



By the order of the court, Judge David A Wiseman

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FOR PUBLICATION

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IN THE SUPERIOR COURT  
OF THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE THE MATTER OF:	)	CIVIL CASE NO. 10-0284
	)	(Disciplinary Case 2008-03)
REYNALDO O. YANA, and	)	CIVIL CASE NO. 10-0285
	)	(Disciplinary Case 2008-05)
ANTONIO M. ATALIG,	)	
	)	
Respondents.	)	ORDER RE: DISCIPLINARY ACTION

**I. INTRODUCTION**

**THIS MATTER** came before the Court on July 20, 2011 at 1:30 p.m. in Courtroom 223A for a Disciplinary Hearing. Antonio M. Atalig, Esq. ("Atalig") and Reynaldo O. Yana, Esq. ("Yana") (collectively "Respondents") appeared pro se. Thomas E. Clifford, Esq. served as court appointed Disciplinary Counsel. The Disciplinary Complaint arose out of the Respondents' representation of the administrator and certain heirs in the matter of In re Estate of Angel Maliti, Civ. No. 97-0369 (NMI Super. Ct.).<sup>1</sup> Respondents are alleged to have violated various provisions of the ABA Model Rules of Professional Conduct ("Model Rules") during their representation of clients and handling of estate funds taken as attorney fees. Respondents have stipulated to have their cases consolidated as they both arise from the same factual scenario and conduct. After hearing testimony, oral arguments and reviewing the briefing the Court finds Respondents have violated several sections of the Model Rules as discussed below.

<sup>1</sup> Some filed documents refer to Angel Malite, while others refer to Angel Maliti. Both parties use Angel Malite in their briefing and so will the Court.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**<sup>2</sup>

2 In April 1997, the estate of Angel Malite entered probate. Respondents represented four of the heirs  
3 in the case of *In re Estate of Angel Malite*. Attorney Stephen J. Nutting ("Nutting") represented another four  
4 heirs in the matter.

5 During the administration, the Marianas Public Land Authority ("MPLA") agreed to pay the estate  
6 three million four hundred and fifty thousand dollars (\$3,450,000) in compensation for land that had  
7 originally been owned by the late Mr. Malite. See *Malite v. Tudela et. al.*, 2007 MP 3 ¶ 2.

8 On November 7, 2000, the Office of the Attorney General ("AGO") filed a separate civil action to  
9 enjoin payment of the money to the estate. (Decl. of Nutting at ¶¶ 3-7.) In response to the AGO's request  
10 for an injunction, four of the estate's eighteen alleged heirs signed a contingency fee agreement with Atalig  
11 agreeing to pay him 33% of the amount he could secure from MPLA. Atalig was also representing the  
12 estate's administrator, Jesus C. Tudela, in the estate's probate. The administrator did not sign the  
13 contingency fee agreement.

14 On February 28, 2006, a settlement was reached which provided that the land compensation funds  
15 would be paid into the court until an order of distribution, fees, and costs was entered. On March 13, 2006,  
16 the civil court accepted the settlement agreement and entered a judgment in accordance with it.

17 The next day, on March 14, 2006, [Respondents] filed a request in the  
18 civil court for attorney fees due in representing the Administrator  
19 "and other signatories to the contingency fee agreement . . . ." A  
20 hearing on the matter was set for April 18, 2006. No notice was  
21 given regarding this hearing or the request for attorney fees to the  
22 AAG who handled the injunction and the resulting settlement.  
The AAG learned of the hearing and appeared in court.  
The AAG informed the court that she had not been served and  
requested the court to continue the matter so that she could be noticed  
and given full time to respond. The court granted her request, taking  
the matter off calendar and ordering Mr. Atalig to provide notice.

23 \_\_\_\_\_  
24 <sup>2</sup> At the hearing on July 20, 2011, the Court took judicial notice of all documents in Civil Case No. 97-0369, *Malite v. Tudela*  
25 *et. al.*, 2007 MP 3, *In re Estate of Malite*, 2010 MP 20, any other appeals resulting therefrom, and "any files on record that  
have anything to do with this matter." The Court also heard testimony and evidence was presented at the hearing. These are  
the factual basis for this disciplinary matter.

1           However, on May 12, 2006, without a hearing on the matter and  
2           apparently sua sponte, the civil court entered an order approving Mr.  
3           Atalig and Mr. Yana's 33% contingency fee. Noting "the absence of  
4           any evidence to the contrary," the court found the contingency  
5           agreement "appropriate compensation for civil cases." Additionally,  
6           in an attempt to salvage some vestige of due process, the court  
7           provided "the clients" ten days to file an opposition. The  
8           Administrator filed a waiver of objection to the fees on May 18, 2006.  
9           The AAG was never served with the order granting attorney fees. Nor  
10           were the Heirs or their attorneys served. Thus, no opposition was  
11           filed within the ten-day time period.

12           *Malite v. Tudela et. al.*, 2007 MP 3 ¶ 5. On May 28, 2006, the Respondents received one million one  
13           hundred thirty-eight thousand and five hundred dollars (\$1,138,500) contingency fee.

14           On June 1, 2006, the heirs represented by Nutting filed a motion for a restraining order for  
15           Respondents to disgorge the fees. On November 6, 2007, the court granted the motion, ordering  
16           Respondents to disgorge attorney fees and stating that if they failed to do so the court would hold contempt  
17           proceedings. *In re Estate of Angel Maliti*, Civ. No. 97-0369 (NMI Super. Ct. Jan. 15, 2008) (Amended  
18           Order at 2.) Subsequently, the court was unsatisfied with Respondents' response regarding the lack of  
19           disgorgement and ordered the attorneys to provide the court with a detailed accounting of how the fees had  
20           been spent, including who received the funds and on what dates, the amounts distributed, and documentation  
21           supporting the purported distributions. *Id.* at 3.

22           At the contempt hearing Respondents testified:

23                   they did not keep records of the time they spent working on the case,  
24                   and that they had been forced to reconstruct their time records. They  
25                   were only able to provide a vague and very general accounting of  
                    how the money was distributed, and in many cases were either unable  
                    or unwilling to answer questions concerning how the fees were spent.

*In re Estate of Malite*, 2010 MP 20, ¶ 12. The court found Respondents in contempt of court for failure to  
disgorge and failure to make reasonable efforts to comply with the court's orders. *In re Estate of Angel*  
*Maliti*, Civ. No. 97-0369 (NMI Super. Ct. Jan. 15, 2008) (Amended Order at 35.).

          "[Respondents] submitted Declarations, under oath, that they had 'exhausted' the attorneys' fees.  
Further, both attorneys testified that they had spent the money on non-necessity items, such as, but not

1 limited to travel, family, vehicles, and housing." In re Estate of *Angel Maliti*, Civ. No. 97-0369 (NMI Super.  
2 Ct. Jan. 15,2008) (Amended Order) at 14-15. The court noted

3 an inconsistency in Mr. Atalig's testimony proffered during the Order  
4 to Show Cause hearing and his Declaration, and an interview that  
5 took place immediately following the conclusion of the December 28,  
6 2007 [hearing] . . . during an interview on [the same day], KSPN  
7 reporter Chris Nelson asked Mr. Atalig, "Is there any of the money  
8 left?" Mr. Atalig said, 'Well, of course there is some left, but I'm not  
9 going to tell you how much.'

10 *Id.* at 14 fn. 1

11 In 2009, the Court issued an Order with the stated goal of summarizing all past orders and "set[ting]  
12 out a timeline of events that have preceded this final order." In re Estate of *Angel Maliti*, Civ. No. 97-0369  
13 (NMI Super. Ct. Jan. 18,2009) (Order at 1). In the Order, the court noted its shock at the willful disregard  
14 both attorneys displayed to the Court and the Rules of Professional Conduct. *Id.* at 5. The Court concluded  
15 that Respondent's "billing statements [were] excessive, unreliable, and disingenuous." *Id.* at 14. The Court  
16 awarded the Estate of Angel Malite the amount of 1,288,500.00 to accrue interest at a rate of 9% as of  
17 January 28,2009. The Court imprisoned Respondents until they paid a substantial portion of the improper  
18 contingency calling them "recalcitrant attorneys who are incarcerated because of their own stubborn refusal  
19 to take even the smallest steps towards satisfying the orders of this Court." *Id.* at 13-14.

20 In a subsequent Order on the reasonableness of the contingency fees in connection with the probate,  
21 the Court found the contingency fee agreement entered into by Respondents to be "invalid and  
22 unenforceable." In re Estate of *Angel Malite*, Civ. No. 97-0369 (NMI Super. Ct. Sept. 16,2011) (Findings  
23 of Fact & Conclusions of Law at 9, 12-13). The Court noted the Respondents "breached their duty to the  
24 heirs who signed the contingent fee agreements and to the Estate by putting their pursuit of a contingent fee  
25 ahead of the heirs and Estate's interest in recovering its land compensation." *Id.* at 13. The Court stated,  
"[t]aking a full one-third (1/3) of the entire amount recovered in the civil case and before a distribution was  
made to any of the signatories to the contingent fee agreements was the equivalent of taking one-third (1/3)  
of the Estate's assets in violation of 8 CMC § 2926." *Id.* at 12.

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### III. LEGAL STANDARD

Professional responsibility is the basic requirement for all attorneys, trial assistants and other officers and administrators of the court in order to maintain the highest possible level of morality in the judicial system. In re the Matter Villanueva, 1 CR 952,956 (Dist. Ct. App. Div. 1984).

The Commonwealth courts have the inherent power and duty to regulate the practice of law, both in and out of court pursuant to the Commonwealth Disciplinary Rules and Procedures. 1 CMC §3403; NMI Disc. R. 1; Matsunaga v. Matsunaga, 2001 MP 11 ¶ 19. The standard of proof for establishing allegations of attorney misconduct is clear and convincing evidence. NMI Disc. R. 9(g); In re Disciplinary Proceedings of Rhodes, 2002 MP 2 ¶ 3; Saipan Lau Lau Dev., Inc. v. Superior Court (San Nicolas), 2001 MP 2 ¶ 30.

*The purpose of a disciplinary action against an attorney is not to punish the attorney, but rather to guard the administration of justice, maintain the dignity of the court and the integrity of the profession, and to protect the public.* Saipan Lau Lau Dev., Inc., 2001 MP 2 ¶ 38 (emphasis added). In determining the appropriate sanction, the court considers the nature of the misconduct, the cumulative weight of the violations, and the harm to the public and the profession. Id.

### IV. DISCUSSION

Respondents are now accused of violating Model Rules 1.15(e), 3.3(a)(1) and (3), as well as 8.4(a)-(c). The Model Rules, as adopted by the ABA are applicable in the CNMI through the Commonwealth Disciplinary Rules and Procedures. NMI Disc. R. 2; Bisom v. Commonwealth, 2002 MP 19 ¶ 55.

Respondents have stipulated to have their cases consolidated as they both arise from the same factual scenario and conduct, and thus the two cases are discussed together for purposes of this Order.

#### **A. Violations of Model Rule 1.15(e)**

Respondents are charged with failing to safeguard property subject to dispute pursuant to Model Rule 1.15(e), which states:

1           When in the course of representation a lawyer is in possession of  
2           property in which two or more persons (one of whom may be the  
3           lawyer) claim interests, the property shall be kept separate by the  
4           lawyer until the dispute is resolved. The lawyer shall promptly  
5           distribute all portions of the property as to which the interests are not  
6           in dispute.

7           Respondents were given possession of the one million one hundred thirty-eight thousand and five  
8           hundred dollars (\$1,138,500) contingency fee on May 28,2006. On June 1,2006, only three-four days later,  
9           the heirs represented by Nutting filed a motion for a restraining order for Respondents to disgorge the fees,  
10          which the court subsequently granted, ordering Respondents to disgorge attorneys fees and stating that if  
11          they failed to do so the court would hold contempt proceedings. In re Estate of Angel Maliti, Civ. No.  
12          97-0369 (NMI Super. Ct. Jan. 15,2008) (Amended Order at 2.).

13          Respondents did not comply and the court ordered the attorneys to provide the court with a detailed  
14          accounting of how the fees had been spent, including who received the funds and on what dates, the amounts  
15          distributed, and documentation supporting the purported distributions. *Id.* at 3.

16          At the subsequent contempt hearing Respondents testified they did not keep adequate records of the  
17          fees and were only able to provide rough figures of how the fees were distributed. They were also unable  
18          or unwilling to cooperate with the court in answering questions regarding how the fees were spent. See In  
19          re Estate of Malite, 2010 MP 20, ¶ 12.

20          Upon the filing of the motion to disgorge the fees by the heirs represented by Nutting within only  
21          three-four days of Respondent's receiving said fees, and certainly once the order for disgorgement issued  
22          from the Court, the attorneys knew that the one million one hundred thirty-eight thousand and five hundred  
23          dollars (\$1,138,500) contingency fee was in dispute. At that time, Respondents were placed on notice of  
24          a dispute regarding the fees that they had a duty and professional obligation to preserve and keep separate  
25          the entire amount. Notwithstanding the fact that the motion to disgorge the fees placed them on clear and  
26          unequivocal notice that there was a dispute registered regarding the fees, they did not preserve, separate or  
27          safeguard the funds. Not only were the disputed fees not safeguarded nor separated, but they were spent by

1 Respondents who then evaded the order of the Court to account for the disputed fees as to how they were  
2 spent. Respondents were so unwilling and blatantly recalcitrant in cooperating with the court and providing  
3 an accounting of the funds as ordered, that they were placed in contempt of court and spent more than a year  
4 in jail rather than comply with the court's order.

5 Respondents represented to the court at the December 28, 2007 hearing that they had spent all of the  
6 one million one hundred thirty-eight thousand and five hundred dollars (\$1,138,500) contingency fee, which  
7 was totally inconsistent with what was told to a reporter immediately after the hearing by Respondent Atalig  
8 who claimed he still had money left, but Atalig was not going to say how much.

9 The Court, therefore, finds by clear and convincing evidence that the actions of Respondents are an  
10 egregious violation of Model Rule 1.15(e) in that they failed to properly safeguard and separate property in  
11 their possession, to wit: the one million one hundred thirty-eight thousand and five hundred (\$1,138,500)  
12 dollars that was in dispute, a fact which they clearly knew about, and spent the funds allegedly on personal  
13 items.

14 **B. Model Rule 3.3(a)**

15 Respondents are charged with breaching their duty of candor to the court pursuant to Model Rule  
16 3.3(a), which States in relevant part:

17 (a) A lawyer shall not knowingly:

18 (1) make a false statement of fact or law to a tribunal or fail  
19 to correct a false statement of material fact or law previously  
made to the tribunal by the lawyer;

20 \* \* \*

21 (3) offer evidence that the lawyer knows to be false. If a  
22 lawyer, the lawyer's client, or a witness called by the lawyer,  
23 has offered material evidence and the lawyer comes to know  
of its falsity, the lawyer shall take reasonable remedial  
24 measures, including, if necessary, disclosure to the tribunal.  
A lawyer may refuse to offer evidence, other than the  
25 testimony of a defendant in a criminal matter, that the lawyer  
reasonably believes is false.

1 At the December 28, 2007 hearing before the court, “[b]oth attorneys submitted Declarations, under  
2 oath, that they had 'exhausted' the attorneys' fees. Further, both attorneys testified that they had spent the  
3 money on non-necessity items, such as, but not limited to travel, family, vehicles, and housing.” *In re Estate*  
4 *of Angel Muliti*, Civ. No. 97-0369 (NMI Super. Ct. Jan. 15, 2008) (Amended Order at 14-15.) The court  
5 noted that Atalig directly contradicted his testimony at an interview by news media immediately following  
6 the hearing where he stated with respect to the money, “[w]ell, of course there is some left, but I'm not going  
7 to tell you how much.” *Id.* At 14 fn 1.

8 Respondent Atalig made a false statement of fact and a false offer of evidence to the court knowing  
9 outright the falsity of the statement. Atalig's contradiction immediately after the hearing to a news reporter  
10 highlights the blatant disregard for the falsity of the statements given to the court. Respondent Atalig's  
11 intentional and significant misrepresentation to the court is unconscionable and cannot be tolerated by the  
12 courts as it is utterly inconsistent with and in violation of the professional conduct that an attorney owes to  
13 the court and the legal profession, and is in clear violation of Model Rule 3.3(a)(1) and (3).

14 Yana did not affirmatively offer false statements or evidence, as far as this Court is aware.  
15 However, Respondent Yana was present at all times when Atalig was presenting evidence and making false  
16 statements. Rule 3.3(a)(1) requires attorneys to "correct [] false statement[s] of material fact or law  
17 previously made to the tribunal." Though it is likely Yana knew the falsity of the statements made by Atalig,  
18 his knowledge is not clearly in evidence, and the Court cannot find by clear and convincing evidence that  
19 Respondent Yana violated Model Rule 3.3.

20 The Court, therefore, finds by clear and convincing evidence that Atalig violated this very important  
21 provision of the model rules.

#### 22 **C. Model Rule 8.4**

23 Respondents are charged with professional misconduct pursuant to Model Rule 8.4, which states:

24 It is professional misconduct for a lawyer to:

- 25 (a) violate or attempt to violate the Rules of Professional



1 Conduct, knowingly assist or induce another to do so,  
2 or do so through the acts of another;

3 (b) commit a criminal act that reflects adversely on the  
4 lawyer's honesty, trustworthiness or fitness as a lawyer  
5 in other respects;

6 (c) engage in conduct involving dishonesty, fraud, deceit  
7 or misrepresentation;

8 (d) engage in conduct that is prejudicial to the  
9 administration of justice;

10 (e) state or imply an ability to influence improperly a  
11 government agency or official or to achieve results by  
12 means that violate the Rules of Professional Conduct  
13 or other law; or

14 (f) knowingly assist a judge or judicial officer in conduct  
15 that is a violation of applicable rules of judicial  
16 conduct or other law.

17 The Court finds by clear and convincing evidence that Respondents violated this provision of the  
18 Model Rules. Respondents violated Model Rule 8.4(a) by violating other rules of professional conduct as  
19 discussed above. Respondents also violated Model Rule 8.4(c) by engaging in dishonesty, deceit and  
20 misrepresentation by making false and inconsistent statements<sup>3</sup> to court regarding the disputed fees and by  
21 refusing to be forthright in providing the court with an accounting of the disputed fees. Respondent's also  
22 entered into an invalid, unenforceable and illegal contingent fee agreement.

23 Respondents also violated Model Rule 8.4(d) by repeatedly and flagrantly refusing to comply with  
24 the court's order and refusing to provide an accounting. The refusal by Respondents was so adamant and  
25 troubling that it resulted in a finding of contempt and Respondents being placed in jail for more than a year.  
The Court notes that throughout their detention, Respondents held the key to their release by simply  
complying with the court's orders. Such compliance was not provided by Respondents resulting in  
recalcitrant conduct highly prejudicial to the administration of justice and in violation of the Model Rules.

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<sup>3</sup> As the Court noted previously, Atalig made a false statement of fact and a false offer of evidence to the court knowing  
outright the falsity of the statement, while Yana did not affirmatively offer false statements or evidence, as far as this Court is  
aware. However, Yana was present at all times when Respondent Atalig was presenting evidence and making false statements  
and in all likelihood knew of the falsity of Atalig's statements.

1 The Court finds Respondents never once made any effort whatsoever to provide an accounting of  
2 how the one million one hundred thirty-eight thousand and five hundred dollars (\$1,138,500) was spent nor  
3 offered any partial or initial payment toward the ordered disgorgement nor any proposal to make any  
4 payments. In other words, there was never any good faith effort made by Respondents to comply with the  
5 court's order. If they had made even the slightest efforts, then they could have in all likelihood, relieved  
6 themselves of the contempt and had been released from prison. Instead, they stubbornly chose not to do so  
7 and instead to blatantly disregard the court's order.

8 Therefore, the Court finds the Respondents by clear and convincing evidence to be in violation of  
9 Model Rule 8.4(a, c & d).

## 10 **V. CONCLUSION**

11 A court must be extremely diligent in protecting and upholding the integrity and decorum of the  
12 judicial system. The public's confidence in the judicial system depends on it. A main factor in pursuing  
13 this constant diligence is to regulate the attorneys who practice law before the court and to assure that  
14 attorneys do not engage in conduct that disparages the administration of justice. In order to assist in this  
15 task, disciplinary rules and procedures are in place for persons practicing law in the Courts of the CNMI,  
16 and the CNMI like most States, has adopted the ABA Model Rules of Professional Conduct.

17 As stated in the Preamble to the Model Rules, "[t]he legal profession's relative autonomy carries with  
18 it special responsibilities of self-government. The profession has a responsibility to assure that its  
19 regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns  
20 of the bar." This view of the professional relationship places the burden on lawyers to observe the ethical  
21 requirements that are set out in the Model Rules and makes it essential that lawyers themselves maintain the  
22 integrity of the profession.

23 In addition to duties owed to clients, lawyers also owe duties to the general public. Members of the  
24 public are entitled to be able to trust lawyers to protect their property, liberty and lives. The community  
25 expects lawyers to exhibit the highest standards of honesty and integrity, and lawyers have a duty not to

1 engage in conduct involving dishonesty, fraud or interference with the administration of justice.

2       Lawyers also owe a duty to the legal system. Lawyers are officers of the court, and must abide by  
3 the rules of substance and procedure which shape the administration of justice. Lawyers must always  
4 operate within the bounds of the law, and cannot create or use false evidence or engage in illegal or improper  
5 conduct.

6       Complete candor and honesty is expected from lawyers, particularly when they appear, plead, or  
7 offer evidence before the courts. They have an obligation to the court as well as to the opposing party to  
8 make only truthful statements in their pleadings. The burden cast on the judiciary would be intolerable if  
9 it could not take at face value what is asserted by counsel.

10       As discussed above, the Court finds Respondents have breached their duty to their clients, the public  
11 and the Court. Specifically, the Court finds Respondents in violation of Model Rules 1.15(e), 3.3(a) and  
12 8.4(a, c-d) with regards to their failure to safeguard and later disgorge the one million one hundred thirty-  
13 eight thousand and five hundred dollars (\$1,138,500) which was part of the Estate of Angel Malite, making  
14 false statements to the Court in relation to the amount in question with respect to Atalig, violating the Model  
15 Rules of conduct involving dishonesty on part of the Respondents that is prejudicial to the administration  
16 of justice, and entering into an improper and illegal contingent fee agreement. The misconduct of  
17 Respondents detailed in this Order reflects adversely on an attorney's honesty, trustworthiness and fitness  
18 as a lawyer.

19       Attorneys found to be in violation of the Model Rules should be disciplined appropriately by way  
20 of this Court imposing a disciplinary result that will assure the public's confidence in the Judiciaries'  
21 regulation of the attorneys practicing in the CNMI.

22       Accordingly, the Court makes an initial determination that the appropriate sanction is the suspension  
23 of Respondents and now considers any relevant aggravating or mitigating factors. The Court has not been  
24 presented with any mitigating factors. The Court does, however, find aggravating factors, which it considers  
25 substantial and indicate a callous and gross indifference and disrespect for the Judiciary, legal profession,

1 the general public and the clients Respondents agreed to represent. In view of such aggravating factors, the  
2 Court believes that the imposition of suspension along with several conditions for future readmission is  
3 warranted.

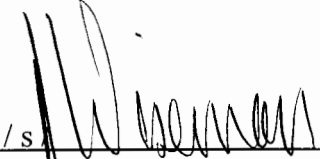
4 In conclusion, the Court believes that the Respondents' misconduct has resulted in serious injuries  
5 to the legal profession, clients, the public and the legal system in general through a disparagement of the  
6 administration of justice and finds that the appropriate discipline is indefinite suspension under the  
7 conditions stated below.

8 **IT IS HEREBY ORDERED:**

- 9 a. Respondents are hereby suspended forthwith, indefinitely from practicing law in the CNMI  
10 until the following conditions are complied with:
- 11 1. Respondents shall pay to the Court, to be held pending further order of the probate  
12 court, at least 10% of the funds they each received as attorney fees which have been  
13 ordered disgorged. In addition, each Respondent must present a proposed realistic  
14 payment plan, acceptable to the Court, of their respective balance of the funds that  
15 each Respondent must pay back.
  - 16 2. Respondents shall take and pass the Multistate Professional Responsibility  
17 Examination.
  - 18 3. Respondents shall pay any costs for the prosecution of this matter. This amount shall  
19 also be paid to the Court.
  - 20 4. Respondents shall comply with all provisions of Rule 15 of the NMI Disciplinary  
21 Rules which includes among other things, notices to clients and others and  
22 certifications to the Court.
  - 23 5. Respondents shall pay to any and all clients the sum of any unearned retainer fees.
  - 24 6. Disciplinary Counsel in this matter shall submit his attorney fees and costs of  
25 prosecution within fifteen (15) days of this Order.

1 **SO ORDERED** this 16<sup>th</sup> day of May, 2012.

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/s/ *David A. Wiseman*

**David A. Wiseman, Associate Judge**