

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

DISTRICT OF NEBRASKA,	)	
	)	
Petitioner,	)	8:11AD20
	)	
v.	)	
	)	FINDINGS AND RECOMMENDATION
JOHN M. CARTER,	)	
	)	
Respondent.	)	

The Nebraska Supreme Court entered a judgment of disbarment against the respondent, John M. Carter, on October 21, 2011. [State ex rel. Counsel for Discipline of Nebraska Supreme Court v. Carter, 282 Neb. 596, 2011 WL 5008559 \(2011\)](#). This court received notice of the disbarment from the Nebraska Counsel for Discipline on October 25, 2011. (Filing No. [1](#)).

A Notice and Order to Show Cause was served on the respondent on November 4, 2011. The notice and order directed Carter to explain, in writing, why he should not be disbarred from practice in this court. (Filing Nos. [2](#) & [3](#)). See also, [NEGenR 1.8\(e\)\(2\)](#). Carter timely responded on November 11, 2011. (Filing No. [4](#)). In his response, Carter argues he was not afforded a fair and impartial hearing in the state proceedings; the state ruling was not supported by clear and convincing evidence; assuming any ethical violation occurred, disbarment is an excessive sanction; and he is eligible to practice in the federal bar because he remains a member in good standing in the Iowa bar. (Filing No. [4](#)). Carter therefore claims the Nebraska judgment of disbarment cannot be considered as “conclusive evidence” that disbarment by this court is warranted, and this court should not impose reciprocal disbarment based on the Nebraska Court’s ruling. See [NEGenR 1.8\(e\)\(6\)](#).

The matter has been referred to the undersigned magistrate judge for findings and a recommendation. (Filing No. 5). The state disciplinary record was retrieved from the Nebraska Supreme Court, filed of record in this case, and reviewed. For the reasons discussed below, the undersigned magistrate judge recommends that the respondent be disbarred from practice before the United States District Court for the District of Nebraska.

#### STANDARD OF REVIEW

This court will impose the same discipline imposed by another jurisdiction unless, upon review of the proceedings before the disciplining jurisdiction, the respondent attorney shows, or this court finds:

- (A) the procedure was so lacking in notice or opportunity to be heard that it resulted in a deprivation of due process;
- (B) an infirmity of proof establishing the misconduct shows that the judge could not, consistent with his or her duty, accept as final the conclusion on that subject;
- (C) the imposition of the same discipline would result in injustice;
- (D) the established misconduct warrants substantially different discipline; or
- (E) the conduct found to warrant discipline in the other jurisdiction would not constitute a violation of the ethical standards stated in Nebraska General Rule 1.7(b) and, accordingly, no discipline should be imposed in this court.

[NEGenR 1.8\(e\)\(4\)](#). This court's review is based on the "face of the record" before the disciplining jurisdiction [NEGenR 1.8\(e\)\(4\)](#). See filing no. 6 (State Disciplinary Record).

## THE STATE DISCIPLINARY RECORD

On August 20, 2010, the Nebraska Counsel for Discipline filed formal disciplinary charges against the respondent. (Filing No. 6 (State Disciplinary File), at CM/ECF p. 1). The charges alleged Carter commingled personal funds and attorney trust funds, and he improperly withdrew amounts from his attorney trust fund for personal use. In his response filed on September 20, 2010, Carter stated money was removed from the trust account as payment for Carter's services, and checks written to two clients from his attorney trust fund account bounced because the bank failed to properly credit a cash deposit into the account. (Filing No. 6 (State Disciplinary File), at CM/ECF pp. 8-15, ¶¶ 11, 16-22, 28).

An evidentiary hearing was held before a referee, attorney Waldine Olson, on January 10 and January 13, 2011, and a hearing transcript ("TR") is included within the state record. (Filing No. 6 (State Disciplinary File), at CM/ECF pp. 52-327). John W. Steele, Nebraska Assistant Counsel for Discipline appeared on behalf of the relator; attorneys James W. Crampton and Timothy Ashford represented the respondent. (TR 2). Testimony was received from Carter, two of his clients, Norma Noland ("Noland") and Clifettia Rose ("Rose"), and Mildred Collins, a former bank employee who offered expert testimony on the respondent's behalf. (TR 3).

### 1. Evidence Before the Referee.

Carter graduated from Creighton University Law School in December of 2006. (TR 21). He was admitted to the Iowa Bar in April of 2007, and became a member of the Nebraska Bar in November of 2007. (TR 20-21, 76, 92). His law office was located in Omaha, Nebraska. (TR 21). Carter is an ordained minister, (TR 24), and prior entering law school, he was a law enforcement officer. (TR 22-23).

During the relevant time period, Carter had two attorney trust accounts: a Wells Fargo account in Nebraska, and a TierOne account in Iowa. (TR 14-15).

In September 2008, Carter began providing legal advice to Anna Charles' two daughters, Rose and Noland. (TR 24-25, 59, 197 & Ex. 14A). As of September 2008, Anna Charles was residing in a nursing home, and Henry Looby served as her conservator. (TR 109, 112, 184). Anna Charles no longer had cash assets to pay for nursing home bills, and the conservator was seeking court approval to sell her residence. Rose was living in the house and was unable to buy it or pay rent. Rose and Noland hired Carter to assist them with opposing the sale of the home. (TR 25-26, 176-77, 191-92). See also, filing no. 6 (State Disciplinary File), at CM/ECF p. 10 (Response to Formal Charges), ¶ 6.

Noland and Rose signed a fee agreement, and collectively paid a \$200.00 retainer for Carter's legal representation in stopping the home sale. (TR 25, 106-08, 110 & Ex. 14A). Carter entered his appearance as counsel for Noland and Rose in the conservatorship case to challenge the home sale. (TR 27). Anna Charles' home was not sold. Carter testified that the home sale was halted due to Carter's efforts; Noland testified that the home was not sold because some land in Texas was sold instead. (TR 25-26, 137, 182).

When Anna Charles passed away, her will named Noland as a co-personal representative of the estate. (TR 26). Noland asked Carter to prepare the opening pleadings and the documents for Noland's court appointment as the personal representative of Anna Charles' estate. (TR 27-28). Carter prepared the documents and eventually filed them for Noland. (TR 111).

The probate court concluded Noland was not administering the estate properly and asked Carter to become more involved and assist Noland in handling the estate assets and the paperwork required of a personal representative. (TR 28 & Ex. 11 at p. 2). Carter was the

attorney of record for the probate case, and although he asked to withdraw, the court denied the request. (TR 64).

In February of 2009, Anna Charles' conservator issued a check for \$7,334.61 to close out the guardianship and conservatorship. (TR 29, 112, 125). Whether directly or by way of Noland, Carter received the check, and on February 20, 2009, he deposited the \$7,334.61 check into his Wells Fargo client trust account. (TR 29-31, 113, 125 & Ex. 2). Checks were drawn from the account, and by February 28, 2009, the ending balance of the trust account was \$7,282.62. (TR 43 & Ex. 2). Carter could not explain why, in only eight days, the balance in the trust account as a whole dropped below the deposit amount for the Charles estate alone. (TR 44-47). Carter testified that he could not provide his computer records regarding when or why amounts were withdrawn from the trust account because his computer program for trust account entries "crashed," and the software company that created it was no longer in business. (TR 32, 41-42, 50-51, 96-98). He therefore attempted to reconstruct the trust account transactional record by creating a spreadsheet with entries extrapolated from his bank statements. (TR 36, 42-43 & Ex. 1).

The reconstructed trust account record indicates Carter withdrew \$1,800.00 from the trust account on March 17, 2009 as payment for his attorney fees on the Charles probate case. (TR 37-38, 131-132 & Ex. 1 at p. 2). On April 3, 2009, Carter withdrew an additional \$4,500.00 from the trust account. He testified that the \$4,500.00 withdrawal was also for attorney fees owed by the Charles estate. (TR 52, 114, 132-33, Ex 1 at p. 2). With this withdrawal, the Wells Fargo trust account balance dropped to \$1,074.62. (TR 51-52). Prior to the evidentiary hearing, Carter never mentioned to the Counsel for Discipline that the \$4,500.00 withdrawal was made in payment for attorney fees. (TR 91).

Carter submitted itemized billing statements to the Counsel for Discipline on January 4, 2010. (TR 55 & Exs. 4 &5). During his testimony, Carter explained that the exhibit 4 billing statement was for work done on the Charles estate from September of 2008 through December of 2009, but it was not a complete bill. (TR 55-56). Carter testified that the exhibit 5 billing statement covered legal fees for the estate, for halting the sale of Anna Charles' home, and for various "other things" requested by Noland and her son. Although exhibit 5 is dated April 22, 2009, it contains 12 billing entries for work ostensibly done after that date, the latest being December 30, 2009. (TR 57, 62 & Ex. 5).

Although Carter deposited the \$7,334.61 from the Charles estate into his attorney trust account, the balances in the account dropped below that deposit amount as follows:

February 27, 2009	\$7,282.62
March 31, 2009	\$5,324.62
April 3, 2009	\$1,074.62
June 5, 2009	\$6,454.38
June 8, 2009	\$5,804.38
June 9, 2009	\$4,804.38
June 11, 2009	\$4,619.38
June 12, 2009	\$1,969.38
June 16, 2009	\$1,069.38
June 18, 2009	\$ 569.38
June 19, 2009	\$1,569.38
June 22,2009	\$ 569.38

Filing No. 6 (State Disciplinary File), at CM/ECF p. 2 (Formal Charges), ¶¶ 8-9; at CM/ECF p. 11 (Response to Formal Charges), ¶¶ 8-9.

Carter's relationship with Noland and Rose deteriorated during the summer of 2009. (TR 63). Noland objected to Carter's withdrawal of fees from the trust assets, and by mid-September, Noland had sent a complaint to the Nebraska Counsel for Discipline. See Ex. 9. In September or October of 2009, in an effort to resolve his controversy with Noland and Rose and to avoid a disciplinary complaint, Carter agreed to pay \$3,300.00 to each of them. (Filing No. 6 (State Disciplinary File), at CM/ECF p. 13 (Response to Formal Charges), ¶ 19 & TR 65, 114). The trust account balance was less than \$1,000.00 when this agreement was reached, (TR 67), but Carter did not advise Noland and Rose that the balance had dropped that low. (TR 142).

Carter testified that on October 12, 2009, he deposited into his TierOne client trust account a \$43,350.00 check for another client, Shirley Suber, and \$6,600.00 in cash he retrieved from a strong box in his office. (TR 69-70, 73). Carter testified that the money in the strong box came from his personal earnings; in his earlier written response to the disciplinary charge, Carter stated he had removed the money from the trust account during the summer of 2009 and placed it in the strongbox. (TR 67, 82, 115 & Ex. 11 at p. 6).

The deposit slip for the TierOne deposit made on October 12, 2009 lists the \$43,350.00 check, but not a cash deposit. (Exs. 6 & 7). Carter claims he left TierOne Bank on October 12, 2009 with no receipt to show he deposited \$6,600.00 in cash. (TR 75, 85-86, 115). He explains he deposited the check and cash without completing a deposit slip, and he never received a deposit slip from the bank teller because the bank's computer system was down while the bank was being transferred to a new owner. (TR 74, 85, 128-29). TierOne Bank was sold or transferred to Great Western Bank in June of 2010, eight months after the deposit transaction in question. (Ex. 13).

On October 19, 2009, Carter wrote two checks for \$3,300.00 and sent one to Noland and one to Rose. The checks bounced. (TR 76, 114 & Ex. 8). Carter contacted the Nebraska Counsel for Discipline. (TR 116).

Carter claims his TierOne account balance was or should have been sufficient to cover the checks written to Noland and Rose. He claims his TierOne bank statement verifies he deposited \$49,950 on October 12, 2009. (See Ex. 8). Although Mildred Collins, a banking expert, testified that the TierOne banking statement was confusing, (TR 163, 168), the statement clearly shows Carter deposited \$43,350.00, and the two \$3,300.00 checks which had been subtracted from the account as withdrawals were added back to the account total when the checks failed to clear. Therefore, the amounts reflected in the deposit column are the \$43,350.00 check, plus the reversal of account withdrawals for the two \$3,300.00 checks which bounced. (TR 127 & Ex. 8). Carter also claims the TierOne bank teller failed to accurately post the amount he deposited on October 12, 2009. Specifically, he claims the teller either converted his \$6600 cash deposit to her own use, or she made a transcription error by pressing the digit "3" rather than the digit "9" when posting the deposit, resulting in a \$43,350.00 rather than a \$49,950.00 deposit amount—a \$6,600.00 error. Mildred Collins testified that due to the keyboard layout, the error of typing a "3" rather than a "9" is common in the banking industry.

Carter has a pending lawsuit against TierOne Bank, Carter v. Federal Deposit Insurance Corp., 8:10CV437, to recover for its alleged failure to correctly post his cash deposit. (TR 127).

In December of 2009, Carter provided cashiers check in the amount of \$3,300.00 to Noland and Rose. (TR 117 & Exs. 15, 16, and 19).



Carter's itemized billing statement dated December 30, 2009 reflects that as of March 17, 2009, Carter had provided legal services for the Charles probate case totaling only \$1,696.00. But his itemized billing statement dated April 22, 2009 reflects that as of March 17, 2009, the bill for his legal services to the estate totaled \$2,607.00. (Compare Exs. 4 and 5). Carter and Noland never entered into a written fee agreement for work performed by Carter on behalf of the estate, the probate court did not approve Carter's fee payment, and there was no written approval to remove the funds, but Carter claimed Noland and Rose had orally agreed to pay him for the services he provided. (TR 38-39, 54-55, 83, 131, 135). Noland and Rose testified that Carter was never hired to assist with the probate matter; as to the estate issues, there was no verbal agreement for the payment of fees; Noland never received a bill for Carter's services on the estate matter; and Carter was never authorized to pay himself. (TR 173, 175-76, 192-93).

By the time of the evidentiary hearing, Carter had taken CLE classes on how to manage client trust fund accounts, and he was willing to have someone else perform the actual oversight of his trust accounts. (TR 122). Carter identified his fault and his mistake as "not documenting that meeting with those women to say that they authorized" his withdrawal from the account for legal fees, and failing to have them "sign something saying that. . . ." (TR 123).

## 2. The Referee's Decision.

The evidentiary hearing before the referee concluded on January 13, 2011. The Report of Referee was filed on February 1, 2011. (Filing No. 6 (State Disciplinary File), at CM/ECF pp. 23-41). The referee's decision includes a detailed description of his factual findings, all of which are clearly supported by the evidence of record. The referee found, by clear and convincing evidence, that:

Carter withdrew \$6,300.00 from his Nebraska client trust account without authorization from his clients;

Carter's Nebraska trust account "was out of trust on the following dates with the then balances indicated: April 3, 2009, \$1,074.62; June 12,2009, \$1,969.38; June 16,2009, \$1,069.38; June 18,2009, \$569.38; June 19,2009, \$1,569.38; and June 22,2009, \$569.38;"

Carter "paid himself fees before they were earned, attempted to conceal the withdrawal by repaying the money and characterizing it as a 'distribution' from the estate, and, when that ruse failed, created after-the-fact billing statements to make it appear he had fully earned the money before it was withdrawn;" and

"From April 2009 until December 2009, the \$6,300.00 was in [Carter's] possession or converted to his personal use and unaccounted for."

(Filing No. [6](#) (State Disciplinary File), (Referee Decision), at CM/ECF p. 34). The referee concluded, by clear and convincing evidence, that Carter engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. (See Neb.Ct. R. § 3-508.4(c)). The referee's opinion explains:

First, he withdrew client funds from the trust account without the clients' authorization. He gave conflicting explanations for withdrawing the funds. He attempted to repay the missing money with insufficient funds checks. He blamed the shortage in his Iowa trust account on either theft by a bank employee or an accounting error, neither of which is supported by the evidence. It is also inferable that respondent did not deposit \$6,600.00 in cash on October 12,2009 as he has claimed. . . . Such conduct, without question, involves dishonesty, deceit, and misrepresentation.

(Filing No. [6](#) (State Disciplinary File), (Referee Decision), at CM/ECF pp. 35-36).

The referee thoroughly analyzed comparable Nebraska case law to determine the appropriate sanction. (Filing No. [6](#) (State Disciplinary File), (Referee Decision), at CM/ECF p. 40). The referee explained that "misappropriation of client funds is one of the most serious

violations of duty that an attorney owes to his clients. It is a serious offense that involves moral turpitude and undermines the public confidence in the legal profession.” (Filing No. 6 (State Disciplinary File), (Referee Decision), at CM/ECF p. 39). Absent extraordinary mitigating circumstances, "the appropriate discipline in cases of misappropriation or commingling of client funds is disbarment." (Filing No. 6 (State Disciplinary File), (Referee Decision), at CM/ECF p. 36). Finding no extraordinary mitigating circumstances to overcome the presumption of disbarment, the referee recommended disbarment. (Filing No. 6 (State Disciplinary File), (Referee Decision), at CM/ECF p. 40).

3. Nebraska Supreme Court Review.

Carter’s counsel filed “Exceptions to the Report of the Referee” on February 10, 2011, (filing no. 6 (State Disciplinary File), at CM/ECF p. 42-43), and filed a brief before the Nebraska Supreme Court on March 31, 2011. Carter argued:

1. The referee erred in finding that Carter did not cooperate and accept responsibility.
2. The referee erred in finding that the estate received money from the sale of a property in Texas.
3. The referee made numerous irrelevant factual findings in the report including findings that characterize the accounting presented as "after the fact," thereby making the Carter appear deceptive while omitting Carter’s explanation that he would have to reconstruct the his billing.
4. The referee erred in overruling the Carter’s jurisdictional objection to the review of his Iowa Trust Account.
5. The referee erred in finding that the respondent was not credible.

[State ex. rel. Nebraska Counsel for Discipline v. Carter, 2011 WL 1665061](#), (respondent's brief), at p. 5. In his argument summary, Carter stated , “[t]he Respondent admits to violating his oath of office and the Nebraska Court Rules of Professional Conduct. . . .” Id. at p. 7.

Upon independent judicial review, the Nebraska Supreme Court concluded Carter committed the alleged ethical violations, and the proper sanction was disbarment.

The Nebraska Court denied Carter's jurisdictional challenge, holding:

It is the conduct of a Nebraska lawyer in the representation of Nebraska residents which is before us in this case. Carter is charged with misappropriating client funds deposited in a trust account in Nebraska. The fact that he subsequently utilized another trust account in an Iowa bank in an attempt to repay the funds does not defeat our disciplinary jurisdiction.

[Counsel for Discipline v. Carter, 2011 WL 5008559](#), 5.

The Nebraska Court summarily rejected Carter's claim that the referee erred in concluding Carter was uncooperative or failed to accept responsibility, or in finding the sale of Anna Charles' home was averted through avenues other than Carter's legal representation. As the Nebraska Court explained, the referee never made these findings. [Counsel for Discipline v. Carter, 2011 WL 5008559](#), 7.

The primary argument raised before the Nebraska Supreme Court and addressed by that court in its opinion was whether the sanction of disbarment was too harsh. Carter argued that "[b]ased on the evidence presented on the Respondent's lack of previous disciplinary issues, and his actions taken as a whole, Respondent should be [suspended] and placed upon probation for a period following reinstatement." [Id.](#) at p. 7.

In considering the sanction, the Nebraska Court determined there was clear and convincing evidence that Carter paid fees to himself before they were earned, tried to conceal these withdrawals by repaying the money and characterizing it as a distribution from the estate, and after this ruse was discovered, created after-the-fact billing statements to make it appear

he had fully earned the money before it was withdrawn. [Counsel for Discipline v. Carter, 2011 WL 5008559](#), 6. Upon consideration of the Nebraska ethical rules and decisions, the Nebraska Court held:

Misappropriation alone is presumptive grounds for disbarment, but here it is aggravated by an apparent attempt to conceal what had occurred from the clients and from the Counsel for Discipline. Viewed in its entirety, Carter's conduct indicates a lack of concern for the protection of the public, the profession, and the administration of justice. On this record, we cannot conclude that there are extraordinary mitigating circumstances which would justify departure from the general rule that a lawyer's misappropriation of client funds should result in disbarment. Upon due consideration, we conclude that disbarment is the appropriate sanction.

[Counsel for Discipline v. Carter, 2011 WL 5008559](#), 8.

#### ANALYSIS

“Though admission to practice before a federal court is derivative from membership in a state bar, disbarment by the State does not result in automatic disbarment by the federal court.” [Theard v. United States, 354 U.S. 278, 281-282 \(1957\)](#). State disbarments are not binding upon federal courts, but they are entitled to great respect. [In re Ruffalo, 390 U.S. 544, 547 \(1968\)](#); [Theard, 354 U.S. at 282](#). As reflected in this court’s local rules, (see [NEGenR 1.8\(e\)\(4\)](#)), a federal court may rely upon a state disciplinary determination provided the attorney received notice and an opportunity to be heard on the state charges, the state’s findings were supported by evidence, and there is no “grave reason” to ignore the state’s decision. [Selling v. Radford, 243 U.S. 46, 51 \(1917\)](#).

The state disciplinary record affirms that Carter received notice of all charges against him. A hearing was held on those charges and at the hearing, Carter was afforded an

opportunity to present evidence and cross-examine the Counsel for Discipline’s witnesses. Carter appealed the findings of the referee to the Nebraska Supreme Court, and fully briefed his claims before that forum. He was represented by counsel throughout. Carter’s claim that he was denied a fair and impartial hearing in the state proceedings lacks merit.

Carter also argues the state disciplinary ruling was not supported by clear and convincing evidence of misconduct. As stated in this court’s local rules, “[a]ttorneys must refrain from conduct unbecoming of a member of the bar.” [NEGenR 1.7\(b\)\(2\)](#).

The phrase “conduct unbecoming a member of the bar” must be read in light of the “complex code of behavior” to which attorneys are subject. . . . Essentially, this reflects the burdens inherent in the attorney’s dual obligations to clients and to the system of justice. . . . Membership in the bar is a privilege burdened with conditions. An attorney is received into that ancient fellowship for something more than private gain. He becomes an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice.

[In re Snyder, 472 U.S. 634, 644 \(1985\)](#) (internal citations omitted).

As the summary of the state record indicates, there was ample evidence to support a finding that Carter misappropriated client funds, allowed the attorney trust account to be depleted, made unauthorized disbursements to himself from the Charles trust account assets, and attempted to conceal this conduct by creating a contrived fee and expense ledger. Carter admitted his conduct violated ethical standards in his brief before the Nebraska Supreme Court. Contrary to Carter’s argument, the record reveals clear and convincing evidence that Carter violated this court’s ethical standards by engaging in “conduct unbecoming a member of the bar.” [NEGenR 1.7\(b\)](#).

Carter claims disbarment is an excessive sanction for the conduct at issue. The court disagrees. As reflected in the referee’s ruling and the Nebraska Supreme Court’s decision,

under Nebraska’s law and disciplinary rules, commingling and misappropriating client funds is considered a serious breach of an attorney’s duty to the client and the administration of justice, and such conduct warrants disbarment. Federal law is no different. Violating the lawyer’s oath of office by misappropriating client funds erodes the public’s trust in the profession of law, and justifies the sanction of disbarment. [In re Strickland, 453 U.S. 907, 910 \(1981\)](#)(Burger, C. J. and Rehnquist, J., dissenting)(remanded by the majority on procedural grounds only). See also, [In re Zdravkovich 634 F.3d 574, 580-581 \(D.C. Cir. 2011\)](#) (holding it was not unjust to impose reciprocal disbarment where the state court concluded the attorney intentionally misappropriated the client’s funds); [In re Mitrano, 335 Fed.Appx. 297, 2009 WL 1561413 \(4th Cir. 2009\)](#)(imposing reciprocal disbarment was warranted where the attorney had notice of charges against him and opportunity to be heard in the lower court, and the evidence supported the District's finding that the attorney misappropriated a check payable to his client); [In re Bailey, 450 F.3d 71 \(1st Cir. 2006\)](#)( holding the district court did not err by refusing to convene a hearing on a reciprocal attorney disciplinary proceeding based on allegations that attorney misappropriated client funds where the attorney’s additional evidence would not undermine the underlying rationale for disbarment); [Wrighten v. U.S., 550 F.2d 990 \(4th Cir. 1977\)](#) (holding that attorney’s pleadings which acknowledged commingling of personal and office funds, although ostensibly due to lack of experience and training, is an admission of wrongdoing of sufficient magnitude to warrant disbarment); [In re Doe, 95 F.2d 386 \(2d Cir. 1938\)](#) (stating disbarment is fitting when an attorney has embezzled a clients’ property); [Thomas v. Ogilby, 44 F.2d 890 \(D.C. Cir. 1930\)](#)(holding an attorney who misappropriated a clients’ money was properly disbarred).

Imposing the sanction of disbarment will not “result in injustice,” ([NEGenR 1.8\(e\)\(4\)\(C\)](#)), and Carter’s misconduct of commingling client and personal funds and misappropriating client funds does not warrant “substantially different discipline” than disbarment. [NEGenR 1.8\(e\)\(4\)\(D\)](#). While Carter may remain in good standing in the Iowa

bar, he is not thereby vested with a right to practice in the United States District Court for the District of Nebraska. This court has a continuing and separate obligation to independently determine who is fit to practice in its courts. Based on the “face of the record” before the Nebraska Supreme Court, ([NEGenR 1.8\(e\)\(4\)](#)), this court should consider the final adjudication of that forum as conclusively establishing that Carter is guilty of misconduct sufficient to justify disbarment.

Accordingly,

IT IS HEREBY RECOMMENDED to the Honorable Laurie Smith Camp, Chief United States District Court Judge, that the court enter an order:

- 1) finding the respondent, John M. Carter, has failed to show cause why he should not be disbarred from practice before the United States District Court for the District of Nebraska; and
- 2) disbarring the respondent from practice before this court in accordance with Nebraska General Rule 1.8 (e).

DATED this 19th day of January, 2012.

BY THE COURT:

*s/ Cheryl R. Zwart* \_\_\_\_\_  
United States Magistrate Judge

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