FILED
October 25, 2023
OFFICE OF
APPELLATE COURTS

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against CATHERINE A. McENROE, a Minnesota Attorney, Registration No. 0219587.

STIPULATION FOR DISPENSING WITH PANEL PROCEEDINGS AND FOR FILING PETITION FOR DISCIPLINARY ACTION

THIS STIPULATION is entered into by and between the Director of the Office of Lawyers Professional Responsibility (Director) through its Deputy Director, Binh T. Tuong, and Catherine A. McEnroe, attorney (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. It is understood that respondent has the right to have charges of unprofessional conduct heard by a Lawyers Professional Responsibility Board Panel prior to the filing of a petition for disciplinary action, as set forth in the Rules on Lawyers Professional Responsibility (RLPR). Pursuant to Rule 10(a), RLPR, the parties agree to dispense with panel proceedings under Rule 9, RLPR, and respondent agrees to the immediate filing of a petition for disciplinary action (petition) in the Minnesota Supreme Court.

2. Respondent understands that upon the filing of this stipulation and the petition, this matter 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. Respondent admits service of the petition.

4. Respondent waives the right to answer and unconditionally admits the allegations as described in 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 sanction the Court will impose.

6. The Director and respondent join in recommending that the appropriate discipline is a 60-day suspension pursuant to Rule 15, RLPR. The suspension shall be effective immediately as of the date of the Court's suspension order. Reinstatement is conditioned upon: (1) payment of $900 in costs and disbursements pursuant to Rule 24(d), RLPR; (2) compliance with Rule 26, RLPR; (3) successful completion of the professional responsibility examination pursuant to Rule 18(e); and (4) satisfaction of the continuing legal education requirements pursuant to Rule 18(e), RLPR.

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

8. Respondent acknowledges receipt of a copy of this stipulation.

9. 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.



Tuong, Binh
Oct 23 2023 11:28 AM

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Dated: October 24, , 2023.



CATHERINE A. McENROE
RESPONDENT
Attorney No. 0219587

Dated: October 24 , 2023.



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[1] Susan M. Humiston is recused from this case and has not taken part in these proceedings.

MEMORANDUM

There is no doubt respondent's conduct is serious as it concerns a knowingly false statement to the court and additional dishonest conduct to cover up the false statement. The Court has viewed false statements to the court as serious and has suspended attorneys for such conduct. *See In re Michael*, 836 N.W.2d 753, 758-59, 767 (Minn. 2013) (suspending lawyer for 30 days for, among other misconduct, making a false statement to a court); *In re Warpeha*, 802 N.W.2d 361, 361 (Minn. 2011) (suspending a lawyer for 60 days for making a false statement about the lawyer's criminal history during *voir dire* when the lawyer was a potential juror); *In re Van Liew*, 712 N.W.2d 758, 758 (Minn. 2006) (suspending a lawyer for 90 days for making a false statement to a tribunal and failing to file opposition to a motion); *In re Winter*, 770 N.W.2d 463 (Minn. 1987) (120-day suspension for attorney with disciplinary history and a number of aggravating factors, who made a knowingly false statement to the court in a *Lozada* motion). Further, the Court has also expressed concerns about whether misconduct committed by a prosecutor warrants heightened discipline due to the breach of public trust. *See*, *In re Bloomquist,* 987 N.W.2d 210 (Minn. 2023). These factors have been taken into consideration by the Director when addressing the appropriate level of discipline.

The Director could not find a Minnesota case exactly on point, though there have been cases of misconduct by prosecutors that involve dishonesty that provide guidance. In *In re Fink*, 2008 WL 11186118 (Minn. 2008), the Court publicly reprimanded a prosecutor for failing to disclose to defense counsel the existence of previously undisclosed records of scientific tests conducted on behalf of the prosecution and failed to correct a prior false statement made to the court that the underlying test data had been destroyed. In *Fink*, the Court specifically noted that there was no evidence that the failure to disclose came from any attempt to intentionally mislead either the defense or the court. In *In re Mollin,* 906 N.W.2d 260 (Minn. 2018), the Court suspended a prosecutor for 60 days for knowingly making false statements in discovery responses and disclosures and failing to disclose and/or timely disclose exculpatory evidence to the defense, which unduly delayed the criminal proceedings. The misconduct in *Mollin* spanned two separate cases and concerned two instances of dishonesty.

Other jurisdictions have considered cases with similar elements that are instructive. *Matter of Hansen*, 877 P.2d 802 (Ariz. 1994), concerned a prosecutor who lied to the court to cover up her error in prematurely releasing her witness. In *Hanson*, the court censured the attorney rather than suspend her, reasoning a censure was appropriate because the attorney had no prior disciplinary record, demonstrated remorse for her actions, made full and free disclosure and was fully cooperative throughout the disciplinary proceedings. Though *Hanson* concerned a single instance of dishonesty, it

has many similar mitigating factors with respondent's case making it particularly instructive.

In *Matter of Disciplinary Proceedings against Sanders*, 494 N.W.2d 430 (Wis. 1993), the prosecutor received a 60-day suspension for engaging in misconduct in two cases. In the first matter, the prosecutor falsely informed the court scheduling clerk that the criminal matter was settled causing the case to be removed from the trial calendar and resulting in dismissal of the matter. In the second matter, Sanders falsely told defense counsel that the jail had a policy against allowing work release privileges for inmates seeking employment. In *Committee on Professional Ethics and Conduct of the Iowa State Bar Association v. Ramey*, 512 N.W.2d 569 (Iowa 1994), the prosecutor received a three-month suspension for falsely stating he had personally examined a serialized list of monies and could guarantee they matched up (they did not) when confronted with a chain-of-custody problem during the trial of a criminal case.

The Director believes, based on the comparable cases, that a 60-day suspension is appropriate for respondent. While this case concerns misconduct that occurred in a single case, it involved two separate instances of dishonesty (making a false statement to the court and then inducing another to write a new note and submitting it to cover up the false statement). The cases that are most comparable are *Mollin* and *Sanders*, which involve two instances of dishonest conduct.

But this matter also has numerous mitigating factors that were not present in *Mollin* or *Sanders*. Respondent has demonstrated deep remorse and has taken full accountability for her actions. Respondent recognizes the harm she caused to the victim, the court, and the justice system and places full responsibility on herself. Demonstration of true remorse is a mitigating factor. *In re Bloomquist,* 987 N.W.2d at 212.

Further, respondent was facing extreme stress in her personal life with the death of her former spouse in 2020 and solely caring for a now-adult special needs son. Respondent also had unaddressed vicarious trauma stemming from her job as a county attorney (in particular, working with child rape victims) which was exacerbated by the added stress from her workload and added responsibilities. While extreme stress would normally not mitigate dishonest conduct, in this case it was a factor giving rise to the misconduct. Respondent has since sought help from a mental health professional and is seeking treatment to address these issues. Respondent has reflected on her conduct, recognizes the root cause of it and has taken steps to address the underlying issue.

Finally, there are no aggravating factors. Respondent's false statement had no bearing on the case, nor did it have substantive value. Indeed, respondent cannot explain why she made the false statement, other than to reflect on the extreme pressure she was

facing at the time. In cases where the Court has aggravated the level of discipline due to prosecutorial misconduct, the conduct typically involved intentional conduct resulting in an abuse of power or denial of constitutional rights. *See Bloomquist*, 987 N.W.2d at 211 (agreeing with the Director that cases in which the Court has viewed an attorney's position as a prosecutor to be an aggravating factor typically involve intentional conduct resulting in an abuse of power or denial of constitutional rights). This case does not involve abuse of power or a denial of constitutional rights. While respondent's misconduct resulted in a dismissal of the case on the motion of the Hennepin County Attorney's Office, the Director recognizes that there were alternatives to the dismissal, and it was not the inevitable outcome of respondent's misconduct. The false statement was not substantive, there were other prosecutors who could have completed the trial (with just one professional witness remaining), and defense counsel's motion for a dismissal was still pending with the court.

For the above reasons, the Director believes a 60-day suspension is consistent with the established caselaw, recognizes the seriousness of the misconduct, fulfills the purpose of discipline, and is appropriate in this case.