

FILE NO. ADM10-8043

STATE OF MINNESOTA

IN SUPREME COURT

**COMMENT OF THE DIRECTOR ON PROPOSED TEMPORARY
SUSPENSION RULE CHANGE**

INTRODUCTION

Pursuant to the Court's order dated March 6, 2026, the Director of the Office of Lawyers Professional Responsibility (OLPR) submits this comment on the Report of the Lawyers Professional Responsibility Board (LPRB) Regarding Rule 16, Rules on Lawyers Professional Responsibility (RLPR), dated January 30, 2026. The Director recommends a different approach to provide the Court with more flexibility in the appropriate case.

Specifically, the Director recommends the rule be modified to expand temporary suspension or license restriction availability pre-petition under a broader set of circumstances (not just criminal charges of a severe crime as proposed by the Board) and further recommends a new category of interim suspension upon a lawyer's conviction of a serious crime, where the serious crime is defined as a felony, the presumptive discipline sanction for which is disbarment or a suspension longer than one year based upon the Court's

on-point or analogous case law. These changes would bring Minnesota's rule more in line with the approach of most jurisdictions and the American Bar Association's Model Rules for Lawyer Disciplinary Enforcement.

The LPRB's proposal is an improvement over the current Rule 16, RLPR. However, it only allows a pre-petition temporary suspension application upon a charge of a "crime of such severity that the lawyer's authority to practice law prior to the filing of a petition under Rule 12 poses a substantial threat of serious harm to the public." This is a narrow triggering event, and as is more fully discussed below, given how the Court has approached temporary suspensions using similar language to date, would likely only apply to criminal charges that, on their face, lead to disbarment.

Further, no provision is made for consistency with Rule 20, RLPR, which requires that all discipline matters before the Director are confidential except in limited circumstances, such as after a panel finds probable cause. Thus, although the criminal charges may be public, the discipline rules prohibit the Director from disclosing information relating to any discipline proceedings. Additionally, the proposed rule is inefficient to the extent it requires the Director and the Court to redo the entire process upon filing of a Rule 12 petition. Because the Director

has concerns regarding the proposed revisions, and does not believe it fully addresses the intent of the Court's inquiry in the first instance, the Director recommends further consideration of any proposed changes to Rule 16, RLPR, with further direction from the Court.

DISCUSSION

A. Current Rule and Application.

Before considering potential revisions, it is helpful to consider the current rule and how it has been applied over the years. Rule 16, RLPR, authorizes the Director to move for the temporary suspension of a lawyer while discipline proceedings are pending only in a limited set of circumstances. First, a petition for public discipline must already be pending under Rule 12. *See* Rule 16(a), RLPR. To submit a petition for public discipline under Rule 12, the Director must have approval of the Board following the procedures set forth in Rule 9 (probable cause process), or under circumstances set forth in Rule 10, such as the agreement of the parties or a felony conviction, the latter of which petition still requires Board Chair approval. This procedure presupposes the Director has completed an investigation and has been able to gather clear and convincing

evidence of one or more rule violations that warrant public discipline (and convinced others of that fact), or a felony criminal conviction has been entered.

Second, the standard is specific to circumstances that present a “substantial threat of serious harm to the public,” a phrase the Court has never defined. Rule 16(a), RLPR. As discussed below, in the most recent case where the Court has considered this standard in a contested, post-petition context, the Court declined to impose a temporary suspension but imposed measures necessary to “adequately protect the public” without addressing whether there was a “substantial threat of serious harm to the public.” In fact, with limited exceptions, the Court has only ordered temporary suspension under Rule 16(a), RLPR, where a lawyer (1) has stipulated to the temporary suspension, or (2) has not opposed the petition for temporary suspension or is otherwise not participating in the proceeding, and disbarment is the likely outcome of the proceedings.

Separately, Rule 16(e), RLPR, provides for interim suspension upon a referee’s recommendation of disbarment, a standard the Court has uniformly applied. Although the Court has not generally articulated the rationale for this rule, where a judicial officer has found clear and convincing evidence of

misconduct that warrants disbarment, the continued practice of the lawyer is arguably on its face a substantial threat of serious harm to the public.

The most recent petition for temporary suspension under Rule 16(a), RLPR, considered by this Court where the matter was contested occurred in *In re Oliver*, A15-1285. *See* Ex. C, Order dated November 12, 2015.¹ In that order, the Court declined without explanation to temporarily suspend a lawyer who had pleaded guilty to felony wire fraud relating to his fraud in securing \$500,000 from a non-client and lied to cover up the fraud. Although Oliver had pleaded guilty in September 2014, the entry of his conviction on the guilty plea and sentencing were significantly delayed and by August 2015, when the Director petitioned for temporary suspension, he had still not been sentenced and the referee hearing for related discipline was on hold. Instead of temporarily suspending Oliver, the Court prohibited Oliver from handling client funds, required him to provide notice to his clients that he had pleaded guilty to a federal felony and that the Director was seeking suspension or disbarment of his law license, and placed Oliver on supervised probation. In issuing its order, the

¹ Not all discipline orders of the Court can be found on Westlaw. Accordingly, where a Westlaw cite is not available, the Director has included a copy of the Court's order as an exhibit to this motion.

Court denied the requested relief of temporary suspension but determined that some measures were necessary prior to the referee hearing to “adequately protect the public.”

The most common situation where the Court has temporarily suspended lawyers under Rule 16(a), RLPR, occurs upon stipulation of the parties. *See In re McNeilly*, A22-0574, Ex. E, Order dated September 9, 2022) (stipulation for temporary suspension and to stay discipline proceedings pending exhaustion of criminal appeals relating to felony criminal conduct related to the practice of law); *In re Green*, A15-0682 (Ex. F, Order dated September 16, 2015) (petition pending for misappropriation of client funds; respondent also under federal investigation for related misconduct; respondent stipulated to temporary suspension and discipline proceedings were placed on hold pending federal investigation); *In re Mayne*, 764 N.W.2d 815 (Mem.) (Minn. 2009) (stipulation for temporary suspension; respondent had pleaded guilty to the crime of financial exploitation of a vulnerable adult); *In re Light*, 741 N.W.2d 607 (Mem.) (Minn. 2007) (stipulation for temporary suspension; respondent had been temporarily suspended in North Dakota and had entered a guilty plea to a felony charge of terrorizing another, among other misconduct); *In re Schmitt*, 681 N.W.2d 352

(Mem.) (Minn. 2004) (stipulation for temporary suspension; petition pending for misappropriation of client funds); *In re Oberhauser*, 664 N.W.2d 847 (Mem.) (Minn. 2003) (stipulation for temporary suspension after initially opposing the motion; petition pending for federal money laundering convictions).

The Court has also ordered temporary suspensions under Rule 16(a), RLPR, where the lawyer provided no response or did not oppose the motion. *See In re Lundeen*, 807 N.W.2d 168 (Mem.) (Minn. 2011) (no response to the motion for temporary suspension and petition for disciplinary action alleging misappropriation, where misappropriation was deemed admitted due to respondent's failure to answer the discipline petition); *In re Mulvahill*, 696 N.W.2d 349 (Mem.) (Minn. 2005) (court *sua sponte* requested briefing on whether respondent should be temporarily suspended after the Court questioned an indefinite suspension versus more severe discipline such as disbarment; respondent did not respond); *In re Jellinger*, 632 N.W.2d 640 (Mem.) (Minn. 2001) (respondent failed to respond to petition for temporary suspension, and the Director had filed a petition for revocation of probation due to respondent's failure to respond to new complaints or cooperate with implementing probation). Accordingly, although the Court has imposed temporary

suspensions in several cases, there is no case law expressly explaining what conduct might give rise to a “substantial threat of serious harm.”

The Director did find a couple of older cases where the lawyer may have opposed the motion, but the motion was nonetheless granted. In doing so, however, the Court did not elaborate on the “substantial threat of serious harm” language. In *In re Plowman*, the Court ordered temporary suspension pending the completion of disciplinary proceedings, where the respondent had admitted misappropriation, made partial restitution, cooperated with the Director’s investigation, and provided letters of support from clients and friends attesting to respondent’s good character. In temporarily suspending the lawyer, the Court stated, “it would be inappropriate, pending final determination of disciplinary proceedings, to hold out the respondent as an attorney who poses no risk of injury to the public and who is entitled to the unquestioned trust and confidence of clients, judges, and lawyers.” *Plowman*, 463 N.W.497 (Mem.) (Minn. 1990) (citing *In re Okerman*, 298 N.W.2d 28, 29 (Minn. 1980)). Similarly, in *In re Anderley*, the Court temporarily suspended Anderley prior to a referee hearing where Anderley had admitted misappropriation and forgery during the investigation, but was undergoing treatment for alcohol use disorder and was

planning to present mitigation. *In re Anderley*, 471 N.W.2d 104 (Mem.) (Minn. 1991). In its order, the Court reiterated its statement from *Okerman*.

Importantly, in every decision the Director found where the Court ordered a temporary suspension pursuant to Rule 16(a), RLPR, except one, the lawyers were ultimately disbarred. *See e.g., In re McNeilly*, 18 N.W.2d 774 (Minn. 2025), *In re Green*, 888 N.W.2d 451 (Mem.) (Minn. 2016), *In re Oliver*, Ex. D, Order dated March 2016); *In re Lundeen*, 811 N.W.2d 602 (Minn. 2012); *In re Mayne*, 783 N.W.2d 153 (Mem.) (Minn. 2010); *In re Light*, 769 N.W.2d 768 (Mem.) (Minn. 2009); *In re Schmitt*, 712 N.W.2d 179 (Mem.) (Minn. 2006); *In re Mulvahill*, 697 N.W.2d 194 (Mem.) (Minn. 2005); *In re Oberhauser*, 679 N.W.2d 153 (Minn. 2004) ; *In re Anderley*, 481 N.W.2d 366 (Mem.) (Minn. 1992); *In re Plowman*, 465 N.W.2d 921 (Mem.) (Minn. 1991).

The exception occurred in *In re Jellinger*. (Ex. G, Opinion dated December 26, 2002.) In *Jellinger*, after being temporarily suspended for failing to comply with probation terms, respondent ultimately received a stayed disbarment, and a two-year suspension for conduct that included misappropriation of client funds, and failure to cooperate while on probation, with mitigation including untreated depression. (*Id.*)

Thus, to date, the Court has only ever imposed temporary suspension prior to a referee recommendation of disbarment, where there was an admission of misconduct and the likely discipline was disbarment or there was a stipulation or non-opposition to temporary suspension and the likely discipline was disbarment. It is with this background in mind that the Director considers how best a “fast track” temporary suspension might be crafted.

B. Survey of Other Jurisdictions.

Minnesota is one of only a couple jurisdictions that does not have a mechanism for seeking temporary suspension or other restrictions of an attorney’s license prior to filing a petition for discipline. On this topic, most jurisdictions have adopted some variation of the American Bar Association’s Model Rules for Lawyer Disciplinary Enforcement, which provide for immediate interim suspension for threat of harm (Rule 20) and a separate rule for interim suspension where a lawyer has been found guilty of a serious crime (Rule 19). A chart describing generally the temporary suspension rules in all states and the District of Columbia (and the ABA model rules) is attached as Exhibit A.

Model Rule 20 provides for an expedited process where there is sufficient evidence that a lawyer has committed a rule violation and poses a substantial

threat of serious harm to the public. The rule does not define sufficient evidence or substantial threat to the public and can be made at any time. The rule contemplates a motion upon reasonable notice to the lawyer, with supporting evidence and quick entry of immediate suspension. A motion for dissolution may be made by the lawyer, which motion shall be heard and determined as expeditiously as the ends of justice require. The comment to Rule 20 explains the rationale:

Certain misconduct poses such an immediate threat to the public and the administration of justice that the lawyer should be suspended from the practice of law immediately pending a final determination of the ultimate discipline to be imposed. Interim suspension is also appropriate when the lawyer's continuing conduct is causing or is likely to cause serious injury to a client or the public, as for example, where a lawyer abandons the practice of law or is engaged in an ongoing conversion of trust funds.

Rule 20, Model Rules of Lawyer Disciplinary Enforcement.

Most states have adopted some form of the model rule. Variations include whether the triggering event is "substantial threat of serious harm to the public" or some variation on that language, usually drawn from the comment to the model rule. For example, some states add administration of justice to the language. *See e.g.*, Rule 61, Arizona Rules of the Supreme Court; Rule 16, Delaware Lawyers' Rules of Disciplinary Procedures. Some states add

“irreparable” to the language. *See* Connecticut Practice Book Section 2-42; Rule 774, Illinois Rules on Admission and Discipline of Attorneys; Rule 5.24, Rules Governing the Missouri Bar and the Judiciary. New Hampshire is the only state to define “substantial threat of serious harm” in the text of its rule:

The term “substantial threat of serious harm” encompasses any non-serious crime, conduct, or course of conduct that substantially impairs the attorney’s ability to continue to practice in conformity with the Rules of Professional Conduct and Rule 50, or creates a substantial risk of harm to the public if the attorney is not suspended on an interim basis.

N.H. R. S. Ct. Rule 37 (9-A) (b).

Separately, Rule 19 of the ABA Model Rules for Lawyer Disciplinary Enforcement provides for an expedited process upon a lawyer’s conviction of a “serious crime.” A “serious crime” is defined as:

[A]ny felony or any lesser crime that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, or any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy or solicitation of another to commit a “serious crime.”

Model Rule 19(C). Upon disciplinary counsel's determination that the conviction involves a "serious crime," discipline counsel shall file formal charges for discipline and seek interim suspension, which interim suspension the Court shall impose upon proof the lawyer has been found guilty of a serious crime regardless of the pendency of any appeal. Upon reversal of a finding of guilt or conviction, the interim suspension shall be vacated but disciplinary proceedings are not otherwise terminated. Typically, formal proceedings on discipline should not be conducted until all appeals from the conviction have been exhausted, unless the respondent lawyer requests that the hearing not be deferred.

The comment to Model Rule 19 makes clear the basis for such a rule:

Interim suspension is necessary both to protect members of the public and to maintain public confidence in the legal profession. The interim suspension not only removes any danger to clients and the public which the respondent may pose, but also serves to protect the profession and the administration of justice from the specter created where an individual found guilty of a "serious crime" continues to serve as an officer of the court in good standing.

Most states adopt the definition of "serious crime" found in the model rule.

Three states include as a triggering event a *charge* of a serious crime, not just conviction. See Rule 16, Delaware Lawyers' Rules of Disciplinary Procedures;

Rule 3-5.3, Rules Regulating the Florida Bar; Rule 413-17, South Carolina Rules for Lawyer for Lawyer Disciplinary Enforcement.

C. Director's Proposed Amendments to Rule 16, RLPR.

By Order dated July 9, 2025, the Court asked the LPRB to consider whether Rule 16, RLPR, "should be amended to allow for an alternative 'fast track' temporary suspension process in certain circumstances." The Director appreciates the work of the LPRB and its careful consideration of this request. However, the Director recommends that this Court take this opportunity to bring Rule 16, RLPR, more in line with the ABA Model Rules and the rules of many states, including considering temporary and interim suspensions in situations short of when the ultimate discipline will be disbarment. A proposed redline of recommended changes is attached as Exhibit. B.

First, the Director recommends that Rule 16(a), RLPR, be modified to apply both pre-Rule 12 petition and post-Rule 12 petition. The Director agrees that suspension before the Director has fully investigated and demonstrated misconduct should be disfavored and is unlikely in the overwhelming number of cases. However, license restrictions short of temporary suspension should be more available for the protection of the public and the profession. Because the

Court has the inherent authority to regulate the practice of law, including plenary authority over a lawyer's license, there should be a confidential method for the Director to move the Court to impose conditions that protect the lawyer's clients and the public's perception of lawyers in certain circumstances. The majority of jurisdictions have such a process, and the ABA model rules provide such a process.

Second, the Director recommends that in addition to conduct that poses a "substantial threat of serious harm," the Court expand that language to include harm to the public, clients and the administration of justice. To date, the Court has only found substantial threat of serious harm upon an undisputed showing of misconduct that leads to disbarment. If the Court wishes to change that high threshold to allow some action in less clear or definitive situations, the triggering event must be changed, or the Court must differently define "substantial threat of serious harm." The Director does not recommend limiting the triggering event to only the situation where a lawyer has been charged with a "severe crime," because that leaves unaddressed situations where lawyers are causing havoc through a pattern of failing to attend hearings or abandoning client representations (more common than lawyer criminal conduct), or

misappropriating client funds and continuing to take on new clients and obtaining new client funds, or has been charged with a serious crime such as solicitation of sex with a minor (a crime that does not lead to disbarment) while engaging in representations that involve minors, as examples.

The Director understands the discomfort that comes from a broader triggering event particularly where misconduct has not been proven, but as the comment to Model Rule 20 provides, the procedure is similar to a civil temporary restraining order. Courts routinely weigh the harm caused by the proposed restraint with the harm likely to occur by the continuation of the status quo to enter temporary orders, and the Director should have a confidential avenue to bring to the Court situations where restrictions on a lawyer's license may be warranted. Whether the Court will order such restrictions, including temporary suspension, would be left to the sound discretion of the Court upon its determination that sufficient evidence is present and sufficient harm likely that some action should be taken.

Third, the Director recommends, consistent with the LPRB, that Rule 16, RLPR, expressly provide for other restrictions on the lawyer's license less than temporary suspension. The Court has always had this authority, as it exercised

in *In re Oliver*, but this change makes the authority express, and as it relates to pre-petition matters, it acknowledges the more likely consequence of any motion.

Fourth, the Director recommends any motions be filed under seal unless there is a public discipline proceeding already in process. This is consistent with the limited circumstances where the Director may comment on private matters under Rule 20, RLPR, and should the Court deny the requested relief, maintains the confidentiality of the Director's investigation. Otherwise, the Director agrees suspensions or license limitations should be public.

Fifth, the Director recommends changing service from personal service currently required to mail service to the address on file with Lawyer Registration. This change is consistent with the model rule, which contemplates an *ex parte* entry of an order "following reasonable efforts to notify the lawyer." See Model Rule 20, comment.

Sixth, the Director recommends a new interim suspension category for criminal convictions for "serious crimes" in line with Model Rule 19. Most jurisdictions follow the model rule definition of a serious crime, which is any felony, or lesser crime with specific elements relevant to a lawyer's fitness to practice. The Director does not believe this definition is workable for Minnesota

given the Court's precedent where many felony convictions lead to less than disbarment and some, such as impaired driving, lead to only a short suspension. Thus, the Director proposes defining "serious crime" as one that likely leads to disbarment or a lengthy suspension based upon the Court's precedent. The idea is that lawyers convicted of such serious crimes should not be able to continue to practice while discipline proceeds absent extraordinary circumstances but also protects against a temporary suspension often being longer than any ultimate suspension. Such a rule may also have the benefit of prompt resolution of such matters since the only issue is appropriate discipline.

Seventh, similar to a "threat of harm" motion, this motion would initially be confidential unless the Director has filed a Rule 12 petition.

Eighth, the Director proposed a process for dissolution of the temporary or interim solution, similar to that set forth in the model rules and lastly, specified, that any suspension requires the lawyer to comply with the notice provisions in Rule 26.

The Director recognizes these changes are substantial and understands why the LPRB chose to narrow the task at hand to one particular circumstance.

However, the Director's proposed changes are in line with the model rules and how the majority of jurisdictions approach similar circumstances.

D. Director's Specific Concerns Regarding the LPRB Proposed Changes.

The LPRB commenced its review to address only the situation where the lawyer presents a "substantial threat of serious *physical* harm." (Report at 4., emphasis supplied.) The Director disagrees with this limited starting point. Where a lawyer presents a threat of serious physical harm to others, the Director believes the criminal or civil courts are well equipped to address the physical safety of the public to the extent anyone is able to do so through harassment restraining order on the civil side and confinement to jail or conditions of release, on the criminal side. Second, the Director notes that she has not sought temporary suspension under Rule 16(a), RLPR, during her tenure, except one time by agreement (*McNeilly*), not because she has not seen harm that should be addressed but because the rule applies to such a narrow set of circumstances.

In its review of Minnesota’s discipline system, the ABA recommended the Court review Rule 16 to streamline its temporary suspension process. (ABA Report, Recommendation 20 at 75.) Specifically, the ABA recommended the Court eliminate the requirement that a petition for discipline be filed. The ABA further recommended the Court revise its rule to generally conform with ABA Model Rules for Lawyer Disciplinary Enforcement R. 20, which the Director has done in her proposal. (ABA Report at 76.) In its Order dated August 23, 2023, the Court rejected Recommendation 20 regarding Rule 16 because the record before the Court at that time did not present compelling reasons to amend Rule 16, RLPR. (August 23, 2023, Order at 33.) By its July 2025 request to the LPRB, however, the Court suggests that a “fast track,” pre-petition process might be beneficial. The Director agrees and encourages the Court to take up at this time the recommendations made by the ABA, as proposed by the Director.

Additionally, the LPRB assumed that pre-petition suspension proceedings should be rare. (LPRB Report at 5.) The Director concurs but believes that, while pre-petition suspension should be rare or even nonexistent, situations that warrant pre-petition license restrictions should be limited but not so rare as to be a unicorn. The Court will ultimately determine, as part of its plenary authority

over an attorney's license, whether to and to what extent a temporary suspension should be granted, or licensing restrictions be imposed. The Director should have a mechanism to seek such relief on a confidential basis.

Finally, the Director sees no reason that any temporary suspension or restriction process should be repeated after it is ordered, where there is a mechanism available to the impacted lawyer to make changes upon changed circumstances, just because the Director has filed a petition for disciplinary action. Such a process is inefficient for both the Court and Director.

CONCLUSION

The Director recommends the Court create a mechanism for the Director to confidentially seek temporary suspension or licensing restrictions at any time where there is a substantial threat of harm to clients, the public, or the administration of justice. Separately, but relatedly, the Director recommends that an interim suspension process be created to address lawyers convicted of serious crimes that warrant disbarment or suspension of more than one year. A proposed redline to Rule 16, RLPR, is attached to provide information as to the specific recommendations of the Director. The Director recommends further

consideration with direction from the Court before any changes to Rule 16, RLPR, are made.

Respectfully submitted,

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Survey of Temporary or Interim Suspension Rules

Jurisdiction	Pre-Charges temp suspension (Y or N)	When?	Process	Rule
Alabama	Y	Conviction of serious crime (defined); Conduct causing or likely to cause immediate and serious injury to a client or the public	Petition by discipline counsel w off; Process for prompt hearing (for other than criminal conviction); Process for lawyer to dissolve	Rule 20, Alabama Rules of Discipline Procedures; Rule 8 (serious crime defined)
Alaska	Y	Conviction of serious crime (defined); Substantial threat of irreparable harm to client or public or conduct causing great harm by continuing course of conduct	Petition by discipline counsel w aff; 7 day response; 7 day opposition to objection; Court determines; Separate process for conviction of crim related to alcohol or drug use.	Rule 26, Rules of the Bar Association; Rule 26(b) (serious crime defined)
Arizona	Y	Conviction of misdemeanor involving serious crime or felony; engage in conduct that has caused or is likely to cause immediate and substantial harm to clients, the public or the administration of justice	Automatic on conviction felony; petition process for misdemeanor or other; handled by presiding discipline judge (may involve hrg); option for SCT review.	Rule 61, Arizona Rules of the Supreme Court
California	Y	Conviction of crime involving moral turpitude; lead to summary disbarment; involuntary enrollment upon various showings including causing substantial harm to clients or public and likely to prevail on charges that will warrant disbarment; sentenced to 90 days or more on a conviction for period of incarceration.	Depends on nature of involuntary inactive enrollment	Rule 5.342, Rules of Procedures of the State Bar of California; Section 6102 Cal. Business & Professional Code; Sec. 6007 (involuntary inactive enrollment)
Colorado	Y	Causing or has caused substantial public or private harm and any of the following: (1) been convicted of a serious crime; (2) knowingly converted property or funds; (3) abandoned a client; or (4) engaged in conduct that poses a substantial threat to the administration of justice	Petition to presiding discipline judge; order to show cause; hearing if ordered; recommendation to SCT; petition must be filed expeditiously and proceedings subject to acceleration; reasonable cause showing	Rule 242.22, Rules Governing Lawyer Disciplinary Proceedings (Rule addresses confidentiality)
Connecticut	Y	Substantial threat of irreparable harm to his or her clients or prospective clients	Petition filed; Hrg; good cause shown; may suspend or make such other interim action as deemed appropriate	Practice Book Sec. 2-42.

Delaware	Y	Charged or convicted of felony; charged or convicted of other criminal conduct which demonstrates threat of substantial harm to public or the orderly administration of justice; or has engaged in misconduct that demonstrates significant threat of substantial harm to the public or to the orderly administration of justice.	Petition filed; Hrg before referee; C&C burden; confidential proceedings; order public if suspends or restricts practice; otherwise confidential; reinstatement if charges dismissed or conviction vacated.	Rule 16, Delaware Lawyers' Rules of Disciplinary Procedures
D.C.	Y	Substantial threat of serious harm to the public or failed to respond to an order of the Board in a matter where investigation involves allegations of serious misconduct. Serious misconduct defined.	Petition filed; special master appointed; report to court; dissolved if respondent responds and suspension is for nonresponse; Panel of Board can recommend dissolution of substantial threat suspensions.	Section 3(c), Rules Governing the District of Columbia Bar
Florida	Y	Suspension (great public harm); automatic suspension upon felony conviction unless modified by court; new rule regarding interim suspension for felony charges that reflect adversely on the lawyer's fitness to practice law (not yet defined).	Emergency Suspension for Great Public Harm; C&C evidence of harm; Interim suspension process (new) for any felony charge "that reflects adversely on the lawyer's fitness to practice law"; process for dissolution on great harm only; briefing process for interim suspension on criminal charges.	Rule 3-5.1, Rules Regulating the Florida Bar (Emergency Suspension and Interim Probation); Rule 3-4.4 (Criminal Misconduct); Rule 3-5.3 (Interim suspension)
Georgia	Y	Substantial threat of harm to his clients or the public	Petition filed with approval of Chair of Board; Special Master appointed; Hearing and Rec to Court with expedited decision timeline	Rule 4-108, Georgia State Bar Rules and Regulations
Hawaii	Y	Substantial threat of serious harm to the public or failed to respond to an order of the Board in a matter where investigation involves allegations of serious misconduct. Serious misconduct defined.	Petition to court; rebuttal opportunity; SCT decides; lawyer may move to dissolve or modify, which motion shall be heard on an expedited basis.	Rule 2.23, Hawai'i Discipline Rules (administrative suspension unless otherwise ordered)
Idaho	Y	Conviction of Serious Crime; Substantial threat of serious harm to public and alleged conduct	Petition to SCT; briefing and potential for referral for hearing; procedures for dissolution.	Rule 510, Idaho Rules for Review of Professional Conduct

Illinois	Y	Lawyer charged with crime of moral turpitude or that reflects adversely upon fitness to practice or complaint approved by Inquiry Board and misconduct involves fraud, moral turpitude or threatens irreparable injury to the public, clients or orderly administration of justice.	Petition; Order to Show Cause; Hearing not contemplated.	Rule 774, Illinois Rules on Admission and Discipline of Attorneys
Indiana	Y	Noncooperation; Conviction of any felony; Emergency Interim Suspension for substantial threat of harm to the public, clients, potential clients or the administration of justice, and if true, would violate an ethics rule.	Vote of 2/3 of Discipline Commission to Petition; 15 days to answer; enter order or order hearing. Dissolution motion (good cause); 60 days to file petition for discipline	Rule 10.1(c), Indiana Rules for Admission to the Bar and the Discipline of Attorneys (noncooperation); Rule 11.1(b) (Emergency)
Iowa	Y	Conviction of crime that would be grounds for license suspension or revocation or substantial threat of serious harm to the public.	Petition to SCT, convincing preponderance of the evidence of substantial threat; may be reinstated if crime reversed or set aside	Rule 34.14 (substantial threat), 34.15 (criminal conviction), Iowa General Disciplinary Rules of Grievance Commission and Attorney Discipline Board
Kansas	Y	Failing to answer formal complaint; substantial threat of harm to clients, the public or the administration of justice	Motion to SCT showing good cause; response within 14 days, decided by full court or single justice	Rule 213, Kansas Rules Relating to Discipline of Attorneys
Kentucky	Y	Felony conviction; probable cause misappropriated funds; probable cause attorney's conduct poses a substantial threat of harm to his clients or the public; or felony conviction or Class A misdemeanor and conduct relating to convicting grave issue of whether fit to continue to practice.	Petition to court; 20-day response period; oral argument. Motions for dissolution or amendment referred to Special Commissioner for report and recommendation.	Rule 3.165 Kentucky Rules of the Supreme Court for the Practice of Law
Louisiana	Y	Conviction of Serious Crime; Substantial threat of serious harm to the public.	Notice of conviction; response from respondent; Upon substantial threat application, show cause order; potential hearing before panel	Rule 19 (C), Louisiana Rules for Lawyer Disciplinary Enforcement (serious crime conviction); Rule 19.2 (threat of harm)

Maine	Y	Threat of imminent injury to a client, to the public or to the administration of justice; conviction of serious crime warranting immediate interim suspension.	Motion to SCT; interim suspension or such order as sees fit; motion for dissolution to be heard on expedited basis; no suspension upon showing of extraordinary circumstances by lawyer.	Rule 23, Maine Bar Rules (criminal conviction); Rule 24 (imminent injury suspension)
Maryland	N	Expedited process for conviction of serious crime (similar to MN)	Petition with request for immediate suspension pending sentencing; order to show cause; Hrg if disposition would be other than disbarment.	Rule 19-738, Maryland Rules for Discipline, Inactive Status, Resignation.
Massachusetts	Y	Conviction of serious crime; threat of harm to clients or lawyer's whereabouts are unknown	Petition; opportunity to be heard; motion for dissolution interim suspension terminated in the interests of justice	Section 12, Massachusetts Rules of Bar Discipline and Clients' Security Protection
Michigan	N	Expedited process for conviction of serious crime (similar to MN); Commission authority to interim suspend upon failure to follow commission orders	Automatic suspension upon felony conviction unless set aside by Commission; simultaneous discipline determination	Rule 9.120, Michigan Court Rules, Attorney Grievance Commission; Rule 9.127 (interim suspension)
Minnesota	N	Post petition motion; substantial threat of serious harm to the public; presumptive on referee recommendation for disbarment	Petition; personal service; 20-day answer; hearing required.	Rule 16, Minnesota Rules on Lawyers Professional Responsibility
Mississippi	N	Expedited process for criminal conviction felony	Petition with copy of conviction; presumptive disbarment	Rule 6, Mississippi State Bar Rules of Discipline
Missouri	Y	Substantial threat of irreparable harm (probable cause); abbreviated discipline process for criminal convictions (similar to reciprocal); interim suspension available without further notice	Petition, response; no hearing; motion for dissolution with 10-day response time and ability of lawyer to request expedited discipline determination	Rule 5.24, Rules Governing the Missouri Bar and the Judiciary

Montana	Y	Conviction of crime that "affects the lawyer's ability to practice law."	Lawyer required to notify court; court determines if interim suspension warranted; discipline determination deferred until all appeals exhausted or lawyer requests matter not be deferred	Rule 23, Montana Rules for Lawyer Disciplinary Enforcement
Nebraska	Y	Serious damage to the public or bar membership unless suspended or conviction of a serious crime	Petition showing temporary suspension "necessary and proper"; proceedings not specified but consistent with "fundamental fairness and due process"	Section 3-312, Nebraska Discipline Procedures for Lawyers
Nevada	Y	Evidence of misappropriation can limit access to trust account; upon recommendation of disbarment; and upon showing of substantial threat of serious harm to the public; conviction of serious crime (automatic suspension)	Petition to court; affidavit upon personal knowledge; motion to dissolve is heard by hearing panel with recommendation to court	Rule 102, Nevada Rules on the Government of the Legal Profession
New Hampshire	Y	Substantial threat of serious harm (defined); The term "substantial threat of serious harm" encompasses any non-serious crime, conduct, or course of conduct that substantially impairs the attorney's ability to continue to practice in conformity with the Rules of Professional Conduct and Rule 50, or creates a substantial risk of harm to the public if the attorney is not suspended on an interim basis. Also summary suspension upon noncooperation or "serious misconduct"	Petition; personal service not required; 20-day response; if contested hearing before referee or panel as ordered by court; expedited hearing (within 30 days); recommendation to court	Rule 37, New Hampshire Attorney Discipline System Rules
New Jersey	Y	Substantial threat of serious harm	Petition, response, court order; lawyer may move for reinstatement which motion shall be considered expeditiously	Rule 1:20, New Jersey Rules for Discipline of Members
New Mexico	Y	Conviction of felony or serious crime; substantial probability of harm, loss, or damage to the public and attorney is under investigation, formal charges are pending or criminal charges filed; administrative suspension for failure to cooperate	Petition, order to show cause; motion for administrative suspension	Rule 17-207, New Mexico Rules Governing Discipline

New York	Y	Conduct immediately threatening the public interest	Petition that demonstrates five specific circumstances (1) default; (2) admission under oath of misconduct; (3) noncooperation; (4) willful failure or refusal to pay money owed, where debt is clear; or (5) other uncontroverted evidence of professional misconduct.	Section 1240.9, New York Rules for Attorney Discipline Matters
North Carolina	Y	Necessity warrants restraint or enjoinder of conduct	Bar must follow regular injunction rules	Section 84-28(f), North Carolina Rules and Regulations of the State Bar
North Dakota	Y	Substantial threat of irreparable harm to the public	Motion; Sufficient Evidence	Rule 3.4, North Dakota Rules for Lawyer Discipline
Ohio	Y	Substantial threat of serious harm to the public	Petition for interim remedial suspension; opposing memo and rebuttal evidence; motion for dissolution or modification process; 180 days to file formal petition for discipline	Section 19, Ohio Discipline Procedures
Oklahoma	Y	Immediate threat of substantial and irreparable public harm	Petition, 10-day order to show cause; potential for hearing; lawyer can request accelerated disposition of discipline matters which shall be completed "without appreciable delay."	Section 6.2A, Oklahoma Rules Governing Disciplinary Proceedings
Oregon	Y	Probable cause for misconduct and reasonable belief client or others will suffer immediate and irreparable harm by continued practice	Petition to Discipline Board, 14-day answer; if contested, then hearing within 30-60 days. Accelerated proceedings following interim suspension; lawyer can seek SCT review.	Rule 3.1, State Bar Rules of Procedures

Pennsylvania	Y	Immediate and substantial public or private harm because of misappropriation, other egregious conduct in manifest violation of rules; noncooperation with Board; expedited process for criminal conviction	Petition with concurrence of a reviewing Board member; 10-day show cause order; dissolution or amendment process; hearing before a member of the Board; process for accelerated disposition upon request.	Section 91.151, Pennsylvania Disciplinary Board Rules
Rhode Island	Y	Conviction of felony	Petition, 10-day response, single justice to consider	Rule 24, Discipline Procedures for Attorneys
South Carolina	Y	Charged with or convicted of serious crime defined as any felony; any lesser crime that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; or, any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, willful failure to file income tax returns, or an attempt, conspiracy or solicitation of another to commit a serious crime. Also "substantial threat to the public or to the administration of justice"	Disciplinary counsel "may" seek interim suspension upon charging, "shall" seek interim suspension upon conviction	Rule 413--17, South Carolina Rules for Lawyer Disciplinary Enforcement; Rule 2(bb), Serious Crime defined.
South Dakota	Y	Attorney poses a risk or danger to clients, client's property, or the public, or where substantial likelihood of discipline and discipline would be suspension or disbarment.	Petition by certified mail; 10-day response; oral argument or referee hearing on an expedited basis.	Section 16-19-35.1, South Dakota Laws for the Discipline of Attorneys
Tennessee	Y	Misappropriation of funds, noncooperation, noncooperation with Lawyer Assistance Program, or lawyer poses a threat of substantial public harm to the public	Petition supported by affidavits upon personal knowledge; notice to lawyer. Good cause request for dissolution, set for hearing of a panel of the Board, report to SCT	Rule 12.3, Tennessee Rules of Discipline Enforcement

Texas	Y	Substantial threat of irreparable harm to clients or prospective clients	Petition with approval of Commission; 10-day hearing in district court; burden--preponderance of the evidence of serious crime, three or more rule violations, other acts "will probably cause harm"	Rule 2.14, Texas Rules of Disciplinary Procedures; Part 14.01 Interim suspension; Part 14.02 Burden of Proof and Evidentiary Standard
Utah	Y	Threat of serious harm to the public	Petition in district court; hearing; discipline counsel can skip screening panel process to file a discipline action; motion to dissolve process	Rule 11-563, Utah SCT Rules of Professional Practice
Vermont	Y	Conviction of Serious Crime; substantial threat of serious harm to the public	Petition by bar counsel; opportunity to respond; automatic on conviction and immediate petition for discipline to be filed; motion for dissolution.	Rule 21(D), Vermont Administrative Order No. 9 Regarding the Establishment and Operation of the Professional Responsibility Program; Rule 22 (threat of harm)
Virginia	Y	Conviction of Specified Crimes; May request expedited consideration after petition filed if risk of harm present	Immediate suspension upon notice and opportunity to be heard for why not further suspension; hearing to occur within 30 days	Paragraph 13-22, Rules of the Virginia Supreme Court on the Procedures for Disciplining, Suspending and Disbarring Attorneys
Washington	Y	Conviction of Felony; substantial threat of serious harm to the public and a review committee recommends interim suspension; recommendation for disbarment; failure to cooperate.	Discipline petition to be filed with request for interim suspension (automatic, Court must enter); Petition to terminate allowed	Rule 7.1, Washington Rules for Enforcement of Lawyer Conduct (criminal conviction); Rule 7.2 (other reasons)
West Virginia	Y	Substantial threat of irreparable harm to the public	Petition filed, SCT reviews for good cause, provides notice to lawyer for expedited hearing	Rule 3.27, West Virginia Rules of Lawyer Disciplinary Procedures
Wisconsin	Y	Threat to the interests of the public and the administration of justice	Petition; order to show cause. 4 months to file discipline complaint	Rule 22.21, Wisconsin Procedures for the Lawyer Regulation System

Wyoming	Y	Immediate and substantial public or private harm and the attorney has converted funds, abandoned clients, or has engaged in conduct that poses an immediate threat to the effective administration of justice; convicted of a serious crime; or noncooperation.	Petition supported by an affidavit showing sufficient facts to give rise to reasonable cause that the alleged conduct occurred; 15-day response period; clear and convincing evidence of imminent threat; petition for dissolution process but burden on petitioner of no imminent threat	Rule 17, Wyoming Rules of Disciplinary Procedures
ABA	Y	Conviction of Serious Crime; Substantial threat of serious harm to the public	Petition filed; personal service not required; opportunity to respond; court enters order; procedure for dissolution motion	Rule 19, ABA Model Rules for Lawyer Disciplinary Enforcement (criminal conviction); Rule 20 (threat)

End of worksheet

Rule 16, Rules on Lawyers Professional Responsibility--Temporary Suspension Pending Disciplinary Proceedings.

(a) **Motion Petition for Temporary Suspension.** In any case where ~~the Director files or has filed a petition under Rule 12, if~~ it appears that a continuation of the lawyer's unrestricted authority to practice law pending final determination of the disciplinary proceeding poses a substantial threat of serious harm to clients, the public or the administration of justice, the Director may file with this Court a motion petition for suspension of the lawyer pending final determination of any~~the~~ disciplinary proceeding, or such other restriction on the lawyer's right to practice as may be warranted, with proof of service. The motion petition shall set forth facts as may constitute grounds for the suspension or requested restriction and shall be supported by affidavits based upon personal knowledge and other evidence, may be supported by a transcript of evidence taken by a Panel, court records, documents or affidavits. Unless the Director has filed a petition under Rule 12, this motion shall be confidential and shall be filed under seal.

(b) **Service.** The Director shall ~~serve~~cause the motion petition to be served upon the lawyer by U.S. Mail at the address on file with Lawyer Registration in the same manner as a petition for disciplinary action.

(c) **Response/Answer.** Within 20 days after service of the motion petition or such shorter time as this Court may order, the lawyer shall file in this Court a response to the motion, an answer to the petition for temporary suspension or license restriction, with proof of service. If the lawyer fails to do so within that time or any extension of time this Court may grant, the motion's petition's allegations shall be deemed uncontested admitted and this Court may enter an order suspending the lawyer pending final determination of disciplinary proceedings or imposing such other terms and conditions on the lawyer's license to practice as may be warranted. The answer may be supported by a transcript of any evidence taken by the Panel, court records, documents, or affidavits.

(d) **Hearing Disposition.** If this Court after hearing finds that a continuation of the lawyer's authority to practice law poses a substantial threat of serious harm to clients, the public, or the administration of justice~~the public~~, it may enter an order suspending the lawyer pending final determination of disciplinary proceedings, or imposing such other terms and conditions on the lawyer's license to practice as may be warranted. If the Court finds an additional factual record is necessary to consider the motion, it may refer the matter to a referee for a hearing and a recommendation on the motion, which hearing and recommendation shall occur as expeditiously as possible under the circumstances. If the Court temporarily suspends

or orders any restrictions on the lawyer's license pursuant to this paragraph (d), the Court's order and the court record leading to the order shall be public. If the motion is denied, the matter shall remain confidential. If the lawyer is temporarily suspended under this paragraph (d), the lawyer may request accelerated disposition of any disciplinary proceeding by providing notice to the Director and Court of that request, and thereafter the matter shall proceed without appreciable delay.

(e) **Interim Suspension, Disbarment Recommendation.** Upon a referee disbarment recommendation, the lawyer's authority to practice law shall be suspended pending final determination of the disciplinary proceeding, unless the referee directs otherwise or the Court orders otherwise.

(f) **Interim Suspension, Serious Crime Conviction.** Upon notice that a lawyer has been convicted of a serious crime, the Director shall determine whether the crime constitutes a "serious crime." A "serious crime" is any felony where the Director determines the likely discipline for the conviction would be disbarment or a suspension of a year or more based upon the Court's on-point or analogous case law. Upon such a determination, the Director shall move for interim suspension by filing and serving by U.S. mail a motion for interim suspension. The motion shall contain evidence of the conviction and analysis supporting a "serious crime" determination. Within 20 days or such other time as the Court may specify, the lawyer may respond by filing and serving by U.S. Mail evidence that establishes the interim suspension should not be ordered, such as the crime does not constitute a "serious crime" or that no conviction has been entered. Unless the Director has filed a petition under Rule 12, this motion shall be confidential and shall be filed under seal.

The lawyer's authority to practice law shall be suspended pending final determination of the discipline proceeding relating to the lawyer's conviction of a serious crime, unless the Court finds extraordinary circumstances exist that interim suspension is not warranted. A lawyer may be placed on interim suspension regardless of the pendency of any appeals. Discipline proceedings will not ordinarily be conducted until all appeals from the conviction have been exhausted, unless the lawyer requests that the discipline proceedings not be deferred. If the Court suspends the lawyer or orders any restrictions on the lawyer's license pursuant to this rule, the Court's order and the court record leading to the order shall be public. If the motion is denied, the matter shall remain confidential.

(g) **Dissolution Motion.** A lawyer who has been temporarily suspended or has restrictions imposed by the Court pursuant to paragraph (d) may move the Court

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for relief upon a showing of substantially changed circumstances. The lawyer must serve the Director with the motion for relief by U.S. Mail and the Director's response shall be due within 20 days after service or such shorter time as this Court may order. If a lawyer suspended on an interim basis pursuant to paragraph (f) demonstrates by motion filed and served upon the Director that the conviction has been reversed or vacated, the order for interim suspension shall be promptly vacated and the lawyer placed on active status. The vacation of the interim suspension will not automatically terminate any discipline proceeding then pending against the lawyer, the disposition of which shall proceed in the ordinary course.

(h) **Notice.** Any lawyer suspended pursuant to any part of this rule shall comply with Rule 26.

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STATE OF MINNESOTA
IN SUPREME COURT
A15-1285



In re Petition for Disciplinary Action against
Timothy J. Oliver, a Minnesota Attorney,
Registration No. 0121393.

O R D E R

The Director of the Office of Lawyers Professional Responsibility has filed a petition for disciplinary action alleging that respondent Timothy J. Oliver pleaded guilty to wire fraud, in violation of 18 U.S.C. § 1343 (2012). The Director has also filed a petition, pursuant to Rule 16, Rules on Lawyers Professional Responsibility (RLPR), seeking an order temporarily suspending respondent from the practice of law pending the final determination of the disciplinary proceedings. Respondent opposes the petition for temporary suspension.

In his answer to the petition for disciplinary action, respondent admitted that he pleaded guilty to wire fraud and is awaiting acceptance of his guilty plea and sentencing in federal court. At his guilty-plea hearing, respondent admitted that his fraudulent conduct involved \$500,000 that he obtained in 2009 on behalf of a company he controlled in order to secure a letter of credit. Within weeks of receipt, respondent had personally spent the funds and then made misrepresentations intended to lull the provider of the funds into believing that the funds had been used to secure a letter of credit when, in fact, respondent knew that there was no letter of credit.

Given the specific facts and circumstances of this case, restrictions must be placed on respondent's authority to practice law pending final resolution of the disciplinary proceedings in order to adequately protect the public.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The petition for temporary suspension is granted to the extent that the restrictions in paragraphs (2) – (5) below on respondent's authority to practice law are imposed pending final resolution of the disciplinary proceedings. The petition to temporarily suspend respondent is otherwise denied.

2. Respondent is prohibited from handling client funds, effective as of the date of the filing of this order.

3. Within 10 days of the date of the filing of this order, respondent shall provide written notice to his existing clients of his criminal proceedings and of the disciplinary proceedings pending against him. Such notice shall state that respondent has pleaded guilty to wire fraud, in violation of 18 U.S.C. § 1343; that respondent may not handle client funds; that the Director of the Office of Lawyers Professional Responsibility has filed a petition for disciplinary action against respondent; and that the Director seeks respondent's suspension or disbarment from the practice of law. Respondent may state that he is cooperating with the Director's investigation but that he is contesting the discipline proposed in the petition for disciplinary action. Respondent shall also provide the same notice to clients who retain respondent on or after the date of this order.

4. Within 14 days of the date of the filing of this order, respondent shall file with the Director an affidavit showing that respondent has fully complied with the court's order, including attaching copies of the notice he sent to clients. Respondent shall also explain the actions taken to ensure that he does not handle client funds.

5. Pending final resolution of the disciplinary proceedings against him, respondent shall be supervised by a licensed Minnesota attorney, appointed by the Director. Within 5 days of the date of this order, respondent shall provide to the Director the name of an attorney who has agreed to be nominated as respondent's supervisor. If the attorney who has agreed to be nominated as respondent's supervisor is not acceptable to the Director, the Director shall appoint a supervisor. Respondent shall cooperate fully with the supervisor in his or her efforts to monitor compliance with this probation. Respondent shall contact the supervisor and schedule a minimum of one in-person meeting per calendar quarter. Respondent shall submit to the supervisor an inventory of all active client files by the first day of each month during the probation. With respect to each active file, the inventory shall disclose the client name, type of representation, date opened, most recent activity, next anticipated action, and anticipated closing date. Respondent's supervisor shall file written reports with the Director at least quarterly, or at such more frequent intervals as may reasonably be requested by the Director.

Dated: November 12, 2015

BY THE COURT:



David R. Stras
Associate Justice

STRAS, J., who joins in the court's decision to place restrictions on respondent's authority to practice law, would have granted the petition in full and temporarily suspended respondent pending final resolution of the disciplinary proceedings.

LILLEHAUG, J., took no part in the consideration or decision of this case.

STATE OF MINNESOTA

IN SUPREME COURT

A15-1285

FILED

March 1, 2016

**OFFICE OF
APPELLATE COURTS**

In re Petition for Disciplinary Action against
Timothy J. Oliver, a Minnesota Attorney,
Registration No. 0121393.

ORDER

The Director of the Office of Lawyers Professional Responsibility filed a petition for disciplinary action alleging that respondent Timothy J. Oliver committed professional misconduct warranting public discipline. We referred the matter to a referee, who issued findings of fact, conclusions of law, and a recommendation for discipline. The referee found that respondent violated Minn. R. Prof. Conduct 8.4(b) and 8.4(c) by defrauding a Mexican company and later pleaded guilty to one count of federal wire fraud, 18 U.S.C. 1343 (2012). The referee recommended that respondent be disbarred.

The respondent and the Director have entered into a stipulation for discipline, in which they stipulate that the referee's findings and conclusions are conclusive and waive their rights under Rule 14, Rules on Lawyers Professional Responsibility (RLPR), to briefing and oral argument before this court. The parties jointly recommend that the appropriate discipline is disbarment.

This court has independently reviewed the file and approves the jointly recommended disposition.

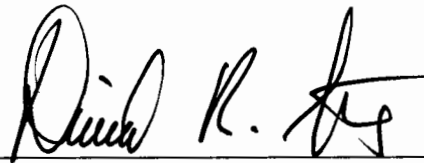
Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. Respondent Timothy J. Oliver is disbarred, effective as of the date of this order;
2. Respondent shall comply with Rule 26, RLPR (requiring notice of disbarment to clients, opposing counsel, and tribunals); and
3. Respondent shall pay \$900 in costs pursuant to Rule 24, RLPR.

Dated: March 1, 2016

BY THE COURT:

A handwritten signature in black ink, appearing to read "David R. Stras", written over a horizontal line.

David R. Stras
Associate Justice

LILLEHAUG, J., took no part in the consideration or decision of this case.

FILED

September 9, 2022

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

A22-0574

In re Petition for Disciplinary Action against
Kristi D. McNeilly, a Minnesota Attorney,
Registration No. 0341265.

O R D E R

The Director of the Office of Lawyers Professional Responsibility has filed a petition for disciplinary action alleging that respondent Kristi D. McNeilly has committed professional misconduct warranting public discipline, namely, being convicted of felony theft-by-swindle in Court File No. 27-CR-19-13419, in violation of Minn. R. Prof. Conduct 8.4(b) and (c). Respondent's appeal of her conviction is pending before the Minnesota Court of Appeals in Court File No. A22-0468. The disciplinary hearing on the petition is scheduled for September 26, 2022.

This matter is before the court on the parties' stipulation (1) to place this matter on hold pending the decision of the court of appeals in respondent's felony conviction appeal, and (2) for respondent's voluntary interim temporary suspension during that same time period.

This court has independently reviewed the file and approves the recommended stay and interim temporary suspension.

Based upon all the files, records, and proceedings herein,

Exhibit E

IT IS HEREBY ORDERED THAT:

1. Respondent's license to practice law is temporarily suspended pursuant to Rule 16, Rules on Lawyers Professional Responsibility (RLPR), effective on the date of this order. If the court of appeals affirms respondent's criminal conviction, respondent's license shall remain suspended until the disciplinary proceedings are concluded. If the court of appeals vacates the conviction and remands for a new trial, respondent's license shall be reinstated pending the outcome of the criminal case and subsequent disciplinary proceedings. Absent further agreement of the parties, the disciplinary proceedings will recommence upon the issuance of the court of appeals' decision or upon voluntary dismissal of the appeal;

2. Respondent shall comply with Rule 26, RLPR; and

3. Nothing in this order shall preclude the Director or respondent from seeking, upon written motion to this court and for good cause shown, to recommence the disciplinary proceedings and to lift the temporary suspension before a decision of the court of appeals is issued.

Dated: September 9, 2022

BY THE COURT:



Natalie E. Hudson
Associate Justice

FILED

September 16, 2015

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

A15-0682

In re Petition for Disciplinary Action against
Pamela L. Green, a Minnesota Attorney,
Registration No. 0037369.

ORDER

The Director of the Office of Lawyers Professional Responsibility filed a petition for disciplinary action alleging that respondent Pamela L. Green committed professional misconduct warranting public discipline. The petition alleges that respondent misappropriated approximately \$160,000 in client funds from a vulnerable client who was suffering from dementia and engaged in fraudulent billing practices related to the client funds she wrongfully paid herself, in violation of Minn. R. Prof. Conduct 8.4(c). The petition also alleges that respondent engaged in fraudulent conduct with respect to a life insurance policy of the same vulnerable client, including changing the ownership of the policy to herself without the client's consent, taking out a \$226,000 loan against the life insurance policy, and misappropriating client funds to repay the loan and the life insurance policy premiums, in violation of Minn. R. Prof. Conduct 1.7(a)(2), 1.7(b)(4), 1.8(a), and 8.4(c).

The Director filed a petition for temporary suspension, alleging that the continuation of respondent's authority to practice law poses a substantial threat of serious

Exhibit F

harm to the public. *See* Rule 16, Rules on Lawyers Professional Responsibility (RLPR). Respondent has entered into a stipulation with the Director in which they jointly recommend that respondent be temporarily suspended pending final determination of this disciplinary matter. Respondent waives her right to oral argument before this court on the question of her temporary suspension. The stipulation also indicates that respondent is currently the subject of a criminal investigation and that the misconduct alleged in the petition for disciplinary action is substantially the same conduct that is the subject of the pending criminal investigation. The parties further recommend that this disciplinary matter be stayed pending a resolution of respondent's criminal proceedings.

This court has independently reviewed the file and approves the jointly recommended disposition.

Based upon all the files, records, and proceedings therein,

IT IS HEREBY ORDERED that:

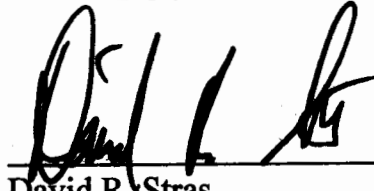
1. Respondent Pamela L. Green is temporarily suspended from the practice of law as of the date of the filing of this order pending final resolution of the disciplinary proceedings in this matter;
2. The disciplinary proceedings in this matter shall be stayed until: (1) respondent is charged with a criminal offense related to the allegations in the petition for disciplinary action and is then convicted of such an offense, a finding of not guilty is entered, or the charges are dismissed; (2) the statute of limitations for criminal conduct

related to the allegations in the petition for disciplinary action expires; or (3) further order of the court, whichever occurs first; and

3. Respondent shall comply with Rule 26, RLPR (requiring notice of suspension to clients, opposing counsel, and tribunals).

Dated: September 16, 2015

BY THE COURT:



David R. Stras
Associate Justice

[View Petition](#)

[View Supp. Petition](#)

[View Temporary Suspension Order](#)

STATE OF MINNESOTA

IN SUPREME COURT

C3-00-1681

Supreme Court

PerCuriam

In re Petition for Disciplinary Action against
Richard T. Jellinger, an Attorney at Law
of the State of Minnesota.

Filed: December 26, 2002
Office of Appellate Courts

S Y L L A B U S

1. An attorney who claimed mitigation based on untreated depression failed to prove that the depression was causally related to his misappropriations of client funds or to his misrepresentations to clients and to the Director.

2. Evidence that the attorney was making progress after two months of treatment for his depression was insufficient to prove that he had made a recovery sufficient to arrest the misconduct or that the misconduct was not apt to recur.

3. The appropriate disciplinary action on this record is disbarment, stayed subject to indefinite suspension, with the opportunity to apply for reinstatement not sooner than two years and supervised probation for two years after successfully petitioning for reinstatement.

Heard, considered and decided by the court en banc.

Exhibit G

OPINION

PER CURIAM.

In this attorney-discipline proceeding, we review the referee's conclusion that although Respondent Richard T. Jellinger violated the Rules of Lawyers Professional Responsibility (RLPR), he proved by clear and convincing evidence that his depression provided mitigation. We hold that Jellinger's claim of mitigation was not fully supported by the evidence. We also review the referee's recommendation that we suspend Jellinger for one year, retroactive to August 17, 2001, and place him on conditional probation for three years. We conclude that a more severe discipline is appropriate.

Jellinger was admitted to practice law in Minnesota in 1982. He was in private practice from 1982 to about 1989 and from 1994 to 2001, ultimately operating as a sole practitioner specializing in family law, criminal defense, and estate planning and administration. He is currently suspended from the practice of law pending the outcome of this proceeding.

On May 3, 2001, we publicly reprimanded Jellinger and placed him on conditional probation for two years after an investigation by the Director of the Office of Lawyers Professional Responsibility (Director) revealed that he misused a trust account, neglected clients, and failed to cooperate with the investigation that led to the charges against him. *In re Jellinger*, 625 N.W.2d 143, 145 (Minn. 2001). In the ensuing months, Jellinger ignored requests from the Director's office for information concerning the conditions of his probation. As a result, the Director petitioned for further disciplinary action and we temporarily suspended Jellinger from the practice of law on August 17, 2001.

The current disciplinary proceeding arises from a supplementary petition filed by the Director against Jellinger. The supplementary petition charged Jellinger with misappropriating client funds, failing to act with reasonable diligence, failing to communicate with clients, making false statements, exceeding the scope of representation, failing to expedite litigation, continuing noncooperation with the Director's investigation and other assorted acts of misconduct. Jellinger's answer alleged as mitigation that he suffered from depression during his period of misconduct.

The matter was assigned to a referee, who held a disciplinary hearing on the supplementary petition. The evidence showed that Jellinger's operating account for his law practice had been closed by the bank in December 2000 for chronic overdrafts and that he thereafter used his client trust account to pay his operating and personal expenses. For example, the referee found that Jellinger, acting as the personal representative of an estate,

misappropriated \$5,200 of estate funds to his client trust account and then disbursed them for his personal benefit; told the heirs and the Director that he had paid \$5,280 in federal fiduciary taxes on behalf of the estate, when he had paid nothing; misappropriated \$10,000 from the estate account to his client trust account and disbursed the funds to himself or to personal and business creditors; and misappropriated \$4,050 from the estate account to his client trust account and disbursed the funds for personal and business expenses.

The referee also found that Jellinger failed to communicate with his clients in an adoption matter, neglected two marital dissolution matters, made false statements to clients and failed to cooperate with the Director's investigation.

Jellinger testified on his own behalf and he called his treating psychologist, Dr. Sheldon Pinsky, as a witness. Dr. Pinsky had seen Jellinger on five occasions over a period of approximately two months, beginning in January 2002. Dr. Pinsky testified that he conducted a series of diagnostic interviews and psychological tests on Jellinger, including the Beck's Inventory Test and the Minnesota Multiphasic Personality Inventory ("MMPI"). Dr. Pinsky opined that Jellinger had a major depressive disorder; that he had been depressed for over two years; and that his professional misconduct was in large part a result of his depressive disorder, because he did not have the skills or the awareness to appreciate what was happening around him. Dr. Pinsky further opined that if Jellinger adheres to a regimen of antidepressant medication and bi-weekly cognitive therapy, over a period of two to three years, his depression is not likely to reappear.

On cross-examination, Dr. Pinsky acknowledged that the results of the Beck's Inventory Test indicated that Jellinger had only moderate depression. The Director did not call an opposing expert witness.

The referee concluded that Jellinger failed to comply with the terms of his probation, failed to communicate with clients, made false statements to clients, neglected clients, failed to expedite litigation, failed to cooperate with the Director's investigations, misappropriated client funds, and made misrepresentations of fact to the Director. In regard to Jellinger's depression, the referee found that Dr. Pinsky's opinions must be accepted because they were uncontested and they proved mitigation by clear and convincing evidence. He found that Jellinger's "misconduct was largely the byproduct of inadequate treatment of his depression." While the Director sought disbarment, the referee found that disbarment would be "unduly harsh" and, based on the finding of mitigation, recommended a one-year suspension, retroactive to August 17, 2001, and conditional probation for three years. The Director sought review.

I.

The Director ordered the hearing transcript and notified this court within the ten-day time period allotted by Rule 14(e), RLPR. The referee's findings, therefore, are not conclusive and are subject to review. *In re Jensen*, 468 N.W.2d 541, 543 (Minn. 1991). In attorney-discipline cases, we will uphold the referee's findings of fact and conclusions of law if they are supported by the evidence. *In re Bergstrom*, 562 N.W.2d 674, 677 (Minn. 1997) (quoting *In re Copeland*, 505 N.W.2d 606, 608 (Minn. 1993)).

The Director agrees with the referee's findings and conclusions regarding Jellinger's misconduct but disputes the referee's conclusion that Jellinger proved his claim of mitigation by clear and convincing evidence. When an attorney raises a psychological disability as a mitigating factor in an attorney-discipline case, he or she has the burden to prove by clear and convincing evidence that: (1) the attorney has a severe psychological problem; (2) the psychological problem caused the misconduct; (3) the attorney is undergoing treatment and is making progress to recover from the psychological problem which caused or contributed to the misconduct; (4) recovery has arrested the misconduct; and (5) the misconduct is not apt to recur. *In re Weyhrich*, 339 N.W.2d 274, 279 (Minn. 1983).

We conclude that the evidence fell short on at least three *Weyhrich* factors: causation, recovery sufficient to arrest the misconduct and the misconduct is not apt to recur. As to the latter two, we determine that Jellinger's treatment by Dr. Pinsky, for only two months and during a period when Jellinger was suspended and not practicing, was too short to provide clear and convincing evidence that Jellinger's recovery was sufficient to arrest his misconduct or that the misconduct is not apt to recur. Dr. Pinsky himself prescribed a course of treatment that would take from two to three years to complete.

As to causation, we addressed the evidentiary standard for proof of depression as mitigation in *In re Pyles*, 421 N.W.2d 321 (Minn. 1988). The attorney in *Pyles* was charged with misrepresentation and misappropriation of client funds and claimed mitigation based on depression. *Id.* at 322-23. Two psychologists testified that the attorney suffered from a "psychological adjustment disorder" but agreed that this disorder did not prevent the attorney from knowing that his conduct was morally and ethically wrong. *Id.* at 326. We affirmed the referee's rejection of the mitigating evidence, concluding that the attorney's mental illness was "not a severe problem on a recognized psychological diagnostic scale and did not result in impairment of respondent's cognitive functions, his ability to direct his actions, or to know right from wrong." *Id.* at 325 (internal quotations omitted). Jellinger similarly failed to meet this standard by clear and convincing evidence.

While Dr. Pinsky's testimony may have been sufficient to prove some causal connection between Jellinger's depression and his passive misconduct (failing to act with reasonable diligence, expedite litigation, communicate with clients and cooperate with the Director's investigation), we are not persuaded that Dr. Pinsky's testimony proves that a causal relationship exists between Jellinger's depression and his affirmative acts of dishonesty (misappropriating funds from client accounts, making false statements to clients and making false statements to the Director's office). It is obvious that Jellinger possessed enough cognitive ability to understand that he needed to restore the funds that he repeatedly withdrew from the client trust account and the estate account. Jellinger's active manipulation of various accounts, in an attempt to avoid detection of his misappropriations, and his misrepresentations to the heirs and the Director's office, demonstrate that the depression had not impaired Jellinger's ability to direct his actions and that he continued to recognize that his actions were wrong.

On this record, we conclude that Jellinger failed to prove by clear and convincing evidence that he satisfied all of the *Weyhrich* factors.

II.

We now turn to the appropriate discipline in this case. We look not to punish, "but rather to guard the administration of justice and to protect the courts, the legal profession and the public." *In re Dovolis*, 572 N.W.2d 734, 736 (Minn. 1998) (citations and internal quotations omitted). We consider: (1) the nature of the misconduct, (2) the cumulative weight of the rule violations, (3) the harm to the public and (4) the harm to the legal profession. *In re Hoedeman*, 620 N.W.2d. 714, 717 (Minn. 2001). We give weight to the referee's recommendation, but the ultimate responsibility for determining the appropriate sanction rests with this court. *Pyles*, 421 N.W.2d at 325.

The Director argues that the circumstances of this case, coupled with the fact that this is Jellinger's second public disciplinary proceeding within two years, warrant disbarment. Indeed, ample precedent supports the sanction of disbarment in cases involving misappropriation of client funds. *See In re Samborski*, 644 N.W.2d 402, 407 (Minn. 2002) (disbarment is the appropriate discipline for an attorney who misappropriated client funds and who made false statements to conceal misappropriation and client neglect); *In re Graham*, 609 N.W.2d 894, 897 (Minn. 2000) (disbarment is appropriate where the attorney misappropriated client funds while on probation); *In re Weems*, 540 N.W.2d 305, 308 (Minn. 1995) (attorney's misappropriation of client funds,

neglect of client matters, violation of the terms of his second public probation, and failure to cooperate with the disciplinary investigation warrant disbarment). At the same time, we give some weight to the referee's recommendation that disbarment would be too harsh. We also recognize that Jellinger's depression was shown to have some causative relationship to his passive misconduct, that he is currently receiving professional treatment for his depression and that his former clients did not ultimately suffer any pecuniary loss as a result of his misconduct.

After considering all of these factors, we order:

1. Respondent Richard T. Jellinger is hereby disbarred pursuant to Rule 15, RLPR. Respondent's disbarment shall be stayed subject to the following conditions:
 - a. Respondent's current suspension from the practice of law in the State of Minnesota shall continue indefinitely;
 - b. Respondent may petition the Director for reinstatement not sooner than two years from the date of this order;
 - c. Respondent is required to make periodic reports to the Director, in such form and with such frequency as the Director requires, regarding the progress of his treatment for depression, including regular reports from Dr. Pinsky;
 - d. Respondent shall pay the Director the sum of \$900 in costs and disbursements pursuant to Rule 24, RLPR; and
 - e. Respondent's failure to comply with the conditions of this stay shall result in immediate disbarment.
2. If and when respondent petitions for reinstatement:
 - a. There shall be a hearing on respondent's petition for reinstatement pursuant to Rule 18(d), RLPR;
 - b. Respondent must show that he has successfully completed the Multistate Professional Responsibility Examination pursuant to Rule 18(e)(2), RLPR (respondent is exempt from the reinstatement requirement found in Rule 18(e)(1), RLPR); and
 - c. Respondent must demonstrate, by clear and convincing evidence, that he has successfully completed treatment for his depression, that his mental condition will not adversely affect his ability to practice law and that his misconduct is not apt to recur.

3. Upon reinstatement, respondent shall be on supervised probation for a period of two years under the conditions set forth in this court's order of May 3, 2001.

4. Respondent shall fully cooperate with the Director's efforts to monitor his compliance with the provisions of this order.

So ordered.