

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against MARK FRANCIS NOVAK,  
a Minnesota Attorney,  
Registration No. 304827.  
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**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 Mark Francis Novak, 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 unconditionally 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.

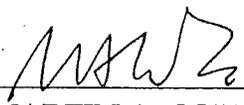
8. This stipulation is entered into by respondent freely and voluntarily, without any coercion, duress or representations by any person except as contained herein.

9. Respondent hereby acknowledges receipt of a copy of this stipulation and admits service of the petition.

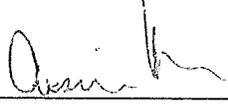
10. Respondent has been advised by the undersigned counsel concerning this stipulation and these proceedings generally.

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

Dated: July 17, 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

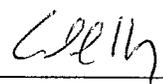
Dated: July 17, 2014.

  
CASSIE HANSON  
SENIOR ASSISTANT DIRECTOR  
Attorney No. 303422

Dated: July 29<sup>th</sup>, 2014.

  
MARK FRANCIS NOVAK  
RESPONDENT

Dated: July 31, 2014.

  
CHAD J. HINTZ  
ATTORNEY FOR RESPONDENT  
Attorney No. 30850X  
3900 Northwoods Drive, Suite 200  
Arden Hills, MN 55112  
(651) 490-1808

## MEMORANDUM

There is no question that respondent misrepresented to the court and opposing counsel the reason he needed a continuance in the underlying marital dissolution action. Respondent acknowledges that the misconduct was intentional, and acknowledges that an intentional misrepresentation to the court could warrant discipline more severe than a reprimand. *See In re Scott*, 657 N.W.2d 567 (Minn. 2003).

There are several mitigating factors that make a public reprimand appropriate in this matter. First, respondent has demonstrated sincere remorse for his misconduct, which can be considered as mitigation under certain conditions. *See In re Fairbairn*, 802 N.W.2d 734, 746 (Minn. 2011) (“Whether an attorney is remorseful for [her] misconduct is an important issue in an attorney discipline case...because remorse can be a mitigating factor in certain circumstances”). During the underlying civil litigation, respondent fully acknowledged to both opposing counsel and the court that he made a false statement. From the onset of the Director’s investigation, respondent has similarly acknowledged his misconduct and cooperated fully with the Director’s investigation. Respondent’s expression of remorse and acknowledgement of the seriousness of his misconduct is sincere. Imposition of a sanction greater than a public reprimand does not appear necessary under these circumstances in order to protect the public. “Because one purpose of attorney discipline is to protect the public, an attorney’s remorse or lack of it is an important factor.” *In re Nora*, 450 N.W.2d 328, 330 (Minn. 1990).

Second, respondent’s misconduct also resulted in less harm than other cases in which the Court has imposed a sanction greater than a public reprimand. The Director is by no means minimizing the negative impact of respondent’s conduct upon the court and opposing counsel, but rather acknowledging the steps that respondent took to minimize any economic harm to the opposing party. After respondent acknowledged

his false statement, opposing counsel filed a motion for sanctions claiming that his client had been financially prejudiced by the approximate one month delay in the case. Respondent voluntarily agreed to pay the amount requested in the motion by the opposing party, namely \$5,000, prior to the court hearing the motion. The court ultimately approved the settlement and the motion for sanctions was stricken. Respondent has provided documentation that the \$5,000 has been paid in full. The Director also notes that the delay caused by the continuance was approximately one month and that the \$5,000 in financial harm claimed by the opposing party could have been viewed as excessive had respondent contested it; however, respondent wanted to take full responsibility for his misconduct and paid the amount requested.

An attorney's discipline may be mitigated by evidence that he did not attempt to conceal the misconduct, has taken actions to ameliorate the problems, and shows that he appreciates the harm his actions caused. Under these circumstances, a public reprimand is the appropriate disposition. *See also, In re Dinneen*, No. A14-0537 (Minn. July 9, 2014) (evidence of mitigating circumstances made public reprimand of attorney, who made a false statement to the court and engaged in other misconduct, appropriate); *In re Clark*, A14-0682, 2014 WL 2969088 (Minn. June 26, 2014) (public reprimand for attorney who made false statements to the court in an appellate brief and expert affidavit).