

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against MARC G. KURZMAN,
a Minnesota Attorney,
Registration No. 59080.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 20, 1972. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

In considering whether public discipline is warranted it is appropriate, pursuant to Rule 19(b)(4), RLPR, to consider respondent's prior discipline. Respondent's history of prior discipline, including admonitions, is as follows:

A. On July 29, 1994, respondent was issued an admonition for knowingly making a false statement in a telephone conversation and recording the telephone conversation without the prior knowledge or consent of the other party to the conversation, in violation of Rules 4.1 and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

B. On November 4, 1996, respondent was issued an admonition for, on two separate occasions, communicating with a court in writing without delivering a copy of the writing to opposing counsel, in violation of Rules 3.5(g) and 8.4(d), MRPC.

C. On December 3, 1996, a Panel of the Lawyers Professional Responsibility Board affirmed that portion of a June 24, 1996, admonition issued to respondent for failing to provide a client with a written contingent fee agreement within a reasonable time after commencing the representation, failing to inform his client of his agreement to share his fee in the client's matter with another attorney, and failing to adequately communicate with a client, in violation of Rules 1.4(a) and 1.5(c) and (e), MRPC.

D. On April 23, 2001, respondent was issued an admonition for failing to place client funds in his trust account, in violation of Rule 1.15, MRPC.

E. On June 16, 2003, respondent was issued an admonition for falsely stating to a court that he was a pharmacist admitted to practice in the state of Minnesota and other states, in violation of Rule 3.3(a)(1), MRPC.

F. On June 16, 2003, respondent was issued an admonition for failing to act with reasonable diligence and promptness in pursuing a client's employment discrimination claims, failing to clarify with the client whether he was undertaking to represent the client in her claims, and failing to promptly comply with the client's requests for information regarding her claims, in violation of Rules 1.3 and 1.4, MRPC.

G. On June 12, 2007, respondent was placed on private probation for offering evidence that respondent's client had obtained through illegal means, bringing a motion that resulted in the assessment of a sanction and billing his client for the amount of the sanction and misstating evidence in a written final

argument and an appellate brief, in violation of Rules 3.4(c), 4.4, 5.1(c)(2) and 8.4(d), MRPC.

H. On July 16, 2010, respondent was publicly reprimanded and placed on probation for two years for transferring funds from a trust account to accounts in financial institutions not approved as depositories for Minnesota client funds, failing to prepare required trust account trial balances and reconciliations resulting in client balance errors, and commingling personal and client funds by allowing a balance of earned fees to remain in the trust account for a period of at least six months, in violation of Rule 1.15(a), (b), (c)(3), (d), and (f), MRPC, and Appendix 1 thereto.

FIRST COUNT

John M. Dixon and Michael J. Shea, Ph.D., Matter

1. John M. Dixon retained respondent in March 2012 to seek an increase in parenting time with his daughter, K.A. E.A. is K.A.'s mother.

2. Dixon wished to remove the court-appointed parenting consultant, psychologist Michael J. Shea, Ph.D. Dixon retained respondent in part because he knew respondent had dealt with Shea in the early 1980s during the well-known child sex abuse cases in Jordan, Minnesota. Respondent told Dixon he recalled there had been allegations of sexual contact made against Shea at the time involving some boys who Shea had seen professionally and were alleged victims in the Jordan cases.

3. On April 11, 2012, respondent scheduled Shea's deposition for May 9, 2012. Prior to May 9, 2012, respondent did no research into whether allegations of inappropriate sexual contact against Shea had been made or had a basis in fact.

4. Shea was unrepresented during the deposition. Respondent asked Shea whether he had ever used polygraphs with people who had been convicted of sexual abuse. Shea said he had not. Respondent and Shea then had the following exchange:

Respondent: When you were accused of inappropriate contact with some of your clients, boys, at that time did you undergo a polygraph examination?

Shea: I've never been accused of inappropriate contact with -- you mean patients?

Respondent: Yeah.

Shea: I've never been accused of inappropriate contact with boys who've been my patients.

Respondent: Okay.

Shea: And I have wondered what Mike's [Dixon] allegations were in the nasty e-mail he sent to me, and perhaps this is one of them.

Respondent: Have you ever been accused of inappropriate contact with any children?

Shea: No. Not that I'm aware of, no. Never any allegations. I would love to see any documentation of that. It actually can't exist.

Respondent did not ask further questions about the allegations during the deposition of Shea.

5. Respondent retained Attorney Kellen T. Fish to assist him in representing Dixon, under respondent's supervision. Fish's first activities included conducting research into the allegation of inappropriate sexual contact against Shea. Fish did not begin his research, however, until June 25, 2012, after Shea's deposition. Fish was unable to substantiate the substance of the allegations or that they were ever made.

6. In March 2013 Dixon decided to terminate respondent's representation. Dixon requested the return of his client files from respondent.

7. On March 28, 2013, respondent emailed Dixon. The message included a request that Dixon indicate whether he wanted his files sent to him or whether he wished to pick up his files from respondent's office, and when.

8. Dixon appeared at respondent's office to pick up his files on April 15, 2013. Dixon told respondent's staff there were three missing boxes of files. Respondent's staff told Dixon the other files had been "lost."

9. Dixon sent a certified letter to respondent dated May 1, 2013, that addressed the issue of the three missing boxes of files. Respondent notified Dixon that the other boxes of files, which were at Fish's office, had been located and were available for pick-up at respondent's office. Dixon picked up the files on May 14, 2013.

10. Respondent's conduct in asking Michael J. Shea, Ph.D., who was under oath, a question that implied Shea had been accused of sexual contact with minors nearly 30 years earlier, without a good faith basis to do so, violated Rules 4.4 and 8.4(d), MRPC.

11. Respondent's conduct in failing to provide a complete copy of John Dixon's file until May 14, 2013, after Dixon complained to respondent, violated Rule 1.16(d), MRPC.

SECOND COUNT

Samantha S. Adamek Matter

12. Samantha S. Adamek retained respondent on February 19, 2007, to represent her regarding a custody and visitation dispute against Scott Haugen, regarding their child, S.A. Respondent represented Adamek continuously in the matter until 2013, including appeals filed in 2008 and 2010.

13. Respondent brought a "Nice-Peterson" motion to modify custody on Adamek's behalf that was scheduled to be heard by the Honorable Sally Ireland Robertson at the Todd County Courthouse on November 6, 2009. Adamek was

required to make a *prima facie* showing endangerment of S.A. in order for the court to order an evidentiary hearing.

14. Haugen submitted records to the court from counselor Nyla Kraemer and from the "Kids Plus" organization. The records from Kraemer were incomplete and the records from Kids Plus were redacted regarding information about Adamek because Adamek had not signed an authorization for release of information.

15. Judge Robertson said the court needed "clean copies" of the Kids Plus and Kraemer records and directed respondent to submit a signed release. Respondent told Judge Robertson he would prepare a release by Monday, November 9, 2009, and send it to Haugen.

16. Judge Robertson addressed the need for clean copies of the Kids Plus and Kraemer records on three additional occasions later in the hearing. She told respondent 30 days was a reasonable deadline and expected respondent to submit them by then. Respondent told Judge Robertson he may need to conduct discovery in support of Adamek's custody change motion but wanted to "start by looking at the records because the records may answer what we need." Judge Robertson told respondent to "wait until you get the records, and then send them to [Judge Robertson]."

17. On December 3, 2009 (three days before Judge Robertson's deadline to submit records), Haugen wrote to respondent. Respondent did not receive the letter until December 7, 2009. Haugen noted that Kids Plus signed a release it received from respondent on December 2, 2009, but that the records would not be ready until December 4, 2009. Haugen also noted he was unaware of the status of Kraemer's records. Haugen asked respondent, "Was Judge Robertson expecting this information 30 days from the motion hearing that was held in November? Once all the information arrives, is your office going to submit [sic] it to Todd County?"

18. Respondent did not provide the records to Judge Robertson by the December 6, 2009, deadline, and did not request an extension of time in which to do so.

19. On January 12, 2010, Judge Robertson denied Adamek's request for an evidentiary hearing, noting "all the parties also agreed that the record was incomplete and the Court would need additional documentation before making a ruling on whether to grant an evidentiary hearing."

20. Respondent did not submit records from Kraemer and Kids Plus until January 12, 2010, the same day as Judge Robertson's order denying Adamek's motion.

21. On January 20, 2010, respondent wrote to Judge Robertson and requested reconsideration of the January 12, 2010, order. Judge Robertson denied the motion in an order dated March 12, 2010. Judge Robertson noted respondent submitted the records one month late and did not request an extension of time in which to submit them.

22. On March 12, 2010, respondent filed an appeal of Judge Robertson's January 12, 2010, order with the Minnesota Court of Appeals. Respondent filed a brief on May 18, 2010, but on May 21, 2010, dismissed the appeal.

23. In or about May 2013, Adamek discharged respondent and requested a copy of her client files. On May 1, 2013, Kim Manney from respondent's office emailed Adamek and told her the files were ready to be picked up from respondent's office.

24. On May 1 or 2, 2013, Adamek picked up her files from respondent's office. Adamek emailed Manney later and said the files were incomplete. Manney asked Adamek to check what she received again and to notify respondent whether items were still missing.

25. On August 9, 2013, Adamek emailed respondent's office to report that items were still missing from her files.

26. On December 3, 2013, respondent notified Adamek that they had discovered four additional banker boxes of Adamek's files in an off-site storage facility. At Adamek's request, the files were sent to her home in Long Prairie, Minnesota.

27. Among the items respondent shipped to Adamek were court pleadings and other materials belonging to other clients of respondent's. On February 14, 2014,

respondent wrote to Adamek seeking the return of the other items at respondent's expense. Adamek returned the files to respondent.

28. Respondent's conduct in failing to submit the Kraemer and Kids Plus records to the court in Samantha Adamek's case as directed, or to seek an extension of the deadline in which to do so, violated Rules 1.1, 1.3, and 8.4(d), MRPC.

29. Respondent's conduct in failing to provide a complete copy of Samantha Adamek's file to her until six months after being discharged violated Rule 1.16(d), MRPC. Respondent's conduct in providing materials from other clients' files to Samantha Adamek, violated Rules 1.1, 1.6(a), 1.16(d), and 8.4(d), MRPC.

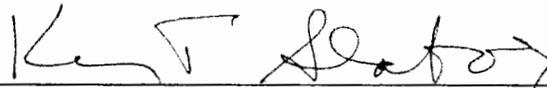
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: June 16, 2014.



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

and



KEVIN T. SLATOR
SENIOR ASSISTANT DIRECTOR
Attorney No. 204584