

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against RICHARD WAYNE PETTY,
a Minnesota Attorney,
Registration No. 340662.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

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

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 29, 2004. Respondent practices law in St. Cloud, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Ethen Matter

1. Diane Ethen hired Palmer law firm to assist her in consolidating her debts. At the time that Ethen ended the representation, prior to August 2011, the Palmer firm held \$3,683.84 of her funds.
2. Ethen hired respondent to draft and file a petition for bankruptcy on her behalf in August 2011.
3. Following multiple requests by respondent, the Palmer firm paid Ethen's funds to respondent's law firm by check in the amount of \$3,683.84 on October 6, 2011.

4. Respondent deposited the Palmer firm check for \$3,683.84 into his business account on or about October 17, 2011.

5. On October 25, 2011, respondent sent a letter to Ethen indicating that “[a]t the Section 341 meeting of creditors, your case trustee will examine your picture identification and verify that the Social Security Number listed on the Statement of Social Security Number previously filed with the Court is correct.” This was a false or misleading statement. At the time of this letter, respondent had not filed a petition for bankruptcy on behalf of Ethen. Therefore, no Section 341 meeting of creditors had been scheduled, and no statement of social security number, or any other document, had been filed by respondent on behalf of Ethen.

6. At some time prior to November 17, 2011, respondent communicated to Ethen by telephone that a Section 341 meeting of creditors was scheduled for November 22, 2011. This statement was false. At the time respondent made the statement, respondent had not filed Ethen’s petition for bankruptcy. Therefore, the Section 341 meeting of creditors had not been scheduled.

7. On November 17, 2011, respondent sent a letter to Ethen indicating that her Section 341 meeting of creditors had been rescheduled to December 8, 2011, due to the court’s request for additional information. This statement was false. At the time respondent sent the letter, respondent had not filed Ethen’s petition for bankruptcy. Therefore, no creditors’ meeting had been scheduled, the meeting had not been rescheduled to December 8, 2011, and the court did not request any additional information.

8. On December 8, 2011, hours before the purportedly rescheduled creditors’ meeting was due to begin, respondent contacted Ethen and told her that the creditors’ meeting had been cancelled. This was a false statement, as respondent had not filed

Ethen's petition for bankruptcy, and, therefore, no creditors' meeting had ever been scheduled.

9. On December 9, 2011, Ethen submitted a complaint to the Office of Lawyers Professional Responsibility.

10. On December 14, 2011, Ethen went to respondent's office and retrieved her file. Ethen terminated the representation at that time.

11. On December 21, 2011, after Ethen had terminated the representation, respondent filed a partial petition for bankruptcy on behalf of Ethen. On that date, respondent also filed with the court a signature declaration, a document which included certain representations and authorizations by Ethen, which appeared to bear the signature of Ethen. Ethen did not sign such a document. Instead, respondent had duplicated Ethen's signature from an earlier document (the August 21, 2011, "Disclosure Certificate") onto the signature declaration page without Ethen's knowledge or permission.

12. In January 2012, respondent repaid Ethen \$3,377.84. Respondent calculated that this amount was due by beginning with the amount paid to him by the Palmer firm (\$3,683.84) and subtracting the \$299 that respondent had expended on filing fees on December 21, 2011. Respondent used a check written from his business account (xxx6262) to repay Ethen.

13. On or about February 16, 2012, the bankruptcy trustee filed a motion for order to pay sanctions against respondent.

14. In March 2012, respondent offered Ethen \$2,000 for settlement of the trustee's motion. Respondent initially requested that Ethen, as a condition of receiving the settlement, withdraw her pending complaint before the Office of Lawyers Professional Responsibility.

15. Ethen accepted the \$2,000 settlement, and the bankruptcy trustee's motion was dismissed by agreement. On March 26, 2012, respondent paid Ethen and her new counsel \$2,000. Such funds were paid from respondent's business account (xxx6262).

16. Respondent's conduct, in that he deposited funds recovered from Palmer law firm on behalf of Diane Ethen into his business account, and allowed the funds to remain in his business account for a period of several months, violated Rule 1.15(a), Minnesota Rules of Professional Conduct (MRPC).

17. Respondent's conduct, in that he made multiple false statements to Ethen regarding the status of her case, whether a Section 341 meeting of creditors had been scheduled, and other misrepresentations, violated Rules 1.4(a)(3), 4.1, and 8.4(c), MRPC.

18. Respondent's conduct, in that he offered Ethen, through counsel, a settlement in exchange for withdrawing her complaint from the Office of Lawyers Professional Responsibility, violated Rule 8.4(d), MRPC.

19. Respondent's conduct, in that he reproduced Ethen's signature on her signature declaration page, without her consent, violated Rules 4.1 and 8.4(c) and (d), MRPC.

SECOND COUNT

Alm Matter

20. On April 22, 2011, Deanna Alm consulted with respondent in regard to filing a bankruptcy petition on her behalf. Alm signed a representation agreement on that date. Alm made full payment by submitting two checks totaling \$1,799 on or about April 25, 2011.

21. Alm was required to submit a certificate indicating that she had taken a credit counseling course, to be included with her bankruptcy petition. Such certificate was required to have been issued within the six months prior to the date of the petition. On April 29, 2011, Alm completed credit counseling through an online course given by

Abacus Credit Counseling. Alm obtained a certificate verifying her completion of that course, dated April 29, 2011.

22. By the end of May 2011, Alm had supplied to respondent all documents necessary to draft and file Alm's bankruptcy petition.

23. Alm had previously hired Palmer law firm to assist her in negotiating her debts. Alm had paid the Palmer firm funds to be accumulated and used to pay off certain creditors. Respondent obtained the release of Alm's funds from Palmer. On May 6, 2011, Palmer law firm paid to respondent's law firm the amount of Alm's funds that it then held, by check in the amount of \$4,987.68. Respondent deposited the check directly into his business account (xxx6262) shortly after its receipt.

24. Respondent performed substantially no work on Alm's file between May 2011 and September 2011.

25. In July 2011, a creditor obtained a judgment against Alm in the amount of \$5,015.77. Such judgment could not have been obtained if respondent had filed a petition for bankruptcy on behalf of Alm.

26. Beginning in September 2011, Alm's wages were garnished by a creditor. Such garnishment would not have been possible if respondent had filed for bankruptcy prior to September 2011.

27. Prior to September 16, 2011, respondent communicated to Alm that a Section 341 creditors' meeting had been scheduled for September 22, 2011. This statement was false. As respondent had not filed Alm's bankruptcy petition, no creditors' meeting had been scheduled.

28. On September 21, 2011, respondent sent an email message to Alm, indicating that he had just spoken with the bankruptcy trustee, and that the bankruptcy trustee had commented on Alm's garnishment, and rescheduled the creditors' meeting. Each of the above statements was false. Respondent did not speak with the bankruptcy

trustee regarding Alm's case. The bankruptcy trustee made no comment with regard to Alm's garnishment. Since no bankruptcy petition had been filed on behalf of Alm, no creditors' meeting had been scheduled or rescheduled.

29. On October 31, 2011, respondent sent a letter to Alm indicating that "[a]t the Section 341 meeting of creditors, your case trustee will examine your picture identification and verify that the Social Security Number listed on the Statement of Social Security Number previously filed with the Court is correct." This was a false or misleading statement. At the time of this letter, no statement of social security number, or any other document, had been filed by respondent on behalf of Alm.

30. On November 16, 2011, respondent sent a letter to Alm indicating that her Section 341 meeting of creditors had been rescheduled to December 8, 2011. This statement was false. No meeting had been originally scheduled, as respondent had not yet filed a bankruptcy petition on behalf of Alm, and the meeting had not been rescheduled to December 8, 2011.

31. On or about December 15, 2011, respondent contacted Abacus Credit Counseling via web chat. Within that web chat, respondent falsely represented to the representative from Abacus Credit Counseling that he was Deanna Alm. Respondent, posing as Alm, stated, "[M]y attorney said [I] need to retake or refresh on the course because my certificate is expired[.]" The representative of Abacus allowed respondent, who was then posing as Alm, to retake the course free of charge.

32. Respondent took the course, posing as Alm, and obtained a certificate dated December 15, 2011, in Alm's name. The certificate states, "I CERTIFY that on December 15, 2011, at 3:54 o'clock PM PST, Deanna Alm received from Abacus Credit Counseling . . . an individual . . . briefing[.]" This statement was false, as respondent took the course on behalf of Alm.

33. On December 19, 2011, respondent filed a petition for bankruptcy on behalf of Alm. Within that petition, respondent submitted the certification from Abacus Credit Counseling to the court, while knowing that the document contained false statements and had been obtained fraudulently and under false pretenses.

34. On December 30, 2011, successor counsel for Alm sent a letter to respondent, indicating that they would be substituting in on the bankruptcy. On January 4, 2012, respondent issued a check for \$2,587.68 to successor counsel. This check was written from respondent's business account (xxx6262).

35. The bankruptcy trustee submitted a motion for sanctions against respondent. Respondent offered Alm \$2,000 for settlement of all claims. Respondent intended the settlement of all claims to include the withdrawal of Alm's complaint from the Office of Lawyers Professional Responsibility. Respondent issued Alm a check for \$2,000 on March 26, 2012.

36. Respondent's conduct, in that he deposited funds recovered from Palmer law firm on behalf of Deanna Alm into his business account, and allowed the funds to remain in his business account for a period of several months, violated Rule 1.15(a), MRPC.

37. Respondent's conduct, in that he made multiple false statements to Alm regarding the status of her case, whether a Section 341 meeting of creditors had been scheduled, and other misrepresentations, violated Rules 1.4(a)(3), 4.1, and 8.4(c), MRPC.

38. Respondent's conduct, in that he offered Alm, through counsel, a settlement in exchange for withdrawing her complaint from the Office of Lawyers Professional Responsibility, violated Rule 8.4(d), MRPC.

39. Respondent's conduct, in that he had all necessary information to file Alm's bankruptcy by May 2011, but did not file such petition until December 2011, violated Rule 1.3, MRPC.

40. Respondent's conduct, in that he falsely stated to representatives of Abacus Credit Counseling that he was Deanna Alm, and in that he fraudulently obtained a credit counseling certificate on her behalf, violated Rules 4.1 and 8.4(c), MRPC.

41. Respondent's conduct, in that he knowingly submitted the false and fraudulently obtained certificate of credit counseling to the court on behalf of Alm, violated Rules 3.3(a)(3) and 8.4(c) and (d), MRPC.

THIRD COUNT

Non-Cooperation

Ethen Matter

42. A notice of investigation was issued to respondent on December 28, 2011, in regard to Diane Ethen's matter. The notice of investigation requested a written response within two weeks. The matter was assigned to a district ethics committee (DEC) investigator. The investigator did not receive any response to the complaint prior to January 30, 2012.

43. The investigator wrote a letter to respondent on January 30, 2012, informing him that his response was overdue. The investigator did not receive any response prior to February 15, 2012.

44. The investigator attempted to contact respondent by telephone on February 15, 2012.

45. On February 23, 2012, the investigator received a telephone message from respondent, indicating that a response would be forthcoming.

46. On February 24, 2012, the investigator received an email message from respondent, indicating that the response would be received by February 28, 2012. The investigator did not receive a response by February 28, 2012.

47. On March 1, 2012, the investigator sent a letter to respondent, indicating that no response had been received, and requesting that a response be sent immediately. The investigator did not receive a response prior to March 30, 2012, when the matter was referred back to the Director's Office for further investigation. The Director's Office received the file on April 20, 2012.

48. The Director sent a letter to respondent on April 26, 2012. That letter gave respondent the option of submitting a response to the complaint.

49. Having not heard from respondent, an Assistant Director attempted to contact respondent by telephone on May 8, 2012. The Assistant Director left a message, and the respondent contacted the Assistant Director by telephone.

50. Respondent submitted his initial response in the Ethen matter on May 11, 2012, approximately five and a half months after the date of the notice of investigation.

Alm Matter

51. A notice of investigation was issued to respondent on January 4, 2012, in regard to Deanna Alm's matter. That notice of investigation requested that respondent complete a written explanation within two weeks. The initial investigation was conducted by a DEC investigator.

52. On February 10, 2012, having not received any response from respondent, the investigator sent respondent a letter informing him that his response was past due.

53. On February 24, 2012, having not received a response from respondent, the investigator contacted him by telephone. At that time, the investigator gave respondent an extension until February 28, 2012, to respond. The investigator sent respondent a test email, which was received. However, respondent claimed that certain email messages to the investigator did not go through.

54. The investigator did not receive any response by February 28, 2012. On March 8, 2012, the investigator sent respondent an email, advising him of his failure to

submit a response. The investigator requested that respondent supply his response by March 12, 2012.

55. The investigator did not receive any response from respondent prior to April 6, 2012. At that time, the investigator prepared her recommendation that this matter be submitted to a Board Panel. The file was referred back to the Director, and was received by the Director's Office on April 18, 2012.

56. On April 20, 2012, the Assistant Director assigned to the file wrote to respondent, enclosing a copy of the DEC recommendation and requesting a response.

57. On May 8, 2012, not having received a response, the Assistant Director contacted respondent by telephone.

58. On May 11, 2012, approximately four months after the notice of investigation was issued, respondent submitted his initial response to Alm's complaint.

59. On June 1, 2012, the Assistant Director submitted additional questions regarding the Alm complaint. Among those questions was a request to address the origin of the December 15, 2011, certificate of credit counseling.

60. On June 15, 2012, respondent submitted a response to the Director's questions of June 1, 2012. Within that response, respondent stated:

Ms. Alm completed her pre-petition debtor course with the company that provided the certificate. That company provides the certificate without any further compensation for any debtor because they already completed it and paid.

61. On June 18, 2012, during a telephone conversation with the Assistant Director assigned to the case, respondent stated that he obtained the questioned certificate by calling the agency in question, and simply requesting that they issue an additional certificate. This statement was false. In fact, as stated in paragraphs 31 and 32 above, respondent had obtained the questioned certificate by contacting the issuing company, and engaging in an electronic chat with a company representative in which

he falsely represented that he was Deanna Alm. Respondent then completed the credit counseling course on behalf of Alm.

62. On July 17, 2012, during a meeting with the Assistant Director assigned to the case, respondent again stated that he called the agency and had them reissue the certificate. This statement was false. After being confronted with the text of the chat that had been conducted with Abacus, respondent admitted that either he or his secretary had contacted Abacus and completed the course. Respondent claimed at that time that he did not remember which of the two of them had contacted Abacus and completed the course.

63. On July 18, 2012, in a telephone conversation with the Assistant Director, respondent admitted that he had contacted Abacus and taken the course on behalf of Alm.

64. On September 18, 2012, respondent admitted in a telephone conversation with the Assistant Director that he had duplicated Diane Ethen's signature to the signature declaration page in her bankruptcy petition from a document that had been submitted earlier.

65. Respondent's conduct, in that he failed to cooperate and made false statements in the course of the Alm and Ethen disciplinary investigations, violated Rules 8.1(b) and 8.4(c), MRPC, and Rule 25, RLPR.

FOURTH COUNT

Trust Account Records

66. Respondent received money from Palmer law firm that belonged to his clients, in the amounts of \$3,683.84 and \$4,987.68, and deposited those funds into his business account, commingling client funds with firm funds.

67. Respondent has held client funds without keeping the trust account records required by Rule 1.15, MRPC, and Appendix 1 thereto.

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

Dated: March 14, 2013.



MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY

Attorney No. 148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and



ROBIN J. CRABB
SENIOR ASSISTANT DIRECTOR
Attorney No. 387303