FILE NO. A12-2130

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against JACQUELINE ELISE KALK,
a Minnesota Attorney,
Registration No. 388459.

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 Jacqueline Elise Kalk, 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 admits the allegations of the petition.

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:

a. The appropriate discipline is a public reprimand pursuant to Rule 15(a)(5), RLPR; and

b. Respondent pay $900 in costs pursuant to Rule 24(a), RLPR.

7. The attached memorandum is made a part of this stipulation.

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

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: March 12, 2013.

MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

Dated: March 20, 2013.

JACQUELINE ELISE KALK
RESPONDENT

Dated: March 22, 2013.

ERIC T. COOPERSTEIN
ATTORNEY FOR RESPONDENT
Attorney No. 210201
800 Nicollet Mall, Suite 2600
Minneapolis, MN 55402
(612) 436-2299

MEMORANDUM

In this matter, there is no doubt that respondent's statement in her affidavit to the court that she did not know how to contact her ex-husband objectively was false; she knew how to "contact" her ex-husband by phone and email. She did not have a current mailing address for service, however. Respondent acknowledges that the district court made a finding that respondent's misconduct was intentional, and acknowledges that an intentional misrepresentation to the court, if proven by clear and convincing evidence, could warrant discipline more severe than a reprimand. *See In re Scott*, 657 N.W.2d 567 (Minn. 2003).

Respondent notes that she did not draft the affidavit that contained her statement and asserts that she did not notice the error when signing it. The first portion of this argument is accurate; the second would be difficult to disprove. To the extent this argument attempts to place blame on the attorney that respondent hired to represent her in the adoption, the Director rejects this argument, as did the court. Respondent is an experienced attorney; the Director holds her responsible for her own sworn testimony. Respondent could have and should have noticed and corrected the statement.

The court's findings presumably were by a preponderance of the evidence standard. Proving that respondent's misrepresentation was in fact intentional by clear and convincing evidence is not a given under all the circumstances. Even a negligent misrepresentation to a court still can warrant public discipline. *See In re Grigsby*, 764 N.W.2d 54 (Minn. 2009); *In re Czarnik*, 759 N.W.2d 217 (Minn. 2009). In this instance, a public reprimand still would fulfill the purposes of public discipline without the necessity of further proceedings.