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IN RE Petition for DISCIPLINARY ACTION AGAINST Michelle Lowney MACDONALD, a Minnesota Attorney, Registration No. 0182370.

A16-1282

Filed: January 17, 2018

Attorneys and Law Firms

Susan M. Humiston, Director, Office of Lawyers Professional Responsibility, Saint Paul, Minnesota, for petitioner.
Paul Engh, Minneapolis, Minnesota, for respondent attorney.

Syllabus by the Court

1. An attorney's good-faith reliance on her client's representations is not an absolute defense to attorney discipline, nor does the First Amendment immunize an attorney's false statements impugning the integrity of a judge.
2. A 60-day suspension, followed by 2 years of supervised probation, is the appropriate discipline for an attorney who failed to competently represent a client; made false statements about the integrity of a judge with reckless disregard for the truth; improperly used subpoenas; knowingly disobeyed a court rule and failed to follow a scheduling order; and engaged in disruptive courtroom conduct, including behavior resulting in her arrest.

OPINION

PER CURIAM.

The Director of the Office of Lawyers Professional Responsibility filed a petition for disciplinary action against respondent Michelle Lowney MacDonald alleging various acts of professional misconduct. After MacDonald responded to the allegations, we appointed a referee, who held a hearing and determined that MacDonald's conduct violated numerous provisions of the Minnesota Rules of Professional Conduct. The referee recommended that we impose a 60-day suspension followed by 2 years of probation, and that we require MacDonald to undergo a mental-health evaluation. We conclude that the referee's findings and conclusions are not clearly erroneous and that a 60-day suspension followed by 2 years of supervised probation is the appropriate discipline for MacDonald's misconduct. We decline, however, to impose a mental-health evaluation as a condition of MacDonald's probation.

FACTS

MacDonald was admitted to practice law in Minnesota in 1987. Her primary area of practice is family law. Her only prior discipline was a private admonition in 2012 for trust-account violations and failing to cooperate with the Director's investigation. Before addressing MacDonald's specific arguments, we first summarize the referee's findings of fact and conclusions of law.

MacDonald began representing S.G. in 2013, as her fourth attorney of record, in a family-law matter. Among her first actions, MacDonald filed a motion challenging the constitutionality of Minnesota's family-

law statutes in response to one of the court's orders. MacDonald's motion relied exclusively on S.G.'s rendition of the facts—specifically, that the order was the result of an *ex parte* communication between the district judge and opposing counsel. It turns out, however, that the district court entered the order by mutual agreement of the parties' attorneys. Indeed, S.G.'s attorney at the time even drafted the order. The court denied MacDonald's motion and explained that it was predicated upon an inaccurate factual assumption.

As the matter advanced toward trial, MacDonald directed an associate to subpoena S.G.'s three prior attorneys to produce their bills and appear at trial because she believed that their testimony was necessary to lay the foundation for a request for attorney fees. MacDonald never contacted the attorneys, however, to ask whether the bills could be provided without a subpoena, nor did she contact opposing counsel to determine if a stipulation could be reached. Opposing counsel later testified that she would not have stipulated to the amount of the bills.

S.G.'s former attorneys moved to quash the subpoenas. The court granted their motions, concluding that MacDonald failed to take reasonable steps to avoid placing an undue burden on the attorneys. *See* Minn. R. Civ. P. 45.03(a) ("A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena."). MacDonald was personally sanctioned in the amount of $6,202.50 for her conduct. *See* Minn. R. Civ. P. 45.03(d) (providing for "reasonable compensation for the time and expense involved in preparing for and giving such testimony or producing such documents").

MacDonald appealed the order, but the court of appeals affirmed, reasoning that MacDonald could have established the amount of attorney fees using alternative means, such as having her client testify to the amount of fees she personally paid to her attorneys. The referee concluded that MacDonald's use of the subpoenas violated Minn. R. Prof. Conduct 3.1,[1] 3.4(c),[2] 4.4(a),[3] *241 and 8.4(d).[4]

During the hearing on the motions to quash, MacDonald interrupted the judge several times. When the judge told her that she was being disruptive, prompting him to call a deputy forward, she replied, "[t]he rules are that an attorney can't talk in court?" MacDonald also interrupted the judge dozens of times during other hearings in the case. The referee concluded that MacDonald's disruptive conduct during these hearings violated Minn. R. Prof. Conduct 3.5(h).[5]
On the day that S.G.'s trial was set to begin, MacDonald filed a civil-rights lawsuit in federal court on S.G.'s behalf against the district judge personally, not in his official capacity. MacDonald then moved for the judge's recusal from the case based on the pending federal lawsuit against him. The judge denied the motion, at which point MacDonald stated, "[a]nd you are telling me that you can be impartial in this trial, which you haven't done since day one." The referee found that this statement violated Minn. R. Prof. Conduct 8.2(a)[6] and 8.4(d), because it was made with reckless disregard for the truth.

Because she had expected the judge to recuse, MacDonald admitted that she was "not ready to proceed" with the trial. She called only one witness, referred to the proceeding as a "pretend trial," and interrupted the court at least half a dozen times. The referee concluded that her lack of preparation violated

Minn. R. Prof. Conduct 1.1,[7] and that her repeated interruptions violated Minn. R. Prof. Conduct 3.5(h). Before the official start of the second day of trial, but after the judge had briefly taken the bench, MacDonald approached the court reporter and accused her of inaccurately recording the prior day's testimony. MacDonald announced that, if the court reporter was unwilling to accurately record the events at trial, she would do so herself. MacDonald then began taking pictures of the courtroom. Court deputies approached MacDonald and reminded her that she knew not to take pictures in the courtroom. *See* Minn. Gen. R. Prac. 4.01 ("[N]o pictures ... shall be taken in any courtroom ... *during a trial*...." (emphasis added)); Order Regarding Cameras and Other Recording Equipment in Court Facilities (Dakota Cty. Dist. Ct. July 1, 2005) (providing, in a standing district-court order adopted "pursuant to Rule 4 of the General Rules of Practice," that "[n]o pictures ... shall be taken in *any* courtroom...." (emphasis added)).

Later that morning, during a recess, the deputies again approached MacDonald and *242 advised her that she would receive a contempt citation for taking photographs in the courtroom. MacDonald initially cooperated with the deputies by accompanying them to a holding area to complete the necessary paperwork, but thereafter refused to give the deputies her full legal name, date of birth, and address. When asked for her name, for example, she replied, "[y]ou know my name."[8] The deputies tried for approximately 15 minutes to obtain basic biographical information for the citation, but MacDonald refused to cooperate. Eventually, the deputies placed her in custody.[9]

The deputies asked MacDonald to remove her jewelry, glasses, and shoes, and to submit to a pat-down

search. The deputies then placed MacDonald in a holding cell. When the time came for her to return to the courtroom, MacDonald refused to stand up or walk to the courtroom on her own. The deputies therefore placed her in a wheelchair and handcuffed her hands to a belt that they had secured around her waist to bring her to the courtroom. Video footage of the incident shows that the deputies attempted to return MacDonald's shoes, but she refused to put them on.

While MacDonald was in custody, S.G. retrieved MacDonald's files, including her trial materials, and left the courthouse. Once MacDonald returned to the courtroom, the judge reminded her that she had an obligation to her client and repeatedly inquired about how she wished to proceed, including offering her numerous chances to contact her client and retrieve her files. Each time, MacDonald refused to respond or otherwise seek an accommodation. Her involvement in the remainder of the trial was minimal. In fact, MacDonald agrees that she did not competently represent her client, but she testified at the disciplinary hearing that her inadequate representation was due solely to her illegal arrest. She maintains that there was "nothing [she] could say or do" to correct the situation and that she "didn't do anything wrong."

The referee found that MacDonald's actions, both before and after her arrest, were an effort to produce a mistrial or support an appeal in S.G.'s case, or to gather evidence for the federal lawsuit against the judge. The referee concluded that MacDonald's conduct violated Minn. R. Prof. Conduct 1.1, 3.4(c), 3.5(h), and 8.4(d). The referee also concluded that MacDonald's separate failure to perfect an appeal in S.G.'s case, by neglecting to serve the notice of appeal on the guardian

ad litem in a timely fashion, violated Minn. R. Prof. Conduct 1.1.

MacDonald subsequently amended the complaint in the federal lawsuit to include the facts surrounding the photo-and-arrest incident. The complaint alleged that the judge had retaliated against S.G. and MacDonald, compromised the Minnesota Court Information System (MNCIS), "usurped" *243 case files with the assistance of opposing counsel, signed documents that he knew were false, and acted without jurisdiction or legal authorization. The federal district court dismissed all of the claims in the complaint, describing them as "futile" and noting that "nothing in the record supports the[m]." When asked at the disciplinary hearing about the basis for her allegations, MacDonald responded, "[t]he record speaks for itself." The referee concluded that MacDonald violated Minn. R. Prof. Conduct 3.1, 8.2(a), and 8.4(d) by making recklessly false allegations against the judge that no reasonable attorney would have made based on the evidence available.

In addition to filing a federal lawsuit against the district judge in S.G.'s case, MacDonald wrote a letter to the Board on Judicial Standards complaining about the judge's behavior and asserting that he had acted unethically during S.G.'s trial. In total, she wrote four letters to the Board, each impugning the judge's integrity and repeating the allegations from the federal lawsuit. She sent copies of these letters to numerous elected officials and made similar remarks in letters to other attorneys. The referee concluded that MacDonald's statements were false, made with reckless disregard for the truth, and violated Minn. R. Prof. Conduct 8.2(a) and 8.4(d).

Although the petition for disciplinary action focused primarily on MacDonald's representation of

S.G., it also alleged that MacDonald acted unethically in her representation of J.D. in a separate lawsuit. MacDonald, who was J.D.'s third attorney of record, defied the court's scheduling order by submitting trial exhibits 11 days late and failing to file proposed findings of fact and conclusions of law. MacDonald has admitted that she did not fully comply with the court's scheduling order.

The district court scheduled J.D.'s trial for only 2 days, but due in part to MacDonald's lack of preparation, the trial lasted 9 days, which was, as the court stated, "virtually unheard of in this kind of case." During the trial itself, MacDonald repeatedly interrupted the judge, who ordered MacDonald to discontinue her disruptive behavior. Based in part on MacDonald's "disorganization, noncompliance with scheduling orders ... and poor trial preparation," the court ordered J.D. to personally pay $20,000 in conduct-based attorney fees. At the disciplinary hearing, MacDonald blamed J.D. for her lack of preparation and failure to comply with the scheduling order.

The referee concluded that MacDonald "knew or should have known she was responsible for ... compliance with court scheduling orders" and that her failure to follow the scheduling order violated Minn. R. Prof. Conduct 3.4(c) and 8.4(d). The referee further concluded that MacDonald's recurring disruptions violated Rule 3.5(h).

Following a 2-day disciplinary hearing, which included the presentation of evidence and testimony, the referee determined that the Director had proven by clear and convincing evidence that MacDonald's conduct violated Minn. R. Prof. Conduct 1.1, 3.1, 3.4(c), 3.5(h), 4.4(a), 8.2(a), and 8.4(d). The referee recommended a 60-day suspension followed by 2 years

of probation, including a requirement that MacDonald undergo a mental-health evaluation as a condition of her probation.

ANALYSIS

Because MacDonald ordered a transcript of the attorney-discipline proceedings, "the referee's findings of fact and conclusions of law are not binding." *In re Glasser*, 831 N.W.2d 644, 646 (Minn. 2013). Nonetheless, we give them "great deference" and "will uphold them if they have evidentiary support in the record and *244 are not clearly erroneous." *In re Paul*, 809 N.W.2d 693, 702 (Minn. 2012); *see also In re Aitken*, 787 N.W.2d 152, 158 (Minn. 2010) (providing that we "review the interpretation of the MRPC de novo," but "review the application of the MRPC to the facts of the case for clear error"). The referee's findings and conclusions are clearly erroneous only "when they leave us with the definite and firm conviction that a mistake has been made." *Glasser*, 831 N.W.2d at 646 (citation omitted) (internal quotation marks omitted).

I.

MacDonald first challenges the referee's factual findings, primarily because she believes that the referee omitted critical facts. Among the facts excluded, according to MacDonald, is that her client had no billing records to provide, making her decision to subpoena S.G.'s past attorneys reasonable, and that opposing counsel in the S.G. matter was also late to court several times. Because nothing in the record, other than MacDonald's testimony, supports these allegedly omitted facts, there is no clear error in the

referee's findings. *See* *In re Grigsby*, 764 N.W.2d 54, 60–61 (Minn. 2009) (holding that it was not clear error for the referee to "fail[ ] to make the requested findings" in part because there was "no documentation in the record"). Moreover, neither fact, even if true, undermines the referee's findings that MacDonald herself was late to court and acted unreasonably in failing to explore other options before pursuing the subpoenas.

MacDonald further challenges the referee's findings surrounding her arrest and detention, again arguing that the referee missed crucial facts, not the least of which was that the deputies illegally arrested her and that her predicament left her powerless to remedy the situation. Again, we disagree. The record supports the referee's finding that the deputies would not have arrested MacDonald if she had provided basic biographical information, such as her name, date of birth, and address, as they had repeatedly requested. The video of the incident, the trial transcript, and the testimony of the two deputies provide ample support for the referee's findings surrounding the photo-and-arrest incident. Furthermore, even if the eventual arrest were illegal, MacDonald had a choice about whether to cooperate or escalate the situation. She elected to make things worse by refusing to cooperate with the deputies in even the most perfunctory way, which supports the referee's overarching finding that, had she provided the requested information to the deputies, "she would [have been] allowed to return to the courtroom."

Finally, MacDonald challenges numerous findings that simply restate the actual words that she used during S.G.'s trial and the disciplinary hearing. MacDonald fails to explain why she believes these

findings are erroneous. Even so, we reject MacDonald's challenges because we have no reason to doubt the accuracy of the official transcripts relied upon by the referee in making these findings. Likewise, the referee did not clearly err in summarizing the allegations from MacDonald's federal lawsuit because there is ample "evidentiary support in the record" for each finding, including from the amended complaint and the federal district court's order dismissing MacDonald's lawsuit. *Paul*, 809 N.W.2d at 702. Accordingly, even if there is some contrary evidence in the record on some of these points, in light of the record as a whole, we cannot conclude that the referee's findings were clearly erroneous.

II.

Having upheld the referee's findings, we now turn to MacDonald's challenges to the referee's conclusions of law. MacDonald *245 challenges nearly every conclusion of law. She specifically challenges the referee's conclusion that she violated both Minn. Gen. R. Prac. 4.01 and a standing district-court order by taking photographs in the courtroom. She also raises two general defenses, good-faith reliance and free-speech immunity, which she says excuse her false statements and filings.

A.

MacDonald's first legal challenge is to the validity of the Dakota County standing order prohibiting anyone, including attorneys, from taking pictures "in any courtroom." Order Regarding Cameras and Other Recording Equipment in Court Facilities

(Dakota Cty. Dist. Ct. July 1, 2005). Unlike the General Rule of Practice that bans anyone from taking photographs "during a trial," Minn. Gen. R. Prac. 4.01, the standing order is broader and appears to ban an individual from taking photographs at any time. According to MacDonald, these two rules conflict, and based on our authority to regulate practice within the district courts, the conflicting standing order must yield to the statewide General Rule of Practice.

The conflict that MacDonald identifies does not exist, either as a factual or legal matter. Rather than picking one rule over the other, as MacDonald now argues, the referee applied both rules and concluded that "[t]he Director has proven by clear and convincing evidence that [MacDonald's] conduct in taking pictures in violation of Court rule *and* District Court Order violated Rule 3.4(c) (MRPC) and Rule 8.4(d) (MRPC)." (Emphasis added.) Factually, therefore, the referee's conclusion does not suggest that the local standing order preempts a statewide general rule of practice.

Legally, moreover, leaving aside whether it is appropriate to have a local standing order that addresses the same subject as a General Rule of Practice, there is no actual conflict between the two rules. One rule, General Rule of Practice 4.01, prohibits taking photographs "in any courtroom ... during a trial" and the other, the Dakota County standing order, expands a situational prohibition into one of across-the-board applicability. Neither rule, however, affirmatively *allowed* MacDonald to take photographs in the courtroom, which is the only way that MacDonald could have established an actual conflict between the two rules. Accordingly, because it is undisputed that MacDonald took photographs in the courtroom, we conclude that the referee did not err in concluding that

MacDonald's conduct violated the Dakota County standing order.[10]

B.

MacDonald's second legal challenge, the first of her two general defenses, is her theory that she was "permitted to believe" and "act upon" her client's representations in good faith, even if they turned out not to be true. To be sure, an attorney "has an obligation to present the client's case with persuasive force" and "is usually not required to have personal knowledge of matters asserted" in "pleadings and other documents prepared for litigation." Minn. R. Prof. Conduct 3.3, cmts. 1, 3.

But neither of the aforementioned principles was inconsistent with MacDonald's duty to "provide competent representation," including her obligation to employ *246 the "knowledge, skill, thoroughness, and preparation" that was "reasonably necessary." Minn. R. Prof. Conduct 1.1. Nor did they conflict with her duty to ensure that "the allegations and other factual contentions [in her litigation documents] ha[d] evidentiary support." Minn. R. Civ. P. 11.02(c). In fact, contrary to MacDonald's position, the Minnesota Rules of Professional Conduct specifically recognize an attorney's obligation to exercise reasonable care before making claims during the course of litigation, emphasizing that competency "includes inquiry into ... the factual and legal elements of the problem" and that lawyers need to "inform themselves about the facts of their clients' positions." Minn. R. Prof. Conduct 1.1 cmt. 5; Minn. R. Prof. Conduct 3.1 cmt. 2.

MacDonald's claim that "she was entitled to believe her client" without performing any

investigation into her client's story is therefore untenable under the circumstances. The record establishes that MacDonald had access to records and information that would have undermined the accuracy of S.G.'s account. Yet MacDonald did not use the "sources and ... information" available to her to verify what S.G. had told her. *In re File No. 17139*, 720 N.W.2d 807, 814 (Minn. 2006). The referee was accordingly entitled to conclude, despite MacDonald's claims of good faith, that a reasonable attorney would not have made serious allegations against a district judge without first verifying her client's account. *In re Graham*, 453 N.W.2d 313, 322 (Minn. 1990); *see also In re Nathan*, 671 N.W.2d 578, 585 (Minn. 2003) ("[T]he standard for judging statements [under Minn. R. Prof. Conduct 8.2] is an objective one.").

C.

MacDonald's final legal challenge, and the second of her general defenses, is that the First Amendment absolutely immunizes her criticisms of the district judge, including her decision to file the federal lawsuit and to write letters disparaging him to the Board on Judicial Standards and to other attorneys and public officials. To the extent that MacDonald claims that she had an absolute right to criticize the judge, even in the absence of a reasonable investigation or sufficient evidence in support of her allegations, MacDonald is wrong.

As an officer of the court, an attorney does not have an absolute right to make false and disparaging remarks about judges or other attorneys. Rather, attorneys are subject to a modified version of the constitutional standard for defamation claims. The

standard, adapted from *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), applies a version of the actual-malice standard from defamation cases, but modifies it to ask what a "reasonable attorney ... would do in the same or similar circumstances."[11] *Graham*, 453 N.W.2d at 321–22, 321 n.6. Our modified standard provides adequate protection for attorney speech but also preserves our ability to discipline attorneys who make baseless allegations *247 against judges or other attorneys during the course of litigation. *See id.* at 321–22.

Applying the modified actual-malice test from *Graham*, we agree with the referee that MacDonald is not entitled to First Amendment protection for her statements because no reasonable attorney in MacDonald's shoes would have made such serious allegations about a judge's integrity and impartiality without substantiating evidence. Our conclusion applies equally to her allegations in the federal lawsuit, in her complaints to the Board on Judicial Standards, and in her correspondence to other attorneys and public officials. As we have held, when "an attorney abuses" her First Amendment rights, "she is subject to discipline." *Id.* at 321.

III.

We now turn to the appropriate discipline. The referee recommended that we impose a 60-day suspension followed by 2 years of probation, including requiring MacDonald to undergo a mental-health evaluation and comply with its recommendations as a condition of her probation. MacDonald maintains that her misconduct does not warrant any discipline, and the Director, for her part, requests that we suspend

MacDonald for 90 days. "Although we place great weight on the referee's recommended discipline, we retain ultimate responsibility for determining the appropriate sanction." *In re Rebeau*, 787 N.W.2d 168, 173 (Minn. 2010).[12]

The purpose of attorney discipline "is not to punish the attorney, but rather to protect the public [and] the judicial system, and to deter future misconduct by the disciplined attorney as well as by other attorneys." *In re Fairbairn*, 802 N.W.2d 734, 742 (Minn. 2011) (citation omitted) (internal quotation marks omitted). We consider four factors in determining the appropriate discipline: "(1) the nature of the misconduct; (2) the cumulative weight of the disciplinary violations; (3) the harm to the public; and (4) the harm to the legal profession." *In re Nelson*, 733 N.W.2d 458, 463 (Minn. 2007). Beyond those four factors, we consider the discipline imposed in similar cases and any aggravating or mitigating circumstances that may exist. *In re Tigue*, 900 N.W.2d 424, 431 (Minn. 2017).

A.

We first address the four factors, beginning with the nature of MacDonald's misconduct. Some of MacDonald's misconduct—such as making false statements about a judge with reckless disregard for the truth, both in pleadings and elsewhere—involves dishonesty, which "is significant misconduct." *In re Nwaneri*, 896 N.W.2d 518, 525 (Minn. 2017); *accord In re Nett*, 839 N.W.2d 716, 722 (Minn. 2013) (stating that an attorney's misconduct, which included making false statements about members of the judiciary, "warrants a serious disciplinary sanction"). Her other misconduct—

including repeatedly disrupting court proceedings and taking photographs in violation of a court rule—oversteps the "bounds of proper professional behavior," which require attorneys to "comply with court rules and orders, develop a courteous and civil rapport ... and *248 maintain respect for the bench." *In re Torgerson*, 870 N.W.2d 602, 614 (Minn. 2015) (citation omitted) (internal quotation marks omitted); *see also In re Getty*, 401 N.W.2d 668, 671 (Minn. 1987) (stating that discipline was "mandated" for an attorney who was "rude, loud and disrespectful" and needed to "learn to show more restraint and more respect for the judicial system even while disagreeing strongly with it or its decisions").

Cumulatively, MacDonald's misconduct was committed over the course of more than a year, eliminating the possibility that her violations were merely a "brief lapse in judgment or a single, isolated incident." *Nwaneri*, 896 N.W.2d at 525 (citation omitted) (internal quotation marks omitted). Her misconduct was far-reaching and varying, from making recklessly false statements about a judge to failing to competently represent a client. *See Torgerson*, 870 N.W.2d at 615 (discussing the "length and variety" of the misconduct). As the Director points out, MacDonald "violated seven ethics rules through multiple acts in the course of two matters." Because MacDonald committed "multiple disciplinary rule violations" over more than one matter, the cumulative weight of her misconduct warrants "severe discipline even when a single act standing alone would not have warranted such discipline." *Nelson*, 733 N.W.2d at 464 (citation omitted) (internal quotation marks omitted).

The final two factors—harm to the public and to the legal profession—require us to "consider the

number of clients harmed and ... their injuries." *Nwaneri*, 896 N.W.2d at 526. Here, MacDonald harmed two clients through incompetent legal representation, both through her failure to perfect an appeal in one of the cases and her lack of preparation for trial in both cases. *See In re Saltzstein*, 896 N.W.2d 864, 872 (Minn. 2017) (discussing clients who lost their appeals based on attorney errors).

Despite these facts, MacDonald's position is that she has not harmed the public, claiming that her clients were satisfied with her performance and that neither filed a malpractice action or ethical complaint against her. Yet, in addition to the harm her clients actually suffered, regardless of their level of satisfaction, MacDonald fails to recognize that "making false statements to a court harms [both] the public and the legal profession" in and of itself. *Nwaneri*, 896 N.W.2d at 526. So too does baselessly attacking the integrity of a judge and repeatedly disrupting court proceedings, the latter of which "prolong[s] and delay[s] proceedings and caus[es] needless expenditure of judicial ... resources." *Nett*, 839 N.W.2d at 722 (citation omitted) (internal quotation marks omitted); *In re Jensen*, 468 N.W.2d 541, 546 (Minn. 1991) ("An attorney does not advance the client's cause ... by making unfounded allegations about [a] judge[ ]...."). In sum, MacDonald's "unprofessional actions and demeanor reflect adversely on the bar, and [were] destructive of public confidence in the legal profession." *Torgerson*, 870 N.W.2d at 616.

B.

We must also consider any aggravating and mitigating factors. The referee found four aggravating factors and no mitigating factors. We review the

referee's application of law to the facts, including any findings on aggravating and mitigating factors, for clear error. *In re Fett*, 790 N.W.2d 840, 847 (Minn. 2010).

First, the referee found that MacDonald's legal experience was an aggravating factor. She has practiced law since 1987, a career that has spanned over 30 years. We agree that "[c]ommitting misconduct despite this substantial experience *249 is an aggravating factor." *Tigue*, 900 N.W.2d at 432.

Second, the referee found three additional aggravating factors based on MacDonald's (1) decision to blame others rather than accept responsibility for her actions; (2) her "lack of insight into how her acts affected others"; and (3) her "continual inability to acknowledge facts found by the courts." To be sure, MacDonald testified at her disciplinary hearing that she was "sorry for whatever [she] did." Nevertheless, there is adequate support in the record that, even if MacDonald expressed remorse at her hearing, she continues to lack insight into how her misconduct has affected others, including the courts and her clients. Accordingly, we conclude that MacDonald's lack of remorse, lack of insight, and blaming of others are aggravating. Due to the substantial overlap among these factors, however, they give rise to only a single aggravating factor, not three.[13] *See In re Ulanowski*, 800 N.W.2d 785, 803–04 (Minn. 2011) (considering the "[f]ailure to acknowledge wrongfulness or express remorse," as well as "shift[ing] the blame ... onto others," to be only one aggravating factor).

On the issue of mitigation, MacDonald challenges the referee's failure to find any mitigating factors. MacDonald believes she should receive two, one for her limited disciplinary history and the other for her pro-bono work. As to her disciplinary history, MacDonald

has received only a single private admonition over the course of her career for unrelated misconduct. Nevertheless, we have repeatedly held that "an attorney's lack of prior disciplinary history is not a mitigating factor, but instead constitutes the absence of an aggravating factor." *Fairbairn*, 802 N.W.2d at 746.

The other factor MacDonald identifies is her pro-bono work, which she describes as "extensive" and culminated in her receipt of the Northstar Lawyers pro-bono award on several occasions. It is true that we have recognized that "extensive pro bono or civil work" *might* constitute mitigation. *In re Wylde*, 454 N.W.2d 423, 426 n.5 (Minn. 1990). But here, despite claiming that she handled S.G.'s case without charging a fee, she does not dispute the fact that she has an attorney lien against S.G. for $193,190.05. This fact, in addition to the qualitative judgment required of the referee when determining whether pro-bono work is adequately extensive to deserve mitigation, leads us to conclude that the referee did not clearly err in concluding that MacDonald is not entitled to mitigation for her pro-bono work. *See In re Albrecht*, 779 N.W.2d 530, 539 (Minn. 2010).

C.

Finally, we examine similar cases to ensure the imposition of consistent discipline, *Tigue*, 900 N.W.2d at 431, even though we impose discipline on a case-by-case basis, *In re Walsh*, 872 N.W.2d 741, 749 (Minn. 2015) (indicating that we "tailor the sanction to the specific facts of each case"). No case involves the same circumstances and constellation of misconduct as MacDonald's case, to be sure, but some cases are

instructive on the disciplinary options available to us here.

In *Torgerson*, perhaps the most analogous case to this one, we disciplined an attorney for "ma[king] false statements, disobey[ing] a court order, [and] act[ing] *250 belligerently toward a judge and court staff," among other misconduct. 870 N.W.2d at 605. Like MacDonald, Torgerson "filed various pleadings ... alleging the judge was biased," which contained statements that were false or made with reckless disregard for their truth. *Id.* at 606. Torgerson also shouted at court employees and "interrupted [a] judge multiple times" during a hearing. *Id.* at 608. Finally, like MacDonald, Torgerson had "substantial experience" practicing law and "fail[ed] to recognize the wrongfulness of her actions." *Id.* at 613. Although the referee recommended a public reprimand, we imposed a 60-day suspension. *Id.* at 606, 616.

In *Graham*, another case bearing some similarities to this one, an attorney pursued "groundless and frivolous" allegations and repeatedly accused a judge of conspiring against his clients. 453 N.W.2d at 315, 324–25. As in this case, the attorney made these statements with reckless disregard for the truth and had an "attitude" that suggested he "believe[d] in a conspiracy against him and preferred to find fault with others [rather] than himself." *Id.* at 325. Although *Graham* did not include some additional misconduct committed by MacDonald, such as violating court rules, repeatedly disrupting court proceedings, and failing to represent a client competently, we imposed a 60-day suspension. *Id.*

Weighing the nature and extent of MacDonald's misconduct together with the aggravating factors present here, we conclude that a 60-day suspension

followed by 2 years of supervised probation is the appropriate sanction. We are confident that a suspension of this length is consistent with our precedent and will adequately protect the public in light of the conditions attached to MacDonald's probation.

Although we have decided to place additional conditions on MacDonald during her probation, we do not accept one condition proposed by the referee. The referee recommended, and the Director agrees, that we order MacDonald to undergo a mental-health evaluation and follow all of its recommendations as a condition of her probation. Not only is there limited precedent for imposing such a condition when the attorney has not placed her mental health at issue in the disciplinary proceeding, but the referee here has made no factual findings that support it. *See* *In re Fuller*, 621 N.W.2d 460, 470 (Minn. 2001) (concluding that the attorney's "possible psychological problem," which was "not acknowledged" by the attorney, "need[ed] to be addressed in the sanction"); *cf.* *In re Hanson*, 592 N.W.2d 130, 130–31 (Minn. 1999) (requiring the attorney to "affirmatively show that she is psychologically fit to practice law" after "the referee found that ... [the attorney] ha[d] been treated for clinical depression and addiction to gambling"). Under these circumstances, we decline to require a mental-health evaluation as a condition of MacDonald's probation.

Accordingly, we order that:

1. Respondent Michelle Lowney MacDonald is suspended from the practice of law for a minimum of 60 days, effective 14 days from the date of this opinion.

2. Respondent shall comply with Rule 26, Rules on Lawyers Professional Responsibility (RLPR) (requiring notice of suspension to clients, opposing counsel, and tribunals), and shall pay $900 in costs under Rule 24(a), RLPR.

3. Respondent shall be eligible for reinstatement to the practice of law following the expiration of the suspension period provided that, not less than 15 days before the end of the suspension period, respondent files with the Clerk of the Appellate Courts and serves upon the Director an affidavit establishing that she is current in *251 continuing-legal-education requirements; has complied with Rules 24 and 26, RLPR; will be practicing law in accordance with the requirements of paragraph 5(c) below upon reinstatement; and has complied with any other conditions for reinstatement imposed by the court.

4. Within 1 year of the date of this opinion, respondent shall file with the Clerk of the Appellate Courts and serve upon the Director proof of her successful completion of the written examination required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility. Failure to timely file the required documentation shall result in automatic resuspension, as provided in Rule 18(e)(3), RLPR.

5. Upon reinstatement to the practice of law, respondent shall be placed on supervised probation for 2 years, subject to the following conditions:

(a) Respondent shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation. Respondent shall promptly respond to the Director's correspondence by the due date. Respondent shall provide the Director with a current mailing address and shall immediately notify the Director of

any change of address. Respondent shall cooperate with the Director's investigation of any allegations of unprofessional conduct that may come to the Director's attention. Upon the Director's request, respondent shall provide authorization for release of information and documentation to verify compliance with the terms of this probation.

(b) Respondent shall abide by the Minnesota Rules of Professional Conduct.

(c) Respondent shall not engage in the solo practice of law, but shall work in a setting where she is in daily contact with, and under the direct supervision of, another Minnesota licensed attorney. The attorney who directly supervises respondent's work must co-sign all pleadings, briefs, and other court documents that respondent files. This attorney may not be an associate who works for respondent's law firm. Any attorney or law firm with whom she practices shall be informed of the terms of this probation.

(d) In addition to the supervision provided by the attorney referenced in paragraph (c), respondent shall be supervised by a licensed Minnesota attorney, appointed by the Director, to monitor her compliance with the terms of this probation ("probation supervisor"). Respondent shall give the Director the names of four attorneys who have agreed to be nominated as respondent's probation supervisor within 2 weeks of the date of this opinion. If, after diligent effort, respondent is unable to locate a probation supervisor acceptable to the Director, the Director shall appoint a probation supervisor. Until such probation supervisor has signed a consent to supervise, respondent shall, on the first day of each month, provide the Director with an inventory of client files as described in paragraph (e) below. Respondent shall

make active client files available to the Director upon request.
(e) Respondent shall cooperate fully with the probation supervisor and the Director's efforts to monitor her compliance with this probation. Respondent shall contact the probation supervisor and schedule a minimum of one in-person meeting per calendar quarter. Respondent shall provide the probation supervisor with an inventory of all active client files by the first day of each month during the probation. With respect to each active file, respondent shall disclose the client name, type of *252 representation, date opened, most recent activity, next anticipated action, and anticipated closing date. Respondent's probation supervisor shall file written reports with the Director quarterly or at such more frequent intervals as the Director may reasonably request.
(f) Respondent shall initiate and maintain procedures that ensure thorough inquiry into, and verification of, factual allegations in pleadings and court filings. Respondent shall also initiate and maintain procedures to ensure timely appeals, including service on all required entities. Within 30 days of the date of this opinion, respondent shall provide the Director and the probation supervisor, if any, with a detailed written plan outlining such procedures.
(g) Respondent shall take 15 credits in continuing-legal-education coursework in the areas of civil-trial and appellate practice, with at least one course emphasizing each of the following: trial preparation and courtroom decorum.

Footnotes

1"A lawyer shall not bring ... a proceeding ... unless there is a basis in law and fact for doing so that is not frivolous...." Minn. R. Prof. Conduct 3.1.

2"A lawyer shall not ... knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists...." Minn. R. Prof. Conduct 3.4(c).

3"In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person...." Minn. R. Prof. Conduct 4.4(a).

4"It is professional misconduct for a lawyer to ... engage in conduct that is prejudicial to the administration of justice...." Minn. R. Prof. Conduct 8.4(d).

5"A lawyer shall not engage in conduct intended to disrupt a tribunal." Minn. R. Prof. Conduct 3.5(h).

6"A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge...." Minn. R. Prof. Conduct 8.2(a).

7"A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Minn. R. Prof. Conduct 1.1.

8MacDonald's full legal name is Michelle Lowney MacDonald Shimota. Professionally, however, she uses the name Michelle Lowney MacDonald.

9Despite MacDonald's failure to cooperate, the deputies eventually were able to issue the contempt citation and a separate citation for obstruction of legal process. MacDonald spent 30 hours in jail for the offenses. The failure to release MacDonald after issuing the two misdemeanor citations violated Minn. R. Crim. P. 6, but the judge on the criminal case concluded that the

detention "was justified by [MacDonald's] actions." *See id.* (requiring a peace officer who issues a citation and acts without a warrant to "release the defendant" unless one of three conditions is present). The prosecutor decided not to charge her with obstruction of legal process, and the district court dismissed the contempt-of-court citation. MacDonald's underlying conduct, not the criminal charges, is the basis for our decision today.

10We need not reach the issue of whether MacDonald's conduct also violated Minn. Gen. R. Prac. 4.01, which would require us to decide the meaning of the phrase "during a trial." It is sufficient that MacDonald violated the local standing order, and it would make no difference if her conduct also violated another rule.

11MacDonald suggests that our standard from *Graham* is no longer good law in light of two Supreme Court decisions, *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 111 S.Ct. 2720, 115 L.Ed.2d 888 (1991), and *Snyder v. Phelps*, 562 U.S. 443, 131 S.Ct. 1207, 179 L.Ed.2d 172 (2011). But neither of these cases involved a challenge to an ethical rule like Minn. R. Prof. Conduct 8.2(a). And to the extent that MacDonald relies on *In re Yagman*, a Ninth Circuit case, *Yagman* actually supports the *Graham* standard. Specifically, *Yegman* recognizes that an "objective standard" applies to whether an attorney may be disciplined for recklessly false statements about "the qualifications, integrity, or record of a judge." 55 F.3d 1430, 1437–38 (9th Cir. 1995).

12The referee concluded that MacDonald's improper pursuit of subpoenas and failure to perfect her client's appeal violated the Rules of Professional Conduct, but it is unclear whether the referee considered either type of misconduct in making a recommendation on the appropriate discipline. Regardless, we consider all

misconduct in determining the appropriate discipline and we will do so here, including MacDonald's misuse of subpoenas and failure to perfect an appeal. *See In re Overboe*, 867 N.W.2d 482, 488 (Minn. 2015) (providing that "[w]e consider [respondent's] misconduct as a whole").

13Even if the dissent were correct that lack of insight, absence of remorse, and projecting blame on others are three separate aggravating factors, despite the substantial overlap in the referee's description of these factors, our determination of the appropriate discipline would not change.

Concurring in part and dissenting in part, McKeig, J. LILLEHAUG, HUDSON, and CHUTICH, JJ., took no part in the consideration or decision of this case.
Dietzen, Christopher J., Acting Justice*

CONCURRENCE & DISSENT

MCKEIG, Justice (concurring in part, dissenting in part).

We impose discipline for attorney misconduct "to protect the public, to protect the judicial system, and to deter future misconduct." *In re Rebeau*, 787 N.W.2d 168, 173 (Minn. 2010). We have said that "[t]he public interest is and must be the paramount consideration" and that our "primary duty ... must be protection of the public." *In re Hanson*, 258 Minn. 231, 103 N.W.2d 863, 864 (1960). The court concludes that a 60-day suspension is adequate to protect the public, the profession, and the administration of justice in this case. I disagree. I conclude that our duty to the public and

the administration of justice requires a 6-month suspension, along with a petition for reinstatement, as opposed to an application for reinstatement by affidavit. *See* Rule 18, Rules on Lawyers Professional Responsibility (RLPR). I would also require respondent Michelle MacDonald to undergo a mental-health evaluation. *Cf.* *In re Jellinger*, 728 N.W.2d 917, 922–23 (Minn. 2007) (recognizing that to further the goals of "protect[ing] the public, the courts, and the legal profession," we must sometimes impose "rigorous" conditions on reinstatement). Therefore, I respectfully dissent.

ANALYSIS

I concur with the court's conclusions in Parts I and II that the referee's findings and conclusions were not clearly erroneous. I disagree, however, with the court's decision in Part III to impose only a 60-day suspension and 2 years of probation without requiring a mental-health evaluation.

I.

There are four underlying bases for my conclusion that more severe discipline is warranted here: (1) the facts establish that MacDonald engaged in an extensive pattern of making false statements and pursuing frivolous claims, disrupting court proceedings, and disregarding court rules and *253 orders—misconduct that, in other instances, would result in a lengthy suspension; (2) MacDonald's misconduct is far more serious than that in *Torgerson* or *Graham*, where we imposed 60-day suspensions; (3) MacDonald's misconduct has caused serious harm; and (4) multiple

aggravating factors are present. Taking these considerations together, it is clear that a 60-day suspension is inadequate.

A.

In calculating the appropriate discipline, I first look to the nature of MacDonald's misconduct and the suspensions we have previously imposed for similar misconduct. *See* *In re Tigue*, 900 N.W.2d 424, 431 (Minn. 2017). I also look to the cumulative nature of MacDonald's misconduct, which includes multiple, repeated rule violations. *See* *id.* When viewed in this comprehensive light, I can only conclude that a sanction more severe than a 60-day suspension, together with a mental-health evaluation, is necessary to fulfill our duty to protect the public.

MacDonald violated at least seven separate Rules of Professional Conduct over the course of two different client matters. But the number of violations alone does not adequately reflect the seriousness of her misconduct. MacDonald's conduct can be grouped into three broad categories: (1) making false statements about the integrity of a judge and pursuing frivolous claims; (2) disrupting court proceedings; and (3) disregarding court rules and orders.

First, MacDonald filed a federal lawsuit against the district judge on behalf of her client S.G., seeking injunctive relief and damages in excess of $55 million for alleged constitutional violations, false imprisonment, battery, and other tort claims. The federal court concluded that these allegations lacked support in the record and were "futile" under the "well-settled" doctrine of judicial immunity. The federal lawsuit contained false statements concerning the integrity of

the judge that MacDonald made in reckless disregard for their truth. MacDonald also repeatedly made similar false statements concerning the integrity of the district judge in reckless disregard for their truth, both in state court proceedings and in multiple letters to the Board on Judicial Standards (BJS).

"[G]enerally, making false statements is serious misconduct" that warrants "severe discipline." *In re Grigsby*, 815 N.W.2d 836, 845 (Minn. 2012). The seriousness of an attorney's false representations is exacerbated when multiple false statements are made in multiple proceedings before multiple courts. *See In re Houge*, 764 N.W.2d 328, 337–38 (Minn. 2009). This type of misconduct has previously resulted in a 3-month suspension. *See, e.g.*, *In re Tieso*, 396 N.W.2d 32, 33–34 (Minn. 1986) (suspending an attorney for filing a single lawsuit that was "groundless," "frivolous, [and] vexatious"). When attorneys have "use[d] convoluted, frivolous pleadings ... to delay litigation," we have imposed even lengthier suspensions. *In re Murrin*, 821 N.W.2d 195, 208, 210 (Minn. 2012) (suspending an attorney for 6 months for filing frivolous lawsuits that "required three courts and nearly 50 defendants to ... wade through thousands of pages").

Second, on multiple occasions in two separate matters, MacDonald engaged in disruptive conduct that was prejudicial to the administration of justice, including persistently interrupting the court, disrupting proceedings during the photo-and-arrest incident, and being unprepared for two trials. These efforts not only delayed the administration of justice, resulting in unnecessarily prolonged proceedings, but in the S.G. matter, they also appear to have been a cover for MacDonald's inadequate *254 preparation for a scheduled trial. Indeed, MacDonald herself conceded

that she was not prepared for the start of trial in the S.G. matter. *See* *In re Waite*, 782 N.W.2d 820, 827 (Minn. 2010) (noting that competent representation requires "the skills and thoroughness 'reasonably necessary for the representation' " (quoting Minn. R. Prof. Conduct 1.1)). In *In re Torgerson*, we suspended an attorney for 60 days for similar behavior. *See* 870 N.W.2d 602, 605, 608, 610, 616 (Minn. 2015) (describing how Torgerson had, among other things, "interrupted the judge multiple times," "acted belligerently toward a judge and court staff," and disobeyed a judge's instructions to remain near the courthouse during jury deliberations and then defiantly refused the judge's request to return).

Third, MacDonald abused the subpoena process in the S.G. matter and violated the scheduling order in the J.D. case. Although we have never specifically disciplined an attorney for abusing subpoenas, we have suspended attorneys for disobeying similar discovery rules and court orders. *See, e.g.*, *In re Walsh*, 872 N.W.2d 741, 743–44 (Minn. 2015) (suspending an attorney for 6 months for failing to timely serve an affidavit of expert review and a response to a motion, among other documents, and "repeatedly fail[ing] to comply with deadlines in the court's scheduling order," among other misconduct); *In re Paul*, 809 N.W.2d 693, 697–99, 706 (Minn. 2012) (concluding a 4-month suspension was warranted for an attorney who failed to file necessary appellate documents and abused the civil rules on intervention); *In re O'Brien*, 809 N.W.2d 463, 463–65, 467 (Minn. 2012) (suspending an attorney for 90 days for failing to timely file an appellate brief, failing to conduct discovery, and violating the disciplinary referee's scheduling order); *In re Brehmer*, 620 N.W.2d 554, 557, 562 (Minn. 2001) (imposing a 1-year suspension

on an attorney who, among other things, "failed to provide discovery responses," "did not comply with the district court's orders regarding deadlines for providing witness and exhibit lists," and "was not prepared for trial").

Each of these violations is independently deserving of significant discipline. *See* *In re Sigler*, 512 N.W.2d 899, 901 (Minn. 1994) ("Based on our cases, each of respondent's violations taken alone would warrant discipline...."). Given the sheer number of these separate violations, and that MacDonald repeatedly engaged in several of the violations, a 60-day suspension is inadequate and inconsistent with our precedent. I also recognize that we consider each discipline case individually, but "we strive for consistency" in our decisions. *In re Rooney*, 709 N.W.2d 263, 268 (Minn. 2006). A 60-day suspension introduces inconsistency into our precedent.

The appropriate discipline based on the cumulative impact of MacDonald's multiple violations is a suspension of 6 months. Our case law demonstrates that this is well within the range of suspensions for similar misconduct. *See, e.g.*, *In re Selmer*, 866 N.W.2d 893, 894 (Minn. 2015) (suspending an attorney for 12 months for "a pattern of harassing and frivolous litigation" and a failure to "abide by court orders," among other misconduct); *In re Jensen*, 542 N.W.2d 627, 628, 633–34 (Minn. 1996) (concluding an 18-month suspension was warranted for an attorney who violated procedural rules and court orders, pursued harassing and frivolous claims, made misrepresentations in court, and "contributed to ... protracted litigation [that] resulted in a drain on judicial resources," although the referee had recommended only a public reprimand); *In re Williams*, 414 N.W.2d 394, 395, 397–98 (Minn. 1987)

(imposing a 6-month suspension on an attorney whose repeated misbehavior included "continually interrupting" *255 others and engaging in "tactics" intended to "provoke" others and "obfuscate the record," which was prejudicial to the administration of justice).

B.

The majority relies on two cases—*In re Torgerson*, 870 N.W.2d 602 (Minn. 2015), and *In re Graham*, 453 N.W.2d 313 (Minn. 1990)—to support its conclusion that a 60-day suspension is appropriate. I agree that there is some similarity between MacDonald's misconduct and the misconduct of the attorneys in these cases. MacDonald's misconduct, however, is more extensive than the misconduct in each of these cases. As a result, *Torgerson* and *Graham* actually demonstrate that a 60-day suspension is an inadequate sanction.

In *Torgerson*, we suspended an attorney for 60 days for "ma[king] false statements" about other attorneys, "disobey[ing] a court order, [and] act[ing] belligerently toward a judge and court staff." 870 N.W.2d at 605–08. Torgerson "filed various pleadings ... alleging that the judge was biased," which contained statements that were made with reckless disregard for their truth, and "interrupted the judge multiple times" during an omnibus hearing. *Id.* at 606, 608–09, 611.

Although MacDonald committed the same types of misconduct as Torgerson, MacDonald committed additional misconduct that Torgerson did not commit. Unlike Torgerson, MacDonald filed a frivolous lawsuit against the district judge, and MacDonald incompetently represented S.G. in both the district

court and at the court of appeals. Both Torgerson and MacDonald made false statements concerning the integrity of a judge, but MacDonald made such statements in three different forums—state court, federal court, and before the Board on Judicial Standards—whereas Torgerson only made them in state court. *Id.* at 606. Finally, MacDonald's disruptive behavior was more extensive than Torgerson's. Torgerson failed to follow a judge's instructions by not returning to court after a jury had finished deliberating, and she interrupted a judge at one hearing in another matter. *See id.* at 606, 608. MacDonald interrupted the court in the S.G. and J.D. matters during many court proceedings, she disrupted the trial in the S.G. matter through the photo-and-arrest incident, and her disruptive conduct in the J.D. matter was partially responsible for a trial that should have taken 2 days lasting for 9 days.

In *Graham*, we suspended an attorney for 60 days for pursuing "groundless and frivolous" allegations that accused a judge, a magistrate judge, and two attorneys of conspiring against him and his clients. 453 N.W.2d at 315, 324–25. Graham made these false statements with reckless disregard for their truth. *Id.* at 324. But even the court acknowledges that "*Graham* did not include some additional misconduct committed by MacDonald, such as violating court rules, repeatedly disrupting court proceedings, and failing to represent a client competently." Although *Torgerson* and *Graham* are helpful because there is some similarity to the misconduct MacDonald committed, MacDonald should receive a longer suspension because she committed more misconduct than these lawyers.

C.

The significant harm that MacDonald's misconduct has caused lends further support for the lengthier suspension that I propose. *See* *In re Nelson*, 733 N.W.2d 458, 463 (Minn. 2007) (stating that two of the factors that we consider when determining the appropriate discipline are "the harm to the public, and ... the harm to the legal profession"). Like the court, I am *256 troubled by respondent's inability to distinguish fact from fiction, and by her pattern of brazenly alleging falsehoods as facts. MacDonald's conduct in making false statements about the district judge in court motions, pleadings, BJS complaints, and legal correspondence demonstrates a pervasive disregard for truth. Neither the public nor the profession benefits when attorneys make baseless accusations about allegedly biased judges and "pretend trials."

The integrity of the judicial system depends on the public's belief that judges are fair, and false accusations of biased judges erode that public trust. *See* *Wiedemann v. Wiedemann*, 228 Minn. 174, 36 N.W.2d 810, 812 (1949) (stating that "it is of transcendent importance to the litigants and the public generally that there should not be the slightest suspicion as to [a judge's] fairness and integrity" (emphasis omitted) (citation omitted) (internal quotation marks omitted)). The integrity of our judicial system also depends on the integrity of lawyers. *In re Schmidt*, 402 N.W.2d 544, 548 (Minn. 1987). Thus, "[w]e should not hesitate to impose severe discipline when a lawyer demonstrates a lack of truthfulness and candor to ... the judicial system." *In re LaChapelle*, 491 N.W.2d 17, 21 (Minn. 1992). As the Director recently argued before the court

in another disciplinary matter, "without honesty, one can't be a lawyer."

I am also concerned by MacDonald's disrespectful and unprofessional behavior.[1] The following remarks provide a window into MacDonald's inability to give judicial officers, and in turn the judicial system, the respect and decorum required:

> "The rules are that an attorney can't talk in court?"
> "And you are telling me that you can be impartial in this trial, which you haven't done since day one[?]"
>
> "Do you want the evidence or not?"

See *In re Michael*, 836 N.W.2d 753, 765 (Minn. 2013) (disciplining an attorney for a "flippant rhetorical question" directed at a judge, which was "unprofessional and disrespectful"); *see also* *In re Getty*, 401 N.W.2d 668, 671 (Minn. 1987) ("[T]here is a line that should not be crossed and respondent has crossed it."). As we have previously explained, attorneys must demonstrate "restraint and ... respect for the judicial system even while disagreeing strongly with it or its decisions." *Getty*, 401 N.W.2d at 671 (indicating discipline was "mandated" for an attorney who was *257 "rude, loud and disrespectful"); *see also* *Williams*, 414 N.W.2d at 397 ("To be vigorous ... does not mean to be disruptively argumentative; ... to be zealous is not to be uncivil."). We perhaps said it best in *In re Pinotti*, 585 N.W.2d 55, 63 (Minn. 1998):

> While we are fully aware of a lawyer's responsibility to aggressively represent his or

> her clients' interest, respondent's conduct here far exceeds the limits of professional representation, despite the numerous warnings of lower tribunals and heavy sanctions imposed.... [R]espondent marched relentlessly onward ... to the great detriment of [her] clients and in total disregard of the waste of judicial resources.

MacDonald's lack of respect and decorum caused a separate and significant harm: a drain on judicial resources and a detriment to the administration of justice. *See* *In re Letourneau*, 792 N.W.2d 444, 453 (Minn. 2011) (discussing how an attorney's misconduct "needlessly increased the burden on a heavily loaded and underfunded court system"). For example, the J.D. trial that was scheduled for 2 days took upwards of 9 days due, in part, to MacDonald's lack of preparation. The district court judge noted that such a long trial was "virtually unheard of." During the photo-and-arrest incident in the S.G. trial, the judge noted that her behavior appeared "orchestrated" to delay the proceedings.

But these delays do not take into account the costs to MacDonald's clients, opposing counsel, and opposing parties—both in terms of time and money. *See* *Murrin*, 821 N.W.2d at 208 (discussing how failing to follow court rules and orders "cause[s] harm to the public"); *In re Ulanowski*, 800 N.W.2d 785, 801 (Minn. 2011) (addressing how frivolous claims took a toll on public confidence in the legal system and caused financial harm to opposing parties). MacDonald's obstructionist behavior has undoubtedly delayed resolution for families in crisis, including both MacDonald's own clients and other litigants waiting for

their day in court. We fail to adequately protect the public by imposing discipline that does not fully account for the significant harms caused by MacDonald's misconduct.

D.

An analysis of the aggravating and mitigating factors provides further support for my proposed discipline. Although the court concludes that two aggravating factors are present, I count four aggravating factors. I agree with the court that MacDonald's significant legal experience is an aggravating factor and that her disciplinary history is neither aggravating nor mitigating.[2]

The court counts respondent's lack of remorse, lack of insight, and blaming of others as a single aggravating factor.[3] Yet *258 our case law suggests that these are three independent aggravating factors. *See* *Michael*, 836 N.W.2d at 760 (stating that respondent's "lack of remorse and failure to recognize and take responsibility for her conduct are aggravating factors"); *In re Wentzel*, 711 N.W.2d 516, 522 (Minn. 2006) (considering respondent's lack of "insight into the moral and ethical nature of his acts" to be one aggravating factor). Simply put, not understanding the wrongfulness of one's conduct is different from not being sorry for it. And it is further distinct from blaming others for one's conduct instead of taking responsibility. *Cf.* *In re Aitken*, 787 N.W.2d 152, 163 (Minn. 2010) (distinguishing between "express[ing] remorse for the consequences of [the] misconduct" and expressing "remorse for [the] actual misconduct"). I would therefore not give respondent the benefit of lumping these three factors into one.

MacDonald claims that her pro bono services to S.G. and J.D. should be a mitigating factor. In reality, she has an attorney lien against one of these "pro bono" clients in the amount of $193,190.05. She insists that this lien is "symbolic." But there is nothing symbolic about a recorded lien. Like the court, I conclude that MacDonald's pro bono services do not qualify as a mitigating factor. If it were to be considered at all, it would be an aggravating factor, *see* *Ulanowski*, 800 N.W.2d at 802 ("Making misrepresentations can be considered an aggravating factor."), but because the Director does not allege this is an aggravating factor, I do not consider it at all, *see* *In re Matson*, 889 N.W.2d 17, 24–25 (Minn. 2017).

Finally, I cannot help but note the contrast between the "slap on the wrist" respondent receives today and the devastating consequences of disbarment that we readily impose for even small amounts of misappropriation of client funds. *In re Fredin*, 552 N.W.2d 23, 25 (Minn. 1996) (Page, J., dissenting) (objecting to a 60-day suspension followed by 2 years of supervised probation, which was "a mere slap on the wrist" and inadequate to protect the public); *see, e.g.*, *In re Rodriguez*, 783 N.W.2d 170, 170–71 (Minn. 2010) (order) (Anderson, Paul H., J., dissenting) (noting that this court had disbarred an attorney who misappropriated $650 and was "deeply remorseful and committed to recovery from his addictions"). I recognize that there are no sentencing guidelines for attorney discipline, and that many disciplinary cases require us to compare apples to oranges. But the disparity between disbarring an attorney for one financial indiscretion, versus only suspending respondent for 60 days for her varied and harmful misconduct, is unsettling. It is even more unsettling

when I consider the significant financial toll of MacDonald's misconduct on her clients, opposing parties and counsel, and the courts. As evidenced by her six-figure lien against S.G., the $6,202.50 sanction to compensate the subpoenaed attorneys, the $20,000 sanction against J.D. for conduct-based attorney fees, and the needlessly time-consuming motion work and trials in the S.G. and J.D. cases, her misconduct comes at a high cost.

II.

In addition to suspension and probation, I believe that a mental-health evaluation is warranted. The referee recommended a mental-health evaluation, and we "afford 'great weight' to the referee's recommendation." *259 *In re Rambow*, 874 N.W.2d 773, 778 (Minn. 2016) (quoting *In re Harrigan*, 841 N.W.2d 624, 628 (Minn. 2014)). It is particularly appropriate to defer to the referee on matters like a respondent's demeanor and mental state. *See Pinotti*, 585 N.W.2d at 62.

I recognize that "neither the referee nor this court is qualified to arrive at a diagnosis or prognosis concerning the respondent's mental health." *In re Davis*, 264 N.W.2d 371, 373 (Minn. 1978). It is therefore unknown "[w]hether respondent is in need of" mental-health services. *Id.* It is clear, however, that the referee acknowledged her own limitations and deferred to a mental-health professional on this matter. I would do the same.

We have recognized that mental-health conditions may have a causal relationship with attorney misconduct. *See, e.g.*, *In re Clark*, 834 N.W.2d 186, 187–88 (Minn. 2013) (recognizing that mental-health issues

may impact an attorney's "life, her cognitive abilities, and her emotional state," which in turn may affect the attorney's ability to competently represent clients). If it is proper for us to require a disciplined attorney to continue existing mental-health treatment and complete therapy programs recommended by treating therapists—and it is—I do not see anything improper about requiring a mental-health evaluation under these circumstances. *See, e.g.*, *In re Fischer*, 901 N.W.2d 155, 156 (Minn. 2017) (order).[4] If anything, requiring an evaluation is less onerous or invasive than requiring treatment. Like the court in *In re Fuller*, 621 N.W.2d 460, 470 (Minn. 2001), I "see no reason not to consider a [potential] psychological problem in determining the appropriate sanction."[5] *See also id.* (noting that addressing the potential mental-health condition would help the respondent "competently and diligently serve his clients," such that his "possible psychological problem need[ed] to be addressed in the sanction").

Though it is unclear "[w]hether respondent is in need of" mental-health services, it is clear that she "would be well advised to consider it." *Davis*, 264 N.W.2d at 373. I would therefore adopt the referee's recommendation to include a mental-health evaluation as a condition of her probation, and further condition her reinstatement on "provid[ing] adequate psychological or other medical evidence establishing that [she] has no ... psychological problems that would prevent [her] from practicing law competently, diligently, and within the rules of conduct for attorneys." *In re Levenstein*, 438 N.W.2d 665, 669 (Minn. 1989).

CONCLUSION

Today, the court hesitates to impose sufficient discipline, and it does so at the expense of protecting the public. Although MacDonald portrays herself as a victim, the true victim in all of this is the public. I respectfully disagree with the court's decision to suspend MacDonald for a mere 60 days and its reluctance to require a mental-health evaluation. Our duty to the public demands more of us, and more of respondent. I conclude that a 6-month suspension, including a petition for reinstatement, and a 2-year probation term, including a mental-health evaluation, is warranted. On these grounds, I respectfully dissent.

Footnotes

*Appointed pursuant to Minn. Const. art. VI, § 10, and Minn. Stat. § 2.724, subds. 2–3 (2016).

1I take this opportunity to note additional unprofessional behavior that was not considered by the referee or the court: MacDonald's criminal convictions for obstructing the legal process and third-degree test refusal. MacDonald was convicted of obstructing legal process for repeatedly refusing to get out of her car during a traffic stop. *See State v. Shimota*, 875 N.W.2d 363, 364–65 (Minn. App. 2016) (affirming convictions), *rev. denied* (Minn. Apr. 27, 2016). After being told she was under arrest, she continued to "resist[ ] the officers' effort by grabbing the shift knob, the steering wheel, and [an officer's] wrist." *Id.* The officers had to "pr[y] [her] free" and forcibly remove her from her car. *Id.* at 365. The referee did not consider MacDonald's criminal history because the Director's petition for disciplinary action did not allege any misconduct based on these convictions.

A lawyer is prohibited from "commit[ing] a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." Minn. R. Prof. Conduct 8.4(b). And an attorney's criminal conviction is "conclusive evidence that the lawyer committed the conduct for which the lawyer was convicted." Rule 19(a), RLPR. I recognize that MacDonald's criminal convictions are not before us and thus are not to be considered in her discipline. But I question why this criminal conduct was not included in the petition for discipline when it arguably is further evidence of MacDonald's obstructionist conduct.

2MacDonald's disciplinary history includes a private admonition in 2012 for failing to deposit client settlement funds into her firm's trust account; failing to maintain adequate and correct trust-account books and records; and failing to cooperate with the Director's investigation, in violation of Minn. R. Prof. Conduct 1.15(a), 1.15(c)(3), 1.15(c)(4), 1.16(d), 5.3(c)(2), and 8.1(b), and Rule 25, RLPR. The referee concluded that this disciplinary history was neither an aggravating nor mitigating factor, in part because the rule violations were unrelated to the misconduct in this case.

3There is certainly some overlap between these factors, *see In re Kalla*, 811 N.W.2d 576, 583 (Minn. 2012) ("This attempt to deflect blame highlights Kalla's lack of remorse and insight into his own conduct."), and at times we have suggested that these are three sides of the same coin, *see Ulanowski*, 800 N.W.2d at 803–04 (counting the "[f]ailure to acknowledge wrongfulness or express remorse," which included the blaming of others, as a single aggravating factor); *In re Gherity*, 673 N.W.2d 474, 480 (Minn. 2004) (citing *Inre Kaszynski*, 620 N.W.2d 708 (Minn. 2001), for the proposition that "the refusal to acknowledge the

wrongful nature of one's actions and instead portraying oneself as a victim and repeatedly casting blame on others was [one] aggravating factor").

4Imposing a mental-health evaluation as a condition of respondent's probation presents no due-process concerns. *See* *Gherity*, 673 N.W.2d at 478 (Minn. 2004) ("We have held that an attorney has a right to know the nature of the charges filed against him but we have never suggested that he has a due process right to know the exact discipline...."). The disciplinary petition here requests "appropriate discipline," and Rule 15(a), RLPR, specifically states that the disposition may include "probationary status ... with such conditions as this Court may specify." *See also* *id.* at 479 (holding that "even if [the disciplinary petition] does not specifically state" that the Director is seeking disbarment, "the attorney's due process rights are not violated when the Director's petition states that 'appropriate discipline' is requested and our rules of professional responsibility specifically include disbarment as a discipline where appropriate").

5The court notes that there is "limited precedent" for imposing a mental-health evaluation "when the attorney has not placed her mental health at issue" and the referee "made no factual findings" to support this recommendation. But limited precedent is precedent, nonetheless.

A16-1282

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against MICHELLE LOWNEY MacDONALD, A Minnesota Attorney Registration No. 0182370	**REFEREE'S FINDINGS OF FACT, CONCLUSIONS OF LAW, RECOMMENDATION FOR DISCIPLINE AND MEMORANDUM**

The above-entitled matter came before The Honorable Heather L. Sweetland, acting as Referee by an Order of Appointment of the Minnesota Supreme Court filed September 14, 2016, for hearing on November 15-16, 2016.

Director Susan M. Humiston (License No. 0254289), 1500 Landmark Towers, 345 St. Peter Street, St. Paul, MN 55102-1218, appeared on behalf of the Office of the Lawyers Professional Responsibility.

Paul C. Engh (License No. 134685), 200 South Sixth Street, Suite 420, Minneapolis, MN 555402, appeared on behalf of Respondent Michelle Lowney MacDonald who was present at all times during the hearing.

The hearing was held based on the Director's July 13, 2016, Petition for Disciplinary Action. District Court Judge David Knutson, Attorney Lisa Elliott and the Respondent testified at the hearing. Exhibits 1-64

(hereinafter D. Ex.) were offered and admitted, with no objection, on behalf of the Director. Exhibits 101-129 (hereinafter R. Ex.) were offered and admitted, with no objection, on behalf of the Respondent. The referee takes judicial notice of the documents filed in the Register of Actions for the Grazzini-Rucki proceeding (D. Ex. 1; R. Ex 108 (partial)) admitted as part of the evidence.

Based on the testimony and exhibits adduced at said hearing and upon all of the files and records herein, the Referee makes the following:

FINDINGS OF FACT

1. Respondent, Michelle Lowney MacDonald (hereinafter Respondent), was admitted to practice law in Minnesota on September 11, 1987. (Minnesota Attorney Registration System (MARS))
2. Respondent primarily practices in the area of family law but also provides estate planning services and appellate work. (R. Ex. 120) Her current law firm, MacDonald Law Firm, LLC, employs other attorneys besides herself and a paralegal and has been in business since 2004. (R. Test.; R. Ex. 120)
3. Respondent founded and is president of Family Innocence, a non-profit organization, which advertises affordable mediation and restorative family circle facilitators in family court proceedings. (R. Ex. 120,121, 122) She assisted in writing a legislative bill to amend or abolish the current family law statutes. (R. Ex. 129)

4. Respondent has provided extensive *pro bono* assistance. (R. Test., R. Ex. 120)

Grazzini-Rucki Case-Pre-Trial Proceedings

5. Respondent first met Sandra Grazzini-Rucki on January 1, 2013 at a social held by Family innocence. (D. Ex. 20, Factual Allegation 99; R. Test.) Ms. Grazzini-Rucki was the petitioner in a dissolution proceeding pending since 2011 in Dakota County (Minnesota Case File No.: 19AV-FA-11-1273). (D. Ex. 1)
6. Prior to January 1, 2013, Ms. Grazzini-Rucki had been represented by at least three attorneys in her dissolution proceeding, namely, Kathryn Graves, Linda Olup and Elizabeth Henry. (D. Ex. 1; D. Ex. 23-25) Elizabeth Henry had withdrawn as Ms. Grazzini-Rucki's attorney on November 7, 2012. (D. Ex. 1)
7. The dissolution case was filed in Dakota County, Minnesota, on April 21, 2011. (D. Ex. 1) Judge David Knutson was randomly assigned to the case in August 2011 pursuant to the suggestion of Ms. Grazzini-Rucki's then attorney (Kathryn Graves) due to the complexity of the case. (Elliott Test.; Knutson Test.; D. Ex. 1; D. Ex. 44, p. 55)
8. According to Respondent, Ms. Grazzini-Rucki told Respondent a story of being evicted from her home and not allowed to have contact with her five children based on a September 7, 2012, Order. (R. Test.)

Respondent reviewed the court file at the Dakota County Courthouse over a period of three days. (R. Test.) After again meeting with Ms. Grazzini-Rucki, Respondent agreed to represent her on a constitutional challenge to Minn. Chap. 518, *et.seq.* (R. Test.)

9. Later, at a June 12, 2013 hearing, Respondent confirmed she was representing Ms. Grazzini-Rucki regarding the custody, parenting time and child support issues still outstanding in the dissolution proceeding. (D. Ex. 47, p. 52)
10. Since 2011, Respondent believes she has a "calling" to abolish the Minnesota family court system. In Respondent's opinion, Minn. Chap. 518, *et.seq.*, is unconstitutional due to its complexity and the State's interference in matters best left to the family to resolve. (R. Test.)
11. Respondent filed her Certificate of Representation in the Grazzini-Rucki case on January 18, 2013. (D. Ex. 1)
12. Respondent's filed a motion challenging the constitutionality of Minn. Chap. 518, *et.seq.*, generally and specifically as it was applied in Ms. Grazzini- Rucki's case based on the September 7, 2012 Order entered by Judge Knutson. (D. Ex. 1; R. Test.) In that Order, custody of the five minor children was given to a third party (the children's aunt) in the family home. (R. Ex. 104)
13. Respondent has argued the constitutionality of Minn. Chap. 518, *et.seq.*, in several courts. No court has given

Respondent's clients relief based on Respondent's arguments. (R. Test.)

14. Based on Ms. Grazzini-Rucki's rendition of the events of September 2012 and Respondent's review of the file, Respondent believed the September 7, 2012, Order was the result of *ex parte* contact between Judge Knutson and Lisa Elliott, Mr. Rucki's attorney. (R. Test) Respondent testified she believed Judge Knutson signed the Order presented to him by Ms. Elliott without reviewing it. (R. Test.; D. Ex. 24)
15. Respondent did not contact Ms. Elliott to discuss the background surrounding the entry of the September 7, 2012, Order, prior to filing the constitutional challenge, (Elliot Test.; R. Test.) Respondent is "unsure" if she contacted Elizabeth Henry, Ms. Grazzini-Rucki's attorney at the time of the September 7, 2012, Order, to confirm Ms. Grazzini-Rucki's summary of the events surrounding entry of the Order. (R. Test.)
16. Neither Respondent nor Ms. Grazzini-Rucki requested a copy of Ms. Henry's file until October 22, 2013, ten months after Respondent filed her Certificate of Representation. (R. Test,; D. Ex. 1; D. Ex. 23)
17. In fact, the September 7, 2012, Order was filed by mutual agreement of the parties' attorneys and the guardian ad litem (Julie Friedrich) after receipt of a report from Dr, Paul Reitman (a court-appointed psychologist), and Ms. Grazzini-Rucki's

statement of August 28, 2012, that she did not want custody of the children. (Knutson Test.; Elliott Test,; R. Test.; D. Ex. 64; R. Ex. 104, p. 10) The Order was drafted by Ms. Grazzini-Rucki's attorney, Elizabeth Henry, after a telephone hearing on the record with counsel for each party and the guardian ad litem. (Knutson Test.; Elliott Test., R. Ex. 104) The written Order reflects Ms. Henry's involvement in the telephone hearing. (R. Ex. 104)

18. The transcript of the September 2012 telephone hearing states Ms. Henry had contact with Ms. Grazzini-Rucki "that day" (R. Ex. 104-Transcript of 9/7/12, p. 18) and her client's request for a copy of Dr. Reitman's report. (R. Ex. 104-Transcript of 9/7/12, p. 15)
19. After a hearing on February 26, 2013 on Respondent's constitutional challenge, Judge Knutson issued an Order on April 19, 2013. (D. Ex 64) Judge Knutson addressed the lack of legal authority for the motion and why the basis for the motion (the September 7, 2012 Order) was in error. (D. Ex. 64, pp. 11-12) Judge Knutson ruled on numerous other arguments made by Respondent on behalf of Ms. Grazzini-Rucki. (D. Ex. 64)
20. Judge Knutson explained in the Order that Elizabeth Henry, Ms. Grazzini-Rucki's prior counsel, drafted the September 7, 2012 Order, and it was reviewed by Ms. Elliott and Ms. Friedrich. Judge Knutson outlined the procedural history, noted the

involvement of counsel for both parties and the guardian ad litem, that a telephone hearing on the record had taken place prior to the Order being entered and that it was based on the recommendations of Dr. Paul Reitman. (D. Ex. 64, pp. 12-13)

21. After the issuance of the April 19, 2013, Order, two of the Grazzini-Rucki children (Samantha and Gianna) ran away and were not located until 2016. Ms. Grazzini-Rucki was convicted of two felony counts of Deprivation of Parental Rights for her abduction of the children. (R. Test.)
22. On May 7, 2013, Judge Knutson entered an Order dismissing the guardian ad litem, Julie Friedrich, at her request. (D. Ex, 2) On May 20, 2013, an Order was entered noting any successor guardian ad litem would be designated a party to the proceedings. (D. Ex, 3)
23. On April 24, 2013, Ms. Grazzini-Rucki, *pro* se, filed for a stay of all proceedings to the Minnesota Court of Appeals regarding the April 19, 2013, Order. (R. Test.; R. Ex. 103) In addition, Ms, Grazzini-Rucki filed a Petition for a Writ of Mandamus to the Minnesota Court of Appeals on April 29, 2013. (D. Ex. 1) The Court of Appeals denied both of these requests on June 13, 2013. (D. Ex. 1; D. Ex. 4, p. 20) Ms. Grazzini-Rucki petitioned for review of these denials to the Minnesota Supreme Court. The Petition for Review was denied on August 20, 2013. (D. Ex. 1) Respondent notified Judge Knutson she was petitioning for

certiorari to the United States Supreme Court. (D. Ex. 7, p. 6) The Petition was denied. (R. Test.)

24. Respondent filed a separate motion on behalf of Ms. Grazzini-Rucki to stay all proceedings. The motion was heard on June 12, 2013. (D. Ex. 4) Respondent interrupted the Court several times during the hearing. (D. Ex. 4, pp. 3, 9, 10 (two times), 39, 48). Respondent was instructed by Judge Knutson to not interrupt the Court but she continued her behavior. The Respondent's interruptions disrupted the proceedings. During the instant hearing, Respondent testified that "things just had to be stopped." (R. Test.)

25. During the June 12, 2013, hearing, a reference was made to a separate civil Summons and Petition filed by Respondent on behalf of Ms. Grazzini-Rucki asking that Judge Knutson's Orders in the pending dissolution action be overturned. (D. Ex. 4, pp. 27-29) Judge Knutson did not deal with the Notice to Remove filed with the separate pleadings since the new pleadings had been filed in the original dissolution action. (D. Ex. 4, pp. 26, 29) In summary, Respondent filed a separate action asking for the same relief as requested in the original dissolution action.

26. At the end of the June 12, 2013, hearing, Judge Knutson scheduled trial for September 11-12, 2013, to address custody, parenting time and child support. (D. Ex. 4, p. 51) The Court stressed the matter had

been pending for over two years (D. Ex. 1) and a third party had custody of the children, (R. Ex. 104, Order filed September 7, 2012) Respondent was present at the hearing when Judge Knutson noted Ms. Grazzini-Rucki's lack of cooperation with the guardian ad litem and other court-appointed professionals working on the custody and parenting time issues. (D. Ex. 4, p. 47)

27. Judge Knutson denied the motion to stay the proceedings. (D. Ex. 4, p. 24)

Grazzini-Rucki-Subpoena Issue

28. On August 30, 2013, and September 3, 2013, Respondent directed an associate to serve subpoenas on Ms. Grazzini-Rucki's former counsel (Evans (represented Ms. Grazzini-Rucki in a separate proceeding), Olup and Henry) for their appearance at the trial scheduled for September 11-12, 2013. (R. Test.; D. Ex 7; D, Ex. 8) Respondent believed the attorneys' testimony would be required to lay foundation for their bills. (R. Test.; D. Ex. 7, p. 9) A hearing was scheduled for 8:30 a.m. on September 6, 2013 on prior counsels' motions to quash the subpoenas. (R. Test.) Prior to serving the subpoenas, Respondent did not contact the recipients to find out whether the billing information could be provided without the need for a subpoena or their testimony. (R. Test.; D. Ex. 7, p. 19 (Evans), pp, 21-22 (Olup)), Respondent and/or her associate

did not comply with Minn. Rule of Civil Procedure 45.03(c), Respondent did not contact Ms. Elliott to find out her position on the foundational issue prior to the issuance of the subpoenas. (Elliott Test.; R. Test.)

29. No motion for attorney fees was pending at the time of the issuance of the subpoenas but fees are usually an issue in a dissolution trial. (D. Ex. 7)

30. The hearing of September 6, 2013, was held on an emergency basis since trial was scheduled for September 11-12, 2013. (R. Ex. 104) The Court's Order setting the hearing for September 6, 2013, at 8:30 a.m. was received by Respondent's office (via facsimile) on September 5, 2013, at 2:01 p.m. (R. Ex. 104-Order filed Septembers, 2013)

31. At the September 6, 2013, hearing, Ms. Elliott stated on the record that Respondent had Ms. Elliott served at her residential address with a notice of Respondent's intention to have Ms. Elliott be held personally responsible for Ms. Grazzini-Rucki's fees. (D. Ex. 7, p. 17) Ms. Elliott testified at the instant hearing that she would not have stipulated to the attorney billings, (Elliott Test.)

32. As noted in the September 6, 2013, transcript (D. Ex. 7), there are a number of ways in dissolution actions to provide fee information to a court without prior counsel testifying under subpoena. This includes having the client, Ms. Grazzini-Rucki, testify regarding the amounts. (D. Ex. 7)

33. Respondent was twenty minutes late for the hearing. (D. Ex. 7, p. 5) Respondent interrupted the Court several times. (D. Ex. 7, pp. 7, 25, 30 (four times), 31) Judge Knutson asked a bailiff to step towards the Respondent to maintain order in the court. (D. Ex. 7, pp. 30-31) Judge Knutson told Respondent she was being disruptive. Respondent replied "The rules are that an attorney can't talk in court?" (D. Ex. 7, p. 31)
34. Judge Knutson issued an Order on September 9, 2013, quashing the subpoenas, in his Order, Judge Knutson found Respondent failed to take reasonable steps to avoid imposing an "undue burden" on the recipients of the subpoenas as required under Minn.R.Civ.P. 45.03(a). (Knutson Test; D. Ex. 8, para. 1) Judge Knutson ordered Respondent (or her law firm) to personally pay monetary sanctions as a result. The measure of the sanctions would be the cost for the attorneys' time and expense involved in making a motion to quash the subpoenas. (D. Ex. 8, para. 5) Judge Knutson allowed the subpoena recipients ten days to file affidavits reflecting the time and expense incurred. (D. Ex. 8, para. 6)
35. Jennifer Evans, Linda Olup and Gary K. Luloff, on behalf of Elizabeth Henry, provided affidavits of the time and expenses. (D. Ex. 8, Attachments B, C, and D) On September 25, 2013, Judge Knutson entered an order establishing sanctions in

the total amount of $6,202.50. (D. Ex. 18)

36. Respondent appealed the September 9, 2013 and September 25, 2013, Orders to the Minnesota Court of Appeals. The sanction award was affirmed on January 12, 2015. (D. Ex. 47) The Court of Appeals opinion stated, in part, that Judge Knutson ordered a "modest sanction against appellants Respondent and her law firm and showed restraint by awarding only fees actually incurred by the attorneys in moving to quash the subpoenas." (D. Ex. 47, p. 9)
37. Respondent petitioned for review to the Minnesota Supreme Court. (D. Ex. 110) The Petition was denied on March 25, 2015. (D. Ex. 1)
38. On December 26, 2013, Respondent sent letters to Luloff, on behalf of Henry, (D. Ex. 23), Olup (D. Ex. 24), and Evans (D. Ex. 25) and made offers of compromise. Copies of the letters were sent to the Lawyers Board of Professional Responsibility. (D. Ex. 23, p.2; Ex. 24, p. 2; Ex. 25, p.2)

<u>Grazzini-Rucki Trial-September 11, 2013</u>

39. On September 11, 2013, the first scheduled day of trial in the Grazzini-Rucki dissolution proceeding, Respondent, on behalf of Ms. Grazzini-Rucki, filed a civil rights lawsuit in Minnesota U.S. District Court against Judge Knutson, personally and not in his position as a Minnesota District Court Judge, alleging violations of the law. (D. Ex. 9) Findings regarding the federal lawsuit

will be outlined below.

40. After hearing *in limine* motions in the dissolution case, Respondent moved Judge Knutson to recuse himself from hearing the Grazzini-Rucki case due to the filing of the federal lawsuit and its demand for compensatory damages in the amount of $330,499,861.32. (D. Ex. 10, pp. 22-25; Knutson Test.; R. Test.)
41. Judge Knutson denied Respondent's motion believing the Code of Judicial Conduct required him to put aside his own personal concerns and interests. He believed he could be impartial and decide the Grazzini-Rucki matter on its merits. (Knutson Test.)
42. After denying Respondent's motion for recusal, Respondent questioned the impartiality of Judge Knutson. Respondent stated, "And you are telling me that you can be impartial in this trial which you haven't done since day one." [sic] (D. Ex. 10, p. 24, lines 1-3)
43. Respondent's statement regarding Judge Knutson's lack of impartiality "since day one" was false and made in reckless disregard of the truth.
44. After Judge Knutson asked Respondent to call her first witness, Respondent stated, "Your Honor, I'm not going to proceed. I do not think this is at all fair." (D. Ex. 10, p. 24, lines 22-23)
45. In the instant disciplinary hearing, Respondent did not provide any evidence of bias on the part of Judge Knutson other than her disagreement with his prior

orders. (R. Test.)

46. In expectation Judge Knutson would recuse himself on the morning of September 11, 2013, Respondent admitted she was not prepared to proceed with the scheduled trial. (D. Ex. 10, p. 23, lines 18-19) Judge Knutson testified he did not believe Respondent was ready for trial. (Knutson Test.)
47. Respondent called Ms. Grazzini-Rucki as her only witness. (D. Ex. 10, Direct Examination, pp. 26-68; Redirect Examination, pp. 105-115)
48. At one point during the testimony, Respondent called the proceeding a "pretend trial". (D. Ex. 10, p. 116, line 24) At another time, she interrupted Ms. Elliott's cross-examination of Ms. Grazzini-Rucki. (D. Ex. 10, p. 91) Respondent argued with opposing counsel (Elliott) during the testimony. (D. Ex. 10, pp. 111; pp. 220-223)
49. At the end of the first day of trial, Judge Knutson directed the case would continue the next day, September 12, 2013, at 9 a.m. (R. Test.; Knutson Test.; D. Ex. 10, p. 250, lines 3-4)

Grazzini-Rucki Trial-September 12, 2013

50. On September 12, 2013, Judge Knutson took the bench at 9:01 a.m. and waited for all parties to arrive. (D. Ex. 14) Respondent approached Judge Knutson's court reporter, demanded a transcript from the preceding day and accused the court

reporter of not recording the prior day's testimony accurately. (Knutson Test.; D. Ex. 11) Since the bailiff and some of the parties and/or counsel were not present, Judge Knutson left the bench at 9:14 a.m. (Knutson Test.; D. Ex. 14; D. Ex.11, p. 3)

51. After Judge Knutson left the courtroom, Respondent off-the-record made, in summary, statements that if the court reporter was not going to record everything that happened in the courtroom, Respondent would do so. (Elliott Test.; D. Ex. 32, p. 22) Respondent began taking pictures of people in the courtroom (including a deputy) and the clock. (D. Ex. 14, Time: 9:15:25; Elliott Test.) No one gave Respondent permission to take their picture. (R. Test.)

52. Deputies assigned to the courtroom approached Respondent and informed her she knew she wasn't allowed to take pictures. (D. Ex. 14; Elliott Test.; D. Ex. 32, p. 22) It is standard procedure for courtroom deputies to advise court attendees that no recording devices of any type are allowed in the courtroom. (Elliott Test.) At the instant hearing, Respondent denied she was ever told to not take pictures. (R. Test.)

53. The Grazzini-Rucki case was the subject of social media coverage and picketing at the Dakota County Courthouse. As a result, heightened security was in place for hearings. A number of Ms. Grazzini-Rucki's supporters (including Dee Dee Evavold)

were present in the courtroom during the trial. (Elliott Test.; D. Ex. 14)

54. A courtroom deputy took Respondent's camera. Respondent planned to use her cell phone for photographs. (D. Ex. 32, p. 24) Respondent denies she ever told the deputy she would take pictures with her cell phone. (R. Test.) The deputy then took Respondent's cell phone. (D. Ex. 14; D. Ex. 32, pp. 24- 25) Respondent was upset but Ms. Grazzini-Rucki was able to settle her down. (Elliott Test.)

55. Judge Knutson had not retaken the bench. (D. Ex. 14) Courtroom deputies talked to Judge Knutson in a hallway outside of the courtroom and advised him that they had observed Respondent take pictures within the courtroom. (D. Ex. 14, Time: approx.. 9:18-19; D. Ex. 32, pp. 25-26)

56. Minnesota Rule of General Practice 4.01 (first paragraph) states:

> Except as set forth in this rule, no pictures or voice recordings, except the recording made as the official court record, shall be taken in any courtroom, area of a courthouse where courtrooms are located, or other area designated by order of the chief judge made available in the office of the court administrator in the county, during a trial or hearing of any case or special proceeding incident to a trial or hearing, or in connection with any grand jury proceeding.

57. The Honorable William Macklin, then chief judge of the First District, issued an Order in 2005 which states in relevant part:

> No pictures or voice recording, except the recording made as the official court record, shail be taken in any courtroom or area of the Judicial Center where courtrooms are located. ...
> Upon the request and at the direction of the presiding judge by written order, this Order may be modified with respect to specific matters pending before the presiding judge.
> (D. Ex. 50, para. 1, 4)

58. When Judge Knutson returned to the courtroom, he stated on the record what the deputies advised had happened during the recess. He then told Respondent that, as an attorney, she knew there was "no recording or picture taking or videoing of any court proceedings in the courtroom." (Knut. Test.; D. Ex. 11, p. 4)
59. At the time, Respondent did not state, as she did at the instant disciplinary hearing, that she was free to take pictures during a recess when a judge is not on the bench since she did not consider it was "during" a trial or hearing. (R. Test.; D. Ex 11)
60. Respondent's purpose in taking pictures was to gather evidence in support of her federal lawsuit against Judge Knutson, (R. Test.)
61. The trial proceeded after Judge Knutson

made a record of what had occurred during the recess. A morning recess was taken when Respondent needed a 2011 calendar to cross-examine Laura Miles, the guardian ad litem. (D. Ex. 14, Time: 10:26:10) Deputies approached Respondent and advised her she would be issued a citation for contempt of court based on her actions of taking pictures within the courtroom and asked her to accompany them so they could fill out the citation. (D. Ex. 32, p. 28)

62. Respondent left the courtroom with the deputies. (Elliott Test.; D. Ex. 14, Time: 10:26:59-10:27:11) Courtroom and court holding area security cameras recorded these events although there is no audio. (D. Ex. 14-16)

63. Immediately upon Respondent's departure from the courtroom, Ms. Grazzini-Rucki and Dee Dee Evavold began packing up all of Respondent's trial materials in boxes and were out of the courtroom security camera coverage in less than three minutes. (D. Ex. 14, Time: 10:29:30; Elliott Test.) Judge Knutson saw Ms. Grazzini-Rucki with boxes in the parking lot area of the courthouse. (Knutson Test.) Ms. Grazzini-Rucki did not return to the courtroom. (D. Ex. 14)

64. As Ms. Grazzini-Rucki and Ms. Evavold were packing up the trial materials, Ms. Elliott informed them Respondent would be right back and would want her trial materials. (Elliott Test.; D. Ex. 14-Ms. Elliott seen talking to Ms. Grazzini-Rucki)

65. Respondent was taken to the court holding

area where the deputies attempted to fill out a citation for contempt of court. (Resp. Test.; D. Ex. 13; Dr. Ex. 15; D. Ex. 32, p. 28) The deputies could not complete the citation because Respondent refused to give her legal name, date of birth and address. (D. Ex. 11; D. Ex. 15; R. Test.; D. Ex. 32, p, 28-29) When asked her name, Respondent replied, "You know my name". (R. Test.)

66. Respondent's legal name is Michelle Lowney MacDonald Shimota. Professionally, she is known as Michelle Lowney MacDonald. (R. Test.)
67. The deputies spent 14-15 minutes (D. Ex. 15, Time: 10:28:57-10:43) requesting the information from Respondent and explaining if she gave it to them, she would be allowed to return to the courtroom. Deputies requested the information multiple times. (D. Ex. 32, p. 30) Respondent refused to give the information to the deputies. (R. Test.; D. Ex. 32, pp. 28-29)
68. The request for a legal name, date of birth and address is standard procedure for all people being given a citation. (D. Ex. 13) Respondent testified it was "ludicrous" for the deputies to request the information. (R. Test.) Subsequently, the deputies used the Department of Motor Vehicles website for Respondent's legal name and used her business address. They still needed her date of birth. (D. Ex. 32, pp. 31-32)
69. Contrary to Respondent's testimony in the

disciplinary proceeding, she was not in custody until she refused to give the deputies her legal name, address and date of birth. She was placed in custody due to her refusal to provide the information. (D. Ex. 32, p. 32) Deputies added a charge of misdemeanor obstruction of justice due to Respondent's actions.

70. Director's Exhibit 15 shows Respondent being placed in custody including the removal of jewelry, glasses and shoes and a pat down search. Respondent was placed in a holding cell with the door open. (D. Ex. 15)

71. When advised she needed to return to the courtroom, Respondent refused to cooperate with the deputies. She refused to stand or walk and, as a result, the deputies placed her in a wheelchair. (D. Ex. 15, Time: 10:57-10:58:37; Knutson Test.; D. Ex. 32) Respondent was handcuffed to a belt. (D. Ex. 15; R. Test.)

72. Director's Exhibit 15 shows Respondent being offered her glasses. (D. Ex. 15, Time: 10:50) Respondent ignored the offers. Respondent was told she could put on her shoes but would not do so. (D. Ex. 15, Time: 10:48) Respondent's property (including her glasses) was photographed and placed in an inventory bag (D. Ex. 15) and the inventory bag is seen being held by a courtroom deputy when Respondent was returned to the courtroom. (D. Ex. 14, Time: 11:02) Respondent denied she was offered her glasses when questioned during the

disciplinary hearing. (R. Test.) Director's Exhibit 15 shows Respondent being offered her glasses. (D. Ex. 15) Deputy Gonder advised Judge Knutson of Respondent's lack of cooperation regarding her shoes and glasses. Respondent's cell phone could be returned to her at a "moment's notice". (D. Ex. 11, p. 54, line 8)

73. Respondent did not consider her obligation as an attorney to competently represent her client, her obligation to not engage in conduct intended to disrupt the court or her obligation not to interfere with the administration of justice on September 12, 2013. (R. Test.)
74. Additional findings regarding the misdemeanor charges will be made below.
75. Upon return to the courtroom, deputies advised Respondent and Judge Knutson, on the record, that Respondent would be released from custody when she provided her legal name, address and date of birth. (D. Ex. 11, pp. 44-45)
76. Judge Knutson asked Respondent how she wished to proceed since her client and trial materials were not present. (D. Ex. 11, pp. 44-45) Respondent was reminded by the Court of her obligation to her client. (D. Ex. 11, p. 46; Knutson Test.) Respondent was asked if she needed to contact someone to get her trial materials. (D. Ex. 11, p. 46) Respondent did not verbally reply to Judge Knutson. (D. Ex. 11, pp. 45-46)
77. Respondent was given a number of opportunities to provide the needed

information, receive the citation, contact her client and retrieve her file but she did nothing. (D. Ex. 15; Knutson Test.; R. Test.)

78. Respondent did not ask for any accommodation during the hearing. (Knutson Test.; D. Ex. 11, pp. 44-98; R. Test.) Respondent was told the situation was of her own making and could be remedied but she did nothing, (D. Ex. 11, p, 54-55) Even during the disciplinary hearing, Respondent stated there was "nothing she could do" to correct the situation, (R. Test.)

79. At first, Respondent refused to respond to Judge Knutson's questions or comments. (D. Ex. 11, pp. 45-47, 52) Later, she made objections to the proceedings and to certain testimony. (D. Ex. 11, p. 51, *et.seq.*) Respondent requested the minor children be immediately returned to the custody of Ms. Grazzini-Rucki. (D. Ex. 11, p. 51)

80. The record reflects Respondent's unwillingness to resolve the contempt of court citation issue disrupted the trial and was aimed at making a record for either an appeal, a mistrial and/or to garner information for Respondent's federal lawsuit against Judge Knutson. Respondent filed an Amended Complaint in the federal lawsuit after the events of September 12, 2013. (D. Ex. 20; R. Ex. 115)

81. Respondent's involvement in the rest of the trial was minimal. (D. Ex. 11) Respondent briefly cross-examined David Rucki. (D. Ex. 11, pp. 86-87) Respondent made numerous objections to the entire

proceeding. (D. Ex. 11) Respondent agrees she did not competently represent her client but testified at the disciplinary hearing that it was due to her illegal arrest and the way the deputies treated her. (R. Test.)

82. At the instant hearing, Respondent blamed Judge Knutson, opposing counsel and the deputies for what happened on September 12, 2013. (R. Test.)

83. Judge Knutson issued Findings of Fact, Conclusions of Law, an Order for Judgment and Judgment and Decree in the Grazzini-Rucki case on November 25, 2013. (D. Ex. 22) Judge Knutson outlined the procedural background of the case and, more importantly for the disciplinary proceeding, what happened during trial. (D. Ex. 22, pp. 16-21)

84. Respondent appealed not only the November 25, 2013, Judgment and Decree but a number of previous orders (including the sanctions orders regarding the subpoenas) in January 2014. The appeal was dismissed. Respondent did not serve the attorney for the guardian ad litem who was made a party to the action on May 14, 2013. (D. Ex. 44, pp. 1-3) Respondent's request for reconsideration was denied on May 29, 2014. (D. Ex. 46)

85. Respondent petitioned the Minnesota Supreme Court for review of the Court of Appeals dismissal on June 13, 2014. (R. Ex. 125) The Petition was denied.

86. Respondent filed a Petition for a Writ of

Certiorari to the United States Supreme Court on November 1, 2014. (D. Ex. 123) The Petition was denied.

87. Ms. Grazzini-Rucki did not file a complaint against Respondent with the Lawyers Board of Professional Responsibility (R. Test.) nor did she file a lawsuit alleging malpractice against the Respondent. (R. Test.)

State v. MacDonald Shimota Contempt of Court Proceeding

88. Respondent was issued a citation for contempt of court and obstruction of justice due to her actions on September 12, 2013. (D. Ex. 13)
89. Judge Wermager of the Dakota County District Court ordered Respondent be released from custody and the citation issued to her without all of the standard information (i.e., address, date of birth) on it. Respondent was in custody for about thirty hours. (R. Test.)
90. Respondent demanded a complaint. The only charge in the complaint was criminal contempt of court.
91. A hearing took place on November 21, 2013, regarding several issues in the criminal case before Judge Leslie Metzen of the Dakota County District Court. In an order filed January 23, 2014, Judge Metzen found probable cause for the charge of criminal contempt for willful disobedience to the lawful process or other mandate of a court

for taking pictures in the courtroom on September 12,2013. (D. Ex. 27)

92. On January 27, 2014, a hearing was held on Respondent's motion to suppress Respondent's camera taken by the deputies on the morning of September 12, 2013. (D. Ex. 109)

93. On February 28, 2014, Judge Metzen issued an order finding the camera was taken by the deputies without a warrant and, therefore, the camera evidence was suppressed. (D. Ex. 39, para. 1) Judge Metzen found that although there was a violation of M.R.Crim.P. 6 (Respondent's arrest), the violation was due to Respondent's conduct. (D. Ex. 39, para. 2)

94. As a result of the suppression of the camera evidence, the criminal case was dismissed on April 4, 2014. (D. Ex. 124)

Grazzini-Rucki v. Knutson Federal Lawsuit

95. As found above, Respondent filed a lawsuit against Judge Knutson personally and not in his position as a Minnesota District Court Judge on September 11, 2013. (Findings 39-40, *supra*)

96. Judge Knutson received a "color of law" letter and "violation" notice from Respondent on or about July 23, 2013. (Knutson Test.; D. Ex. 20, para. 6, Factual Allegations (hereinafter Factual Alleg.) 108, 132) The letter, in summary, stated Judge Knutson should "stop what he was doing" in the Grazzini-Rucki proceeding. (R. Test.)

Judge Knutson testified he considered this letter a "nonsensical document". (Knutson Test.)

97. Respondent testified during the instant hearing that she has sent "color of law" letters to opposing counsel and parties in other proceedings. (R. Test.)

98. Judge Knutson was served with the federal lawsuit on October 21, 2013. (D. Ex. 19)

99. On November 12, 2013, following completion of the Grazzini-Rucki trial but before entry of the Judgment and Decree on November 25, 2013, Respondent signed an Amended Complaint on behalf of Ms. Grazzini-Rucki in Minnesota U.S. District Court. (D. Ex. 20; Knutson Test.)

100. In the Amended Complaint, Respondent made a number of allegations regarding Judge Knutson. Respondent testified the Amended Complaint's "factual allegations" were very serious. (R. Test.)

101. Respondent testified she had the right to file the federal lawsuit based on Ms. Grazzini-Rucki's allegations and the constitutional safeguards of the First Amendment. (R. Test.; R. Argument filed December 8, 2016) Respondent's duties as an attorney include making only meritorious claims. Based on Respondent's personal knowledge and the Minnesota state court records, Respondent knew or should have known many of the "factual allegations" were false.

102. Respondent alleged Judge Knutson repeatedly retaliated and acted with malice

against Ms. Grazzini-Rucki and Respondent (D. Ex. 20, Intro.Para. 5, Fact Alleg. 104, 182), compromised MNCIS (D. Ex. 20, Factual Alleg. 25, 28, 32, 33, 139, 140), "usurped" case files in concert with opposing counsel (D. Ex. 20, Factual Alleg. 34, 35, 36, 49, 68, 69, 78, 96, 107, 113, 170), signed documents that Judge Knutson knew were false (D. Ex. 20, Factual Alleg. 69, 144, 153), and used professionals to gather data Judge Knutson knew was false. (D. Ex. 20, Factual Alleg. 37, 54, 73, 76, 101, 153, 156, 164)

103. In addition, Respondent alleged Judge Knutson had no jurisdiction or legal authorization to enter orders. (D. Ex. 20, Intro. Para. 5, Factual Alleg. 30, 40,147, 166, 169)

104. In the Amended Complaint, other exhibits offered in the disciplinary proceeding and during Respondent's testimony, Respondent alleged Judge Knutson had entered "over 3,400" orders in the Grazzini-Rucki case. (D. Ex. 20; R. Test.)

105. Upon review of Director's Exhibit 1, this referee finds 30 orders were entered before January 15, 2013 (the date Respondent filed her Certificate of Representation) and an additional 64 orders after January 15, 2013. The orders include notices for hearings, orders regarding any child support obligation, orders regarding Ms. Grazzini-Rucki's multiple petitions for *in forma pauperis* status, etc. It appears Respondent's "over 3,400" comments may

have alluded to individual paragraphs of various orders. (D. Ex. 1)

106. At the instant hearing, Respondent, when asked for the basis of these allegations, said "the record speaks for itself". (R. Test.) Respondent did testify to the following: (a) Judge Knutson's assignment of cases associated with the Grazzini-Rucki dissolution case was an "usurping" of cases; (b) Judge Knutson's insistence she continue the second day of trial while in a wheelchair was evidence of his retaliation against her for the filing of the federal lawsuit; (c) Judge Knutson continuing with the trial despite the disappearance of two children and his decision to quash the subpoenas was evidence he was obstructing evidence of his own wrongdoing; (d) Judge Knutson's signing of orders allegedly including civil rights violations that he should have noticed was evidence he signed documents he knew were false; and (e) Judge Knutson did not hold evidentiary hearings prior to entering orders and, therefore, he knew the information contained in the orders was false. (R. Test.)

107. No reasonable attorney would conclude these "facts" were sufficient evidence to make serious allegations questioning the integrity and impartiality of a judge.

108. U.S. District Court Judge Susan Nelson presided over the federal lawsuit brought by Respondent against Judge Knutson. In a 34-page Order and Memorandum filed May 29, 2014, Judge Nelson dismissed all of the

claims with prejudice when presented with a Defense Rule 12(b) Motion to Dismiss. Judge Nelson abstained on the injunctive and declaratory relief and dismissed the rest of the claims on the basis of judicial immunity. (D. Ex. 45)

109. Based on Respondent's submissions, Judge Nelson outlined the state court record and materials (D. Ex. 45, pp. 2-13) and the appellate history of the dissolution case. (D. Ex. 45, pp. 13-16) Judge Nelson dismissed all of the claims because they were "futile" (D. Ex. 45, p. 32) and wrote "nothing in the record supports these allegations". (D. Ex. 45, p. 30) Judge Nelson found the complaint was clearly based on Judge Knutson's "actions taken in his capacity as a state court judge." (D. Ex. 45, p. 32)
110. The "factual allegations" within the federal lawsuit were, in part, false and made with reckless disregard as to their truth or falsity.
111. Respondent appealed Judge Nelson's Order to the United States Eighth Circuit Court of Appeals on September 25, 2014. (R. Ex. 116) Judge Nelson's Order was affirmed on March 31, 2015. (D. Ex. 117, p. iii of Supreme Court Petition for Writ of Certiorari) Respondent filed a Petition for Writ of Certiorari with the United States Supreme Court. (D. Ex. 117) The Petition was denied. (R. Test.)
112. Respondent testified at the disciplinary hearing and made statements throughout the Grazzini-Rucki matter that she was

representing her client *pro bono*. Upon review of the documents within District Court File No.19AV-FA- 11-1273, it is noted there is an attorney lien in favor of Respondent in the amount of $193,190.05 and against Ms. Grazzini-Rucki. (D. Ex. 1)

D'Costa Case

113. Respondent signed her Certificate of Representation on behalf of Joseph D'Costa on February 17, 2014. (D. Ex. 51)
114. Respondent was Mr. D'Costa's third attorney on a Petition for Dissolution of Marriage filed by his then wife in November 2013. (R. Test.)
115. On February 24, 2014, Hennepin County District Court Referee Timothy Mulrooney issued an Order for Trial setting trial for June 16-17, 2014. (D. Ex. 52)
116. The Order for Trial (scheduling order) included deadlines for the exchange of hard copies of exhibits (D. Ex. 52, para. 3(C), para. 1), financial disclosures (D. Ex. 52, para. 3(E)), submission of transcripts of audio tapes being offered as exhibits (D. Ex. 52, para. 3(C), sub-para. 2), and filing of proposed findings of fact, conclusions of law, order for judgment and judgment and decree (D. Ex. 52, para. 4). Respondent received a copy of the Order for Trial. (R. Test.)
117. Respondent admitted she did not comply with all of the Order for Trial although she tried to "substantially comply". (R. Test.)

Respondent did not provide hard copies of her client's exhibits on time; some were a day late but most were provided eleven days late. (D. Ex. 58, Findings 168, 177). Respondent did not provide proposed findings of fact as directed stating she "waived" her client's right to file them. (R. Test.)

118. Originally set for two days, the D'Costa trial took all or parts of nine days due, in part, to Respondent and her client's failure of preparation. (D. Ex. 58, Finding 181) The District Court found, in part, "But for the conduct of [D'Costa] and his counsel [Respondent herein] including disorganization, noncompliance with trial scheduling orders, nonresponsive and argumentative and narrative testimony, and poor trial preparation, each side's trial time would not have exceeded 10 hours and the trial would have taken no more than 4 days." (D. Ex. 58, Finding 181)
119. Respondent interrupted and argued with Referee Mulrooney a number of times and had to be ordered to stop talking when the court was speaking. (D. Ex. 56, pp. 616-620; D. Ex. 57, pp. 894, 1088-1090) Respondent's behavior was disruptive and disrespectful to the Court. (D. Ex. 56, pp. 616-620; D. Ex. 57, p. 1089-90)
120. The District Court (Judge Patrick Robben) approved Referee Mulrooney's Findings of Fact, Conclusions of Law and Judgment and Decree and ordered Mr. D'Costa to pay $20,000 in conduct-based attorney's fees.

Mr. D'Costa's former spouse was awarded an additional $20,000 in property to satisfy this order. (D. Ex. 58, Finding 183)

121. Respondent again argued the constitutionality of Minn. Chap. 518, *et.seq.* Referee Mulrooney denied Respondent's motion to find the statute unconstitutional. (D. Ex. 58, Finding 184)
122. Respondent appealed the District Court's Judgment and Decree to the Minnesota Court of Appeals on April 22, 2015. (D. Ex. 59; R. Test.) The appellate panel called the constitutional challenge "vague and unclear" (D. Ex. 60, p. 4) and said it was "saddled with numerous procedural deficiencies." (D. Ex. 60, p. 3)
123. The Judgment and Decree was affirmed on appeal in part because Respondent failed to preserve arguments on issues at the trial court level. (D. Ex. 60, pp. 9-10) The Court of Appeals found the opposing party had to defend procedurally barred matters on appeal and $16,000 in attorney's fees was awarded. (D. Ex. 61) Judgment was entered for the fees and costs. (D. Ex. 62)
124. Mr. D'Costa's monthly gross income at the time of the entry of the Judgment and Decree was $3,464. (D. Ex. 58, Child Support Worksheet appended to Judgment and Decree) An award of $16,000 in appellate fees was significant.
125. At the disciplinary hearing, Respondent blamed Mr. D'Costa, a licensed attorney, for the issues at trial and on appeal. (R. Test.) Respondent knew or should have

known she was responsible for what was presented at trial, compliance with court scheduling orders and, if necessary, making a record to be reviewed on appeal.

126. Joseph D'Costa did not sue Respondent for any alleged errors in her representation of him (R. Test.) nor did he file a complaint with the Lawyers Professional Responsibility Board. (R. Test.)

Letters to Board of Judicial Standards

127. On December 26, 2013, Respondent wrote a letter to the Board of Judicial Standards (BJS) reporting what she believed to be unethical conduct by Judge Knutson. (R. Ex. 114) She wrote additional letters to the same office on February 7, 2014 (D. Ex. 36), March 11, 2014 (D. Ex. 40) and April 2, 2014 (R. Ex. 114)

128. Judge Knutson is a member of the Minnesota Board of Judicial Standards, (Knutson Test.) In her letters of December 26, 2013 and February 7, 2014, Respondent asked for Judge Knutson's removal from the Board. (R. Ex. 114; D. Ex. 36) On January 28, 2014, Thomas Vasaly, the director of BJS, responded and stated Judge Knutson could not be removed from the Board since he was appointed by the Governor. (R. Ex. 114)

129. In his testimony, Judge Knutson summarized the process for complaints with the BJS. Upon receipt of a complaint, the staff determines whether investigation is

required or if the complaint should go to the Board. The question for the Board is whether there is reasonable cause to proceed. If there is reasonable cause, the judge is then notified of the complaint and asked to respond. (Knutson Test.) If a complaint is about a member of the Board, the named judge is not part of the process. (Knutson Test.) Judge Knutson was unaware of Respondent's complaints to the BJS until the current proceeding. (R. Test.) Since Judge Knutson was unaware of Respondent's complaints to the BJS, it is reasonable to believe the Board determined no investigation was required based on Respondent's letters and attachments.

130. Respondent believes her complaint to the BJS was the reason Judge Knutson sent a letter to the Lawyers Board of Professional Responsibility regarding Respondent. (R. Test.)
131. The letters to the BJS include the same complaints made within the federal lawsuit outlined above. Respondent sent copies of all of her letters to the BJS to numerous elected officials. (R. Ex. 114)
132. As with the federal lawsuit, Respondent's statements were false and made with a reckless disregard as to their truth or falsity.

Mitigation and Aggravation

133. Respondent offered testimony regarding her *pro bono* work, her work as a referee in

Hennepin County and her minimal prior disciplinary history as mitigation of her misconduct. (R. Test.; R. Ex. 120)

134. Respondent maintains she did nothing wrong and, during the disciplinary hearing, blamed others including Judge Knutson, Ms. Elliott, and Joseph D'Costa. (R. Test.) This is an aggravating factor.

135. Respondent does not acknowledge her misconduct. Respondent testified she was "sorry for whatever I did". (R. Test.) This reflects Respondent's lack of insight into how her acts affected others. This is an aggravating factor.

136. Respondent characterized the Petition for Disciplinary Action as an attack on her right to be critical of the court system and her attempts to challenge the constitutionality of the family law statute. (R. Test.) She testified the Petition for Disciplinary Action was in retaliation for her running for a position on the Minnesota Supreme Court. (R. Test.) This is neither a mitigating nor aggravating factor.

137. Respondent's continual inability to acknowledge facts found by the courts is an aggravating factor.

138. Respondent has a lengthy record of practicing family law. She has been an attorney for almost thirty years. (D. Ex. 120) This is an aggravating factor.

139. Respondent has one prior discipline, a private admonition, for a rule violation unrelated to the misconduct alleged in this case. This is neither a mitigating nor

aggravating factor.

Based upon the above Findings of Fact, the Referee makes the following:

CONCLUSIONS OF LAW

1. The Director has proven by clear and convincing evidence that Respondent failed to properly prepare for the first day of trial in the Grazzini-Rucki proceeding, failed to competently represent Ms. Grazzini-Rucki during the second day of trial by not asking for accommodation to get her client and file back in the courtroom and failed to perfect Ms. Grazzini-Rucki's appeal. Respondent violated Rule 1.1 of the Minnesota Rules of Professional Conduct (MRPC).
2. The Director has proven by clear and convincing evidence that Respondent's conduct in pursuing subpoenas against her client's former counsel violated Rule 3.1 (MRPC); Rule 3.4(c) (MRPC); Rule 4.4(a) (MRPC) and 8.4(d) (MRPC)
3. The Director has proven by clear and convincing evidence that Respondent's conduct in pursuing false claims against Judge Knutson violated Rule 3.1 (MRPC) and Rule 8.4(d) (MRPC).
4. The Director has proven by clear and convincing evidence that Respondent's conduct in taking pictures in violation of Court rule and District Court Order violated Rule 3.4(c) (MRPC) and Rule 8.4(d) (MRPC).
5. The Director has proven by clear and

convincing evidence that Respondent's conduct in repeatedly interrupting the court, being arrested and being detained during the Grazzini-Rucki trial violated Rule 3.5(h) (MRPC).

6. The Director has proven by dear and convincing evidence that Respondent's false statements made with reckless disregard for the truth or falsity of those statements about Judge Knutson's impartiality and integrity in multiple forums violated Rule 8.2(a) (MRPC) and Rule 8.4(d) (MRPC).
7. The Director has proven by clear and convincing evidence that Respondent's conduct in knowingly failing to follow the D'Costa Order for Trial regarding the disclosure of exhibits and proposed findings violated Rule 3.4(c) (MRPC) and Rule 8.4(d) (MRPC).
8. The Director has proven by clear and convincing evidence that Respondent's conduct in interrupting the Court on multiple occasions during the D'Costa trial violated Rule 3.5(h) (MRPC).
9. The attached Memorandum is incorporated herein by reference.

RECOMMENDATION

Based upon the above Findings of Fact and Conclusions of Law, and after consideration of the mitigating and aggravating factors, the undersigned recommends Respondent be suspended from the practice of law for a minimum of sixty (60) days followed by two years of probation.

Dated this 31st day of December, 2016.

/s/ Heather L. Sweetland
Heather L. Sweetland

MEMORANDUM

The issues before this referee during the disciplinary hearing can be broadly grouped into three parts: (a) statements and actions by Respondent towards Judge Knutson during and after the Grazzini-Rucki proceeding and Referee Mulrooney during the D'Costa matter; (b) Respondent's alleged incompetence regarding the issuance of subpoenas and appeals; and (c) actions taken by Respondent to disrupt court proceedings.

False Statements and Conduct

Respondent argues any statements she made are protected by the First Amendment's right to free speech. Respondent relies, in part, on State Board of Examiners in Law v. Hart, 116 N.W. 212, 104 Minn. 88 (1908) in support of her argument. Her reliance is misplaced.

In Hart, the statements made in a letter to the Chief Justice of the Minnesota Supreme Court and the Governor concerned cases that had been completed through the appellate process. As cited in Hart, an attorney publishing false charges against a judge "to influence his action or discredit his proceedings in a matter still undetermined" [citing In re Collins, 147 Cal. 8, 81 Pac. 220] can be disciplined. In another cited case [Ex parte Cole, 1 McCreary 405, Fed. Cas. No. 2,973], an attorney urged publication within a newspaper of disparaging comments about a judge in some matter that was still pending. The court found it was done with "intent to intimidate the judge in a pending matter." (Hart, *supra*, at 113)

The Minnesota Supreme Court has addressed

the issue of whether the First Amendment offers protection to attorneys who bring serious charges against judges and legal officials impugning their integrity. In Disciplinary Action Against Graham, 453 N.W.2d 313 (Minn. 2000), the Minnesota Supreme Court addressed the issue. While Hart protected attorneys when those rights were exercised to criticize rulings of the court once litigation was complete or to criticize judicial conduct or even integrity, the protection has not been absolute and an attorney's abuse of that right makes the attorney subject to discipline. (In re Williams, 414 N.W.2d 394, 396 (Minn. 1987))

The Minnesota Supreme Court has found Rule 8.2 consistent with the constitutional limits placed on defamation actions by the United States Supreme Court including New York Times v. Sullivan, 376 U.S. 254 (1964) cited by Respondent.

As noted in Graham,

> "Because of the interest in protecting the public, the administration of justice and the profession, a purely subjective standard is inappropriate. The standard applied must reflect that level of competence, of sense of responsibility to the legal system, of understanding of the legal rights and of legal procedures to be used only for legitimate purposes and not to harass or intimidate others, that is essential to the character of an attorney practicing in Minnesota. Thus, we hold that the standard must be an objective one dependent on what the reasonable attorney, considered in light of all his professional functions, would do in the same or similar circumstances."

(Graham, *supra*, at 322)

Impugning the integrity of judges and public legal officers by stating as certainties that which was based on nonexistent evidence or mere supposition is conduct that reflects a reckless disregard for the truth or falsity of the statements made in violation of Rule 8.2(a). (Graham, at 324)

In the present case, Respondent made statements and impugned the integrity of Judge Knutson while the Grazzini-Rucki matter was pending. This included statements made directly to Judge Knutson in court on September 11 and 12, 2013, and "factual allegations" in the federal lawsuit's Amended Complaint. The first two letters to the Board of Judicial Standards, although sent after the entry of the Grazzini-Rucki Judgment and Decree, were sent before the time of appeal had expired.

In re Petition for Discipline Action Against Lynne A. Torgerson, 870 N.W.2d 602 (Minn., 2015) confirms the standard for judging statements as false. The standard is an objective one under the rule of professional conduct prohibiting a lawyer from making a statement that the lawyer knows to be false with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge. (Rules of Professional Conduct, Rule 8.2(a)).

Respondent knew her comments regarding entry of the September 7, 2012, Order were false with certainty after the April 19, 2013, Order was entered. Respondent would have been aware of Ms, Grazzini-Rucki's counsel's involvement in the telephone conference and the drafting of the order. Respondent's on-going statements and "factual allegations" within the federal lawsuit's Amended Complaint were false

and in reckless disregard of their truth or falsity. The filing of the lawsuit appears to be the same as the case of Petition for Disciplinary Action Against Nathan, 671 N.W.2d 578 (Minn. 2003). "Merely cloaking an assertion of fact as an opinion does not give that assertion constitutional protection." (Nathan, at 584, citing In re Westfall, 808 S.W.2d 829, 832-33 (Mo. 1991))

The Supreme Court in Torgerson confirmed that an attorney's disrespectful comments to a judge can be subject to discipline. As in Torgerson, Respondent interrupted Judge Knutson and Referee Mulrooney multiple times as outlined in the findings. Neither Judge Knutson nor Referee Mulrooney imposed sanctions against Respondent for her disruptive behavior. However, there is no question Respondent acted unprofessionally and in violation of Minn.R. of Prof. Conduct 3.5(h).

This says nothing of Respondent's conduct the morning of September 12, 2013, when she was arrested because she wouldn't give her legal name, date of birth and address to the deputies who were attempting to give her a citation. Her lack of cooperation with the deputies (shoes, glasses, walking) was disruptive to the tribunal at the very least. Respondent's client left the courtroom with all of Respondent's trial materials and did not return. Other than Respondent's testimony that a bailiff told Ms. Grazzini-Rucki to leave, no other evidence was provided at the disciplinary hearing to support Respondent's statement.

Respondent provided no credible evidence to mitigate her conduct during the Grazzini-Rucki proceeding or, for that matter, the D'Costa trial.

Lack of Competence

A second general area of issues concerned the service of subpoenas, Respondent's inability to perfect Ms. Grazzini-Rucki's appeal of the November 25, 2013, Judgment and Decree and the lack of a proper record for review of the D'Costa issues on appeal. While Respondent has been found to be in violation of the Rules of Professional Conduct, the recommended discipline did not take these violations into account. Respondent was sanctioned for the issuance of subpoenas and paid them. Neither client sued Respondent for malpractice. In addition, neither client reported Respondent to the Board of Professional Responsibility.

Contrary to Respondent's counsel's argument, findings of fact in a family court proceeding can be reviewed on appeal if counsel files an appropriate post-trial motion.

Disruption of Proceedings

It appears from review of the lengthy Register of Actions in the Grazzini-Rucki matter (D. Ex. 1) that one of Respondent's purposes was to disrupt the proceedings. Many of those actions are noted in the Findings, *supra.*

Respondent had an absolute right to bring the constitutional challenge to Minn. Stat. 518, *et.seq.*, but she based it on the September 7, 2012, Order that she knew or should have known was entered after a telephone conference on the record with Ms. Grazzini-Rucki's attorney's involvement.

From the records provided and the testimony at the hearing, Respondent also sent a "color of law" letter to Judge Knutson. This hearing referee believes it was done with the intent to intimidate the judge. Of concern

to this referee was Respondent's testimony that she has sent "color of law" letters to opposing litigants and attorneys in the past.

Respondent followed up with the federal lawsuit which was filed the first day of the Grazzini-Rucki trial. U.S, District Court Judge Nelson found the allegations to be baseless and "futile". The Eighth Circuit agreed.

Respondent's commencement of a federal lawsuit against Judge Knutson personally and not in his position as a Minnesota District Court Judge can only be construed as an attempt to intimidate the judge and force his removal from the case and, possibly, the bench. "A reasonable attorney under these circumstances would not have made such serious, unsubstantiated allegations against a judge". (Torgerson, at 610, citing In re Graham, 453 N.W.2d 313, 322 (Minn. 1990) As noted earlier, "Impugning the integrity of judges and public legal officers by stating as certainties that which was based on nonexistent evidence or *mere supposition* is conduct that reflects a reckless disregard for the truth or falsity of statements made." (Graham, Id.; emphasis added in Torgerson)

Counsel for Respondent argues Respondent had the good faith right to rely on her client's statements. (Respondent's Argument, p. 15) When attorneys have information disputing what their client is saying, the attorney must rely on the record and make proper factual allegations and arguments. The allegations in the Amended Complaint were not true and Respondent would know they weren't true from the written orders filed in Ms. Grazzini-Rucki's case.

Respondent's letter to opposing counsel that Respondent intended to have Ms. Elliott be personally responsible for Ms. Grazzini-Rucki's attorneys' fees was done with the intent to intimidate counsel.

Even Respondent's arrest during the trial appears to have been orchestrated so the trial would not continue. While Respondent suggested Judge Knutson or Ms. Elliott could have remedied the situation, in fact, Respondent could have given the deputies the required information, received the citation and continued with the trial.

Ms. Grazzini-Rucki's immediate departure from the courtroom with all of Respondent's trial materials, her not returning to the courtroom and Respondent's failure to ask for accommodation appears to have been orchestrated to disrupt the trial.

Respondent began taking pictures in the courtroom when there was a standing order against such behavior. When advised she was not allowed to take pictures, Respondent told deputies that she would use her cell phone. These actions were taken with the intent to disrupt the court proceedings.

Conclusion

The recommendation based on Respondent's violations of the Rules of Professional conduct is minimal under the circumstances. If probation is imposed by the Supreme Court, the referee recommends Respondent be required to obtain a mental health evaluation and follow through with the recommendations, if any, as one of the probationary terms.