COPY

FILE NO. A13-0531

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action Against
Richard Wayne Petty
a Minnesota Attorney, Registration No. 340662

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND
RECOMMENDATION FOR DISCIPLINE

This matter was heard at the Stearns County Courthouse in St. Cloud, Minnesota, on June 6, 2013, by the undersigned Referee.

Robin J. Crabb, Senior Assistant Director, appeared on behalf of the Director of the Office of Lawyers Professional Responsibility (Director).

Richard Wayne Petty (Respondent) appeared personally and represented himself.

The Director called the following witnesses to testify at the hearing: Dianne, Ethen and Deanna Alm. The Director also called Respondent for cross examination. Further, the Director offered Exhibits 1 through 46 into evidence, all of which were received without objection by Respondent.

Respondent called no witnesses to testify at the hearing and declined the

opportunity to offer direct testimony prior to being called for cross examination by the Director.

At the conclusion of the hearing, the undersigned Referee instructed the Director and Respondent to submit written arguments/briefs on or before June 27, 2013. The Director was further required to submit proposed findings of fact, conclusions of law, and recommendations for discipline. Respondent was given the opportunity to submit proposed findings of fact, conclusions of law, and recommendations for discipline but was not required to do so.

This matter was taken under advisement by the undersigned Referee on June 27, 2013.

Based upon the Petition for Disciplinary Action herein, Respondent's Answer to said Petition, the exhibits received, the testimony presented, and the written arguments/briefs submitted by both the Director and Respondent, the undersigned Referee makes the following Findings of Fact, Conclusions of Law and Recommendation for Discipline:

FINDINGS OF FACT

1. Respondent was admitted to practice law in Minnesota on October 29, 2004, and is currently engaged in the practice of law in St. Cloud, Minnesota.

2. At all times relevant to this proceeding Respondent was a licensed attorney in Minnesota.

3. Respondent has no prior history of disciplinary proceedings.

Ethen Matter

4. Diane Ethen (Ethen) hired The Palmer Firm to assist her in consolidating her

debts. Ethen terminated her representation by The Palmer Firm prior to August 2011. At the time Ethen terminated her representation by The Palmer Firm, that firm was holding $3683.84 of Ethen's funds.

5. In August 2011, Ethen consulted with Respondent with respect to filing bankruptcy. At the time of this consultation, Ethen did not sign a retainer agreement and did not pay a retainer to Respondent. It was the understanding of both Ethen and Respondent that Respondent's fees would be paid from Ethen's funds held by The Palmer Firm.

6. Following multiple requests by Respondent, The Palmer Firm paid Ethen's $3683.84 to Respondent. This payment was received in the form of a check on October 6, 2011, and was deposited by Respondent in his law firm business account on or about October 17, 2011.

7. On October 25, 2011, Respondent mailed a letter to Ethen explaining what would occur at a Section 341 meeting of creditors in a bankruptcy proceeding. The letter did not specifically state that a bankruptcy petition had been filed on Ethen's behalf, that a trustee in bankruptcy had been appointed, or that a Section 341 meeting of creditors had been set in Ethen's case. Upon reading the letter, however, it would be reasonable for Ethen to have assumed that her bankruptcy petition had been filed, that a trustee in bankruptcy had been appointed in her case, and that a Section 341 meeting of creditors had been set. In fact, Respondent had not filed a bankruptcy petition on Ethen's behalf, a trustee in bankruptcy had not been appointed, and a Section 341 meeting of creditors had not been set.

8. 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. When Respondent communicated this message to Ethen, Respondent had not filed a bankruptcy petition on Ethen's behalf and a Section 341 meeting of creditors had not been scheduled. Because respondent knew that a bankruptcy petition had not been filed and that a meeting of creditors had not been scheduled, Respondent's communication to Ethen was a knowingly false statement.

9. On November 17, 2011, Respondent mailed a letter to Ethen informing her that the Section 341 meeting of creditors in her case had been rescheduled to December 8, 2011, due to the court's request for additional information. This statement was false and was known by Respondent to be false. When Respondent mailed this letter to Ethen, Respondent had not filed a bankruptcy petition on Ethen's behalf, a Section 341 meeting of creditors had not been scheduled, there had been no request by the court for additional information, and a Section 341 meeting of creditors had not been rescheduled for December 8, 2011.

10. On December 8, 2011, just hours before the purportedly rescheduled Section 341 meeting of creditors was to begin, Respondent contacted Ethen by telephone and informed her that the meeting of creditors had been canceled. This statement was false and was known by Respondent to be false. When Respondent telephoned Ethen on December 8, 2011, Respondent had not yet filed a bankruptcy petition on Ethen's behalf and a Section 341 meeting of creditors had not been scheduled.

11. On December 8, 2011, Ethen consulted another attorney. After explaining

what had occurred, Ethen was advised by the second attorney that something did not sound right and that Ethen should consider filing a complaint with the Office of Lawyers Professional Responsibility.

12. On December 8, 2011, Ethen did submit a complaint to the Office of Lawyers Professional Responsibility.

13. On the evening of December 8, 2011, Ethen telephoned Respondent and Informed Respondent that she had consulted another attorney. Respondent's response was to chastise Ethen for consulting other counsel.

14. On December 9, 2011, Ethen telephoned Respondent's office and left a message for Respondent indicating that she wanted her file. Ethen further stated in her message that she had submitted a complaint to the Office of Lawyers Professional Responsibility.

15. On December 14, 2011, Ethan went to Respondent's office and retrieved her file.

16. Ethen informed Respondent's receptionist that Ethen was terminating Respondent's representation of her. It was not clear in Ethen's testimony whether this was communicated to the receptionist in the telephone call of December 9, 2011, or at the time Ethen retrieved her file on December 14, 2011, but it was clear that Ethen left such a message for Respondent with his receptionist.

17. On December 21, 2011, Respondent filed a partial petition for bankruptcy on Ethen's behalf. Also filed with the court was a signature declaration, a document which included certain representations and authorizations by Ethen and which appeared to bear Ethen's signature. In fact, Ethen did not sign that document. Instead,

Respondent had duplicated Ethen's signature from a document signed by Ethen while at Respondent's office at the time of their initial consultation in August 2011. This duplication of Ethen's signature was admitted by Respondent in a September 18, 2012, telephone conversation with the assistant director assigned to the file, and was done without Ethen's knowledge or permission.

18. On December 28, 2011, a notice was sent to Respondent by the Director advising Respondent of the complaint of misconduct in the Ethen matter.

19. In January 2012, Respondent paid Ethen $3377.84 in the form of a check drawn on his law firm business account. This payment represented a refund of the $3683.84 received by Respondent from The Palmer Firm, less $299.00 paid by Respondent as filing fees in conjunction with the filing of the partial petition for bankruptcy on Ethan's behalf on December 21 2011.

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

21. In March 2012, Respondent offered Ethen $2000.00 in settlement of the trustee's motion. Respondent initially requested that Ethen, as a condition of receiving the $2000.00 settlement, withdraw her pending complaint before the Office of Lawyers Professional Responsibility.

22. Ethen declined to withdraw her pending complaint before the Office of Lawyers Professional Responsibility but accepted the $2000.00 offer of settlement. The motion for sanctions by the trustee in bankruptcy was dismissed by agreement and on March 26, 2012, Respondent paid Ethen and her new counsel the $2000.00. These funds were again paid in the form of a check drawn on Respondent's law firm business

account.

23. The $3683.84 received by Respondent from The Palmer Firm were at no time deposited in a trust account. Although it was understood that Respondent's fees were to come from those funds, a substantial portion of those funds were at all times client funds.

24. Ethen suffered harm as a result of Respondent's legal representation. The harm suffered by Ethen consisted of emotional distress, loss of the income from days of work missed to attend hearings that were not, in fact, scheduled, and loss of access to that portion of the funds paid to Respondent by The Palmer Firm which were over and above the agreed upon amount Respondent was to receive in payment of fees and expenses. As a result of this experience, Ethen has lost trust in and respect for the legal profession and faith in the justice system in general.

Alm Matter

25. On April 22, 2011, Deanna Alm (Alm) consulted with Respondent regarding filing bankruptcy.

26. At Alm's April 22, 2011, consultation with Respondent, Alm signed a representation agreement and paid Respondent $750.00.

27. On April 25, 2011, Alm paid Respondent an additional $1049.00.

28. The combined amount of the two payments made by Alm to Respondent on April 22, 2011, and April 25, 2011, constituted full payment for Respondent's fees and expenses in Alm's bankruptcy proceeding.

29. Alm was required to submit a certificate indicating that she had taken a credit counseling course which would be included with her bankruptcy petition. The

Certificate of Completion of the credit counseling course was required to have been issued within six months prior to the date of the bankruptcy petition.

30. On April 29, 2011, Alm completed an online credit counseling course offered by Abacus Credit Counseling. Alm obtained a certificate verifying her completion of that course dated April 29, 2011.

31. By the end of the May 2011 Alm had supplied to Respondent all information and documents necessary to draft and file a bankruptcy petition on Alm's behalf.

32. As with Diane Ethen, Alm had previously hired The Palmer Firm to assist her in consolidating her debts. At the time Alm retained Respondent to represent her in a bankruptcy proceeding The Palmer Firm was holding funds which Alm had paid for the purpose of debt consolidation. Respondent obtained the release of Alm's funds from The Palmer Firm. On May 6, 2011, The Palmer Firm paid to Respondent the funds belonging to Alm in the form of a check in the amount of $4987.68. Respondent deposited the check in his law firm business account.

33. In July 2011, a creditor obtained a judgment against Alm in the amount of $5015.77

34. Commencing in September 2011, Alm's wages were garnished by the judgment creditor. Over a period of several months approximately $2000.00 of Alm's wages were garnished by the judgment creditor.

35. Although the garnished wages were ultimately returned to Alm, had Respondent filed a bankruptcy petition on Alm's behalf when he had the necessary information and documents enabling him to do so (the end of May 2011), this judgment could not have been obtained and no garnishment of Alm's wages would have

occurred.

36. At some time prior to September 16, 2011, Respondent communicated to Alm that a Section 341 meeting of creditors was scheduled for September 22, 2011. This statement was false. When Respondent communicated this message to Alm, Respondent had not filed a bankruptcy petition on Alm's behalf and a Section 341 meeting of creditors had not been scheduled. Because Respondent knew that a bankruptcy petition had not been filed and that a meeting of creditors had not been scheduled, Respondent's communication to Alm was a knowingly false statement.

37. On September 21, 2011, Respondent sent an e-mail to Alm indicating that he had spoken with the trustee in bankruptcy and that the trustee in bankruptcy had commented on Alm's garnishment and rescheduled the meeting of creditors. These representations were false. Respondent had not filed a bankruptcy petition on Alm's behalf, a trustee in bankruptcy had not been appointed, and a meeting of creditors had not been scheduled. Because a trustee in bankruptcy had not been appointed, Respondent could not have spoken to the trustee in bankruptcy, Alm's garnishment could not have been the subject of comment by the trustee in bankruptcy, and the trustee in bankruptcy could not have rescheduled a meeting of creditors. All such representations made by Respondent to Alm were knowingly false representations.

38. . On October 31, 2011, Respondent mailed a letter to Alm explaining what would occur at a Section 341 meeting of creditors in a bankruptcy proceeding. The letter did not specifically state that a bankruptcy petition had been filed on Alm's behalf, that a trustee in bankruptcy had been appointed, or that a Section 341 meeting of creditors had been set in Alm's case. Upon reading the letter, however, it would be

reasonable for Alm to have assumed that her bankruptcy petition had been filed, that a trustee in bankruptcy had been appointed in her case, and that a Section 341 meeting of creditors had been set. This is particularly true when Respondent's October 31, 2011, letter is considered in conjunction with Respondent's September 21, 2011, e-mail. In fact, Respondent had not filed a bankruptcy petition on Alm's behalf, a trustee in bankruptcy had not been appointed, and a Section 341 meeting of creditors had not been set.

39.. On November 16, 2011, Respondent mailed a letter to Alm indicating that her Section 341 meeting of creditors had been rescheduled to December 8, 2011. This statement was false. When Respondent communicated this information to Alm, Respondent had not filed a bankruptcy petition on Alm's behalf and a Section 341 meeting of creditors had neither been scheduled nor rescheduled. Because Respondent knew that a bankruptcy petition had not been filed and that a meeting of creditors had not been scheduled, Respondent's communication to Alm was a knowingly false statement.

40. On or about December 15, 2011, Respondent contacted Abacus Credit Counseling by means of a "web chat." Respondent falsely represented to the representative of Abacus Credit Counseling that he was Deanna Alm. Posing as Alm, Respondent represented to the representative of Abacus Credit Counseling that it was necessary that she retake the online credit counseling course because her prior certificate had expired. Based upon this representation the representative Of Abacus Credit Counseling permitted Respondent, who was then posing as Alm, to retake the course free of charge.

41. Posing as Alm, Respondent took the credit counseling course and obtained a Certificate of Completion dated December 15, 2011, issued in Alm's name. The certificate states in part: "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 because Respondent had taken the course resulting in the certification posing as Alm.

42. On December 19, 2011, Respondent filed a bankruptcy petition on Alm's behalf. As part of the petition Respondent submitted to the bankruptcy court the certification from Abacus Credit Counseling representing that Alm had completed the credit counseling course on December 15, 2011. This representation to the bankruptcy court was made by Respondent knowing that the certification had been fraudulently obtained under false pretenses.

43. On December 30, 2011, successor counsel for Alm mailed a letter to Respondent indicating that they would be substituting as counsel for Alm in the bankruptcy proceeding.

44. On January 4, 2012, Respondent issued a check drawn on his law firm business account in the amount of $2587.68 to Alm's successor counsel.

45. On January 4, 2012, the Director mailed a notice of investigation to Respondent regarding the Alm matter.

46. On or about February 21, 2012, the trustee in bankruptcy filed a motion for order to pay sanctions against Respondent in the Alm bankruptcy proceeding.

47. Respondent offered Alm $2000.00 in settlement of the trustee's motion. Respondent initially requested that Alm, as a condition of receiving the $2000.00

settlement, withdraw her pending complaint before the Office of Lawyers Professional Responsibility.

48. Alm declined to withdraw the her pending complaint before the Office of Lawyers Professional Responsibility but accepted the $2000.00 offer of settlement. The motion for sanctions by the trustee in bankruptcy was dismissed by agreement and on March 26, 2012, Respondent paid Alm the $2000.00. These funds were again paid in the form of a check drawn on Respondent's law firm business account.

49. Since Alm had separately paid Respondent's fees, the $4987.68 received by Respondent from The Palmer Firm were at the time of their receipt, and at all times thereafter, client funds. At no time were these client funds deposited in a trust account. Further, these client funds were withheld from Alm from the time of their receipt by Respondent in May 2011 until at least January 2012, and possibly later with respect to a portion thereof.

50. This referee is uncertain as to when or how the remaining $2500.00 of the payment received from The Palmer Firm was paid by Respondent to Alm, however, there was no issue at the hearing of this matter regarding a failure on Respondent's part to repay funds from The Palmer Firm to which Alm was entitled.

51. Alm suffered harm as a result of Respondent's legal representation. The harm suffered by Alm consisted of emotional distress, loss of income from days of work missed because of her fragile emotional condition and to attend hearings that were not, in fact, scheduled, loss of access to the funds refunded by The Palmer Firm, the garnishment of her wages and the loss of access to the garnished funds until such time as they were recovered. As a result of this experience, Alm has lost trust in and respect

for the legal profession and faith in the justice system in general.

Non-Cooperation

52. The Director issued a notice of investigation to Respondent with respect to the Ethen matter on December 28, 2011. The notice of investigation requested a written response within two weeks. The matter was assigned to a district ethics committee investigator. The district ethics committee investigator did not receive a timely response from Respondent.

53. On January 30, 2012, the district ethics committee investigator mailed a letter to Respondent informing Respondent that his response to the notice of investigation was overdue. Again, the district ethics committee investigator did not receive a timely response from Respondent.

54. On February 15, 2012, the district ethics committee investigator attempted to contact Respondent by telephone.

55. On February 23, 2012, the district ethics committee investigator received a telephone message from Respondent indicating that a response would be forthcoming.

56. On February 24, 2012, the district ethics committee investigator received an e-mail from Respondent indicating that a response would be received by February 28, 2012. The district ethics committee investigator did not receive Respondent's response by February 28, 2012.

57. On March 1, 2012, the district ethics committee investigator mailed a letter to Respondent indicating that no response had been received and requesting that a response be sent immediately.

58. When the district ethics committee investigator received no response from

Respondent, the matter was referred back to the Office of Lawyers Professional Responsibility for further investigation. The Director's office received the file on April 20, 2012.

59. On April 26, 2012, the Director mailed a letter to Respondent in which Respondent was given the option of submitting a response to the complaint.

60. On May 8, 2012, having received no response from Respondent, an assistant director attempted to contact Respondent by telephone. The assistant director left a message for Respondent and Respondent did return the assistant director's telephone call.

61. On May 11, 2012, Respondent submitted his initial response to the notice of investigation issued in the Ethen matter on December 28, 2011.

62. The Director issued a notice of investigation to Respondent with respect to the Alm matter on January 4, 2012. The notice of investigation requested a written response within two weeks. The matter was assigned to a district ethics committee investigator. The district ethics committee investigator did not receive a timely response from Respondent.

63. On February 10, 2012, the district ethics committee investigator mailed a letter to Respondent informing respondent that his response to the notice of investigation was overdue. Again, the district ethics committee investigator did not receive a timely response from Respondent.

64. On February 24, 2012, the district ethics committee investigator contacted Respondent by telephone. The district ethics committee investigator gave Respondent an extension on till February 28, 2012, to respond. The district ethics committee

investigator sent a test e-mail to respondent which was received. Respondent claims, however, that certain e-mail messages to the district ethics committee investigator did not go through.

65. The district ethics committee investigator did not receive a response from Respondent by February 28, 2012.

66. On March 8, 2012 the district ethics committee investigator sent an e-mail to Respondent advising Respondent of his failure to submit a response and requesting that Respondent submit his response by March 12, 2012.

67. When the district ethics committee investigator again failed to receive a response from Respondent, the matter was referred back to the Office of Lawyers Professional Responsibility for further investigation. The Director's office received the file on April 18, 2012.

68. On April 20, 2012, the assistant director assigned to the file mailed a letter to Respondent requesting a response. Enclosed with a letter was a copy of the district ethics committee recommendation that the matter be referred to a Office of Lawyer's Professional Responsibility Board panel.

69. On May 8, 2012, having received no response from Respondent, the assistant director assigned to the file contacted Respondent by telephone.

70. On May 11, 2012, Respondent submitted his initial response to the notice of investigation issued in the Alm matter on January 4, 2012.

71. On June 1, 2012, the assistant director assigned to the file submitted additional questions to Respondent regarding the Alm matter. Among the questions submitted to Respondent was a question requesting that Respondent specifically

address the Certificate of Counseling issued by Abacus Credit Counseling to Alm on December 15, 2011.

72. On June 15, 2012, Respondent submitted a response to the questions submitted to him on June 1, 2012. With respect to the Certificate of Counseling issued to Alm by Abacus Credit Counseling on December 15, 2011, Respondent stated:

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

73. On June 18, 2012, during the course of a telephone conversation with the assistant director assigned to the file, Respondent stated that he had obtained the questioned certificate by calling Abacus Credit Counseling and simply requesting that an additional certificate be issued. This statement was false. In fact, Respondent had obtained the questioned certificate by contacting Abacus Credit Counseling, engaging in an electronic chat with a company representative in which he falsely represented that he was Deanna Alm, and then, posing as Alm, completing the credit counseling course.

74. On June 17, 2012, during a meeting with the assistant director assigned to the file, Respondent again stated that he had called Abacus credit counseling and had them re-issue the Certificate of Counseling. This statement was false. After being confronted with the text of the chat that had been conducted with Abacus Credit Counseling, Respondent admitted that either he or his secretary had contacted Abacus Credit Counseling and completed the course. Respondent claimed at that time that he did not remember whether it was he or his secretary that had contacted Abacus Credit Counseling and completed the course.

75. On July 18, 2012, in a telephone conversation with the assistant director assigned to the file, Respondent admitted that he, not his secretary, had contacted Abacus Credit Counseling and taken the course posing as Deanna Alm.

Trust Account Issues

76. Respondent received $3683.84 from The Palmer Firm belonging to Diane Ethen and deposited those funds in his law firm business account, thereby mingling client funds with his law firm funds.

77. Respondent received $4987.68 from The Palmer Firm belonging to Deanna Alm and deposited those funds in his law firm business account, thereby mingling client funds with his law firm funds.

78. Respondent failed to keep the trust account records required by Rule 1.15, Minnesota Rules of Professional Conduct (MRPC), and Appendix 1, thereto.

Aggravating Factors

79. Respondent has demonstrated a pattern of dishonest conduct. In both the Ethen and the Alm matters Respondent made multiple false statements to his clients. In the Ethen matter Respondent filed a bankruptcy petition containing a reproduced signature. In the Alm matter Respondent contacted Abacus Credit Counseling falsely representing himself to be Deanna Alm and then completed an online credit counseling course offered by Abacus Credit Counseling again falsely representing himself to be Deanna Alm. Having thus completed the credit counseling course and having thus obtained a Certificate of Counseling issued in Alm's name, Respondent filed the fraudulently obtained Certificate of Counseling with the bankruptcy court. When questioned by the Director's office regarding the Certificate Of Counseling, Respondent

was untruthful in explaining how the Certificate of Counseling was obtained and before admitting that he had posed as his client in taking the course which resulted in the issuance of the Certificate of Counseling, Respondent implicated his secretary as possibly having taken the course on the client's behalf.

80. Respondent's lack of cooperation with the disciplinary investigations is considered by the undersigned referee as not only an ethical violation but, at the same time, an aggravating factor.

Mitigating Factors

81. Both Ethan and Alm were made whole, however, this did not occur until after the commencement of the disciplinary proceedings.

82. Respondent has admitted virtually every aspect of his misconduct.

83. Respondent has expressed great remorse for his misconduct.

CONCLUSIONS OF LAW

1. Respondent's conduct in making multiple false statements to Ethen regarding the status of her case violated Rules 1.4(a)(3), 4.1, and 8.4(c), MRPC.

2. Respondent's conduct in offering Ethen, through counsel, a settlement conditioned on Ethen's withdrawal of her complaint filed with the Office of Lawyers Professional Responsibility violated Rule 8.4(d), MRPC.

3. Respondent's conduct in reproducing Ethen's signature, without Ethen's knowledge or consent, on the signature declaration page of the bankruptcy petition filed on Ethen's behalf violated Rules 4.1 and 8.4(c) and (d), MRPC.

4. Respondent's conduct in depositing funds recovered from The Palmer Firm on Ethen's behalf in his law firm business account and allowing those funds to remain

in his law firm business account for months violated Rule 1.15(a), MRPC.

5. Respondent's conduct in making multiple false statements to Alm regarding the status of her case violated Rules 1.4(a)(3), 4.1, and 8.4(c), MRPC.

6. Respondent's conduct in failing to file a bankruptcy petition on Alm's behalf by the end of June 2011 violated Rule 1.3, MRPC.

7. Respondent's conduct in offering Alm, through counsel, a settlement conditioned on Alm's withdrawal of her complaint filed with the Office of Lawyers Professional Responsibility violated Rule 8.4(d), MRPC.

8. Respondent's conduct in depositing funds recovered from The Palmer Firm on Alm's behalf in his law firm business account and allowing those funds to remain in his law firm business account for months violated Rule 1.15(a), MRPC.

9. Respondent's conduct in falsely stating to representatives of Abacus Credit Counseling that he was Deanna Alm and in taking the credit counseling course offered by Abacus Credit Counseling posing as Deanna Alm thereby fraudulently obtaining a Certificate of Counseling in Deanna Alm's name violated Rules 4.1 and 8.4(c), MRPC.

10. Respondent's conduct in knowingly submitting a false and fraudulently obtained Certificate of Counseling to the bankruptcy court on behalf of Alm violated Rules 3.3(a)(3) and 8.4(c) and (d), MRPC.

11. Respondent's conduct in failing to cooperate and making false statements in the course of the Ethen and the Alm disciplinary investigations Violated Rules 8.1(b) and 8.4(c), MRPC, and Rule 25, Rules on Lawyers Professional Responsibility.

12. Respondent's conduct in commingling client funds with his own funds in his law firm business account and in holding client funds without maintaining the trust

account records required violated Rule 1.15, MRPC, and Appendix 1 thereto.

RECOMMENDATION FOR DISCIPLINE

The undersigned Referee recommends that respondent be indefinitely suspended for a minimum of two years and that he be subject to reinstatement by hearing pursuant to Rule 18, RLPR.

COPY

Dated: July 16, 2013

Frederick J. Casey
Referee/Retired District Court Judge

MEMORANDUM

In making these findings and recommendation I have intentionally failed to include Respondent's relative youth and limited experience in practice as a mitigating factor. I am conscious of the fact that Respondent graduated from law school with substantial school loan obligations and found himself unable to find employment with an established law firm. After unsuccessfully seeking employment in the legal field Respondent resorted to hanging out his own shingle and practicing law as a solo practitioner with, I would guess, virtually no practical knowledge or training in the operation of a law office and with no one to monitor his performance or to mentor him. Under some circumstances I would consider this situation to be a mitigating factor. In this case, however, I do not feel that to be appropriate. Respondent's actions involved dishonesty with clients, dishonesty with Abacus Credit Counseling, the unauthorized reproduction of a client's signature on a document, the filing of a fraudulently obtained Certificate of Counseling with the Bankruptcy Court, and the filing of what is for all intents and purposes a forged document with the Bankruptcy Court. Youth and

inexperience do not excuse this behavior.

F.J.C.