

FILE NO. A07-213

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against GARY K. WOOD,
a Minnesota Attorney,
Registration No. 118772.

**STIPULATION
FOR DISCIPLINE**

THIS STIPULATION is entered into by and between Martin A. Cole, Director of the Office of Lawyers Professional Responsibility, hereinafter Director, and Gary K. Wood, attorney, hereinafter respondent.

WHEREAS, respondent has concluded it is in respondent's best interest to enter into this 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 January 18, 2007, petition for discipline.

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 indefinite suspension for an additional minimum period of five years pursuant to Rule 15, RLPR. The suspension shall be effective on 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 and disbursements in the amount of \$1,308.18 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); (4) satisfaction of the continuing legal education requirements pursuant to Rule 18(e), RLPR; and (5) within ninety (90) days of the Court's suspension order respondent shall make restitution to David Wilson in the amount of \$1,140.

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

8. The attached memorandum is incorporated into the stipulation by reference.

9. Respondent hereby acknowledges receipt of a copy of this stipulation.

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

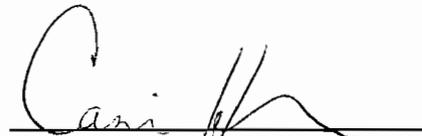
IN WITNESS WHEREOF, the parties executed this stipulation on the dates indicated below.

Dated: June 8, 2007.



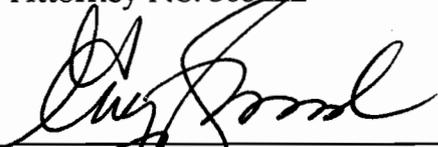
MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
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(651) 296-3952

Dated: June 8, 2007.



CASSIE HANSON
ASSISTANT DIRECTOR
Attorney No. 303422

Dated: June 8, 2007.



GARY K. WOOD
RESPONDENT

Dated: 6/8, 2007.



JOEL D. RATH
ATTORNEY FOR RESPONDENT
Attorney No. 8976X
5537 Pompano Drive
Minnetonka, MN 55343
(952) 931-1234

MEMORANDUM

The gravity of respondent's misconduct, coupled with his history of prior discipline, warrants severe discipline. Respondent is currently suspended from the practice of law. See, *In re Wood*, 716 N.W.2d 341 (Minn. 2006). In recommending an indefinite suspension from the practice of law for a minimum for an additional period of five years, the Director has taken into consideration that respondent suffers from depression and anxiety, which may have been an exacerbating factor in portions of respondent's misconduct.

Depression is not a defense to misconduct. An attorney who raises a psychological disability must prove five factors: (1) that the attorney has a severe psychological problem, (2) that the psychological problem was the cause of the misconduct, (3) that the attorney is seeking treatment, (4) that the treatment has arrested the misconduct, and (5) the misconduct is not likely to recur. *In re Weyhrich*, 339 N.W.2d 274, 279 (Minn. 1983).

Respondent likely meets the first criteria. Respondent's medical records reflect a history of depression and anxiety. Respondent was first diagnosed with a major depressive disorder in 2002. Respondent has participated in a depression therapy group through Lawyers Concerned for Lawyers (LCL) since 2004 in addition to treating with a psychiatrist and taking prescribed medications.

Respondent is unable to establish the remaining *Weyhrich* factors. Some of respondent's misconduct, such as client neglect and non-cooperation, may have been exacerbated by his depression and anxiety. There is substantial doubt that respondent's intentional misconduct, such as misappropriation, making false statements and handling client funds while suspended from the practice of law, were caused by either depression or anxiety. Respondent has also not regularly followed

through with all recommended treatment. Respondent's medical records show that he has missed appointments with his treating physician.

Where an attorney presents evidence of a psychological problem but fails to establish all of the *Weyhrich* factors, this Court has on occasion still taken such evidence into consideration when determining the appropriate discipline to be imposed. *See, e.g., In re Bergstrom*, 562 N.W.2d 674 (Minn. 1997) (attorney's depression played role in his misconduct and there was evidence that attorney had made improvements in both his psychological condition and his legal practice despite attorney's failure to establish all five factors under *Weyhrich*). Despite the fact that respondent could not meet all of the *Weyhrich* factors, the Director took respondent's evidence of a psychological problem into consideration when determining whether a lengthy period of indefinite suspension versus disbarment was warranted. Given that respondent's depression may have had some causative relationship to his passive misconduct, a lengthy period of suspension appears appropriate in this matter. *See, e.g., In re Jellinger*, 655 N.W.2d 312 (Minn. 2002) (attorney who claimed untreated depression in mitigation for misconduct, including misappropriation of client funds and false statements, disbarred, which was stayed subject to an indefinite period of suspension for a minimum of two years).

The Director also considered the fact that respondent has made partial restitution of the misappropriated funds and has expressed a sincere willingness to make further restitution. Respondent refunded the unearned retainer to Hang Nguyen. Respondent has also agreed in the stipulation for discipline to make prompt restitution of the \$1,140 to attorney David Wilson. For the above-reasons, an indefinite period of suspension for a minimum of five years is appropriate in this matter.