

FILE NO. A14-1416

STATE OF MINNESOTA

IN SUPREME COURT

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

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION
FOR DISCIPLINE**

The above-captioned matter was heard on December 5, 2014, by the undersigned acting as referee by appointment of the Minnesota Supreme Court. Kevin T. Slator appeared on behalf of the Director of the Office of Lawyers Professional Responsibility (Director). Respondent Marc G. Kurzman appeared personally and was represented by counsel, Eric T. Cooperstein.

The hearing was conducted on the Director's June 16, 2014, petition for disciplinary action. The Director presented the live testimony of respondent, Michael J. Shea, Ph.D., Kellen T. Fish, Samantha S. Adamek, and John M. Dixon and submitted exhibits. The Director submitted proposed findings of fact, conclusions of law and recommendation for appropriate discipline and a legal argument. Respondent presented the live testimony of Carol M. Grant, Kellen T. Fish, and Barry R. Woodgate.

The referee's findings of fact, conclusions of law and recommendation are due to the Supreme Court no later than January 13, 2015.

In his answer to the petition for disciplinary action ("R. ans."), respondent admitted certain factual allegations, denied others, and denied any rule violations. The findings and conclusions made below are based upon respondent's admissions, the documentary evidence the Director submitted, the testimony presented, the demeanor

and credibility of the witnesses as determined by the undersigned and the reasonable inferences to be drawn from the documents and testimony.

If respondent admits a particular factual finding made below, then even though the Director may have provided additional evidence to establish the finding, no other citation will necessarily be made. For each factual finding made below, the undersigned evaluated the relevant documents and testimony, accepted as credible the testimony consistent with the finding and did not accept the testimony inconsistent with the finding.

FINDINGS OF FACT

1. Respondent was admitted to practice law in Minnesota on October 20, 1972.
Respondent practices law in Minneapolis, Minnesota and in the State of Florida.
Respondent is also admitted to practice law in the states of Wisconsin and New York, and in federal courts.
2. Respondent has practiced law continuously for 42 years. He has handled 400-500 jury trials and approximately 150 bench trials. He has practiced law with Carol M. Grant since the early 1980s (R. test.).
3. During roughly the first half of respondent's career, from 1972 until 1994, he was not subject to any professional discipline in Minnesota. During the second half of his career, from 1994 until 2013, respondent was disciplined 10 times, including violations of 19 provisions of the Minnesota Rules of Professional Conduct (MRPC): 1.3, 1.4, 1.4(a), 1.5(c), 1.5(e), 1.15, 1.15(a), 1.15(b), 1.15(c)(3), 1.15(d), 1.15(f), 3.3(a)(1), 3.4(c), 3.5(g), 4.1, 4.4, 5.1(c)(2), 8.4(c), and 8.4(d). Respondent's disciplinary history, which is described below, also includes repeated violations of Rules 1.3, 3.4(c), and 8.4(d), MRPC:
 - a. On July 29, 1994, respondent received 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), MRPC.

b. On November 4, 1996, respondent received 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 received 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 received 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 received 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.

i. On July 11, 2013, respondent received an admonition for filing a "general denial," pleading defenses such as forgery without any supporting factual allegations, and in pleading fraud without particularity, in violation of the Minnesota Rules of Civil Procedure, violated Rules 1.3, 3.4(c), and 8.4(d), MRPC.

Michael J. Shea, Ph.D., Matter

4. John M. Dixon retained respondent in March 2012 to seek an increase in parenting time with his minor daughter, K.A. E.A. is K.A.'s mother (R. ans.).
5. Dixon also wished to remove the court-appointed parenting consultant, psychologist Michael J. Shea, Ph.D. Dixon contacted and 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 were allegations of sexual contact made against Dr. Shea at the time involving some boys who Dr. Shea had seen professionally and were alleged victims in the Jordan cases (R. ans.).
6. Respondent had represented several individuals accused of sexual abuse of children

near Jordan Minnesota in the early 1980s. Dr Shea assisted the county attorney in some of the cases. Respondent later sometimes in other cases also applied polygraph testing to potential clients and witnesses. Polygraph test results are usually inadmissible as evidence in court. *State v. Kolander*, 236 Minn. 209 (Minn. 1952). Polygraph testing may have relevance in other limited circumstances. Minn. Stat. 609.3456 (a) (2014), requirement that sex offender submit to polygraph examinations. Minn. Stat. 611A.26 (2014), voluntary use of polygraph examinations in complaints in sexual conduct offenses. Respondent utilized the polygraph test results for purposes such as evaluating the reliability of individuals. Respondent did use such testing of Mr. Dixon.

7. On April 11, 2012, respondent scheduled Dr. Shea's deposition for May 9, 2012. Respondent at the evidentiary hearing testified that prior to the deposition he had recalled that Dr. Shea himself at some prior time had been accused of sexual contact with minors. That testimony was not credible. Prior to May 9, 2012, respondent did no research into whether allegations of inappropriate sexual contact against Dr. Shea had in fact ever been made or had any basis in fact (R. ans.).
8. Dr. Shea was unrepresented during the deposition. Others present included E.A., E.A.s' attorney, Jody M. Alholinna, a court reporter, and Dixon (Exh. 12). Respondent asked Dr. Shea under oath whether he had ever used polygraphs with people who had been convicted of sexual abuse. Dr. Shea said he had not. Respondent and Dr. Shea then had the following exchange shown on Exh. 12, page 83:

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 (R. ans.).

9. Respondent testified at the evidentiary hearing that part of his purpose in taking the Shea deposition was to determine what weight Dr. Shea placed upon polygraph results, and therefore to persuade Shea that if Dixon had performed positively on Dixon's polygraph that Dixon was trustworthy regarding the case concerning his daughter. The totality of the evidence, including Exh. 12, supports this testimony and the referee so finds. Therefore respondent had a legitimate purpose in asking Shea about polygraph tests, regardless of whether evidence of the test results was ultimately admissible in court proceedings.
10. However respondent went further than that purpose in his question on line 4, page 83, of Exh. 12. He prefaced the question "...at that time did you undergo a polygraph examination?" with an affirmative assumption "When you were accused of inappropriate contact with some of your clients, boys...". That assumption necessarily became part of respondent's following question and required either a tacit approval or a specific denial by Shea. It is akin to the classic "Have you stopped

beating your wife?" The question appeared to be intended to embarrass and humiliate Shea, particularly in view of the nature of his profession, and did provoke his response as shown in Exh. 12.

While respondent did have a good faith basis in questioning Shea about Shea's attitude and experience concerning polygraph tests, he did not have a good faith basis when he in effect asked Shea whether he had been accused of inappropriate sexual contact with minor clients.

11. Respondent also testified that he was aware many people had been falsely accused in the Jordan/Scott County cases and would not be surprised if Dr. Shea had also been falsely accused (R. test.). However lack of surprise does not equate with a positive good faith basis. Respondent testified that he defended two couples, the Buchans and Myers, against such accusations (R. test.). Later, respondent sued Dr. Shea and others in federal court on behalf of the Buchans and Myers, alleging civil rights violations. Dr. Shea was dismissed as a defendant. *Myers v. Morris*, 810 F.2d 1437 (8th Cir. 1987).
12. Respondent asked attorney Kellen T. Fish to assist him by researching possible grounds to remove Shea as parenting consultant (R. test., Fish test.). Among Fish's first activities was to conduct research into the allegations of inappropriate sexual contact against Shea (R. ans.; Fish test.). Respondent did not ask Fish for this research assistance until June 25, 2012, after Shea's deposition. Respondent did no research personally or by Fish prior to the Shea deposition to substantiate whether the allegations had ever been made (R. test.).
13. Fish's research included reviewing files at the offices of the Minnesota Board of Psychology, from whom Shea holds a license to practice psychology (Fish test.; Shea test.) Fish was unable to substantiate the substance of the allegations or that they were ever made (R. ans.; Fish test.).

14. No evidence was introduced at the evidentiary hearing that Shea had ever been accused of sexual misconduct with a client.
15. There was considerable discussion at the evidentiary hearing, including during the testimony of Carol Grant, as to whether a difference exists between a question asked by an attorney without good faith in a) a trial, or b) a deposition. Neither counsel has cited any authority to distinguish the two situations, nor has the referee so identified. The director has cited generally Minn. Prac., Methods Of Practice: Civil Advocacy 7:1 (2013 ed.); and 11 Minn. Prac., Evidence 608.01 (4th ed. 2014). The referee finds a significant general difference in degree between an improper question being asked during a deposition or a trial. In the present case the question was asked in a discovery deposition attended only by a few persons, most of whom were legal professionals. The question, while improper, did not materially affect the deposition nor the handling or progress of the case, nor has it been established that there resulted significant damage or harm to Shea. A contrasting result may have existed if such a question were asked of Dr. Shea during a felony jury trial in which a defendant was charged with sexual abuse of minors. Depending upon the circumstances, the question asked by respondent could conceivably have resulted in a range of results up to a mistrial, with great delay, cost and prejudice. The referee finds that while respondent did not ask the relevant question identified above in good faith, the seriousness of the misconduct was less in degree than the typical similar misconduct.

John M. Dixon Matter

16. On March 28, 2013, respondent emailed Dixon and told him he was withdrawing from representation (Exh. 14). Respondent asked Dixon to tell him whether he wanted his client files sent to him or whether he planned to pick them up from respondent's office (R. ans.).

17. Approximately one box of Dixon's files was in Fish's possession when respondent withdrew from representation (Fish test.). As described below, respondent did not contact Fish about returning Dixon's files that were in his possession until over two weeks later, on April 15, 2013 (Exh. 15; Fish test.).
18. Dixon phoned respondent's office on April 15, 2013, to say he would come to respondent's office to pick up his files (R. ans.; Dixon test.). Dixon told respondent's staff and Fish that he had retained a new attorney, Zachary Smith, to continue his legal matter with E.A. (Dixon test.; Fish test.).
19. Respondent was not present when Dixon arrived on April 15, 2013. Respondent's staff gave some files to Dixon and had him sign a receipt (R. test.; Exh. 16). Because three boxes of files were missing, a member of respondent's office staff wrote "less three boxes" on the receipt (Dixon test.; Exh. 16).
20. After Dixon left respondent's office on April 15, 2013, respondent's assistant, Kim Manney, contacted Fish by email, about retrieving Dixon's files that were in Fish's possession (R. test.; Exh. 15). Manney told Fish she "had no idea where the rest [of Dixon's files] would be" and that the file room was "disorganized" and "horrible" (Exh. 15). Fish delivered the Dixon files in his possession directly to Smith on April 16, 2013 (Fish test.).
21. Respondent had no contact with Dixon between April 15, 2013, and May 1, 2013 (R. test.). On that day, Dixon wrote to respondent to request the return of his remaining missing client files (R. ans.). Dixon picked up the rest of his files from respondent's office on May 14, 2013 (R. ans.; Dixon test.; Exh. 18). From April through May 14, Dixon was in Florida but returned to Minnesota weekly (Dixon test.). Some, but not all of the delay in returning Dixon's complete file was caused by the lax and unresponsive office practices of respondent. Dixon also contributed to the delay. The referee finds that no legal damage occurred to Dixon's case due to any delay.

Samantha S. Adamek Matter

22. Samantha S. Adamek retained respondent in 2007 to represent her regarding a custody and visitation dispute against Scott Haugen involving their child, S.A. Respondent represented Adamek continuously in the matter until 2013, including appeals filed in 2008 and 2010 (R. ans.).
23. Respondent brought a “Nice-Peterson” motion to modify custody 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 of endangerment of S.A. in order for the court to order an evidentiary hearing (R. ans.; Exh. 20).
24. 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 (Exh. 20, pp. 7-9, 12-15, 22-23, 27-28, 35; R. ans.).
25. The transcript shows that Judge Robertson requested “clean copies” (i.e. unredacted copies) of the Kids Plus and Kraemer records and directed respondent to submit a release for the records signed by Adamek. Respondent told Judge Robertson he would prepare a release by Monday, November 9, 2009, and send it to Haugen (Exh. 20, p. 14; R. ans.).
26. 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]” (Exh. 20, pp. 27-28; R. ans.).

27. 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?" (R. ans.).
28. 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 (R. ans.). Respondent testified that he was in Florida during this time because his mother, who lives there, was ailing. Respondent did not seek an extension of the deadline and was not prevented from doing so.
29. 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" (R. ans.; Exh. 21).
30. Respondent did not submit records from Kraemer and Kids Plus until January 12, 2010, the same day that Judge Robertson issued an order denying Adamek's motion (Exh. 21; R. ans.).
31. On January 20, 2010, respondent wrote to Judge Robertson and requested reconsideration of the January 12, 2010, order (Exh. 22).
32. Sometime after January 20, 2010, respondent phoned Adamek to tell her he planned to ask for reconsideration of Judge Robertson's order now that the Kraemer and Kids Plus records had been submitted to the court. Respondent did not explain to Adamek, however, why he failed to submit the records on time or what the possible

impact was on Adamek's motion of his failing to do so (Adamek test.). Respondent also did not express regret or remorse to Adamek for failing to comply with the court's directive and potentially diminishing the chances that Adamek's motion would succeed (Adamek test.).

33. Judge Robertson denied respondent's request for reconsideration in an order dated March 12, 2010 (Exh. 23). Judge Robertson noted that respondent submitted them one month late and did not request an extension of time in which to do so (R. ans.). Nonetheless her order shows that she did review the unredacted records that respondent had tardily filed, and utilized them in confirming her decision to deny Adamek's pending motion on the merits. While the delay caused by respondent did not appear to prejudice Adamek regarding Judge Robertson's ultimate decision, it caused delay in a likely time sensitive child custody case and impacted Adamek's relationship with the legal profession.
34. On March 12, 2010, respondent appealed 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 (R. ans.).
35. In or about May 2013, Adamek discharged respondent and requested a copy of her client files. On May 1, 2013, respondent's assistant, Kim Manney, emailed Adamek and told her the files were ready to be picked up from respondent's office (R. ans.; Exh. 24).
36. On May 1, 2013, Adamek picked up her files from respondent's office (R. ans.; Exh. 24).
37. On August 9, 2013, Adamek emailed Manney and said the files were incomplete. Manney asked Adamek to check the files again and to notify respondent whether items were still missing (R. ans.; Exh. 24).
38. On August 9, 2013, Adamek emailed respondent's office to report that items were still missing from her files (Exh. 24; R. ans.).

39. 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.
40. Among the items respondent shipped to Adamek were court pleadings and other materials belonging to two or three other clients of respondent's in unrelated cases, including a nonpublic case (Exh. 25; R. ans.; Adamek test.). On February 14, 2014, respondent wrote to Adamek seeking the return of the other items at respondent's expense (R. ans.; Adamek test.). Adamek returned the files to respondent (Exh. 25; R. ans.; Adamek test.). The referee finds that respondent failed to apply adequate reasonable actions to timely return files to Adamek and to safeguard the files of other clients.

Aggravating and Mitigating Factors

41. Respondent's prior discipline, including discipline for repeated violations of the same Rules of Professional Conduct, is an aggravating factor. Respondent's current violations of Rules 1.3, 4.4(a), and 8.4(d), MRPC, for which respondent has been disciplined once or more in the past, is an aggravating factor.
42. Respondent's misconduct in the Dr. Shea matter occurred in May 2012, while respondent was on two years of public probation that was ordered by the Minnesota Supreme Court on July 16, 2010. However that probation was grounded upon respondent's trust account recordkeeping. Thus while the probation may be an aggravating factor, such aggravation may be mitigated by the differences.
43. Respondent's substantial experience in the practice of law is an aggravating factor. He estimated that he has participated in 400 – 500 jury trials, 150 bench trials, and several hundred depositions.
44. Respondent generally has devoted about 40 - 50 hours per year doing *pro bono* legal work. Respondent's *pro bono* legal work consists, in part, of not charging paying

clients for all of the time he spends on their cases. Respondent devoted about twice the number of annual pro bono hours prior to five years ago. (R. test.).

45. The referee is charged with assessing a respondent's demeanor, credibility, and sincerity, including sincerity or genuineness of remorse. *In re Moulton*, 721 N.W.2d 900, 905 (Minn. 2006). Remorse may not be found to be a mitigating factor if it was compelled and not made until after the respondent was under investigation. *In re Jones*, 834 N.W.2d 671, 677 (Minn. 2013). In this case the issue of remorse is not a major factor. Respondent presented arguable defenses to the allegations, rendering statements of remorse, especially as regards Shea and Dixon, awkward or inconsistent other than by alternative expressions.
46. Respondent testified he was sorry or regretful that Samantha Adamek had to wait two months to learn if Judge Robertson would reconsider her order and that Shea was upset and distressed by respondent's deposition questions and insinuations (R. test.). The referee so finds. Respondent did not mention Dixon. There is no indication that respondent expressed remorse to Adamek or Shea.
47. Respondent testified that he was very concerned about the allegations, discussed them with others for their opinions, and took over 20 hours, mostly online, of continuing educational courses in ethics in 2013 to avoid future allegations. The referee so finds.
48. In summary, the referee finds that respondent expressed weak to moderate remorse, within the limitations of his legal position.
49. Respondent presented the testimony of Kellen T. Fish, Carol M. Grant, and Barry R. Woodgate, as character witnesses. Each witness testified of his or her great respect for respondent's ability as a lawyer. Each of the witnesses also testified as to their very significant financial connection to respondent:
 - Respondent has many of his clients take a polygraph examination in order to assess their truthfulness (R. test.). Woodgate, a polygraph

examiner since the 1970s, said he is the only polygraph examiner respondent uses. When Woodgate has a conflict of interest he (not respondent) refers the client to another examiner. Woodgate said he derives a substantial amount of polygraph examination business from respondent's referrals, and has done so for many years (Woodgate test.).

- Carol M. Grant is the only other shareholder and lawyer in respondent's law practice. Grant and respondent have practiced law together since the late 1970s and were formerly married to each other before their divorce. They continue their joint practice. (R. test.; Grant test.).
- Kellen T. Fish is a young lawyer who was a law clerk in respondent's office during law school in 2007-2008. Respondent began employing Mr. Fish to assist him with cases as soon as Mr. Fish became a lawyer in 2010, including the Dixon case in 2012. Respondent continues to employ Fish at present, but less often than in prior years (Fish test.).

50. Because of their demeanor, deep financial and emotional interests, and in the cases of Fish and Woodgate, lack of knowledge of, or willingness to accept, respondent's disciplinary history, the referee has placed little weight upon the value of the testimony of the aforesaid witnesses regarding the character of respondent. The referee finds evidence of respondent's character not to be a mitigating factor. However some testimony of these witnesses is credited by the referee. This includes testimony of Grant that the law firm had a procedure for tracking and storing client files in an off-site storage building ; and that she had no knowledge of other client complaints regarding retrieval of their files. The referee however finds that any procedure for tracking and storing client files was clearly inadequate, and that respondent had the co-responsibility for ensuring a viable system.

CONCLUSIONS OF LAW

1. Respondent's conduct in asking Michael J. Shea, Ph.D., who was under oath, a question that assumed that Shea had been accused of sexual contact with some

of his clients, without a good faith basis to do so, violated Rules 4.4(a) and 8.4(d), MRPC.

2. Respondent's conduct in failing to provide a complete copy of John Dixon's file to him until May 14, 2013, approximately six weeks after respondent withdrew from representation, in the particular circumstances of the facts found in this case, did not violate any rules of professional conduct.

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

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

5. Respondent committed no other rule violations regarding the Adamek matter.

6. Respondent's prior discipline, including discipline for multiple violations of the same Rules of Professional Conduct, is an aggravating factor. Respondent's conduct in violating Rules 1.3, 4.4(a), and 8.4(d), MRPC, for which he has been disciplined once or more in the past, is an aggravating factor.

7. Respondent's substantial experience in the practice of law is an aggravating factor. *In re Overboe*, 745 N.W.2d 852, 867 (Minn. 2008).

8. Respondent's contributions to the legal community through his *pro bono* work "are not so far above and beyond what is expected of an attorney in [his] position." *In re Fairbairn*, 802 N.W.2d 734, 746 (Minn. 2011). Respondent has not "done more than is generally expected of any attorney." *In re Albrecht*, 779 N.W.2d 530, 539 (Minn. 2010), (citation omitted). Respondent's *pro bono* work does not constitute a mitigating factor.

9. A referee may find that character testimony is or is not a mitigating factor. *In re Farley*, 771 N.W.2d 857, 863 (Minn. 2009). The referee does not find evidence offered regarding the character of respondent to result in a significant mitigating factor.

10. The referee acknowledges that respondent was procedurally somewhat restricted in expressing remorse for the violations he denied. However even as to the violations admitted by respondent, Respondent's remorse was lacking or not significant before the disciplinary investigation was begun, and is deemed compelled. Remorse is neither a mitigating nor an aggravating factor in this matter.

11. Any violations of the MRPC that are not herein specifically found to have occurred are dismissed.

RECOMMENDATION FOR DISCIPLINE

Respondent Marc G. Kurzman has committed intentional misconduct which has caused harm to the administration of justice, parties, counsel and clients. The misconduct was generally less serious and damaging than similar types of violations usually found under the cited MRPC. However his lengthy history of recurring discipline aggravates the misconduct and does not give encouragement that disciplinary dispositions similar to those imposed in the past will result in improved conduct.

After consideration of all factors the referee recommends the following discipline:

1. Respondent be suspended from the practice of law for 60 days, with the suspension stayed and that he be placed on probation for two years under the terms below.
2. Respondent to cooperate fully with the Director in monitoring the probation, including but not limited to the following:

- a. Notify the Director of his current mailing address, and any changes thereof within five days of any change.
 - b. Respond to any communication from the Director within any due date requested by the Director.
 - c. Promptly cooperate with the Director regarding any future allegations of professional conduct, and compliance with the terms of any other probation..
 - d. Sign any authorizations for release of information reasonably requested by the Director to monitor compliance with any probation.
3. Respondent to abide by the Minnesota Rules of Professional Conduct.
4. Respondent to be supervised by a licensed Minnesota attorney appointed by the Director to monitor compliance with the terms of this probation.

Respondent shall provide to the Director within four weeks after the date of this document the names and addresses of four attorneys who have agreed to be nominated as respondent's supervisor. If after diligent effort respondent is unable to locate a supervisor, the Director will seek to appoint a supervisor. Any supervisor must be reasonably acceptable to the Director.
5. Respondent shall cooperate fully with the supervisor and the supervisor's efforts to monitor respondent's compliance with probation. Respondent shall contact the supervisor and schedule and attend at least one in-person meeting with the supervisor each calendar quarter. Respondent shall submit to the supervisor an inventory of all active client files for which respondent is responsible by the first day of each month during probation. As 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. The supervising attorney shall file with the Director

the initial inventory, and thereafter future inventories prepared by respondent at least quarterly, together with any supplementary information as may be reasonably requested by the Director.

6. Respondent shall initiate and maintain office procedures which ensure that there are prompt responses to correspondence, telephone calls and other communications from clients, courts or other relevant persons regarding matters in which Respondent is representing clients, and which ensure that respondent regularly reviews all files regarding those matters and timely completes them. Within four weeks after the date of this document respondent shall provide to the Director, and to the probation supervisor immediately when appointed, a written plan showing the office procedures he has designed and implemented to ensure that he is in compliance with the probation requirements. Respondent shall immediately provide to the Director and the probation supervisor any changes he may make in the plan.

Dated: January 9, 2015.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Bruce W. Christopherson", written over a horizontal line.

BRUCE W. CHRISTOPHERSON
SUPREME COURT REFEREE