds to his own benefit by issuing the following checks:

Date	Check No.	Payee	Amount
1/17/12	2259	Tedman Heim	\$ 9,000.00
1/18/12	2255	John Bandy (for remodeling work on respondent's home)	2,600.00
1/20/12	2257	Arthurs Jewelers (final payment on a jewelry purchase for respondent's wife)	4,250.00
2/13/12	2258	Tom Kadlec Honda (car repair)	2,524.77
3/19/12	2267	Olmsted County (respondent's property taxes)	4,982.48
3/20/12	2269	Pack 80	275.00
5/9/12	2272	Tedman Heim	2,500.00
5/24/12	2270	Tedman Heim	3,000.00
5/30/12	2273	James L. Heim, Sr.	3,600.00
6/7/12	2275	Tedman Heim	6,100.00
6/20/12	2274	Tedman Heim	2,500.00
6/28/12	2277	John Bandy (for remodeling work on respondent's home)	<u>7,743.00</u>

TOTAL MISAPPROPRIATION: \$49,075.25

(R. ans.; Exs. 10, 23, 24-25, 28.)

18. Respondent's disbursement of the Bandy funds was also in violation of Minn. Stat. § 573.02, which requires that the court determine the proportionate pecuniary loss of the persons entitled to the recovery in actions for wrongful death.

19. Respondent further failed to properly safe keep the Thomas Bandy funds since the Home Federal business account was not an approved IOLTA trust account as defined by Rule 1.15(a) and (o), MRPC, as interpreted by Appendix 1.

20. Respondent's testimony that he was unaware that he was required to deposit client funds into an IOLTA approved trust account was not credible as respondent had been practicing law for eleven years at this point. Respondent, through Allen & Heim, had previously opened a trust account at another bank for safeguarding client funds; and respondent handled the book keeping and accounting for Allen &

Heim. By depositing the Progressive draft into his Home Federal business account, it was respondent's intent to hide these funds from his partner and staff.

21. Respondent also did not create and maintain the trust account books and records as required by Rule 1.15(c)(3) and (h), MRPC, as interpreted by Appendix 1 to account for his receipt and handling of the Thomas Bandy funds.

22. Respondent also pursued an underinsured motorist claim ("UIM") in the wrongful death matter. Thomas Bandy, who had resided with his parents at the time of his death, was insured under his parents' Allstate Insurance Company ("Allstate") insurance policy, which provided \$250,000 in UIM coverage. (Ex. 11.)

23. On January 26, 2012, respondent filed a claim for UIM with Allstate. Pursuant to *Schmidt v. Clothier and Safeco*, 338 N.W.2d 256 (Minn. 1983), respondent offered to exchange Progressive's \$50,000 draft for a draft from Allstate in order to preserve Allstate's subrogation rights. If Allstate failed to exchange drafts within 30 days, respondent stated his client would execute Progressive's release. Since respondent had already negotiated Progressive's draft on January 11, 2012, and misappropriated portions of the \$50,000, respondent's statements to Allstate were false. (R. ans.; Ex. 11.)

24. On January 31, 2012, Allstate waived its UIM subrogation right, but reserved its right to investigate other available coverage and use all available policy limits as offsets to any future UIM claim. (Ex. 12.)

25. On July 19, 2012, Jesse Bandy, individually and as trustee for the heirs and next of kin of Thomas Bandy, executed the Progressive wrongful death release discharging the at-fault driver. Respondent did not inform Jesse Bandy that he had already misappropriated the \$50,000 from Progressive at this time. (R. ans.; Ex. 13.)

26. After months of delay on respondent's part, Jesse Bandy began pressuring respondent to schedule a hearing so the court could approve disbursement of the

wrongful death proceeds. (R. ans.; Bandy Test.) Respondent frequently directed support staff to lie to Jesse Bandy and tell him that he was not in the office when he called. Respondent also falsely told Jesse Bandy that his grandparents' claim on the UIM settlement was delaying disbursement of the \$50,000 Progressive settlement. (R. ans.)

27. Under increasing pressure from Jesse Bandy, on September 28, 2012, respondent filed a trustee's petition for approval and distribution of wrongful death proceeds and minor settlement. (R. ans.) The petition sought the court's (1) authorization to accept the \$50,000 settlement of all claims against the at-fault driver and Progressive, (2) approval of respondent's one-third contingency fee on the \$50,000 settlement, (3) authorization to disburse the remaining funds to the next of kin, and (4) approval of the minor settlement for Thomas Bandy's minor child. (Ex. 14.) Contrary to Jesse Bandy's request for a hearing, respondent attached a note requesting that court personnel not schedule a hearing date. (R. ans.) Respondent's purpose in doing so was to prevent the court from discovering his misappropriation. (R. ans.)

28. Since respondent's filing presumed the \$50,000 settlement from Progressive remained in trust, respondent's petition to the court was also misleading.

29. In October 2012, Jesse Bandy resorted to contacting the court and scheduling a hearing date on the petition for trustee approval and distribution. (R. ans.; Bandy Test.) After learning of the hearing date, respondent canceled the hearing. (R. ans.) The MNCIS printout shows that the hearing was cancelled at respondent's request. (Allen Test.)

30. Jesse Bandy, who suspected that respondent had mishandled the \$50,000 Progressive settlement, contacted Progressive, which confirmed that the settlement draft was cashed in January 2012. Jesse Bandy relayed this information and his

suspicion that respondent had taken the funds to Allen & Heim's support staff. (R. ans.)

31. The support staff subsequently became suspicious of respondent's conduct, especially since he had recently purchased a used 2000 S-Type Jaguar, remodeled his home and taken several vacations during the time in which he should have been safe keeping the \$50,000 Progressive settlement. (R. ans.; Bandy Test.) As a result, support staff reviewed Allen & Heim's trust account books and records but were unable to identify a \$50,000 deposit to the firm's trust account in January 2012. The support staff reported their concerns to Allen on October 4, 2012. (R. ans.)

32. On October 5, 2012, Allen scheduled a hearing on the petition for approval and distribution of wrongful death proceeds and minor settlement for October 22, 2012. On October 8, 2012, Allen caused the petition to be served upon Jesse Bandy and Thomas Bandy's other next of kin and informed them of the October 22, 2012, hearing on the petition. (R. ans.; Allen Test.; Exs. 15-16.)

33. On October 9, 2012, Allen received a copy of Progressive's draft, confirming its deposit into respondent's Home Federal business account on January 11, 2012. (Ex. 10.) Allen contacted Home Federal and learned that only \$1,695.90 remained in the account. Allen then compared Jesse Bandy's signature on the draft with other available documents signed by Jesse Bandy and concluded that it was unlikely that Jesse Bandy executed the draft. (R. ans.)

34. Later on October 9, 2012, Allen confronted respondent regarding his concerns and specifically asked respondent where the \$50,000 Progressive funds were being held. Respondent denied the Progressive funds were missing and falsely stated he had multiple accounts at Home Federal, including a separate interest bearing trust account that complied with Rule 1.15(f), MRPC, where he was currently holding the \$50,000 Progressive funds in trust. Respondent also falsely stated he would provide

proof that the funds were held in trust, but failed to do so. Allen informed respondent that he needed to self-report or else he would report respondent to the Director. (R. ans.; Allen Test.)

35. On October 16, 2012, Allen met with Jesse Bandy in order to report what he had discovered about respondent's misappropriation of the Progressive funds. Allen showed Jesse Bandy the signature on the Progressive draft. Jesse Bandy confirmed that he had not signed the settlement check and the signature did not look like his signature. Jesse Bandy became very emotional at this point and broke down crying after learning of respondent's dishonesty. (Bandy Test.; Allen Test.)

36. Upon learning this information, Jesse Bandy confronted respondent who misrepresented that the funds were in a trust account. Jesse Bandy demanded proof of that, which respondent failed to provide. (Bandy Test.; Ex. 26, pp. 3-4.)

37. Allen and Jesse Bandy filed a report with the local sheriff's department the following day on October 17, 2012. (R. ans.; Bandy Test.; Allen Test.; Ex. 26.) Jesse Bandy confronted respondent later that evening and respondent admitted that he had misappropriated the Progressive funds. (R. ans.; Bandy Test.; Allen Test.; Ex. 26, p. 5.)

38. By letter dated October 23, 2012, respondent reported his misconduct to the Director. (Exs. 17, 23.) Respondent acknowledged he deposited the funds into the Home Federal business account and used the funds for personal use. Respondent later provided an accounting of how the funds were used, as outlined in paragraph 17, above. (Ex. 17.)

39. On October 25, 2012, respondent executed a notice of substitution of attorneys. (Ex. 18.)

40. Respondent made full restitution by December 6, 2012. Respondent cashed out a life insurance policy and obtained funds from a family member's retirement account to repay \$20,000 on November 16, 2012, and the remaining \$30,000

on December 6, 2012. Respondent's restitution came after he reported his misconduct to the Director. (R. ans.; Bandy Test.; R. Test.; Exs. 17, 19-20.)

Count Two: Unauthorized Use of the Law Firm's Credit Card
for Personal Expenses

41. When Allen & Heim was formed in 2007, respondent and Allen did not have a formal system in place for handling business expenses. For example, both respondent and Allen would individually purchase office supplies and then submit receipts for reimbursement at the end of the month. (R. Test.; Allen Test.)

42. This system proved cumbersome for smaller expenses and was not practical for larger expenses such as advertising. In the summer of 2011, respondent and Allen had discussions about streamlining repayment of smaller business expenses by opening a credit card account in the firm's name. Respondent and Allen also agreed that the credit card would also give the firm the ability to spread out payments for advertising costs over a period of time and that any "points" accrued on a credit card would be beneficial to the firm. (Allen Test.)

43. Some time in August or September 2011, Allen & Heim opened a credit card account through Elan Financial Services. Respondent and Allen each received a credit card with a different number, but both cards were billed to the same account and one billing statement was received each month that detailed what purchases were made by each individual. (Allen Test.; Ex. 21.)

44. Respondent and Allen did not have written office procedures regarding whether personal expenses were a permitted use of the Allen & Heim credit card; however, the Allen & Heim credit card was opened for the express intent of handling business and not personal expenses. (Allen Test.)

45. Respondent's testimony that Allen agreed from the onset to let him use the credit card for personal expenses is not credible. Respondent's use of the Allen &

Heim credit card for personal expenses was inconsistent with the stated purpose for opening the account. Allen's testimony that he never used the credit card for personal expenses was credible and the purchases that he made on the card, unlike purchases made by respondent, are consistent with typical business expenses, such as office supplies. (Allen Test.; Ex. 21.)

46. Respondent's testimony that Allen transferred personal balances onto the Allen & Heim credit card when it was opened is also not credible or consistent with the purchases attributed to Allen on the credit card statements or Allen's credible testimony.

47. Respondent made unauthorized credit card charges for personal expenses to the Allen & Heim business credit card, including but not limited to :

a. In January 2012, respondent charged a trip to Las Vegas, Nevada, that included \$327.20 in airfare on January 17, 2012; \$2,775.03 in charges at Aria Resort and Casino between January 17-25, 2012; a \$442.13 restaurant charge at Eiffel Tower Restaurant on January 23, 2012; and a \$425.34 rental car charge on January 23, 2012. (Ex. 21, p. 2.)

b. In February 2012, respondent charged a second vacation to Cancun, Mexico, that included \$85 in airfare and another \$250.85 in vacation-related expenses. (Ex. 21, p. 5.)

c. In April 2012, respondent charged \$3,352.22 for home electronics at Best Buy. Respondent's purchase was not business-related. (R. Test.; Ex. 21, p. 11.)

d. In July 2012, respondent charged \$450.96 at Best Buy; \$987.84 in car repairs; and paid \$998.49 for professional painting related to a home remodeling project. (Ex. 21, p. 17.)

e. In August 2012, respondent made a \$246.23 charge at Treasure Island Resort and Casino and charged \$209.75 for a hotel room at the St. Paul Hotel. (Ex. 21, p. 20.)

48. Sometime in late February or early March 2012, Allen noticed that respondent had been making a large number of personal transactions on the Allen & Heim credit card, including the vacation to Las Vegas. Allen confronted respondent, stated that the firm credit card was not for personal use and demanded that respondent transfer any balance to a personal credit card. Respondent agreed and for the next month did not use the credit card for personal expenses, but returned to misusing the credit card in April 2012. Respondent's balance for personal expenses remained on the firm credit card. (Allen Test.; Ex. 21.) After being confronted by Allen further misuse of the card by respondent was clearly unauthorized and unwarranted. A failure by Allen to either cancel the account or remove the card from respondent does not, in any way, mitigate the continued unauthorized use.

49. Between September 2011 and October 2012, respondent's unauthorized credit card transactions totaled \$17,870.04.

50. Respondent did not fully repay these expenses. Allen later assumed responsibility for the debt as part of the agreement dissolving their partnership. (Allen Test.; Exs. 21-22.) Although Allen received other benefits, such as free rent for two months, various pieces of office equipment, the firm's telephone number and address it does not fully negate the fact that Allen was required to assume respondent's personal debt as part of the partnership dissolution of Allen & Heim. Allen obtained a home equity loan to pay off respondent's personal debt. (Allen Test.)

Count Three: Temporary Misappropriation of Client Funds, Failure to Safe Keep Client Funds and Related Misconduct in the Timothy Grabau Matter

51. Respondent represented Timothy Grabau in a civil matter. On March 12, 2012, respondent deposited into his Home Federal business account \$52,000 in client funds received on behalf of Grabau. (R. ans.; Exs. 24-25.)

52. As stated above, the Home Federal business account was not a lawyer trust account complying as required under Rule 1.15(a) and (o), MRPC, as interpreted by Appendix 1 thereto. Respondent also did not create and maintain the trust account books and records required by Rule 1.15(c)(3) and (h), MRPC, as interpreted by Appendix 1, to account for the Grabau funds.

53. Respondent did not deposit the Grabau funds into his Home Federal business account until March 12, 2012. Prior to depositing the Grabau funds, respondent disbursed check no. 2262 in the amount of \$4,000 payable to himself as attorney's fees in the Grabau matter on March 7, 2012. Respondent also issued check no. 2261 payable to Grabau in the amount of \$5,000 on March 9, 2012. (R. ans.; Exs. 24-25.)

54. As of March 7, 2012, respondent did not hold any client funds belonging to Grabau in the Home Federal business account; therefore, he temporarily misappropriated client funds belonging to the Thomas Bandy estate in order to issue the March 7 and 9 checks. On March 12, 2012, respondent deposited the Grabau settlement check fully curing the \$9,000 shortage. (R. ans.; Exs. 24-25.)

55. Respondent handled the Grabau funds as follows:

Date	Check No.	Payee	Deposits	Checks	Running Balance
3/7/12	2262	Tedman Heim (attorney's fees in Grabau matter)		-4,000.00	-4,000.00
3/9/12	2261	Timothy Grabau		-5,000.00	-9,000.00
3/12/12		Deposit	52,000.00		43,000.00
3/13/12	2263	Allen & Heim Law Office		-5,200.00	37,800.00
3/13/12	2265	Tedman Heim		-3,800.00	34,000.00
3/16/12	2266	Timothy Grabau		-30,000.00	4,000.00
5/25/12	2271	Tedman Heim		-2,000.00	2,000.00
6/28/12	2276	Tedman Heim		-2,000.00	0.00

(R. ans.; Ex. 25.)

56. Assuming a one-third contingency fee agreement, Grabau eventually received \$35,000, approximately two-thirds or all funds due him from the settlement. Respondent disbursed the remaining one-third (\$17,000) of the settlement to himself (\$11,800) and Allen & Heim (\$5,200). (R. ans.; Ex. 25.)

Count Four: Felony Conviction for Check Forgery

57. On April 25, 2014, respondent was convicted of check forgery/falsefully endorsing a check in violation of Minn. Stat. § 609.631, subdiv. 2(2), which is a felony. (R. ans.; Exs. 27-29.)

58. Rule 19(a), RLPR, makes a criminal conviction conclusive evidence that respondent committed the conduct for which he was convicted.

Aggravating Factors

59. Respondent has a short history of prior discipline that includes one admonition. (Ex. 30.)

60. Respondent exhibited little sincere recognition of the wrongfulness of his misconduct. His statements of remorse were very "matter of fact" and are suspect. Respondent also failed to offer any evidence or assurance that similar misconduct will not reoccur. For example:

a. Respondent tried to reduce his culpability on his assertion that he was unaware that client funds should be deposited into a trust account. This is in spite of the fact that when he and Allen started their partnership they opened a firm trust account for the express purpose of depositing client funds. (R. Test.) Judicial notice is taken of the statements that must be acknowledged each year by every lawyer on their application for license.

b. Respondent tried to justify, or at least explain, his misappropriation on his unfamiliarity with the area of wrongful death law. This is simply not credible as respondent knew the settlement proceeds were subject to a minor settlement and needed court approval for disbursement, which he did not have at the time he took the funds. (R. Test.; Ex. 14, p. 4.)

c. Respondent justified his misappropriation, in part, on his close friendship with his client, which "blurred the lines for him," thus enabling him to misappropriate client funds. There is no assurance that should respondent represent a friend or family member as a client in the future that he will not feel entitled to engage in similar misconduct. (R. Test.)

d. Respondent testified that it was not his intent to misappropriate but that a jury had, nonetheless, convicted him in the criminal proceedings.

61. Respondent had a dishonest or selfish motive in committing his misconduct. Respondent misappropriated client funds and made unauthorized charges on the firm's credit card account in order to fund personal expenses that are, on their face, nonessential and of a luxurious or lavish nature, including:

a. Respondent's first instance of misappropriation occurred on January 17, 2012, when he distributed \$9,000 of the Progressive funds to himself and that same day flew to Las Vegas, Nevada, where he charged nearly \$4,000 in vacation-related expenses to the Allen & Heim credit card in order to celebrate his ten-year anniversary with his wife. (R. Test.; Exs. 21, 23, 25.)

b. Respondent misappropriated \$4,250 in client funds in order to pay off expensive jewelry for his wife. (Exs. 23, 25.)

c. Respondent misappropriated \$2,524 in client funds to repair his car. Jesse Bandy also testified that at the time of the misappropriation respondent had purchased a Jaguar. (Bandy Test.; Exs. 23, 25.)

d. Respondent testified that at the time of the misappropriation he was remodeling his home creating either a guest house or home office/entertainment center. Respondent used misappropriated funds from the Thomas Bandy estate in order to pay John Bandy, son of Thomas, \$10,343 for remodeling work. (R. Test.; Exs. 23, 25.)

e. Respondent used the Allen & Heim credit card to make unauthorized personal purchases, including trips to Las Vegas, Nevada, and Cancun, Mexico, casino charges, car detailing, home electronics and remodeling work. (Ex. 21.)

62. Respondent misappropriated client funds from a vulnerable minor. One of the decedent's children was 4 years old at the time of the misappropriation and respondent's misappropriation involved theft of client funds subject to minor settlement provisions.

63. Respondent engaged in a pattern of dishonesty, including repeated misappropriation, filing misleading documents with the court, and making false

statements to the court, the client, his law partner and opposing counsel and parties to conceal his misappropriation.

Mitigating Factors

64. Respondent presented no evidence of *pro bono* or other volunteer work. His claim that the firm's contract with the county to do civil commitment defense is *pro bono* is facetious.

65. Respondent did not assert a medical or psychological condition in mitigation of his misconduct.

66. Respondent has made full restitution of the \$50,000 that he misappropriated from the Bandy estate. His restitution, however, was compelled in that it occurred only after he was under investigation by the local police department and the Director's Office for misappropriation of client funds. This restitution, while certainly positive, hardly offsets the serious nature of such a blatant misappropriation. (R. Test.; Exs. 17-20, 26.)

67. Respondent's October 23, 2012, self-report to the Director was similarly compelled because it came only after respondent was under investigation by the police department and respondent's partner told him to self-report or else he would have to report him pursuant to Rule 8.3(a), MRPC. (Allen Test.; Exs. 17, 26.)

68. Jesse Bandy testified that he remained a close friend of respondent and that he had forgiven him for his misconduct. However, Jesse Bandy testified that he was hurt and emotional at the time he learned of respondent's misconduct from Allen. Jesse Bandy was also not the only victim of respondent's misconduct. Although Jesse Bandy has forgiven respondent and remains a friend, it is insufficient to mitigate the recommended disposition.

69. Respondent engaged in a series of misappropriations, falsehoods and deceptions over a long period of time and with multiple victims. He could have early on brought this long series of events to an end by acknowledging his wrongdoing.

CONCLUSIONS OF LAW

1. Respondent's misappropriation of client funds for personal use, forgery of a client's signature on a settlement check, engaging in a pattern of false statements to his client and his law partner to conceal the misappropriation, submission of misleading documents to the court and opposing counsel, failure to deposit client funds into a trust account, and failure to keep required trust account books and records, violated Rules 1.4(a), 1.15(a), (c)(3) and (4), (h) and (o), 3.3(a), 4.1, and 8.4(b), (c) and (d), MRPC.

2. Respondent's unauthorized charges to a law firm credit card violated Rule 8.4(c), MRPC.

3. Respondent's temporary misappropriation of client funds, failure to deposit client funds into a trust account and failure to keep required trust account books and records violated Rules 1.15(a), (c)(3) and (4), (h) and (o), and 8.4(c) and (d), MRPC.

4. Respondent's felony level conviction for check forgery violated Rule 8.4(b) and (c), MRPC. Further, such conviction is conclusive evidence of the misconduct, as contained in count one above, for which he was convicted under Rule 19(a), RLPR.

5. Respondent's selfish motive in misappropriating client funds is an aggravating factor.

6. The vulnerability of one of the victims of respondent's theft and the fact that the theft involved minor settlement funds is an aggravating factor.

7. Respondent's pattern of dishonesty and misappropriation is an aggravating factor.

8. Respondent's restitution was compelled and thus is not a mitigating factor.
9. Respondent's self-report was compelled and is not a mitigating factor.
10. Forgiveness of respondent's misconduct by one victim is insufficient mitigation to warrant a departure from the recommended disposition.

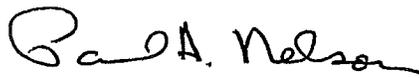
RECOMMENDATION FOR DISCIPLINE

The undersigned recommends:

1. That respondent, Tedman John Heim, be disbarred from the practice of law pursuant to Rule 15, RLPR, effective immediately.
2. That respondent, Tedman John Heim, pay \$900 in costs pursuant to Rule 24(a), RLPR, and \$1,039.90 in disbursements pursuant to Rule 24(b), RLPR.

Dated: November 5, 2014.

BY THE COURT:



PAUL A. NELSON
SUPREME COURT REFEREE

MEMORANDUM

The Respondent's admitted actions are, on their face, so egregious, so selfish and so unprofessional that the only result can be disbarment. It was not a single incident but a months' long course of misappropriation and lies. This is not a case of financial hardship involving medical expenses for a family member or one caused by issues of mental illness or substance abuse. The respondent had access to a client's funds and took advantage of it. He was caught in his deception and even then tried to deceive his way out of it.

The only positive, and potentially redeeming, factor is that restitution was promptly made. It was certainly compelled and would likely have been made a condition of probation in the criminal proceeding if not paid.

Even a lengthy suspension would not adequately protect the public and would unduly deprecate the serious nature of this conduct.

PN