

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

-----  
In Re Petition for Disciplinary Action  
against CAROL LYNN O'GARA,  
a Minnesota Attorney,  
Registration No. 230790.  
-----

**PETITION FOR  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 23, 1992. Respondent currently practices law in Minneapolis, Minnesota.

INTRODUCTION

On May 27, 2004, respondent and the Director entered into a stipulation for probation. Respondent's probation was based upon an admission that respondent failed to maintain proper trust account books and records pursuant to Rule 1.15(a), (b), (c), and (h), Minnesota Rules of Professional Conduct (MRPC), as interpreted by Lawyers Professional Responsibility Board Opinion 9.<sup>1</sup> On June 7, 2006, respondent's inability to bring her trust account books and records into compliance with Rule 1.15, MRPC, and Appendix 1 to the MRPC, resulted in a two-year extension of her probation. Respondent's probation ends on June 7, 2008.

\_\_\_\_\_  
<sup>1</sup> Opinion 9 of the Lawyers Professional Responsibility Board was repealed on January 26, 2006, and now appears as Appendix 1 to the 2005 MRPC.

Among the conditions of respondent's probation was that respondent would abide by the Minnesota Rules of Professional Conduct and commit no further unprofessional conduct, and that if, after giving respondent an opportunity to be heard, the Director concluded that respondent had not complied with the conditions of the probation, then the Director could file this petition without the necessity of Panel proceedings pursuant to Rule 8(d)(3), RLPR.

The Director, after giving respondent an opportunity to be heard, has concluded that respondent has not complied with the conditions of the probation.

Respondent has committed the following unprofessional conduct warranting public discipline:

#### FIRST COUNT

##### A. V.V. v. Walker Methodist Health Center, Inc.

1. V.V., a vulnerable adult, retained respondent in December 2005 to pursue a claim against Walker Methodist Health Center, Inc. (WMHC), a medical care facility, for improper touching/sexual assault. On April 28, 2006, respondent filed a complaint against WMHC on theories of negligent hiring, negligent supervision and negligent retention. Respondent did not name the alleged perpetrator as a defendant in V.V.'s lawsuit.

2. On May 26, 2006, WMHC filed an answer to V.V.'s complaint affirmatively alleging that the complaint was deficient because it failed to include the requisite affidavit of expert review. WMHC demanded production of the affidavit. Respondent did not comply with WMHC's demand.

3. On July 19, 2006, WMHC filed a motion to dismiss on the theory that the underlying case was essentially a medical malpractice case and as such was unsupported by a professional affidavit as required by Minn. Stat. § 145.682. On August 9, 2006, respondent filed a memorandum of law opposing WMHC's motion to

dismiss; however, her submission was untimely. On August 16, 2006, WMHC's motion was heard before the court. Respondent failed to appear for the hearing.

4. On September 4, 2006, the court issued its order granting WMHC's motion to dismiss. The court determined that respondent was required to serve an affidavit with the summons and complaint and, because she failed to do so within sixty days of WMHC's demand for production, dismissal was mandatory. The court rejected any argument that V.V.'s cause of action constituted a negligence action as distinguished from a medical malpractice action, thereby obviating the need for an expert affidavit. The court found that WMHC is a health care provider; therefore, the statute applied to V.V.'s case.

5. On or about September 12, 2006, opposing counsel served respondent with the court's order dismissing V.V.'s case. Respondent did not forward the order to V.V. and did not file the appeal.

6. From about November 15, 2006, to December 15, 2006, V.V. and her mother contacted respondent at least twenty times for information regarding the status of V.V.'s case. Respondent did not accept any of their calls nor did she return their messages.

7. On January 7, 2007, V.V. called and was finally able to speak with respondent. Respondent scheduled an appointment with V.V. for the afternoon of January 10. The morning of January 10, however, respondent contacted V.V. to reschedule the appointment for January 12. On January 12, respondent failed to appear and did not call V.V. to let her know she would not be attending. On January 15, V.V. called respondent's office again. This time, respondent's secretary said respondent was in court. January 15 was a federal holiday; court would not have been in session. V.V. called later that day and spoke with respondent, who indicated she would meet with

V.V. on January 17. On January 17, respondent's secretary called V.V. to cancel the meeting.

8. V.V. passed away in late January; neither she nor her mother ever learned of the outcome of V.V.'s case from respondent.

9. Respondent's conduct in failing to file the requisite expert affidavit in support of her client's claim, in failing to timely file her opposition memorandum and in missing the appeal deadline without informing her client that the matter had been dismissed or of her appeal rights, violated Rules 1.1 and 1.3, MRPC. Respondent's conduct in failing to communicate with her client regarding the status of the case violated Rule 1.4, MRPC. Respondent's conduct in failing to appear for a hearing violated Rules 3.2, 3.4(c) and 8.4(d), MRPC.

#### SECOND COUNT

##### B. M.A., I.A. and A.A. v. Modern Service Insurance Company

10. Respondent and her co-counsel represented M.A. and A.A. in a personal injury matter. The matter was scheduled for jury trial on November 13, 2006. On October 24, 2006, however, the parties reached a settlement agreement in the amount of \$7,000 for M.A.'s claim and \$6,000 for A.A.'s claim. On November 9, 2006, opposing counsel, Jack Moore, sent respondent a settlement draft along with a stipulation for dismissal and release. Moore requested that respondent return the signed stipulation and release as soon as possible.

11. Respondent advised Moore that I.A. (M.A.'s husband, whose name also appeared on the settlement draft) could not be located and requested that Moore re-issue the settlement draft without his name on it. Moore agreed to re-issue the settlement draft in exchange for a release whereby plaintiffs' counsel agreed to indemnify defendant from any consortium claim that I.A. may have.

12. On December 14, 2006, Moore sent the revised release, requested the return of the signed release and requested confirmation that the dismissal stipulation had been signed and filed with the court. Neither respondent nor co-counsel responded.

13. On January 5, 2007, Moore sent the re-issued settlement draft to respondent, requested the return of the signed revised release of M.A.'s claim and again requested confirmation that the dismissal stipulation had been filed. Neither respondent nor co-counsel responded.

14. On January 25, 2007, Moore for the third time requested confirmation that the dismissal stipulation had been filed and requested the return of the signed releases of A.A. and M.A.'s claims. Neither respondent nor co-counsel responded. Following this letter, Moore left two messages each for respondent and co-counsel; neither respondent nor co-counsel returned Moore's messages.

15. On February 13, 2007, Moore sent a final letter to both respondent and co-counsel requesting both signed releases and the signed dismissal stipulation by February 23. Moore's letter notified counsel that if they missed the February 23 deadline, he would bring a motion to enforce the terms of the settlement agreement and seek \$500 in attorney fees.

16. Moore served respondent and co-counsel separately by mail with a notice of motion and motion on February 27, 2007, having not heard from respondent or co-counsel by the February 23 deadline. The matter was scheduled for hearing on March 15, 2007, at 1:45 p.m., before the Honorable Marilyn J. Kaman.

17. Neither respondent nor co-counsel appeared in person for the hearing, as required. The court made contact with respondent's firm at the time of the hearing and permitted respondent to appear by telephone.

18. The court granted Moore's motion in its entirety.

19. Respondent's conduct in failing to timely provide Moore with a signed settlement release, in failing to timely file the dismissal stipulation and in failing to appear before the court for a scheduled hearing violated Rules 3.2, 3.4(c), and 8.4(d), MRPC.

### THIRD COUNT

#### C. Non-Cooperation with Probation

20. On April 17, 2004, respondent stipulated to a two-year probation. Pursuant to the terms of her probation, respondent agreed to fully cooperate with the Director's Office and respond to the Director's correspondence by the due date. Respondent further agreed to submit her complete trust account books and records on a quarterly basis.

21. Over the next eighteen (18) months, respondent failed to promptly respond in a timely manner to eight (8) different letters from the Director's Office. On February 14, 2006, the Director scheduled a meeting with respondent and requested she bring certain books and records with her. Respondent appeared for the meeting with the requested records.

22. However, when respondent failed to submit her 2006 first quarter records, due on April 15, 2006, the Director and respondent stipulated to an extension of respondent's probation for an additional two years. In addition, under the terms of the extended probation, respondent agreed to produce her trust account books and records on a monthly basis.

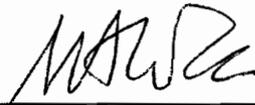
23. Nonetheless, over the past fourteen (14) months, respondent has failed to timely submit her trust account books and records on a regular basis, notwithstanding

seven (7) different letters from the Director's Office reminding her to provide said books and records.

24. Respondent's conduct in failing to comply with the terms of her probation and the Director's efforts to monitor her compliance therewith violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent's license to practice law 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.

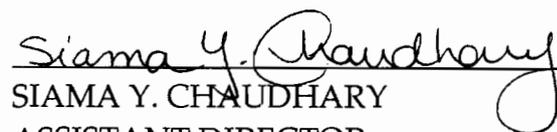
Dated: Nov. 14, 2007.



---

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



---

SIAMA Y. CHAUDHARY  
ASSISTANT DIRECTOR  
Attorney No. 350291