FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against GARY K. WOOD,
a Minnesota Attorney,
Registration No. 118722.

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 21, 1977. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On October 23, 1987, respondent was issued an admonition for failing to pursue a workers' compensation matter and failing to respond to a client's telephone calls in violation of Rules 1.3 and 1.4, Minnesota Rules of Professional Conduct (MRPC).

B. On September 13, 1996, respondent was issued an admonition for client neglect and non-communication in violation of Rules 1.3 and 1.4, MRPC.

C. On March 28, 2000, respondent entered into a stipulation for private probation for endorsing settlement checks without permission from his law firm; failing to maintain required trust account books and records; failing to provide an accounting

for money withheld from a settlement; failing to diligently pursue a client matter; practicing law while on restricted status; failing to pay a professionally-incurred debt; and failing to cooperate in a disciplinary investigation in violation of Rules 1.3, 1.4, 1.15, 1.15(b)(3), 5.5, 8.1(a)(3), and 8.4(c) and (d), MRPC, and Lawyers Professional Responsibility Board Opinion No. 9.

D. On April 16, 2001, respondent entered into a stipulation to extend his private probation for failing to pay a professionally-incurred debt in violation of Rule 8.4(d), MRPC.

E. On March 25, 2003, respondent was issued an admonition for failing to diligently pursue a client matter in violation of Rule 1.3, MRPC.

F. On February 26, 2004, respondent was issued an admonition for failing to diligently pursue a client matter and failing to communicate with his client in violation of Rules 1.3 and 1.4, MRPC.

FIRST COUNT

David Espeland Matter

1. In January 1999 David Espeland retained respondent to represent him in a civil matter.

2. Respondent subsequently represented Espeland in several other matters between 1999 and 2001, some of which involved issues pertaining to Espeland's business partnerships. Neither Espeland nor his business partners signed retainer agreements for these subsequent representations.

3. On July 16, 1999, respondent and Espeland met at a bank. Due to respondent's financial problems, more specifically a foreclosure proceeding against respondent's home, Espeland agreed to loan respondent $20,644.96.

4. Respondent drafted and signed a handwritten promissory note in the lobby of the bank confirming his receipt of the funds and stating the note was payable on demand within 30 days if respondent failed to diligently seek refinancing through an

approved lender. Espeland presented respondent with a cashier's check in the amount of $20,644.96.

5. Both respondent and Espeland understood this transaction to be a short term loan (30 to 90 days) which would be repaid in full when respondent secured refinancing on his home.

6. Respondent did not advise Espeland in person or in writing that he should seek independent counsel regarding the transaction or give Espeland sufficient opportunity to seek the advice of independent counsel. There was no independent written consent from Espeland.

7. Respondent did not secure refinancing that would allow him to pay the funds owed to Espeland within 90 days. Respondent did secure financing in September 2000. Respondent failed to repay any funds to Espeland at the time.

8. On April 2, 2004, Espeland filed a complaint against respondent with the Director's Office.

9. On April 27, 2004, in response to Espeland's complaint, respondent sent to the Director and Espeland an invoice illustrating that respondent applied the amount of the loan from Espeland as a credit towards legal services provided by respondent for Espeland and for litigation matters concerning business partnerships in which Espeland had an interest. There was no agreement between Espeland and respondent for repayment in this manner, and Espeland was not aware that respondent was repaying the amount owed to Espeland in this manner.

10. Respondent's conduct in the Espeland matter violated Rule 1.8(a), MRPC.

SECOND COUNT

Shahram Vafaei-Makhsoos and Enayat Vafaei-Makhsoos Matters

11. Respondent represented Enayat Vafaei-Makhsoos and his son Shahram Vafaei-Makhsoos in several matters.

12. In the latter half of 2001, Shahram asked respondent to represent him regarding an escrow held by West Title Company. Respondent agreed to work on resolving the title issues so the escrow could be released.

13. Respondent failed to take any action on the West Title matter as agreed.

14. On February 14, 2002, Shahram called respondent regarding his progress on the West Title matter. Respondent failed to return Shahram's call.

15. On September 6, 2002, Shahram called respondent for a status update on the West Title matter. Respondent failed to return Shahram's call.

16. Respondent represented Enayat Vafaei-Makhsoos in an insurance claim arising from a fire that took place on one of his properties. Respondent failed to inform Enayat there was a hearing on April 2, 2002, on opposing counsel's motion to compel answers to discovery. Respondent attended the hearing without his client.

17. On July 1, 2002, due to a failure to produce all documents requested in the first motion to compel, there was a hearing on opposing counsel's second motion to compel. Respondent and Enayat were in attendance. During the hearing respondent stated:

> I have to admit and I will admit to Your Honor that most of the documents that I've provided to [opposing counsel] could have been produced to him much sooner. I was neglectful in accomplishing that and I apologize for that. He certainly shouldn't have to file a motion to compel in order to produce records that I can produce.

18. Respondent's conduct in the Makhsoos matters violated Rule 1.3, 1.4, and 3.2, MRPC.

THIRD COUNT

Non-Cooperation

19. On June 6, 2003, the Director received a complaint against respondent from Donald Ziebart alleging that respondent failed to turn over to Ziebart a $25,000 check from the sale of one of Ziebart's properties.

20. On June 9, 2003, the Director sent respondent a notice of investigation regarding Ziebart's complaint. The notice requested respondent to meet with the Director at the Director's Office on June 24, 2003, and requested respondent submit a written response in the Ziebart matter prior to the June 24 meeting.

21. On June 24, 2003, respondent met with the Director as scheduled but failed to provide a response to the Ziebart complaint prior to or during the June 24 meeting. The Director informed respondent of his continuing obligation to provide a written response to the complaint and respondent agreed to provide one.

22. On July 11, 2003, the Director wrote respondent requesting a response to Ziebart's complaint within ten days. Respondent failed to respond to the Director's July 11 letter.

23. On July 31, 2003, the Director wrote respondent requesting he immediately provide a response to the Ziebart complaint. Respondent failed to respond to the Director's July 31 letter.

24. On August 21, 2003, the Director wrote respondent requesting he immediately respond to the Ziebart complaint. Respondent failed to respond to the Director's August 21 letter.

25. On September 26, 2003, the Director wrote respondent requesting he provide his response to the Ziebart complaint no later than October 3, 2003. The September 26 letter was sent by certified mail and also requested that respondent meet with the Director on October 8, 2003.

26. On October 5, 2003, respondent faxed to the Director a response to the Ziebart complaint.

27. On October 8, 2003, respondent met with the Director. During this meeting respondent agreed to provide additional documents and information including billing statements regarding the Ziebart matter by October 13, 2003. Respondent failed to provide the requested information and documents.

28. On October 16, 2003, the Director wrote respondent requesting he immediately provide the information and documents requested during the October 8 meeting.

29. On October 30, 2003, respondent provided the billing statements and documents previously requested by the Director. Respondent's billing statements indicated that he performed work on behalf of Ziebart on a number of legal matters resulting in claimed attorney's fees of approximately $25,000. Although Ziebart believes respondent's fee was excessive, the Director is unable to determine the exact amount of fees respondent is entitled to for his multiple representations of Ziebart, or the exact amount of any refund to which Ziebart may be entitled.

30. Respondent's non-cooperation with the Director's Office in the Ziebart matter violated Rule 8.1(a)(3), MRPC, and Rule 25, RLPR.

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent from the practice of law, 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: February 24, 2005.

KENNETH L. JORGENSEN
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and

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