

FILED

September 13, 2019

**OFFICE OF
APPELLATE COURTS**

FILE NO. A18-1967

STATE OF MINNESOTA

SUPREME COURT

In Re Petition for Disciplinary Action
KARLOWBA ADAMS POWELL,
Respondent, a Minnesota Attorney,
Registration No. 0327335.

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

The above entitled matter came on for hearing before the undersigned Referee acting by appointment of the Minnesota Supreme Court, on June 23 and 24, 2019, at the Minnesota Judicial Center, St. Paul, Minnesota. Binh T. Tuong, Senior Assistant Director, Attorney at Law, St. Paul, Minnesota appeared on behalf of the Office of Lawyers Professional Responsibility ("Director" herein). Bobby Joe Champion, Attorney at Law, Minneapolis, Minnesota appeared on behalf of Karlowba Respondent Adams Powell ("Respondent" herein), who was personally present throughout the hearing.

Based upon the evidence offered and received into the record herein, the undersigned Referee makes the following

FINDINGS OF FACT

A. Procedural Matters and Determinations

1. The hearing was conducted on the basis of Director's October 31, 2018 Petition For Disciplinary Action.
2. Respondent filed and served her Answer to the Petition, dated November 16, 2018. In her Answer to the Petition, Respondent admitted certain factual allegations, denied or qualified others, and admitted nearly all of the charged rule violations, but denied any violations were intentional or deliberate and warrant discipline.
3. While the denials and explanations offered by Respondent in her Answer to the Petition as to the applicability of certain Rules of Professional Responsibility vis a vis her conduct, whether deemed factual, legal or procedural, may not be totally without merit,

they are insufficient to overcome the clear and convincing evidence presented by Director in the Petition.

4. Director presented the live testimony of Referee Mary Madden, attorney Diana Longrie Jeremy Stirewalt, Nicole Frank, and Joanna Hill, formerly Sumrall. Respondent testified personally upon cross examination by Director and direct examination by her counsel. The live testimonial evidence is referenced as "Testimony" herein.

Director's Exhibits numbered 1 through 30 inclusive and Respondent's Exhibits numbered 100 through 108 inclusive ("Exhibit" herein), were received into evidence by stipulation or without objection.

5. The parties were directed to submit proposed Findings of Fact, Conclusions of Law and Recommendations for Discipline, together with a brief if desired, on or before August 12, 2019. The Referee's Findings of Fact, Conclusions of Law and Recommendations for Disciplinary Action are due to the Supreme Court by no later than September 17, 2019.

6. The Findings and Conclusions made below are based upon Respondent's admissions, the testimony and exhibits submitted, and the reasonable inferences to be drawn from the same, as well as the demeanor and credibility of all the witnesses as determined by the undersigned. Although Respondent may have admitted a particular factual finding made below, if the Director provided additional evidence to establish the finding, the citation may reflect both. For each factual finding made below whether admitted by Respondent or not, the undersigned evaluated the relevant exhibits and testimony, accepted as credible the testimony and exhibits consistent with that Finding and did not accept any testimony or exhibits inconsistent with that Finding.

The references to the Petition and Answer in these Findings and Conclusions, if any, are to the numbered paragraphs of those documents, i.e. Answer 3 references paragraph 3 of Respondent's Answer.

7. For the continuity of review, the Findings are arranged under subheadings involving the allegations in the Petition (Subheadings B, C. and D.) rather than consolidating similar factual allegations into one like subheading.

8. Respondent was admitted to practice law in the State of Minnesota on September 18, 2003. She began her practice at a legal firm in 2003 and became a full time solo practitioner in September 2011. The primary focus in her practice has been criminal defense and family law.

9. Respondent was the subject of three (3) earlier disciplinary proceedings for professional misconduct:

- (a) On May 16, 2016 Respondent received an admonition for failing to diligently pursue a client's representation and failing to keep the client advised of the status of the representation in violation of Rules 1.3 and 1.4, Minnesota Rules of Professional Conduct ("MRPC" herein);
- (b) On April 10, 2007 Respondent received an admonition for failing to act with reasonable diligence and promptness and failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rules 1.3 and 1.4(b), MRCP;
- (c) By order dated July 19, 2017, Respondent was disciplined for failing to appear in court on behalf of a client in violation of Rules 1.1, 1.3, 3.4(c), and 8.4(d), MRPC and failing to cooperate with the Director's investigation in violation of Rule 8.1(b), MRPC and Rule 25 of the Rules on Lawyers Professional Responsibility ("RLPR" herein); the Supreme Court suspended Respondent from the practice of law for a minimum of forty-five (45) days effective the date of the Order and ordered that upon reinstatement, Respondent be placed on probation for two (2) years (Ex. 1); On September 25, 2017, Respondent was conditionally reinstated; Among the conditions of Respondent's two (2) year probation were the following:
 - 1. Respondent was to abide by the Minnesota Rules of Professional Conduct.
 - 2. Respondent was to cooperate fully with the Director's Office in its efforts to monitor compliance with her probation; and
 - 3. Respondent was to promptly respond to the Director's correspondence by its due date.

(Exhibit 17).

10. At the conclusion of the hearing, Respondent moved for dismissal of the entire matter on the basis of a lack of due process. She claimed the proceeding constituted an unlawful taking of her property (her license to practice law) by the State of Minnesota. The Director opposed the motion on several grounds. This Court finds that Respondent:

- (a) Received full and proper notice of the terms of her probation, the alleged violations of which constitute the basis for this proceeding;
- (b) The probationary order was never appealed or otherwise challenged by Respondent;
- (c) Respondent received proper notice of this proceeding by way of the Petition for Discipline;¹ and
- (d) Respondent received a full hearing on this Petition complete with the right and opportunity to challenge evidence offered by the Director and to submit evidence on her behalf.

B. False Statements to a Tribunal, the Director, and Others, and Unauthorized Practice of Law in the Benjamin Bump Matter

11. Respondent represented Benjamin Bump on family matters with two (2) court file numbers (27-FA-16-4324 and 27-DA-FA-16-2940) in Hennepin County District Court. Family Court Referee Mary Madden presided over the matters and Diana Longrie, attorney at law was opposing counsel (Exhibits 2 and 3). On August 1, 2017, Respondent appeared as counsel for Bump at a previously scheduled review hearing (Madden, Longrie and Respondent Testimony). Present at the review hearing before Referee Madden were Respondent, Longrie and the guardian ad litem Jean Hariman (GAL) (Madden and Longrie Testimony). At the review hearing, the parties discussed how to move the case(s) forward and possible trial or future hearing dates (Madden and Longrie Testimony).

12. Respondent's appearance on behalf of Bump constituted the unauthorized

¹ See also the Admission of Service signed by counsel for Respondent on November 5, 2018.

practice of law because Respondent engaged in legal practice while Respondent's license to practice law was suspended as of July 19, 2017 (Rule 5.5, MRPC; Exhibit 1).

13. Respondent is responsible for reading a Court's order and clarifying any confusion she may have with an order. Respondent is responsible for knowing the status of her own attorney license. Respondent, as a licensed attorney practicing for fifteen (15) years, should know that a Court's final order controls and supersedes an underlying stipulation, particularly when the stipulation states that it is a recommendation and by its terms acknowledges that the Court can impose any level of discipline (Exhibit 100, Paragraph 5). Even if Respondent had a good faith belief that she was permitted to appear at a review hearing, this does not mean she did not engage in the unauthorized practice of law. There is no "knowing" requirement in Rule 5.5(a), MRPC. *In re Panel File No. 39302*, 884 N.W.2d 661 (Minn. 2016) (affirming private admonition for attorney's practice of law in Minnesota by negotiating, via email, with Minnesota attorney regarding satisfaction of Minnesota judgment involving representation of Minnesota resident, where attorney wrongly believed that he was permitted to negotiate settlement without being licensed in Minnesota).

14. Referee Madden and Attorney Longrie testified about what happened at the review hearing. Both testified consistent with one another about what Respondent stated at the hearing and both are credible. Respondent does not deny the basic facts of what happened at the hearing. Referee Madden's and Attorney Longrie's consistent and credible testimonies support the facts set forth herein on this particular issue by clear and convincing evidence.

15. In Referee Madden's chambers prior to the hearing prior to the August 1, 2017 hearing, the parties discussed dates for scheduling future hearings and pre-trial conferences (Madden, Longrie and Respondent Testimony). A number of dates were suggested, including August 8, 11, and 21, 2017 (Respondent Testimony; Ex. 6).

Respondent informed Referee Madden that she would be unavailable for those specific

dates and unavailable to attend any hearings until September 16, 2017 (Madden and Longrie Testimony). When asked by Referee Madden the reason for her unavailability Respondent stated that she had vacations and two (2) trials scheduled (Madden, Longrie, Respondent Testimony; Exhibit 6). August 8 was the date selected for the conference.

16. Referee Madden and Longrie both testified that Respondent failed to disclose to either of them or the GAL at any time during the hearing, either in chambers or in open court that she could not make any appearances prior to September 16, 2017, because Respondent was suspended from the practice of law as of July 19, 2017, for at least forty-five (45) days (Madden and Longrie Testimony).

17. Respondent's statements to Referee Madden and Longrie that she was unavailable for future hearings until September 16, 2017, were knowingly false as evidenced by the following facts:

- (a) The upcoming vacations that Respondent claimed made her unavailable for any appearance from early August until after September 16, 2017, included only a five (5) or six (6)² day trip to Texas on August 9 through August 13 (Exhibit 5) and two (2) trips scheduled for *after* September 16, 2017 (Exhibit 6; Respondent Testimony). Therefore, the only period prior to September 16, 2017, that Respondent was unavailable for a hearing due to a vacation was August 9, through August 13, 2017 (Exhibit 6; Respondent Testimony).
- (b) Respondent has offered inconsistent statements regarding her reason for not being able to appear at the August 8, 2017 hearing. In her first response to the Director's notice of investigation, Respondent indicated that her stated reason for not being able to attend the August 8, 2017, hearing was because she would be in Texas on vacation (Exhibit 11). After the Director asked Respondent to provide travel confirmation of her Texas trip, and it showed

² At trial Respondent stated that to allow time for pre-travel errands she blocked off her schedule for vacation starting August 8, 2017.

her flight did not leave until the evening of August 9, 2017, in a subsequent response to the Director's request for more information, Respondent stated that her reason was because of her suspension (Exhibit 6).

(c) On August 7, 2017, Respondent finally revealed to Referee Madden and Longrie that she could not attend the August 8, 2017, hearing because of her suspension (Exhibit 7). By this time, Respondent was required to give notice of her suspension (Ex. 1, Paragraph 2), which was the true reason for Respondent not being able to attend the August 8, 2017 telephone hearing, as stated in Respondent's August 7, 2017, email. In that same email Respondent did not mention being on vacation or blocking off time for vacation as her reason for her unavailability on August 7, 2017 (Exhibit 7). Respondent continued to email the parties on August 8, 2017, the date she supposedly blocked off her schedule for her Texas vacation (Exhibit 9). Respondent's statement to Referee Madden and Attorney Longrie about the reason Respondent was unavailable on August 8, 2017, was knowingly false.

(d) The upcoming trials that Respondent stated made her unavailable for any appearance until after September 16, 2017, were trials scheduled for August 21 and September 18, 2017 (Exhibit 6). Respondent's suspension from the practice of law spanned the period of July 19, 2017, through September 25, 2017, the date Respondent was to be reinstated (Exhibits 1 and 17).

Therefore, Respondent was unable to engage in the practice of law, including attending any trials until after her license was reinstated (Exhibits 1 and 17).

Contrary to Respondent's representation, those trials could not be a reason she was unable to attend any hearings on the Bump matter until September 16, 2017. Thus Respondent's claims in this regard were knowingly false.

(e) By the August 1, 2017 review hearing, Respondent had received the Court's July 19, 2017, order regarding her suspension from the practice of law

(Respondent Testimony). Respondent was unable to make any appearances until after her reinstatement on September 25, 2017 because of her suspension, not because of her vacations or trials (Exhibits 1 and 17).

18. Respondent's reasons for why she did not reveal the suspension at the August 1, 2017, hearing are not credible in light of all the evidence:

(a) Respondent claims that she was not aware she needed to inform Referee Madden, Longrie and the GAL of Respondent's suspension by the August 1, 2017 hearing (Respondent Testimony). However, pursuant to the Court's suspension order and Rule 26, RLPR, Respondent was obligated to notify Referee Madden and Longrie of her suspension by July 31, 2017 (Exhibit 1; Rule 26, RLPR). Respondent claims she wrote letters to Referee Madden and Longrie on July 28, 2017, which she sent out on August 1, 2017, and therefore knew at a minimum that they were entitled to notice of the suspension (Respondent Testimony; Exhibits 13 and 14).

(b) Respondent also claimed she did not inform the parties at the August 1, 2017 review hearing because there was no obligation (other than the Rule 26 notice) for her to reveal that information (Respondent Testimony). But Respondent acknowledged that there was nothing to prevent or prohibit her from revealing her public suspension at the review hearing (Respondent Testimony). The rules relating to candor to a court and honesty in the course of representing a client obligate Respondent to tell the truth and to reveal the suspension information, particularly since it is the true reason Respondent was unable to appear for future hearings until September 16, 2017. Respondent's omission of a material fact caused misapprehension and confusion to other parties, counsel and the Court and wasted the court's, counsel's, GAL's and parties' time.

19. Because the parties were unaware of Respondent's suspension, a telephone

hearing was nonetheless scheduled for August 8, 2017 (Madden and Longrie Testimony).

20. When agreeing to schedule the August 8, 2017, telephone hearing, Respondent assured Referee Madden that she would find an attorney to attend in her place (Madden Testimony; Exhibit 4) since she would be unavailable due to the previously scheduled vacations.

21. Respondent was unable to find an attorney to attend the August 8, 2017, telephone hearing in her place (Exhibit 7; Respondent Testimony). On August 7, 2017, Respondent sent an email to Referee Madden and Longrie asking to continue the August 8, 2017 telephone hearing (Exhibit 7). This was the first time Respondent indicated that she was unable to attend the hearing because of her suspension (Exhibit 7).

22. In addition to informing the court, counsel and GAL parties of her suspension and inability to attend the August 8, 2017 telephone hearing, Respondent addressed on behalf of her client, other matters, including her client's position regarding the GAL's proposal. In the email (Exhibit 7), Respondent stated:

Please be advised [Bump] doesn't not [sic] agree with the GAL's proposal and wants her to complete a neuro-psych exam as she was previously ordered before therapy would begin. [X] has been having nightmares since he learned of the potential therapy His therapist has attempted to contact the GAL to no avail.

23. During the email exchange, Respondent tried to steer the conversation to focus on substantive issues, rather than just her suspension:

The focus of our emails should be Re-scheduling the phone conference and the concerns addressed in Mr. Bump's letter sent to you and the Court as they Reiser [sic] to what is in the best interest of [the child]."

(Exhibit 9, dated August 9, 2017).

24. Respondent's discussion of her client's case with Referee Madden, Longrie and the GAL in the August 7, 2017 emails (Exhibits 7 and 9) constituted the unauthorized practice of law because Respondent engaged in legal practice while Respondent's license to practice law was suspended.

25. Respondent's claim that she was not communicating with Referee Madden, Attorney Longrie and the GAL in her capacity as Bump's attorney is neither credible nor persuasive:

- (a) Respondent was the attorney of record (Referee Madden, Longrie and Respondent Testimony; Exhibits 2 and 3).
- (b) Respondent had been representing Bump for over a year (Madden, Longrie and Respondent Testimony).
- (c) Even though Respondent never state she was sending the emails as Bump's attorney, she never indicated in what capacity she was discussing her client's case, if not as his attorney (Respondent Testimony).
- (d) In her initial Answer to the Director's notice of investigation, Respondent acknowledged that she should not have engaged in substantive discussion about her client's case because she was suspended (Exhibit 11).
- (e) Respondent's trial testimony is inconsistent with her previous responses to the Director on this issue (Respondent Testimony),
- (f) Respondent is responsible for her representations to the Director in the course of the Director's investigation and cannot later disavow her previous statements to the Director when convenient.

26. Because Respondent was unable to attend the August 8, 2017 telephone hearing due to her suspension, and because Respondent was unable to find an attorney to appear in her place on Bump's behalf, the August 8, 2017, telephone hearing was continued (despite strong objections from Attorney Longrie to a long continuance) until August 28, 2017, thus delaying the case (Madden and Longrie Testimony; Exhibits 2, 3, and 9). Respondent's actions burdened the court and the other parties in the case.

27. During the course of the Director's investigation, and in response to Referee Madden's complaint regarding Respondent's conduct, Respondent stated to the Director that the reason she did not mention the suspension was because at the time of the August

1, 2017, hearing she did not believe her suspension was for “public consumption and something that she would be in the position to disclose.” (Exhibit 11.) This statement is knowingly false:

- (a) The Court’s suspension order directed Respondent to “comply with Rule 26, RLPR (requiring notice of suspension to clients, opposing counsel, and tribunals).”
- (b) Rule 26(b), RLPR, provides that a suspended lawyer “shall notify each client, opposing counsel (or opposing party acting pro se) and the tribunal involved in pending litigation . . . as of the date of the . . . order imposing discipline”
- (c) Rule 26(c), RLPR, provides that, “Notices required by this Rule shall be sent by certified mail, return receipt requested, within ten (10) days of the Court’s order.”
- (d) Respondent was required to provide notice to Referee Madden and Attorney Longrie of her suspension by July 31, 2017³
- (e) Further, Respondent’s Rule 26 notices to Longrie and to the court were dated July 28, 2017 (Respondent Testimony; Exhibits 13 and 14).
- (f) Respondent was aware that she had an obligation to notify Referee Madden and Attorney Longrie of her suspension.

28. Respondent was aware her suspension was public and that it needed to be disclosed when she attended the August 1, 2017, hearing. Respondent’s lack of candor and failure to promptly notify the court and the parties of her suspension earlier in the proceedings burdened the court and the judicial process by causing unnecessary delays and waste of the time and resources of the court, counsel, GAL (Madden and Longrie Testimony).

³ Ten (10) days from the Court’s July 19, 2017 order was July 29, 2017, which fell on a Saturday and therefore, the Director could consider July 31, 2017 as the date by which Respondent had to mail these notices.

29. During the course of the Director's investigation, the Director asked Respondent whether the August 8, 2017 telephone hearing had to be continued (Respondent Testimony; Exhibits 6 and 11). Respondent stated in written responses, and under oath at a deposition, that she was able to find an attorney to appear in her place and that the August 8, 2017, telephone hearing occurred (Exhibits 6, 11 and 30 at p. 28, Lines 3-10):

- (a) In response to the notice of investigation relating to the complaint of Referee Madden, Respondent, through her attorney, stated in a letter dated September 22, 2017, "It should be noted that Ms. Adams Powell's statement that 'I will have to try and get someone to cover that' was in fact a goal that was achieved since the matter did in fact take place on August 8th, and a licensed attorney was present for her client." (Exhibit 11.)
- (b) In response to the Director's request for additional information, Respondent, through her attorney, stated in a letter dated October 26, 2017, "The August 8, 2017 telephone conference was not continued. Ms. Adams Powell was in fact able to secure counsel to appear at the August 8, 2017 telephone conference." (Exhibit 6.) Respondent made these statements knowing they were false. Respondent did not find an attorney to appear in her place on August 8, 2017, and the August 8, 2017, telephone hearing was cancelled and continued to August 28, 2017 (Madden, Longrie and Respondent Testimony).
- (c) Respondent's claim of mistake as to the timing of the August 2017 conference call (whether the 8th or 28th) is not credible. Respondent could have looked up the information before responding to the Director to ensure her response was accurate and truthful. During trial, Respondent attempted to claim that she meant the hearing was continued to August 28, 2017 (Respondent Testimony). But Respondent's written representations are clear--she stated the August 8, 2017, hearing was not continued and that it occurred (Exhibits 6 and 11).

(d) During a deposition taken on September 12, 2018, Respondent again claims the August 8, 2017, telephone conference was not continued:

Q: Okay. And did you have another attorney appear on your behalf on August 8?

A: I did.

Q: On August 8?

A: Yes. The telephone --

Q: The telephone conference was not continued or canceled?

A: Yes, ma'am

(Exhibit 30 at p. 28, Lines 3-10).

30. Respondent's claim that she meant the hearing occurred on August 28 instead of August 8, 2017, is not credible. While a misstatement made once may be a mistake, being stated in writing twice and then again under oath at a deposition, demonstrates a disregard for the truth. Respondent's numerous statements as to the August 8, 2017 conference on the Bump matter made to the Director in writing and under oath, were knowingly false.

C. Additional Unauthorized Practice of Law and Failure to Provide Proper Receipt for Cash Payments in the Jamier Sumrall Matter

31. On or about June 23, 2017, Joanne Hill (formerly Sumrall) hired Respondent to represent her daughter, Jamier Sumrall, in three (3) separate criminal matters (Hill Testimony). When discussing the representation, Hill made clear that the cases were urgent and that there was a hearing scheduled for August 12, 2017, that needed to be handled (Hill Testimony). When discussing with Hill the potential representation of Sumrall, Respondent failed to inform Hill that she had signed a stipulation for suspension and that she may be suspended from that practice of law in the near future (Hill and Respondent Testimony).

32. Respondent's fee for the representation was \$3,000.00 and Hill paid Respondent \$1,500.00 in cash up front (Hill and Respondent Testimony).

33. Respondent provided Hill with a receipt for the cash payment. This receipt

was not countersigned by the payor (Hill) as required by Rule 1.15(h), MRPC, as interpreted by Appendix 1, Section II(2), thereto (Exhibit 15).

34. On July 19, 2017, the Court ordered Respondent suspended from the practice of law for a minimum of forty-five (45) days, effective as of the date of the order (Exhibit 1). After receiving the order, Respondent did not inform Hill or Sumrall of Respondent's suspension, despite the suspension being in effect on the date of the scheduled hearing (Hill Testimony). Respondent never informed Hill of Respondent's suspension and did not inform Sumrall until August 1, 2017 (Respondent Testimony).

35. Despite her suspension from the practice of law, Respondent continued her legal representation of Sumrall (Hill and Respondent Testimony). Between July 24 and 31, 2017, Respondent consulted with Hill and others about Sumrall's case and provided legal advice and consultation for which she invoiced Sumrall for the legal work (Exhibit 16; Respondent Testimony).

36. On August 1, 2017, Respondent contacted a Dakota County district court clerk and the prosecutor on one of the Sumrall cases regarding a possible continuance of the case (Exhibit 16.).

37. Respondent admits during this period she worked on Sumrall's file and discussed the case with others in Respondent's capacity as Sumrall's attorney (Exhibit 16; Respondent Testimony).

38. Ultimately, Respondent's representation of Sumrall was terminated, and Hill had to quickly find a replacement attorney to handle the case within a two-week time period (Hill Testimony). While Hill was able to obtain the result she desired, she paid the replacement attorney \$10,000.00 to handle the case (Hill Testimony).

39. Due to Respondent's misconduct, Hill experienced stress about her daughter's case and concerns about whether the matter would be handled on time as initially discussed and emphasized (Hill Testimony).

D. Failure to Safeguard Client Funds and Additional False Statements to the Director

40. On September 25, 2017, Respondent's license to practice law was conditionally reinstated and she was placed on supervised probation for two (2) years (Exhibit 17). The Court's reinstatement order required that 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 its due date." (Exhibit 17.) Further, the Order required that Respondent "abide by the Minnesota Rules of Professional Conduct." (Exhibit 17.)

41. On January 17, 2018, Respondent met with Nicole Frank and other members of the probation department of the Director's Office. At this time Respondent did not yet have a single probation supervisor assigned (Frank Testimony).

42. During the meeting, the Director's Office requested that Respondent provide several randomly selected client files for review, which included Respondent's client files for Benjamin Bump and Robert Walker (Frank Testimony). After reviewing those files, the Director's Office discovered that Respondent's flat fee agreements in those cases did not comply with Rule 1.5(b), MRPC (Frank Testimony).

43. In the Bump matter, Respondent and Bump entered into a flat fee retainer agreement on August 18, 2016 (Exhibit 18):

- (a) The flat fee agreement provided that Respondent would represent Bump in his family law case for a flat fee of \$2,500.00 (Exhibit 18).
- (b) The flat fee agreement did not disclose that the fee would not be held in a trust account until earned, that the client had the right to terminate the client-lawyer relationship, and, that the client will be entitled to a refund of all or a portion of the fee if the agreed-upon legal services were not provided, as required by Rule 1.5(b)(1), MRPC (Frank Testimony; Exhibit 18).

- (c) Further, the fee agreement states, “**This is a flat fee and non-refundable.**” (Bold in original.) (Frank Testimony; Exhibit 18.) Under Rule 1.5(b)(3), MRPC, such a provision is impermissible.
- (d) Because Respondent’s flat fee agreement did not comply with Rule 1.5(b)(1), MRPC, Respondent was obligated to place any unearned fees in trust pursuant to Rule 1.15(a) and (c)(5), MRPC (Frank Testimony).
- (e) Bump paid Respondent for the family law representation as follows: \$255.00 on July 26, 2016; \$1,000.00 on July 29, 2016; and \$1,250.00 on August 15, 2016 (Exhibit 19). None of these payments were placed in Respondent’s trust account (Respondent and Frank Testimony).
- (f) By August 15, 2016, Bump had paid Respondent the full \$2,500.00 flat fee (Exhibit 19; Respondent Testimony).
- (g) Respondent did not complete the agreed-upon services until December 11, 2017, (Respondent Testimony; Exhibit 21) and did not fully earn the \$2,500.00 flat fee until that date
- (h) All or at least a portion of the \$2,500.00 Bump paid to Respondent should have been placed into trust until December 11, 2017, when it was fully earned (Frank Testimony; Rule 1.15(a) and (c)(5), MRPC).

44. In the Walker matter, Respondent and Walker entered into a flat fee agreement on April 25, 2017 (Exhibit 22):

- (a) The flat fee agreement provided that Respondent would represent Walker in his family law case for a flat fee of \$2,500.00 (Exhibit 22).
- (b) The flat fee agreement did not disclose that the fee would not be held in a trust account until earned, that the client had the right to terminate the client-lawyer relationship, and, that the client will be entitled to a refund of all or a portion of the fee if the agreed-upon legal services are not provided, as required by Rule 1.5(b)(1), MRPC (Exhibit 22).

- (c) Further, the fee agreement states, “**This is a flat fee and non-refundable.**” (Bold in original.) Under Rule 1.5(b)(3), MRPC, such a provision is impermissible (Frank Testimony; Exhibit 22).
- (d) Because Respondent’s flat fee agreement did not comply with Rule 1.5(b)(1), MRPC, Respondent must place any unearned fees into trust pursuant to Rule 1.15(a) and (c)(5), MRPC (Frank Testimony).
- (e) Walker paid Respondent for the family law representation as follows: \$600.00 on February 22, 2017; \$1,150.00 on March 29, 2017; \$500.00 on May 15, 2017; and \$250.00 on June 15, 2017 (Exhibit 19). None of these payments were placed in Respondent’s trust account (Respondent Testimony; Exhibit 19).
- (f) By June 15, 2017, Walker had paid Respondent the full \$2,500.00 flat fee (Respondent Testimony; Ex. 19).
- (g) Respondent did not complete the agreed-upon services until April 20, 2018, (Respondent Testimony and Exhibit 24) and did not fully earn the \$2,500.00 until that date.
- (h) All or at least a portion of the \$2,500.00 Walker paid to Respondent should have been placed into trust until April 20, 2018, when it was fully earned (Frank Testimony; Rule 1.15(a) and (c)(5), MRPC).
- (i) Respondent’s testimony on this issue is not supported by credible evidence, while Frank’s testimony is supported by credible evidence.

45. Deposit of the Bump and Walker fees were the subject of several discussions between the Director’s office and Respondent:

- (a) At the start of the supervision of Respondent’s probation, the Director’s Office asked Respondent where she placed any unearned portion of fees in the Bump and Walker matters; Respondent indicated that she had placed

such funds into her trust account and agreed to provide proof of the same (Frank Testimony).

- (b) At trial Respondent testified that she told Frank that she was not sure where the money went but would check.
- (c) In all follow-up discussions regarding the Bump and Walker deposits, Frank asked Respondent numerous times for proof of deposit into her trust account, not just where the money was deposited (Exhibits 25-27); such discussions and resulting assumption that Respondent told Frank the funds were placed in her trust account are only reasonable if in fact Respondent represented that the funds were placed into her trust account.
- (d) Frank's testimony that Respondent told Frank the funds were placed into Respondent's trust account is credible.
- (e) On January 23, and again on February 21 and 23, 2018, the Director's Office followed up with Respondent about the promised proof of deposits into the trust account (Exhibits 25-27). Respondent delayed providing the requested information until the end of March 2018 (Exhibit 19).
- (f) Prior to March 2018, however, Respondent was in communication with Frank and part of the communication revealed that the fees at issue were not placed into her trust account (Frank Testimony). Respondent finally disclosed that those fees were, in fact, placed in her personal account (Frank Testimony).
- (g) If, as Respondent testified, her response to Frank was that she did not know where the funds were deposited, and therefore had to check, the fact that Respondent discovered the funds were placed into her personal account would end the discussion. Yet, Respondent claimed that the deposits into her personal account were not as she intended (Respondent Testimony; Exhibit 19). It is unclear how Respondent knew she intended the deposits to be

placed into trust, when she claimed that initially she did not recall where those funds were deposited.

(h) Frank testified that when the Director's Office questioned Respondent about her representations that she intended the Bump and Walker funds to be placed into her trust account, Respondent claimed that the handwriting on the deposit slips directing that both sets of funds be deposited into the personal account was not her own handwriting (either partially or entirely) (Frank Testimony; Exhibit 19). Frank further testified that after she demanded proof of the deposits, Respondent falsely told Frank that the placement of the funds into her personal account rather than into the trust account was due to bank error and that Jeremy Stirewalt, a bank employee, told Respondent it was due to bank error. Respondent claimed that she contacted Wells Fargo to inquire about this issue and spoke with Stirewalt, who told Respondent that placement of the funds into Respondent's personal account, rather than into her trust account, was a bank teller's error (Frank Testimony).

(i) Frank requested that Respondent provide documentation from the bank verifying the error (Frank Testimony; Exhibit 27). Respondent stated that Stirewalt did not assist Respondent at the time of the deposits, and he did not provide Respondent with anything in writing to verify that the deposit of the Bump and Walker funds into Respondent's personal account was a bank error (Frank Testimony; Exhibit 19). Respondent provided no further explanation of the bank error (Frank Testimony; Exhibit 19). Frank's testimony on this issue is credible and supported by the record, whereas Respondent's testimony is neither.

(j) Stirewalt testified that deposits are made at the customer's direction (Stirewalt Testimony). While a teller may assist a customer in completing a

deposit slip, the specific account into which a deposit should be made is dictated by the customer (Stirewalt Testimony). Therefore, the responsibility to ensure funds are deposited into the proper account falls to the customer, who can verify the deposit by reviewing the deposit receipts (Stirewalt Testimony).

(k) Respondent made the deposits in question in 2016 and 2017, and inquired from Stirewalt about these deposits in 2018 (Stirewalt Testimony). Stirewalt testified that it would be difficult, especially without investigation (which was never requested by Respondent) to determine a bank error on a deposit at *any* time, much less a deposit made a year or two earlier (Stirewalt Testimony).

(l) Stirewalt was never asked to investigate further into how the funds that Respondent claimed she intended to deposit into her trust account were deposited into her personal account (Stirewalt Testimony).

(m) Stirewalt testified that he is certain he did not state to Respondent that the deposits made into the “wrong” account were a “bank error.” (Stirewalt Testimony) Such a determination could not be made under the circumstances presented. (Stirewalt Testimony).

(n) Stirewalt refused to write a letter stating the deposits were placed into the personal account was in bank error because there is no way he could confirm that claim (Stirewalt Testimony).

(o) The undersigned finds Stirewalt’s testimony as supported by other evidence to be credible. Respondent’s testimony is neither.

46. Based on the record and the credible testimony of Frank and Stirewalt, the undersigned finds Respondent’s statements to the Director about depositing the unearned fees into her trust account to be knowingly false:

- (a) Respondent is responsible for making deposits relating to these fees, and should know where the deposits were made.
- (b) Respondent believed she had a valid flat fee agreement, which would have allowed her to place the advanced fees into her personal or business account. Thus it would make sense for Respondent to place such funds into her personal account.
- (c) Respondent's subsequent actions evidenced that she knew the Bump and Walker funds were not placed into trust:
 - (1) Over the course of one (1) year, Respondent never noticed her personal account had more money than it should (Respondent Testimony).
 - (2) If Respondent intended for the funds to be placed into trust, she should have been accounting for the funds, attributing them to her clients and reconciling her trust account as required by the Rules of Professional Conduct (Frank Testimony; Rule 1.15, MRPC).
 - (3) At no time over the course of the years did Respondent notice shortages in her trust account (Respondent Testimony).
 - (4) When Respondent finally earned the fees in the Bump and Walker matters at the conclusion of the representation, Respondent never transferred the funds from the trust account into her personal account (Respondent Testimony).
 - (5) Respondent's claim that she placed the funds into her trust account (after being informed that her flat fee agreement was invalid) is therefore not credible nor supported by credible evidence.
- (d) The record and testimony establish that Respondent placed the advanced fees into her personal account because she believed she had a valid flat fee agreement that allowed her to do so, but when she was informed that her flat fee agreement was not valid, she made a false statement to the Director that

she placed the funds into her trust account. When the Director asked Respondent for proof that the deposits were made into her trust account, to cover her false statement, Respondent made another false statement that her bank deposited the funds into the wrong account and the incorrect deposits were "bank error." Respondent knew the statements were false when she made them.

E. Aggravating and Mitigating Factors

47. A lawyer's prior disciplinary history is an aggravating factor. *See In re Mayrand*, 723 N.W.2d 261, 269 (Minn. 2006). Respondent does have a history of prior discipline(Exs. 28-29):

- (a) On July 19, 2017, Respondent was suspended for forty-five (45) days for failing to attend a court hearing and failing to cooperate with the Director, in violation of Rules 1.1, 1.3, 3.4(c), 8.1(b), MRPC and Rule 25, Rules on Lawyers Professional Responsibility.
- (b) On May 16, 2016, Respondent received an admonition for her conduct in failing to diligently pursue a client's representation and failing to keep the client advised of the status of the representation, in violation of Rules 1.3 and 1.4, MRPC.
- (c) On April 10, 2007, Respondent received an admonition for failing to act with reasonable diligence and promptness and failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, in violation of Rules 1.3 and 1.4(b), MRPC.

48. Engaging in misconduct while on disciplinary probation is an aggravating factor. *See In re Winter*, 770 N.W.2d 463, 468 (Minn. 2009). The current misconduct occurred while Respondent was on public disciplinary probation, a condition of which required Respondent to abide by the Minnesota Rules of Professional Conduct.

49. Committing intentional misconduct is an aggravating factor. *In re Fru*, 829 N.W.2d 379, 390 (Minn. 2013). Respondent's misconduct was intentional.

(a) Respondent knew she was suspended, and knew that her suspension would be relevant and material to a scheduling hearings.

(b) Respondent ignored the court's suspension order and engaged in the unauthorized practice of law on three (3) occasions.

(c) While on probation, Respondent continued to engage in misconduct by making false statements to the Director and then making additional false statements to cover them up. While the Court has indicated that it will not consider intentional misconduct as an aggravating factor when one of the elements of the violation requires "knowing false statement" as is the case for Rules 3.3(a), 4.1, and 8.4(c), MRPC, since Rule 8.4(d), MRPC (as well as Rules 1.15(c)(5), 1.15(h), and 5.5(a), MRPC), do not have an intent requirement, the Court has held that for violations of such rule, the intentional nature of misconduct is an aggravating factor. *See In re Sea*, No. A17-1548 at *7 __ N.W.2d. __ (August 7, 2019).

50. Respondent refused to acknowledge her misconduct, exhibited no remorse for her misconduct, and failed to offer any evidence or assurance that she will not engage in similar future misconduct (Respondent Testimony), which is an aggravating factor. *See In re Westby*, 639 N.W.2d 358, 371 (Minn. 2002) ("[B]ecause [the lawyer] does not acknowledge that she committed any misconduct, she might engage in similar conduct in the future unless she is appropriately sanctioned."); *In re Ray*, 610 N.W.2d 342, 347 (Minn. 2000).

51. Respondent's conduct at trial is also an aggravating factor. In a case about candor to a court, the Director, and others, Respondent displayed a lack of candor with this court during her own testimony. The Court has held that making additional

misrepresentations aggravates the sanction. *Ulanowski* 800 N.W.2d 785, 792, 802 (Minn. 2011).

52. Respondent neither claimed nor offered evidence of any legally recognized mitigation of the sanction for her misconduct.

CONCLUSIONS OF LAW

1. That the due process rights of Respondent were vindicated throughout these proceedings, starting with the July 19, 2017 order which constitutes the basis for this disciplinary proceeding and continuing through the hearing from which these Findings, Conclusions and Recommendations spring forth.

2. Respondent's conduct in appearing at the August 1, 2017, review hearing and representing her client in a series of emails dated August 7, 2017, while not licensed to practice law, violated the Court's July 19, 2017, suspension order and Rules 3.4(c) and 5.5(a), MRPC.

3. Respondent's conduct in falsely telling Referee Madden, Attorney Longrie and the GAL that she was unable to schedule any hearings until after September 16, 2017, due to two (2) trials and upcoming vacations violated Rules 3.3(a)(1), 4.1, and 8.4(c) and (d), MRPC.

4. Respondent's conduct in falsely telling Referee Madden, Attorney Longrie and the GAL that she was unable to attend a telephone hearing on August 8, 2017, due to a vacation violated Rules 3.3(a)(1), 4.1, and 8.4(c) and (d), MRPC.

5. Respondent's conduct in falsely telling the Director that the August 8, 2017, telephone hearing occurred and was not continued and that she found another attorney to appear for her client on Respondent's behalf violated Rules 8.1(a) and 8.4(c) and (d), MRPC.

6. Respondent's conduct in falsely telling the Director that Respondent did not mention the suspension because she did not know her suspension was for "public

consumption and something that she would be in the position to disclose" violated Rules 8.1(a) and 8.4(c) and (d), MRPC.

7. Respondent's conduct of accepting a cash payment of \$1,500.00 and failing to provide her client a receipt that is countersigned by the payor violated Rule 1.15(h), MRPC, as interpreted by Appendix 1, Section II(2), thereto.

8. Respondent's conduct of continuing to represent Jamier Sumrall while suspended from the practice of law violated the Court's July 19, 2017, suspension order and Rules 3.4(a) and 5.5(a), MRPC.

9. Respondent's conduct in failing to promptly respond to requests for information from the Director's Office during the course of Respondent's supervised probation violated Rule 8.1(a), MRPC, and the July 19, 2017, and September 25, 2017, orders.

10. Respondent's conduct of failing to deposit unearned fees into a trust account, absent a compliant flat fee agreement, violated Rule 1.15(c)(5), MRPC.

11. Respondent's conduct in falsely claiming that fees were deposited into a trust account when they were deposited into a personal account violated Rules 8.1(a) and 8.4(c) and (d), MRPC.

12. Respondent's conduct in falsely claiming that the named bank employee told Respondent deposits made into her personal account rather than into her trust account were due to bank teller error violated Rules 8.1(a) and 8.4(c) and (d), MRPC.

13. Respondent's disciplinary history aggravates the sanction.

14. Respondent's current misconduct, which occurred while Respondent was on public disciplinary probation, aggravates the sanction.

15. Respondent's intentional misconduct aggravate the sanction.

16. Respondent's repeated failures to recognize and acknowledge the wrongful nature of her conduct or to express remorse for her misconduct stating she caused no harm to clients, the public or anyone, aggravate the sanction.

17. Respondent's misrepresentations at trial aggravate the sanction.

18. There is no factor which mitigates the sanction for Respondent's misconduct.

RECOMMENDATION FOR DISCIPLINE

Based on the foregoing Findings and Conclusions, the undersigned recommends:

1. The motion to dismiss these proceedings on due process grounds be denied.
2. Respondent, Karlowba Adams Powell, be indefinitely suspended from the practice of law, ineligible to apply for reinstatement for a minimum of six (6) months.
3. The reinstatement hearing provided for in Rule 18, RLPR, not be waived.
4. Reinstatement be conditioned upon:
 - (a) Compliance with Rule 26, RLPR;
 - (b) Payment of costs, disbursements and interest pursuant to Rule 24, RLPR;
 - (c) Successful completion of the professional responsibility examination pursuant to Rule 18(e), RLPR;
 - (d) Satisfaction of continuing legal education requirements pursuant to Rule 18(e), RLPR; and;
 - (e) Proof by Respondent by clear and convincing evidence that she has undergone moral change, is fit to practice law and that future misconduct is not apt to occur.

Dated: September 13, 2019.



RICHARD C. PERKINS
SUPREME COURT REFEREE