

FILE NO. A15-1946

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against DAVID EDWIN WANDLING,
a Minnesota Attorney,
Registration No. 0232312.

**AMENDED STIPULATION
FOR DISCIPLINE**

THIS AMENDED STIPULATION is entered into by and between Susan M. Humiston, Director of the Office of Lawyers Professional Responsibility, hereinafter Director, and David Edwin Wandling, attorney, hereinafter respondent.

WHEREAS, respondent has concluded it is in respondent's best interest to enter into this amended stipulation,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the undersigned as follows:

1. Pursuant to the Rules on Lawyers Professional Responsibility (RLPR), the parties agree to dispense with further proceedings under Rule 14, RLPR, and respondent agrees to the immediate disposition of this matter by the Minnesota Supreme Court under Rule 15, RLPR.

2. Respondent understands this stipulation, when filed, will be of public record.

3. It is understood that respondent has certain rights pursuant to Rule 14, RLPR. Respondent waives these rights, which include the right to a hearing before a referee on the petition; to have the referee make findings and conclusions and a

recommended disposition; to contest such findings and conclusions; and to a hearing before the Supreme Court upon the record, briefs and arguments.

4. Respondent withdraws the answer filed herein and unconditionally admits the allegations of the petition, except for paragraph 4 of the petition.

Respondent denies paragraph 4 of the petition and affirmatively states that he made restitution of all misappropriated funds prior to detection of the misappropriation. The Director concurs that respondent has made restitution of all misappropriated funds, and that he did so before any misappropriation was discovered.

5. Respondent understands that based upon these admissions, this Court may impose any of the sanctions set forth in Rule 15(a)(1) - (9), RLPR, including making any disposition it deems appropriate. Respondent understands that by entering into this stipulation, the Director is not making any representations as to the sanctions the Court will impose.

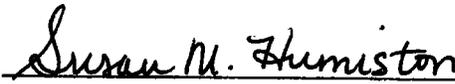
6. The Director and respondent join in recommending that the appropriate discipline is a 30-month suspension pursuant to Rule 15, RLPR. The suspension shall be effective 14 days from the date of the Court's suspension order. The reinstatement hearing provided for in Rule 18, RLPR, is not waived. Reinstatement is conditioned upon: (1) payment of costs in the amount of \$900 plus interest pursuant to Rule 24(d), RLPR; (2) compliance with Rule 26, RLPR; (3) successful completion of the professional responsibility examination pursuant to Rule 18(e); and (4) satisfaction of the continuing legal education requirements pursuant to Rule 18(e), RLPR.

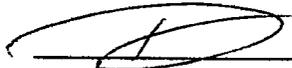
7. This amended stipulation is entered into by respondent freely and voluntarily, without any coercion, duress or representations by any person except as contained herein.

8. Respondent hereby acknowledges receipt of a copy of this amended stipulation.

9. Respondent has been advised by the undersigned counsel concerning this amended stipulation and these proceedings generally.

IN WITNESS WHEREOF, the parties executed this amended stipulation on the dates indicated below.

Dated: May 25, 2016. 
SUSAN M. HUMISTON
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 0254289
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

Dated: May 2, 2016. 
TIMOTHY M. BURKE
SENIOR ASSISTANT DIRECTOR
Attorney No. 019248x

Dated: MAY 18, 2016. 
DAVID EDWIN WANDLING
RESPONDENT
Attorney No. 0232312

Dated: May 20, 2016. 
ERIC T. COOPERSTEIN
ATTORNEY FOR RESPONDENT
Attorney No. 0210201
800 Nicollet Mall, Suite 2600
Minneapolis, MN 55402
(612) 439-2299

DIRECTOR'S MEMORANDUM

The most serious misconduct is respondent's misappropriation of client funds. The Court has long held that absent substantial mitigating circumstances, intentional misappropriation of client funds warrants disbarment. *In re Fairbairn*, 802 N.W.2d 734, 742 (Minn. 2011); *In re Rooney*, 709 N.W.2d 263, 268 (Minn. 2006).

In this matter, respondent raised multiple factors in mitigation which, if proven, would serve to mitigate the sanction for respondent's misconduct. The Director acknowledges that respondent made restitution of all misappropriated funds before the misappropriations were discovered. The Court has held that "complete restitution of misappropriated funds can constitute a mitigating factor so long as the restitution is not prompted by an attorney's fear of getting caught." *Fairbairn*, 802 N.W.2d at 746 (citing *In re Berg*, 741 N.W.2d 600, 605 (Minn. 2007), and *Rooney*, 709 N.W.2d at 271).

Additionally, it does not appear that respondent's misconduct directly harmed any client(s). Lack of harm to clients can constitute a mitigating factor. *Rooney*, 709 N.W.2d at 271.

Respondent also claims stress constitutes a factor which should mitigate the sanction. Respondent's claims of stress are to be based on the mental health issues he was suffering. Although the Director does not believe that respondent can establish these mental health issues constitute mitigation as defined in *In re Weyhrich*, 339 N.W.2d 274, 275 (Minn. 1983), and its progeny, such claims have been recognized as a factor which can contribute to a claim of mitigation based on stress. *Fairbairn*, 802 N.W.2d at 744. Respondent's claim of mitigation based on stress is also based on the guilt he was feeling from his decision to seek a divorce. The Court has recognized "extreme" or "extraordinary" stress can constitute a mitigating factor. *Id.*

Based on respondent's restitution before discovery and in recognition of his claims of mitigation based on the lack of harm to any clients and stress, the Director believes that a 30-month suspension is an appropriate discipline.