FILED
Aug 25, 2015
Board of Disciplinary Appeals

BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS

IN THE MATTER OF	§	
MPATANISHI SYANALOLI	§	**CAUSE NO.** 56589
TAYARI GARRETT,	§	
STATE BAR CARD NO. 24073090	§	

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Mpatanishi Syanaloli Tayari Garrett, (hereinafter called "Respondent"), showing as follows:

1. This action is commenced by Petitioner pursuant to Part IX of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of Section 7 of this Board's Internal Procedural Rules, relating to Reciprocal Discipline Matters.

2. Respondent is a member of the State Bar of Texas and is licensed and authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at 100 Crescent Ct. Ste. 700, Dallas, Texas 75201.

3. On or about November 5, 2014, 2014, Findings of Fact and Conclusions of Law and Recommendation for Discipline (Exhibit 1) was filed in the Supreme Court of the State of Minnesota in a matter styled, *In Re Petition for Disciplinary Action against Mpatanishi Syanaloli Tayari Garrett, A Minnesota Attorney, Registration No. 342075*, File No. A14-0995.

4. On or about July 1, 2015, an Opinion (Exhibit 2) was filed in the Supreme Court of the State of Minnesota in a matter styled, A14-0995, *In re Petition for Disciplinary Action against Mpatanishi Syanaloli Tayari-Garrett, A Minnesota Attorney, Registration No. 342075*, that states in pertinent part as follows:

> ...Respondent Mpatanishi Syanaloli Tayari-Garrett is indefinitely suspended from the practice of law, effective 14 days from the date of the filing of this opinion, and she shall be ineligible to petition for reinstatement for a minimum of 120 days from the effective date of the suspension;

5. The Opinion states that the referee in the disciplinary matter concluded that Tayari-Garrett violated Minn. R. Prof. Conduct 3.4(c) and 8.4(b)-(d), by, among other things, willfully disobeying a court mandate, making false or misleading statements to a tribunal, and being convicted of willfully disobeying a court mandate. The Opinion held that the referee did not err by concluding that Tayari-Garrett violated Minn. R. Prof. Conduct 3.4(c) - 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; 8.4(b) - It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; 8.04(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; and 8.04(d) - It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

Copies of the Findings of Fact and Conclusions of Law and Recommendation for Discipline and Opinion, are attached hereto as Petitioner's Exhibits 1 and 2, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 1 and 2 at the time of hearing of this cause.

6. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enters a judgment imposing discipline identical with that imposed by the Supreme Court of the State of Minnesota and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

Linda A. Acevedo
Chief Disciplinary Counsel

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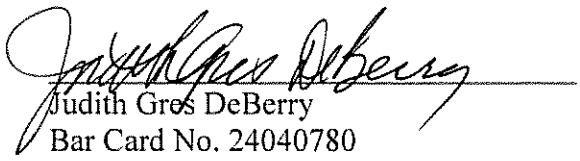

Judith Gres DeBerry
Bar Card No. 24040780
ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this Petition for Reciprocal Discipline and the Order to Show Cause on Mpatanishi Syanaloli Tayari Garrett by personal service.

Mpatanishi Syanaloli Tayari Garrett
100 Crescent Ct. Ste. 700
Dallas, Texas 75201

Judith Gres DeBerry

INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Effective February 19, 2015

Contents

SECTION 1: GENERAL PROVISIONS

Rule 1.01 Definitions

(a) "BODA" is the Board of Disciplinary Appeals.

(b) "Chair" is the member elected by BODA to serve as chair or, in the Chair's absence, the member elected by BODA to serve as vice-chair.

(c) "Classification" is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a "complaint" or an "inquiry."

(d) "BODA Clerk" is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.

(e) "CDC" is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.

(f) "Commission" is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.

(g) "Executive Director" is the executive director of BODA.

(h) "Panel" is any three-member grouping of BODA under TRDP 7.05.

(i) "Party" is a Complainant, a Respondent, or the Commission.

(j) "TDRPC" is the Texas Disciplinary Rules of Professional Conduct.

(k) "TRAP" is the Texas Rules of Appellate Procedure.

(l) "TRCP" is the Texas Rules of Civil Procedure.

(m) "TRDP" is the Texas Rules of Disciplinary Procedure.

(n) "TRE" is the Texas Rules of Evidence.

Rule 1.02 General Powers

Under TRDP 7.08, BODA has and may exercise all the powers of either a trial court or an appellate court, as the case may be, in hearing and determining disciplinary proceedings. But TRDP 15.01 applies to the enforcement of a judgment of BODA.

Rule 1.03 Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TRCP, TRAP, and TRE apply to all disciplinary matters before BODA, except for appeals from classification decisions, which are governed by TRDP 2.10 and by Section 3 of these rules.

Rule 1.04 Appointment of Panels

(a) BODA may consider any matter or motion by panel, except as specified in (b). The Chair may delegate to the Executive Director the duty to appoint a panel for any BODA action. Decisions are made by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting en banc. Nothing in these rules gives a party the right to be heard by BODA sitting en banc.

(b) Any disciplinary matter naming a BODA member as Respondent must be considered by BODA sitting en banc. A disciplinary matter naming a BODA staff member as Respondent need not be heard en banc.

Rule 1.05 Filing of Pleadings, Motions, and Other Papers

(a) **Electronic Filing.** All documents must be filed electronically. Unrepresented persons or those without the means to file electronically may electronically file documents, but it is not required.

(1) **Email Address.** The email address of an attorney or an unrepresented party who electronically files a document must be included on the document.

(2) **Timely Filing.** Documents are filed electronically by emailing the document to the BODA Clerk at the email address designated by BODA for that purpose. A document filed by email will be considered filed the day that the email is sent. The date sent is the date shown for the message in the inbox of the email account designated for receiving filings. If a document is sent after 5:00 p.m. or on a weekend or holiday officially observed by the State of Texas, it is considered filed the next business day.

(3) It is the responsibility of the party filing a document by email to obtain the correct email address for BODA and to confirm that the document was received by BODA in legible form. Any document that is illegible or that cannot be opened as part of an email attachment will not be considered filed. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from BODA.

(4) **Exceptions.**

(i) An appeal to BODA of a decision by the CDC to classify a grievance as an inquiry is not required to be filed electronically.

(ii) The following documents must not be filed electronically:

a) documents that are filed under seal or subject to a pending motion to seal; and

b) documents to which access is otherwise restricted by court order.

(iii) For good cause, BODA may permit a party to file other documents in paper form in a particular case.

(5) **Format.** An electronically filed document must:

(i) be in text-searchable portable document format (PDF);

(ii) be directly converted to PDF rather than scanned, if possible; and

(iii) not be locked.

(b) A paper will not be deemed filed if it is sent to an individual BODA member or to another address other than the address designated by BODA under Rule 1.05(a)(2).

(c) **Signing.** Each brief, motion, or other paper filed must be signed by at least one attorney for the party or by the party pro se and must give the State Bar of Texas card number, mailing address, telephone number, email address, and fax number, if any, of each attorney whose name is signed or of the party (if applicable). A document is considered signed if the document includes:

(1) an "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or

(2) an electronic image or scanned image of the signature.

(d) **Paper Copies.** Unless required by BODA, a party need not file a paper copy of an electronically filed document.

(e) **Service.** Copies of all documents filed by any party other than the record filed by the evidentiary panel clerk or the court reporter must, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 1.06 Service of Petition

In any disciplinary proceeding before BODA initiated by service of a petition on the Respondent, the petition may be served by personal service; by certified mail with return receipt requested; or, if permitted by BODA, in any other manner that is authorized by the TRCP and reasonably calculated under all the circumstances to apprise the Respondent of the proceeding and to give him or her reasonable time to appear and answer. To establish service by certified mail, the return receipt must contain the Respondent's signature.

Rule 1.07 Hearing Setting and Notice

(a) **Original Petitions.** In any kind of case initiated by the CDC's filing a petition or motion with BODA, the CDC may contact the BODA Clerk for the next regularly available hearing date before filing the original petition. If a hearing is set before the petition is filed, the petition must state the date, time, and place of the hearing. Except in the case of a petition to revoke probation under TRDP 2.23, the hearing date must be at least 30 days from the date that the petition is served on the Respondent.

(b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23, the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.

(c) **Setting Notices.** BODA must notify the parties of any hearing date that is not noticed in an original petition or motion.

(d) **Announcement Docket.** Attorneys and parties appearing before BODA must confirm their presence and present any questions regarding procedure to the BODA Clerk in the courtroom immediately prior to the time docket call is scheduled to begin. Each party with a matter on the docket must appear at the docket call to give an announcement of readiness, to give a time estimate for the

hearing, and to present any preliminary motions or matters. Immediately following the docket call, the Chair will set and announce the order of cases to be heard.

Rule 1.08 Time to Answer

The Respondent may file an answer at any time, except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

Rule 1.09 Pretrial Procedure

(a) Motions.

(1) **Generally.** To request an order or other relief, a party must file a motion supported by sufficient cause with proof of service on all other parties. The motion must state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other documents must be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. Unless otherwise required by these rules or the TRDP, the form of a motion must comply with the TRCP or the TRAP.

(2) **For Extension of Time.** All motions for extension of time in any matter before BODA must be in writing, comply with (a)(1), and specify the following:

(i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;

(ii) if an appeal has been perfected, the date when the appeal was perfected;

(iii) the original deadline for filing the item in question;

(iv) the length of time requested for the extension;

(v) the number of extensions of time that have been granted previously regarding the item in question; and

(vi) the facts relied on to reasonably explain the need for an extension.

(b) **Pretrial Scheduling Conference.** Any party may request a pretrial scheduling conference, or BODA on its own motion may require a pretrial scheduling conference.

(c) **Trial Briefs.** In any disciplinary proceeding before BODA, except with leave, all trial briefs and memoranda must be filed with the BODA Clerk no later than ten days before the day of the hearing.

(d) **Hearing Exhibits, Witness Lists, and Exhibits Tendered for Argument.** A party may file a witness list, exhibit, or any other document to be used at a hearing or oral argument before the hearing or argument. A party must bring to the hearing an original and 12 copies of any document that was not filed at least one business day before the hearing. The original and copies must be:

(1) marked;

(2) indexed with the title or description of the item offered as an exhibit; and

(3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

All documents must be marked and provided to the opposing party before the hearing or argument begins.

Rule 1.10 Decisions

(a) **Notice of Decisions.** The BODA Clerk must give notice of all decisions and opinions to the parties or their attorneys of record.

(b) **Publication of Decisions.** BODA must report judgments or orders of public discipline:

(1) as required by the TRDP; and

(2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.

(c) Abstracts of Classification Appeals. BODA may, in its discretion, prepare an abstract of a classification appeal for a public reporting service.

Rule 1.11 Board of Disciplinary Appeals Opinions

(a) BODA may render judgment in any disciplinary matter with or without written opinion. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and must be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be

written. The names of the participating members must be noted on all written opinions of BODA.

(b) Only a BODA member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

(c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this rule and may be issued without a written opinion.

Rule 1.12 BODA Work Product and Drafts

A document or record of any nature—regardless of its form, characteristics, or means of transmission—that is created or produced in connection with or related to BODA's adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, BODA staff, or any other person acting on behalf of or at the direction of BODA.

Rule 1.13 Record Retention

Records of appeals from classification decisions must be retained by the BODA Clerk for a period of at least three years from the date of disposition. Records of other disciplinary matters must be retained for a period of at least five years from the date of final judgment, or for at least one year after the date a suspension or disbarment ends, whichever is later. For purposes of this rule, a record is any document, paper, letter, map, book, tape, photograph, film, recording, or other material filed with BODA, regardless of its form, characteristics, or means of transmission.

Rule 1.14 Costs of Reproduction of Records

The BODA Clerk may charge a reasonable amount for the reproduction of nonconfidential records filed with BODA. The fee must be paid in advance to the BODA Clerk.

Rule 1.15 Publication of These Rules

These rules will be published as part of the TDRPC and TRDP.

SECTION 2: ETHICAL CONSIDERATIONS

Rule 2.01 Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases

(a) A current member of BODA must not represent a party or testify voluntarily in a disciplinary action or proceeding. Any BODA member who is subpoenaed or otherwise compelled to appear at a disciplinary action or proceeding, including at a deposition, must promptly notify the BODA Chair.

(b) A current BODA member must not serve as an expert witness on the TDRPC.

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

Rule 2.02 Confidentiality

(a) BODA deliberations are confidential, must not be disclosed by BODA members or staff, and are not subject to disclosure or discovery.

(b) Classification appeals, appeals from evidentiary judgments of private reprimand, appeals from an evidentiary judgment dismissing a case, interlocutory appeals or any interim proceedings from an ongoing evidentiary case, and disability cases are confidential under the TRDP. BODA must maintain all records associated with these cases as confidential, subject to disclosure only as provided in the TRDP and these rules.

(c) If a member of BODA is subpoenaed or otherwise compelled by law to testify in any proceeding, the member must not disclose a matter that was discussed in conference in connection with a disciplinary case unless the member is required to do so by a court of competent jurisdiction.

Rule 2.03 Disqualification and Recusal of BODA Members

(a) BODA members are subject to disqualification and recusal as provided in TRCP 18b.

(b) BODA members may, in addition to recusals under (a), voluntarily recuse themselves from any discussion and voting for any reason. The reasons that a BODA member is recused from a case are not subject to discovery.

(c) These rules do not disqualify a lawyer who is a member of, or associated with, the law firm of

a BODA member from serving on a grievance committee or representing a party in a disciplinary proceeding or legal malpractice case. But a BODA member must recuse him- or herself from any matter in which a lawyer who is a member of, or associated with, the BODA member's firm is a party or represents a party.

SECTION 3: CLASSIFICATION APPEALS

Rule 3.01 Notice of Right to Appeal

(a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule.

(b) To facilitate the potential filing of an appeal of a grievance classified as an inquiry, the CDC must send the Complainant an appeal notice form, approved by BODA, with the classification disposition. The form must include the docket number of the matter; the deadline for appealing; and information for mailing, faxing, or emailing the appeal notice form to BODA. The appeal notice form must be available in English and Spanish.

Rule 3.02 Record on Appeal

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01 Perfecting Appeal

(a) **Appellate Timetable.** The date that the evidentiary judgment is signed starts the appellate timetable under this section. To make TRDP 2.21 consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21.

(b) **Notification of the Evidentiary Judgment.** The clerk of the evidentiary panel must notify the parties of the judgment as set out in TRDP 2.21.

(1) The evidentiary panel clerk must notify the Commission and the Respondent in writing of the judgment. The notice must contain a clear statement that any appeal of the judgment must be filed with BODA within 30 days of the date that the judgment was signed. The notice must include a copy of the judgment rendered.

(2) The evidentiary panel clerk must notify the Complainant that a judgment has been rendered and provide a copy of the judgment, unless the evidentiary panel dismissed the case or imposed a private reprimand. In the case of a dismissal or private reprimand, the evidentiary panel clerk must notify the Complainant of the decision and that the contents of the judgment are confidential. Under TRDP 2.16, no additional information regarding the contents of a judgment of dismissal or private reprimand may be disclosed to the Complainant.

(c) **Filing Notice of Appeal.** An appeal is perfected when a written notice of appeal is filed with BODA. If a notice of appeal and any other accompanying documents are mistakenly filed with the evidentiary panel clerk, the notice is deemed to have been filed the same day with BODA, and the evidentiary panel clerk must immediately send the BODA Clerk a copy of the notice and any accompanying documents.

(d) **Time to File.** In accordance with TRDP 2.24, the notice of appeal must be filed within 30 days after the date the judgment is signed. In the event a motion for new trial or motion to modify the judgment is timely filed with the evidentiary panel, the notice of appeal must be filed with BODA within 90 days from the date the judgment is signed.

(e) **Extension of Time.** A motion for an extension of time to file the notice of appeal must be filed no later than 15 days after the last day allowed for filing the notice of appeal. The motion must comply with Rule 1.09.

Rule 4.02 Record on Appeal

(a) **Contents.** The record on appeal consists of the evidentiary panel clerk's record and, where necessary to the appeal, a reporter's record of the evidentiary panel hearing.

(b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and the reporter's record to be included in the record

on appeal by written stipulation filed with the clerk of the evidentiary panel.

(c) **Responsibility for Filing Record.**

(1) Clerk's Record.

(i) After receiving notice that an appeal has been filed, the clerk of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record.

(ii) Unless the parties stipulate otherwise, the clerk's record on appeal must contain the items listed in TRAP 34.5(a) and any other paper on file with the evidentiary panel, including the election letter, all pleadings on which the hearing was held, the docket sheet, the evidentiary panel's charge, any findings of fact and conclusions of law, all other pleadings, the judgment or other orders appealed from, the notice of decision sent to each party, any postsubmission pleadings and briefs, and the notice of appeal.

(iii) If the clerk of the evidentiary panel is unable for any reason to prepare and transmit the clerk's record by the due date, he or she must promptly notify BODA and the parties, explain why the clerk's record cannot be timely filed, and give the date by which he or she expects the clerk's record to be filed.

(2) Reporter's Record.

(i) The court reporter for the evidentiary panel is responsible for timely filing the reporter's record if:

a) a notice of appeal has been filed;

b) a party has requested that all or part of the reporter's record be prepared; and

c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.

(ii) If the court reporter is unable for any reason to prepare and transmit the reporter's record by the due date, he or she must promptly notify BODA and the parties, explain the reasons why the reporter's record cannot be timely filed, and give the date by which he or she expects the reporter's record to be filed.

(d) Preparation of Clerk's Record.

(1) To prepare the clerk's record, the evidentiary panel clerk must:

(i) gather the documents designated by the parties' written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);

(ii) start each document on a new page;

(iii) include the date of filing on each document;

(iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;

(v) number the pages of the clerk's record in the manner required by (d)(2);

(vi) prepare and include, after the front cover of the clerk's record, a detailed table of contents that complies with (d)(3); and

(vii) certify the clerk's record.

(2) The clerk must start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively—including the front and back covers, tables of contents, certification page, and separator pages, if any—until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page.

(3) The table of contents must:

(i) identify each document in the entire record (including sealed documents); the date each document was filed; and, except for sealed documents, the page on which each document begins;

(ii) be double-spaced;

(iii) conform to the order in which documents appear in the clerk's record, rather than in alphabetical order;

(iv) contain bookmarks linking each description in the table of contents (except for descriptions of sealed documents) to the page on which the document begins; and

(v) if the record consists of multiple volumes, indicate the page on which each volume begins.

(e) **Electronic Filing of the Clerk's Record.** The evidentiary panel clerk must file the record electronically. When filing a clerk's record in electronic form, the evidentiary panel clerk must:

(1) file each computer file in text-searchable Portable Document Format (PDF);

(2) create electronic bookmarks to mark the first page of each document in the clerk's record;

(3) limit the size of each computer file to 100 MB or less, if possible; and

(4) directly convert, rather than scan, the record to PDF, if possible.

(f) Preparation of the Reporter's Record.

(1) The appellant, at or before the time prescribed for perfecting the appeal, must make a written request for the reporter's record to the court reporter for the evidentiary panel. The request must designate the portion of the evidence and other proceedings to be included. A copy of the request must be filed with the evidentiary panel and BODA and must be served on the appellee. The reporter's record must be certified by the court reporter for the evidentiary panel.

(2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records.

(3) The court reporter or recorder must file the reporter's record in an electronic format by emailing the document to the email address designated by BODA for that purpose.

(4) The court reporter or recorder must include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise

(6) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.

(g) **Other Requests.** At any time before the clerk's record is prepared, or within ten days after service of a copy of appellant's request for the reporter's record, any party may file a written designation requesting that additional exhibits and portions of testimony be included in the record. The request must be filed with the evidentiary panel and BODA and must be served on the other party.

(h) **Inaccuracies or Defects.** If the clerk's record is found to be defective or inaccurate, the BODA Clerk must inform the clerk of the evidentiary panel of the defect or inaccuracy and instruct the clerk to make the correction. Any inaccuracies in the reporter's record may be corrected by agreement of the parties without the court reporter's recertification. Any dispute regarding the reporter's record that the parties are unable to resolve by agreement must be resolved by the evidentiary panel.

(i) **Appeal from Private Reprimand.** Under TRDP 2.16, in an appeal from a judgment of private reprimand, BODA must mark the record as confidential, remove the attorney's name from the case style, and take any other steps necessary to preserve the confidentiality of the private reprimand.

Rule 4.03 Time to File Record

(a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from,

disregard materials filed late, or apply presumptions against the appellant.

(b) **If No Record Filed.**

(1) If the clerk's record or reporter's record has not been timely filed, the BODA Clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of the evidentiary panel.

(2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and a reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:

(i) the appellant failed to request a reporter's record; or

(ii) the appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record, and the appellant is not entitled to proceed without payment of costs.

(c) **Extension of Time to File the Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied on to reasonably explain the need for an extension must be supported by an affidavit of the court reporter. The affidavit must include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

(d) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record, BODA may, on written motion of a party or on its own motion, direct a supplemental record to be certified and transmitted by the clerk for the evidentiary panel or the court reporter for the evidentiary panel.

Rule 4.04 Copies of the Record

The record may not be withdrawn from the custody of the BODA Clerk. Any party may obtain a copy of the record or any designated part thereof by making a written request to the BODA Clerk and paying any charges for reproduction in advance.

Rule 4.05 Requisites of Briefs

(a) **Appellant's Filing Date.** Appellant's brief must be filed within 30 days after the clerk's record or the reporter's record is filed, whichever is later.

(b) **Appellee's Filing Date.** Appellee's brief must be filed within 30 days after the appellant's brief is filed.

(c) **Contents.** Briefs must contain:

(1) a complete list of the names and addresses of all parties to the final decision and their counsel;

(2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;

(3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;

(4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;

(5) a statement, without argument, of the basis of BODA's jurisdiction;

(6) a statement of the issues presented for review or points of error on which the appeal is predicated;

(7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;

(8) the argument and authorities;

(9) conclusion and prayer for relief;

(10) a certificate of service; and

(11) an appendix of record excerpts pertinent to the issues presented for review.

(d) **Length of Briefs; Contents Included and Excluded.** In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of the parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of the jurisdiction,

signature, proof of service, certificate of compliance, and appendix. Briefs must not exceed 15,000 words if computer-generated, and 50 pages if not, except on leave of BODA. A reply brief must not exceed 7,500 words if computer-generated, and 25 pages if not, except on leave of BODA. A computer-generated document must include a certificate by counsel or the unrepresented party stating the number of words in the document. The person who signs the certification may rely on the word count of the computer program used to prepare the document.

(e) **Amendment or Supplementation.** BODA has discretion to grant leave to amend or supplement briefs.

(f) **Failure of the Appellant to File a Brief.** If the appellant fails to timely file a brief, BODA may:

(1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's failure to timely file a brief;

(2) decline to dismiss the appeal and make further orders within its discretion as it considers proper; or

(3) if an appellee's brief is filed, regard that brief as correctly presenting the case and affirm the evidentiary panel's judgment on that brief without examining the record.

Rule 4.06 Oral Argument

(a) **Request.** A party desiring oral argument must note the request on the front cover of the party's brief. A party's failure to timely request oral argument waives the party's right to argue. A party who has requested argument may later withdraw the request. But even if a party has waived oral argument, BODA may direct the party to appear and argue. If oral argument is granted, the clerk will notify the parties of the time and place for submission.

(b) **Right to Oral Argument.** A party who has filed a brief and who has timely requested oral argument may argue the case to BODA unless BODA, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:

(1) the appeal is frivolous;

(2) the dispositive issue or issues have been authoritatively decided;

(3) the facts and legal arguments are adequately presented in the briefs and record; or

(4) the decisional process would not be significantly aided by oral argument.

(c) **Time Allowed.** Each party will have 20 minutes to argue. BODA may, on the request of a party or on its own, extend or shorten the time allowed for oral argument. The appellant may reserve a portion of his or her allotted time for rebuttal.

Rule 4.07 Decision and Judgment

(a) **Decision.** BODA may do any of the following:

(1) affirm in whole or in part the decision of the evidentiary panel;

(2) modify the panel's findings and affirm the findings as modified;

(3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or

(4) reverse the panel's findings and remand the cause for further proceedings to be conducted by:

(i) the panel that entered the findings; or

(ii) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

(b) **Mandate.** In every appeal, the BODA Clerk must issue a mandate in accordance with BODA's judgment and send it to the evidentiary panel and to all the parties.

Rule 4.08 Appointment of Statewide Grievance Committee

If BODA remands a cause for further proceedings before a statewide grievance committee, the BODA Chair will appoint the statewide grievance committee in accordance with TRDP 2.27. The committee must consist of six members: four attorney members and two public members randomly selected from the current pool of grievance committee members. Two alternates, consisting of one attorney and one public member, must also be selected. BODA will appoint the initial chair

who will serve until the members of the statewide grievance committee elect a chair of the committee at the first meeting. The BODA Clerk will notify the Respondent and the CDC that a committee has been appointed.

Rule 4.09 Involuntary Dismissal

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal:

(a) for want of jurisdiction;

(b) for want of prosecution; or

(c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

SECTION 5: PETITIONS TO REVOKE PROBATION

Rule 5.01 Initiation and Service

(a) Before filing a motion to revoke the probation of an attorney who has been sanctioned, the CDC must contact the BODA Clerk to confirm whether the next regularly available hearing date will comply with the 30-day requirement of TRDP. The Chair may designate a three-member panel to hear the motion, if necessary, to meet the 30-day requirement of TRDP 2.23.

(b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23, the TRCP, and these rules. The CDC must notify BODA of the date that service is obtained on the Respondent.

Rule 5.02 Hearing

Within 30 days of service of the motion on the Respondent, BODA must docket and set the matter for a hearing and notify the parties of the time and place of the hearing. On a showing of good cause by a party or on its own motion, BODA may continue the case to a future hearing date as circumstances require.

SECTION 6: COMPULSORY DISCIPLINE

Rule 6.01 Initiation of Proceeding

Under TRDP 8.03, the CDC must file a petition for compulsory discipline with BODA and serve the Respondent in accordance with the TRDP and Rule 1.06 of these rules.

Rule 6.02 Interlocutory Suspension

(a) **Interlocutory Suspension.** In any compulsory proceeding under TRDP Part VIII in which BODA determines that the Respondent has been convicted of an Intentional Crime and that the criminal conviction is on direct appeal, BODA may suspend the Respondent's license to practice law by interlocutory order. In any compulsory case in which BODA has imposed an interlocutory order of suspension, BODA retains jurisdiction to render final judgment after the direct appeal of the criminal conviction is final. For purposes of rendering final judgment in a compulsory discipline case, the direct appeal of the criminal conviction is final when the appellate court issues its mandate.

(b) **Criminal Conviction Affirmed.** If the criminal conviction made the basis of a compulsory interlocutory suspension is affirmed and becomes final, the CDC must file a motion for final judgment that complies with TRDP 8.05.

(1) If the criminal sentence is fully probated or is an order of deferred adjudication, the motion for final judgment must contain notice of a hearing date. The motion will be set on BODA's next available hearing date.

(2) If the criminal sentence is not fully probated:

(i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or

(ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.

(c) Criminal Conviction Reversed. If an appellate court issues a mandate reversing the criminal conviction while a Respondent is subject to an interlocutory suspension, the Respondent may file a motion to terminate the interlocutory suspension. The motion to terminate the interlocutory suspension must have certified copies of the decision and mandate of the reversing court attached. If the CDC does not file an opposition to the termination within ten

days of being served with the motion, BODA may proceed to decide the motion without a hearing or set the matter for a hearing on its own motion. If the CDC timely opposes the motion, BODA must set the motion for a hearing on its next available hearing date. An order terminating an interlocutory order of suspension does not automatically reinstate a Respondent's license.

SECTION 7: RECIPROCAL DISCIPLINE

Rule 7.01 Initiation of Proceeding

The Commission for Lawyer Discipline may initiate an action for reciprocal discipline by filing a petition with BODA under TRDP Part IX and these rules. The petition must request that the Respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction, including a certified copy of the order or judgment rendered against the Respondent.

Rule 7.02 Order to Show Cause

When a petition is filed, the Chair immediately issues a show cause order and a hearing notice and forwards them to the CDC, who must serve the order and notice on the Respondent. The CDC must notify BODA of the date that service is obtained.

Rule 7.03 Attorney's Response

If the Respondent does not file an answer within 30 days of being served with the order and notice but thereafter appears at the hearing, BODA may, at the discretion of the Chair, receive testimony from the Respondent relating to the merits of the petition.

SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01 Appointment of District Disability Committee

(a) If the evidentiary panel of the grievance committee finds under TRDP 2.17(P)(2), or the CDC reasonably believes under TRDP 2.14(C), that a Respondent is suffering from a disability, the rules in this section will apply to the de novo proceeding before the District Disability Committee held under TRDP Part XII.

(b) Upon receiving an evidentiary panel's finding or the CDC's referral that an attorney is believed to be suffering from a disability, the BODA Chair must appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. BODA will reimburse District Disability Committee members for reasonable expenses directly related to service on the District Disability Committee. The BODA Clerk must notify the CDC and the Respondent that a committee has been appointed and notify the Respondent where to locate the procedural rules governing disability proceedings.

(c) A Respondent who has been notified that a disability referral will be or has been made to BODA may, at any time, waive in writing the appointment of the District Disability Committee or the hearing before the District Disability Committee and enter into an agreed judgment of indefinite disability suspension, provided that the Respondent is competent to waive the hearing. If the Respondent is not represented, the waiver must include a statement affirming that the Respondent has been advised of the right to appointed counsel and waives that right as well.

(d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee must be filed with the BODA Clerk.

(e) Should any member of the District Disability Committee become unable to serve, the BODA Chair may appoint a substitute member.

Rule 8.02 Petition and Answer

(a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service may be made in person or by certified mail, return receipt requested. If service is by certified mail, the return receipt with the Respondent's signature must be filed with the BODA Clerk.

(b) **Answer.** The Respondent must, within 30 days after service of the petition for indefinite disability suspension, file an answer with the BODA Clerk and serve a copy of the answer on the CDC.

(c) **Hearing Setting.** The BODA Clerk must set the final hearing as instructed by the chair of the District Disability Committee and send notice of the hearing to the parties.

Rule 8.03 Discovery

(a) **Limited Discovery.** The District Disability Committee may permit limited discovery. The

party seeking discovery must file with the BODA Clerk a written request that makes a clear showing of good cause and substantial need and a proposed order. If the District Disability Committee authorizes discovery in a case, it must issue a written order. The order may impose limitations or deadlines on the discovery.

(b) **Physical or Mental Examinations.** On written motion by the Commission or on its own motion, the District Disability Committee may order the Respondent to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. Nothing in this rule limits the Respondent's right to an examination by a professional of his or her choice in addition to any exam ordered by the District Disability Committee.

(1) **Motion.** The Respondent must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(2) **Report.** The examining professional must file with the BODA Clerk a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the CDC and the Respondent.

(c) **Objections.** A party must make any objection to a request for discovery within 15 days of receiving the motion by filing a written objection with the BODA Clerk. BODA may decide any objection or contest to a discovery motion.

Rule 8.04 Ability to Compel Attendance

The Respondent and the CDC may confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses by subpoena, enforceable by an order of a district court of proper jurisdiction, is available to the Respondent and the CDC as provided in TRCP 176.

Rule 8.05 Respondent's Right to Counsel

(a) The notice to the Respondent that a District Disability Committee has been appointed and the petition for indefinite disability suspension must state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing. BODA will reimburse appointed counsel for reasonable expenses directly related to representation of the Respondent.

(b) To receive appointed counsel under TRDP 12.02, the Respondent must file a written request with the BODA Clerk within 30 days of the date that Respondent is served with the petition for indefinite disability suspension. A late request must demonstrate good cause for the Respondent's failure to file a timely request.

Rule 8.06 Hearing

The party seeking to establish the disability must prove by a preponderance of the evidence that the Respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee must admit all relevant evidence that is necessary for a fair and complete hearing. The TRE are advisory but not binding on the chair.

Rule 8.07 Notice of Decision

The District Disability Committee must certify its finding regarding disability to BODA, which will issue the final judgment in the matter.

Rule 8.08 Confidentiality

All proceedings before the District Disability Committee and BODA, if necessary, are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure or discovery, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court of Texas.

SECTION 9: DISABILITY REINSTATEMENTS

Rule 9.01 Petition for Reinstatement

(a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. The petitioner must serve a copy of the petition on the CDC in the manner required by TRDP 12.06. The TRCP apply to a reinstatement proceeding unless they conflict with these rules.

(b) The petition must include the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition must affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has

a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

(c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may make all or any part of the record of the proceeding confidential.

Rule 9.02 Discovery

The discovery period is 60 days from the date that the petition for reinstatement is filed. The BODA Clerk will set the petition for a hearing on the first date available after the close of the discovery period and must notify the parties of the time and place of the hearing. BODA may continue the hearing for good cause shown.

Rule 9.03 Physical or Mental Examinations

(a) On written motion by the Commission or on its own, BODA may order the petitioner seeking reinstatement to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. The petitioner must be served with a copy of the motion and given at least seven days to respond. BODA may hold a hearing before ruling on the motion but is not required to do so.

(b) The petitioner must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(c) The examining professional must file a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the parties.

(d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.

(e) Nothing in this rule limits the petitioner's right to an examination by a professional of his or her choice in addition to any exam ordered by BODA.

Rule 9.04 Judgment

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include other orders necessary to protect the public and the petitioner's potential clients.

SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01 Appeals to the Supreme Court

(a) A final decision by BODA, except a determination that a statement constitutes an inquiry or a complaint under TRDP 2.10, may be appealed to the Supreme Court of Texas. The clerk of the Supreme Court of Texas must docket an appeal from a decision by BODA in the same manner as a petition for review without fee.

(b) The appealing party must file the notice of appeal directly with the clerk of the Supreme Court of Texas within 14 days of receiving notice of a final determination by BODA. The record must be filed within 60 days after BODA's determination. The appealing party's brief is due 30 days after the record is filed, and the responding party's brief is due 30 days thereafter. The BODA Clerk must send the parties a notice of BODA's final decision that includes the information in this paragraph.

(c) An appeal to the Supreme Court is governed by TRDP 7.11 and the TRAP.

OFFICE OF
APPELLATE COURTS

NOV 05 2014

FILED

FILE NO. A14-0995

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against
MPATANISHI SYANALOLI TAYARI GARRETT,
a Minnesota Attorney,
Registration No. 342075.

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

The above-captioned matter was heard on October 9 and 10, 2014, by the undersigned acting as Referee by appointment of the Minnesota Supreme Court. Timothy M. Burke appeared on behalf of the Director of the Office of Lawyers Professional Responsibility (Director). Steven V. Grigsby appeared with and on behalf of respondent Mpatanishi Syanaloli Tayari Garrett.

The hearing was conducted on the Director's May 5, 2014, petition for disciplinary action. The Director offered 15 exhibits into evidence, which were received. Respondent offered one exhibit, which was received.

The Director presented the testimony of Michael O'Hara, Michael Seelig, Thomas Sinas and Ellen Tschida. Respondent testified at the hearing and presented the testimony of Ryan Jancik and Julie Rasmussen.

Before the hearing, each party had been directed to submit any desired proposed findings of fact, conclusions of law and recommendation and brief on October 28, 2014. Both parties submitted proposed findings and a memorandum in a timely fashion.

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

Exhibit 1

and credibility of respondent and the other witnesses as determined by the undersigned, and the reasonable inferences to be drawn from the documents and testimony. If respondent admits a particular factual finding made below, then even if the Director may have provided additional evidence to establish the finding, no other citation will necessarily be made. For each factual finding made below, the undersigned evaluated the relevant exhibits and testimony, accepted as credible the testimony consistent with the finding and did not accept the testimony inconsistent with the finding.

Based upon the evidence as outlined above and upon all of the files, records and proceedings herein and the arguments of counsel, the Referee makes the following:

FINDINGS OF FACT

1. Respondent was admitted to practice law in Minnesota on November 22, 2004 (R. test.).

Criminal Contempt of Court, Misrepresentations to a Tribunal, Violations of Court Orders, - *State v. Martin-Mahuru* Matter

2. In October 2010, respondent began representation of Efay Imani Martin-Mahuru to defend against criminal charges alleging felony aiding and abetting theft by swindle (R. ans., p. 1, ¶ 1). Thereafter, in November 2011, Judge William Howard was assigned to the matter. He was the presiding judge at all times thereafter. (Sinas test.).

3. During a January 21, 2011, scheduling pretrial conference, respondent agreed to a trial date of May 2, 2011 (R. ans., p. 1, ¶ 1; Sinas test.).

4. On January 25, 2011, the court issued an order which stated in pertinent part, "The trial remains set for May 2, 2011, and will be given trial priority . . . ." (R. ans., p. 1, ¶ 1; Ex. 10, Trial Ex. 1.)

5. On or about February 16, 2011, respondent served and filed motions to dismiss, to compel disclosure and for sanctions (Ex. 1, p. 4). By order filed February 24, 2011, the court denied the motions for disclosure and for sanctions and reiterated, "**The case remains set for trial on May 2, 2011.**" (Bold in original.) (Ex. 2, pp. 4-5.)

6. On March 4, 2011, the court conducted a hearing on respondent's motion to dismiss and from the bench denied the motion to dismiss (Ex. 1, p. 4; Ex. 10, Trial Ex. 2; Sinas test.).

7. On or about March 10, 2011, respondent served and filed a notice to remove the judge assigned to the matter, District Court Judge William Howard, "pursuant to Rule 26.03 Subd. 14(4) of the Minnesota Rules of Criminal Procedure." (Ex. 1, p. 4; Ex. 3.)

8. Respondent's notice to remove was inconsistent with and contrary to the Minnesota Rules of Criminal Procedure:

- Minn. R. Crim. P. 26.03, subdiv. 14(4), requires that a notice to remove be served and filed "within 7 days after the party receives notice of the name of the presiding judge at the trial or hearing . . . ." Minn. R. Crim. P. 26.03, subdiv. 14(4) (a). Respondent's notice to remove was filed approximately four months after the matter was assigned to Judge Howard in November 2010 (Exs. 1, 3).
- Minn. R. Crim. P. 26.03, subdiv. 14(4), further provides that a notice to remove "is not effective against a judge who already presided at the trial, Omnibus Hearing, or evidentiary hearing if the removing party had notice the judge would preside at the hearing." Minn. R. Crim. P. 26.03, subdiv. 14(4)(c). The omnibus hearing occurred on

March 4, 2011, approximately one week before respondent filed her notice to remove (Ex. 1, p. 4). The January 25, 2011, order expressly informed respondent, "an Omnibus hearing will be held before the undersigned Judge of District Court on 1:30 p.m. on March 4, 2011, in Courtroom 1159." (Ex. 10, Trial Ex. 1.)

- At the hearing in this matter respondent testified she knew the procedure was incorrect but that she did so in the hope that Judge Howard would voluntarily recuse.

9. On March 16, 2011, Judge Howard issued an order confirming the denial of respondent's motion to dismiss (*see* ¶ 6, above) and reiterating that the case remained scheduled for trial on May 2, 2011 (Ex. 1; Ex. 8, p. 2).

10. On or about April 14, 2011, respondent served and filed a motion to continue the trial date (Ex. 4). Among the reasons for the request was an undefined personal commitment (Ex. 4, p. 1).

11. On April 16, 2011, respondent purchased a nonrefundable plane ticket for travel to Paris, France, from May 4 through 9, 2011 (R. ans., p. 1, ¶ 5; Ex. 10, Trial Exs. 5-6).

12. On April 21, 2011, a hearing was conducted on respondent's motion to continue the trial date (Ex. 1, p. 4; Ex. 10, Trial Ex. 2). During the motion hearing, respondent stated that earlier in April she had purchased tickets to go to Europe to go to a wedding (Ex. 10, Trial Ex. 2).

13. The court verbally denied the motion to continue the trial date and memorialized this decision by order dated April 22, 2011 (R. ans., p. 1, ¶ 7; Ex. 10, Trial Ex. 2).

14. That same day, respondent filed a motion to remove Judge Howard for cause (R. ans., p. 1, ¶ 7; Ex. 5).

15. Respondent's motion to remove Judge Howard was found to be frivolous by the Chief Judge of the Fourth Judicial District. Chief Judge James Swenson found "nothing that even hints at bias or prejudice against [respondent's client]," that the transcript of the March 4 hearing "does not comport with [respondent's] assertions [of bias, contempt, and the like] - not one iota," and that respondent's claim that Judge Howard "verbally attacked" respondent "is so off-base, so unfounded, that it necessarily taints the rest of [the] claims." (Ex. 6, pp. 4, 7-8). The Chief Judge found "nothing to suggest that [the charges in the motion] are the least bit warranted." (Ex. 6, p. 8.) He concluded, "Charging Judge Howard with bias against [respondent's client] in this case, race, gender, or otherwise, is both unwarranted and unfair." (Ex. 6, p. 9.)

16. By email dated April 28, 2011, respondent stated that she would appear to argue pending pretrial motions on the first day of trial, May 2, 2011 (R. ans., p. 1, ¶ 9).

17. Respondent failed to appear on May 2 (Ex. 7, p. 2; Ex. 8, p. 3; Sinas test.). Attorney L.F. appeared (Ex. 7, pp. 2-3). He told the court that respondent had called L.F. the day before, stated that she was in the hospital and asked L.F. to appear and ask for a continuance (Ex. 7, pp. 2-3). The court ordered respondent to provide by 9:00 a.m. the next day (May 3, 2011), medical documentation of her hospitalization, documentation of a prognosis including ability to travel and conduct trial, and documentation of the plans respondent had had to travel from Dallas to Minneapolis for trial on May 2 (Ex. 7, pp. 12-18; Ex. 8, pp. 2-3).

18. The court continued the trial to May 3 (Ex. 7, p. 17). Later on May 2, L.F. informed the court that he had informed respondent of the court's order for respondent to produce information (Ex. 8, p. 3).

19. Respondent failed to appear on May 3 (Ex. 7, p. 21; Ex. 8, p. 3). Respondent also notably failed to provide any of the ordered documentation, either directly or through L.F. (Ex. 8, p. 3; Ex. 10, Trial Ex. 3, pp. 1-2).

20. The court continued the matter to May 5, 2011, at 1:00 p.m. (Ex. 7, pp. 28-29; Ex. 8, p. 3). After the hearing, L.F. submitted an affidavit stating that he had confirmed respondent was at a hospital in Dallas (Ex. 8, p. 3).

21. At the trial in this matter, respondent testified that she was admitted to the hospital early morning, around 9:00 A.M. on May 2 and was released at 3:00 P.M. on May 3. Rather than a direct phone call to the court she sent an email to Judge Howard's law clerk, Ellen Tschida as noted in paragraph 23.

22. By email later on May 3, the court found that good cause existed for an order for respondent to show cause, and gave respondent until May 4, 2011, at noon, to provide documentation as to why she had failed to appear previously (R. ans., p. 2, ¶ 12; Ex. 8, p. 3).

23. Later that day, respondent sent an email to Judge Howard's law clerk in which respondent stated, "Please inform Judge Howard that I have just been released from a hospital and will definitely not be able to attend a scheduling conference this Thursday. Too soon." (Ex. 10, Trial Ex. 10.) Respondent's statement was false and/or misleading. Respondent stated and/or implied that she would be unable to appear for medical reasons. Respondent neither stated nor implied that she intended to be in Paris, France, on that date (*see* Ex. 10, Trial Exs. 5-6).

24. On Wednesday, May 4, 2011, respondent flew from Dallas to the Minneapolis-St. Paul Airport. She was there at the terminal and was seen on airport security cameras at 2:09:25 that afternoon walking in the terminal. (Dir. Ex.10, Trial Ex. 9) She did not contact the court or in any way inform anyone that she was present in the area. She later boarded her flight and departed for Paris (R. ans., p. 2, ¶ 14).

25. By order dated May 4, 2011, the court ordered that the show cause hearing occur on May 5, 2011, at 1:00 p.m. (R. ans., p. 2, ¶ 14; Ex. 8, p. 3; Ex. 10, Trial Ex. 3). The

court allowed respondent to appear by telephone (R. ans., p. 2, ¶ 14; Ex. 8, p. 3; Ex. 10, Trial Ex. 3).

26. Respondent appeared by telephone for the hearing on May 5 from Paris, France(R. ans., p. 2, ¶ 14; Ex. 7, pp. 35-70; Ex. 8, p. 3). The transcript of that hearing (particularly pp. 35-70) is of importance as it shows the concerns of the court and the prosecutor and demonstrates the respondent's complete lack of transparency.

27. During that May 5 hearing respondent stated, "I have a follow-up appointment next week so I cannot, and I believe the Court is aware of that, that I cannot be there on Monday." (Ex. 7, p. 60.) Respondent's statement was false and/or misleading. Respondent was scheduled on that date to be traveling from Paris to the United States (Ex. 10, Trial Exs. 5, 6).

28. At no time during the hearing on May 5 did respondent mention that she had flown to France (Ex. 7, pp. 35-70; Sinas test.). Instead, respondent discussed her medical situation and prognosis (Ex. 7, pp. 35-70). Respondent's statements were false and/or misleading.

29. On May 11, 2011, the defendant retained a different lawyer for representation in the underlying case (Ex. 7, p. 72; Ex. 8, pp. 4-5).

30. On May 25, 2011, the court found respondent in contempt of court, and the court referred the matter to prosecutors for further handling (Ex. 8). In the trial in this matter the respondent tried to portray Judge Howard as someone who did not grant what she characterized as a "routine" motion for continuance and discovery. (Resp. test.) (Her affidavit accompanying her motion to remove him for cause was much stronger. (Ex. 5)) The footnote on page 2 of his order (Ex. 8) is noteworthy. The final phrase is

"...the continued inability or refusal by defense counsel to conduct discovery was the basis of the Court's denial of any further continuance of trial."

31. Respondent was criminally charged and, on October 18, 2012, was convicted by a jury of misdemeanor contempt of court, specifically "willful disobedience to court mandate between April 16, 2011 and May 9, 2011," in violation of Minn. Stat. § 508.20.2(4) (R. ans., p. 2, ¶ 18; Ex. 9; Ex. 14). Respondent was sentenced to 90 days in the workhouse, stayed for one year, ordered to pay a fine of $1,000 within 90 days and ordered to cooperate with the Director's Office (R. ans., p. 2, ¶ 18; Exs. 13-15). Respondent appealed (R. ans., p. 2, ¶ 18; Ex. 17).

32. By opinion filed January 13, 2014, the Minnesota Court of Appeals affirmed (Ex. 14). Among other statements the Court noted the "overwhelming evidence of appellant's guilt." By order filed March 26, 2014, the Minnesota Supreme Court denied respondent's petition for review (Ex. 15).

Aggravating Factors

33. Respondent's misconduct was intentional.

34. Respondent's misconduct was the product of selfish motive. She wished to go to Paris, France to attend her brother's wedding. Her sudden illness and brief hospitalization gave her an opportunity which she manipulated to provide a reason to avoid the trial.

35. Respondent has substantial experience in the practice of law. She had some experience in criminal defense. But, it appears from the record and in her testimony that she was involved in a very complex case and was inadequately prepared for trial.

36. During the hearing before the undersigned, additional misrepresentations by respondent were revealed. Respondent testified, and presented an exhibit (Ex. 16) stating, that she was admitted to the hospital on May 2, 2011. However, respondent told L.F., the lawyer who appeared for her on May 2, and R.J., who was acting as a paralegal for respondent, that she was admitted on May 1 (Ex. 7, p. 23; Jancik test.).

Respondent's assertions that she was admitted on May 2 and her assertions that she was admitted on May 1 are mutually exclusive.

37. Respondent does not recognize the wrongful nature of her misconduct, refused to acknowledge committing any wrongdoing and clearly exhibited no remorse for her misconduct (R. ans.; R. test.). Respondent offered no evidence that she understood, regretted, or was sorry or remorseful for the wrongful nature of her conduct (R. ans.; R. test.). Respondent failed to understand either in May of 2011 or at the trial in this matter the impact that her actions had on her own client, the 15 witnesses subpoenaed for trial, the prosecution or the court.

38. Consistent with the prior finding, respondent presented no evidence that similar misconduct will not occur in the future.

39. Respondent offered, and there is, no evidence in mitigation of the sanction of respondent's misconduct.

CONCLUSIONS OF LAW

1. Respondent's conduct violated Rules 3.4(c), and 8.4(b), (c) and (d), Minnesota Rules of Professional Conduct.

2. Respondent's commission of intentional misconduct aggravates the sanction for respondent's misconduct.

3. Respondent's selfish motive for her misconduct aggravates the sanction for her misconduct.

4. Respondent's additional misrepresentations revealed during the hearing before the undersigned aggravate the sanction for respondent's misconduct.

5. Respondent's refusal to acknowledge the wrongful nature of her conduct aggravates the sanction for her misconduct.

6. Respondent's lack of remorse for her misconduct aggravates the sanction for her misconduct.

7. The absence of evidence that respondent has changed her methods or that misconduct is not likely to occur in the future aggravates the sanction for respondent's misconduct.

8. There is no factor which mitigates the sanction for respondent's misconduct.

RECOMMENDATION

Based on the foregoing findings and conclusions, the undersigned recommends that:

1. Respondent, Mpatanishi Syanaloli Tayari Garrett, be indefinitely suspended from the practice of law, ineligible to apply for reinstatement for a minimum of 120 days.

2. The reinstatement hearing provided for in Rule 18, Rules on Lawyers Professional Responsibility (RLPR), not be waived.

3. 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; and

   d. Satisfaction of continuing legal education requirements pursuant to Rule 18(e), RLPR.

Dated: November 6, 2014.

Paul A. Nelson

PAUL A. NELSON
SUPREME COURT REFEREE

MEMORANDUM

As noted by the Director in his memorandum the "respondent's criminal conviction for contempt of court appears to be a lawyer discipline case of first impression in Minnesota." There is no reason to treat this conviction any differently than any other conviction of an attorney. If anything, it is even more compelling as the facts proven in that proceeding are essentially the same as alleged here.

The respondent had the full rights of a criminal defendant; a presumption of innocence, the requirement of unanimous jury and proof beyond a reasonable doubt. She also had the right to remain silent, which she exercised. The specific offense was "Contempt of Court-Willful Disobedience to a Court Mandate between April 16, 2011 and May 9, 2011." She appealed the conviction to the Court of Appeals which found the respondent's arguments unavailing and that the "evidence against her was overwhelming." The Supreme Court declined review.

The respondent's actions are hard to understand and fathom. The Martin-Mahuru case was a major one involving alleged mortgage fraud and complex issues. It was brought by a specialized division of the Hennepin County Attorney's Office. There were 15 witnesses under subpoena; experts, law enforcement and lay. The matter was on a date certain and had been set for a lengthy time and repeatedly reiterated to her. The documents were voluminous; dozens of "bankers boxes." She clearly knew that this was an important case for everyone involved.

It is also apparent from the record and the respondent's own testimony and that of her witness, Mr. Jancik, that she was woefully unprepared for the trial. Between the lack of discovery and her inability to obtain witnesses (for which there was a solution) she was in dire straits. Getting the assistance of other counsel certainly should have been explored.

Her sudden illness and hospitalization, however, provided a convenient excuse to not only delay the trial but also allow her to go to Paris as she wished. The security footage of her at the airport in Minneapolis on the afternoon of May 4 is compelling. Had respondent, both as an attorney and officer of the court, gone to the Hennepin County Government Center to meet with the court and the prosecution that afternoon instead of going to Paris she would never have been charged with contempt or with these ethical violations.

The removal attempts may have been retaliation for Judge Howard's rulings, or her own anger and spite, or even legitimately held beliefs. A removal for cause should only be brought with great care and for the most important of reasons. Whether her actions were frivolous and mean spirited or brought in good faith it is not on the removal basis that the respondent should be disciplined.

Even with an unforeseen illness she could have easily avoided the snowball effect of her selfish and thoughtless actions. Her obligations were to her client and the court system and not herself.

PN

State of Minnesota, Supreme Court
I hereby Certify that the foregoing instrument is a true and correct copy of the original as the same appears on record in my office this 19 day of August 2015

Assistant Clerk

STATE OF MINNESOTA

IN SUPREME COURT

A14-0995

Original Jurisdiction — Per Curiam

In re Petition for Disciplinary Action against Mpatanishi Syanaloli Tayari-Garrett, a Minnesota Attorney, Registration No. 342075.

Filed: July 1, 2015
Office of Appellate Courts

Martin A. Cole, Director, Timothy M. Burke, Senior Assistant Director, Office of Lawyers Professional Responsibility, Saint Paul, Minnesota, for petitioner.

Stephen V. Grigsby, Minneapolis, Minnesota, for respondent attorney.

S Y L L A B U S

The referee's conclusions that the respondent attorney violated the rules of professional conduct by willfully disobeying a court mandate, making false or misleading statements to a tribunal, and committing a criminal act that reflects adversely on her fitness as a lawyer are supported by the record. Respondent's misconduct is aggravated by her selfish motive, lack of remorse, and failure to acknowledge the wrongful nature of the conduct. Based upon these violations and aggravating factors, the appropriate discipline is an indefinite suspension from the practice of law with no right to petition for reinstatement for 120 days.

Exhibit 2

OPINION

PER CURIAM.

The Director of the Office of Lawyers Professional Responsibility (the Director) filed a petition for disciplinary action against respondent, Mpatanishi Syanaloli Tayari-Garrett, alleging that Tayari-Garrett violated the rules of professional conduct by, among other things, being convicted of willfully disobeying a court mandate and by making multiple false or misleading statements to a court. Following an evidentiary hearing, the referee concluded that Tayari-Garrett violated Minn. R. Prof. Conduct 3.4(c) and 8.4(b)-(d) and recommended that Tayari-Garrett be indefinitely suspended with no right to petition for reinstatement for a minimum of 120 days. We hold that the referee did not clearly err by concluding that Tayari-Garrett violated Minn. R. Prof. Conduct 3.4(c) and 8.4(b)-(d) and that the referee's recommendation for discipline is the appropriate sanction in this case.

Tayari-Garrett was admitted to practice law in Minnesota on November 22, 2004, and currently practices in Texas and Minnesota. Her misconduct occurred during her representation of E.M.M. in a criminal matter. The referee made the following findings and conclusions.

At a January 21, 2011, pretrial conference, the district court established a May 2, 2011, trial date. On April 14, Tayari-Garrett filed a motion to continue the trial date, citing, among other reasons, an undefined personal commitment. Before the hearing on the motion, Tayari-Garrett purchased a nonrefundable plane ticket for travel to Paris from May 4 to May 9 to attend her brother's wedding. The court ultimately denied the motion.

Tayari-Garrett failed to appear for the first day of trial, May 2. A lawyer who appeared on her behalf informed the court that Tayari-Garrett called him on May 1, told him that she was in the hospital in Dallas, and asked him to appear and request a continuance. The court continued the proceedings to the following day, May 3, and ordered Tayari-Garrett to provide documentation of her hospitalization; her prognosis, including her ability to travel and conduct trial; and the plans she had made for traveling from Dallas to Minneapolis for trial on May 2. At a hearing the next day, Tayari-Garrett failed to appear and did not produce the ordered documentation. The court again continued the proceedings, to May 5.

Tayari-Garrett later established that she had been admitted to the hospital around 9 a.m. on May 2 and released at approximately 3 p.m. on May 3. Shortly after her release from the hospital, Tayari-Garrett e-mailed the trial judge's law clerk, stating, "Please inform Judge Howard that I have just been released from a hospital and will definitely not be able to attend a scheduling conference this Thursday [May 5]. Too soon." The next morning, May 4, Tayari-Garrett flew from Dallas to Paris via a connecting flight at the Minneapolis-St. Paul International Airport. After the State brought a motion for an order to show cause, the court scheduled a hearing on May 5 and allowed Tayari-Garrett to appear by telephone.

Tayari-Garrett appeared by telephone from Paris for the May 5 hearing. She discussed her medical situation and prognosis, but made no mention of having traveled to France. During the hearing, the court scheduled a contempt hearing for May 9. In response, Tayari-Garrett stated, "I have a follow-up appointment next week so I cannot,

and I believe the Court is aware of that, that I cannot be there on Monday [May 9]." Tayari-Garrett did not appear for the May 9 hearing either in person or by telephone. In fact, at the time of the May 9 hearing, Tayari-Garrett was en route from Paris to Dallas. By order dated May 25, the court found that probable cause existed to find Tayari-Garrett in constructive contempt of court. The court then referred the matter to prosecutors for further handling. Tayari-Garrett was criminally charged with and eventually convicted of misdemeanor contempt of court, Minn. Stat. § 588.20, subd. 2(4) (2014), for her willful disobedience of a court mandate between April 16, 2011, and May 9, 2011. The court of appeals affirmed Tayari-Garrett's conviction. *State v. Tayari-Garrett*, 841 N.W.2d 644, 656 (Minn. App. 2014), *rev. denied* (Minn. Mar. 26, 2014).

Based on these facts, the Director filed a petition against Tayari-Garrett alleging that she violated the rules of professional conduct by, among other things, willfully disobeying a court mandate, making false or misleading statements to a tribunal, and being convicted of willfully disobeying a court mandate. Following an evidentiary hearing on the petition, the referee found that Tayari-Garrett was criminally convicted for "willful disobedience to [a] court mandate" and that Tayari-Garrett made false or misleading statements in her May 3 e-mail to the court and at the May 5 hearing. Based on these findings, the referee concluded that Tayari-Garrett violated Minn. R. Prof. Conduct 3.4(c) and 8.4(b), (c), and (d).[1] The referee also found several aggravating

[1] The petition for disciplinary action also alleged that Tayari-Garrett violated Minn. R. Prof. Conduct 3.1 and 4.4(a), but the referee did not conclude that Tayari-Garrett
(Footnote continued on next page.)

factors, but no mitigating factors. The referee recommended that Tayari-Garrett be indefinitely suspended with no right to petition for reinstatement for a minimum of 120 days.

I.

Tayari-Garrett challenges the referee's conclusions that she violated Minn. R. Prof. Conduct 3.4(c) and 8.4(b), (c), and (d), as well as several of the findings underlying those conclusions. Specifically, Tayari-Garrett challenges the referee's findings that a statement in her May 3 e-mail to the court was false or misleading, and that statements she made during the May 5 hearing were false or misleading.

The Director bears the burden of proving professional misconduct by clear and convincing evidence. *In re Voss*, 830 N.W.2d 867, 874 (Minn. 2013). If either party timely orders a transcript of the hearing, as Tayari-Garrett did here, the referee's finding and conclusions are not conclusive. Rule 14(e), Rules on Lawyers Professional Responsibility (RLPR). Nonetheless, when a party orders a transcript, we give "great deference" to the referee's findings and will uphold those findings if they have evidentiary support in the record and are not clearly erroneous. *Voss*, 830 N.W.2d at 874. We give particular deference to the referee's findings when those findings "rest on disputed testimony or in part on credibility, demeanor, and sincerity." *In re Lyons*, 780 N.W.2d 629, 635 (Minn. 2010). A referee's findings are clearly erroneous only when

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violated these rules. The Director does not contest the referee's dismissal of those allegations.

they leave us "with the definite and firm conviction that a mistake has been made." *Id.* (citation omitted) (internal quotation marks omitted).

Given the evidentiary support in the record for the referee's findings and our deferential standard of review, Tayari-Garrett's challenges to the referee's findings and conclusions fail. First, the referee found, and the record confirms, that Tayari-Garrett was convicted, after a jury trial, of misdemeanor contempt of court, in violation of Minn. Stat. § 588.20, subd. 2(4)—specifically for the "willful disobedience to [a] court mandate between April 16 and May 9, 2011." This conviction constitutes conclusive evidence that Tayari-Garrett willfully disobeyed a court mandate. *See* Rule 19(a), RLPR ("A lawyer's criminal conviction in any American jurisdiction . . . is, in proceedings under these rules, conclusive evidence that the lawyer committed the conduct for which the lawyer was convicted."). Nonetheless, Tayari-Garrett argues that her contempt conviction cannot be used to support any conclusion that she committed professional misconduct because "neither the conviction nor the Director's charges embrace any particular act for which [Tayari-Garrett] must be disciplined."

Tayari-Garrett's argument is without merit. First, Tayari-Garrett cannot relitigate her conviction in this disciplinary proceeding. *See* Rule 19(a), RLPR; *In re Dvorak*, 554 N.W.2d 399, 402 (Minn. 1996) ("[A]ttorneys may not avoid the consequences of criminal conviction by attempting to relitigate the issue of guilt or innocence in subsequent disciplinary proceedings."). Thus, to the extent that Tayari-Garrett seeks to challenge the specificity of the factual basis for her contempt conviction, or to challenge the court of

appeals' affirmance of her conviction based on evidence presented at the disciplinary hearing, she is precluded from doing so.

Second, Tayari-Garrett's criminal contempt conviction for willfully disobeying a court mandate from April 16, 2011, to May 9, 2011, is a sufficiently specific basis upon which the referee could find that Tayari-Garrett committed professional misconduct. Rule 8.4(b) of the Minnesota Rules of Professional Conduct prohibits a lawyer from "commit[ing] a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." A criminal conviction for willfully disobeying a court mandate clearly has a direct relationship to, and "reflects adversely on," Tayari-Garrett's "fitness as a lawyer." *See, e.g., In re Lundeen*, 811 N.W.2d 602, 606 (Minn. 2012).

The act of willfully disobeying a court mandate also constitutes a violation of Minn. R. Prof. Conduct 3.4(c) and 8.4(d). Rule 3.4(c) provides that "[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." Tayari-Garrett contends that because the Director and referee failed to specify the obligation or mandate that Tayari-Garrett knowingly disobeyed, the referee erred by concluding that Tayari-Garrett violated Minn. R. Prof. Conduct 3.4(c). But this is just another attempt to circumvent Rule 19(a), RLPR. As discussed above, Tayari-Garrett's criminal conviction is "conclusive evidence" that she willfully disobeyed a court mandate—which clearly violates Minn. R. Prof. Conduct 3.4(c)'s prohibition against knowingly disobeying an obligation under the rules of a tribunal.

Minnesota Rule of Professional Conduct 8.4(d) provides that it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice." We have applied Rule 8.4(d) to a range of conduct that overlaps with Rule 3.4(c) and involves failure to comply with court orders or rules, including: failure to appear at scheduled court hearings, *In re Pierce*, 706 N.W.2d 749, 754 (Minn. 2005); failure to follow procedural rules, resulting in a delayed hearing, *In re Paul*, 809 N.W.2d 693, 703 (Minn. 2012); failure to comply with deadlines and respond to a court's order to show cause, *In re Mayrand*, 723 N.W.2d 261, 267 (Minn. 2006); and knowingly violating a tribal court's disqualification order, *In re Michael*, 836 N.W.2d 753, 762 (Minn. 2013). In this context, Tayari-Garrett's willful failure to comply with a court mandate, conclusively proven through her conviction, also violates Minn. R. Prof. Conduct 8.4(d).

Tayari-Garrett's conviction for criminal contempt does not, however, constitute conclusive evidence that she engaged in conduct that violates Minn. R. Prof. Conduct 8.4(c). Rule 8.4(c) prohibits an attorney from engaging in "conduct involving dishonesty, fraud, deceit, or misrepresentation." Such conduct is not an element of the crime for which Tayari-Garrett was convicted. Thus, the referee's conclusion that Tayari-Garrett violated Rule 8.4(c) must rest on findings other than the contempt conviction. The referee made three relevant findings, each of which Tayari-Garrett challenges.

First, the referee found that Tayari-Garrett made a false or misleading statement when she stated in her May 3 e-mail to the trial judge's law clerk: "Please inform Judge Howard that I have just been released from a hospital and will definitely not be able to attend a scheduling conference this Thursday [May 5]. Too soon." The referee found

this statement to be false or misleading because Tayari-Garrett "stated and/or implied that she would be unable to appear for medical reasons" and "neither stated nor implied that she intended to be in Paris, France, on that date." Second, the referee found that Tayari-Garrett made a false or misleading statement at the May 5 hearing when she told the court, "I have a follow-up appointment next week so I cannot, and I believe the Court is aware of that, that I cannot be there on Monday [May 9]." The referee found this statement to be false or misleading because Tayari-Garrett "was scheduled on [May 9] to be traveling from Paris to the United States." Third, the referee found, more broadly, that Tayari-Garrett's statements during the May 5 hearing were false or misleading because "[a]t no time during the hearing on May 5 did [she] mention that she had flown to France"; "[i]nstead, [Tayari-Garrett] discussed her medical situation and prognosis."

Our review of the record shows that all three findings have evidentiary support. Moreover, to the extent that Tayari-Garrett's testimony at the disciplinary hearing provided explanations for her statements that conflict with the referee's findings, the referee was free to—and did—find Tayari-Garrett not credible. *See Lyons*, 780 N.W.2d at 635 (stating we especially defer to the referee's findings when they "rest on disputed testimony or in part on credibility, demeanor, and sincerity"). Thus, the referee did not clearly err in finding that Tayari-Garrett made multiple false or misleading statements

and concluding that she engaged in conduct "involving dishonesty, fraud, deceit, or misrepresentation," in violation of Minn. R. Prof. Conduct 8.4(c).[2]

II.

The Director recommends that we adopt the referee's recommended sanction and indefinitely suspend Tayari-Garrett from the practice of law for a minimum of 120 days. Tayari-Garrett argues that her conduct does not warrant professional discipline, or, in the alternative, warrants a lesser sanction than a 120-day suspension.

"[W]e place great weight on the referee's recommended discipline," but "we retain ultimate responsibility for determining the appropriate sanction." *In re Rebeau*, 787 N.W.2d 168, 173 (Minn. 2010). The purposes of attorney discipline are the protection of the public and the judicial system, and the deterrence of future misconduct by the disciplined attorney and other attorneys. *In re Oberhauser*, 679 N.W.2d 153, 159 (Minn. 2004). We consider four factors in determining the appropriate disciplinary sanctions:

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[2] Tayari-Garrett argues that even if the referee's findings that she made false or misleading statements to the court are accepted as true, she did not violate Rule 8.4(c) because any false or misleading statements were not made with an intent to deceive. We disagree. As an initial matter, it is not clear that "intent to deceive" is in fact an element of Rule 8.4(c). *See In re Grigsby*, 764 N.W.2d 54, 61 (Minn. 2009) ("Nor is Rule 8.4(c) limited, by its terms, to intentional misrepresentations . . . ."). But even assuming it is an element, in *In re Czarnik* we explained that in the context of Rule 8.4(c), "intent to deceive" means nothing beyond that the attorney "made false statements with knowledge of their falsity." 759 N.W.2d 217, 223 (Minn. 2009). Here, the referee's relevant findings are premised on Tayari-Garrett's awareness that she only gave medical reasons for her inability to appear in person on May 5 and May 9, when in fact she knew that she was unable to appear on those dates because she would be in France or would be travelling on those dates. Therefore, Tayari-Garrett either made these statements with knowledge of their falsity or with knowledge that she had omitted material information from her responses in a misleading way.

"1) the nature of the misconduct, 2) the cumulative weight of the violations of the rules of professional conduct, 3) the harm to the public, and 4) the harm to the legal profession." *Id.* (citation omitted) (internal quotation marks omitted). We also consider mitigating or aggravating factors. *See In re Mayne*, 783 N.W.2d 153, 162 (Minn. 2010).

We first consider the nature of Tayari-Garrett's misconduct. Her conviction for "willful disobedience to [a] court mandate" itself constitutes serious misconduct because her criminal conduct was directly related to the practice of law. *See In re Brost*, 850 N.W.2d 699, 703 (Minn. 2014) (explaining that an attorney's criminal acts are more serious when the criminal conduct occurs within the practice of law). Moreover, this case involves Tayari-Garrett's false or misleading statements to the district court, which also warrant severe discipline. *In re Lochow*, 469 N.W.2d 91, 99 (Minn. 1991) ("[W]hen a lawyer demonstrates a lack of that truthfulness and candor that the courts have a right to expect of their officers to the end that the system of justice will not be undermined, courts do not hesitate to impose severe discipline." (citation omitted) (internal quotation marks omitted)).

We next consider the cumulative weight of Tayari-Garrett's misconduct. "[T]he cumulative weight and severity of multiple disciplinary rule violations may compel severe discipline even when a single act standing alone would not have warranted such discipline." *In re Oberhauser*, 679 N.W.2d 153, 160 (Minn. 2004). Tayari-Garrett's misconduct involves multiple disciplinary rule violations, Minn. R. Prof. Conduct 3.4(c) and 8.4(b)-(d), which weighs in favor of more serious discipline. At the same time, her multiple rule violations all arise out of a single matter and occurred over a relatively short

period of time. When considering the cumulative weight of disciplinary rule violations, we distinguish between "single, isolated incident[s]" and "misconduct that includes multiple rule violations and persists over time." *Brost*, 850 N.W.2d at 704 (alteration in original) (internal quotation marks omitted). The misconduct at issue in this case is more akin to an "isolated incident" than to misconduct involving multiple violations over an extended period.

We also assess the harm to the public and the legal profession, "requir[ing] consideration of the number of clients harmed [and] the extent of the clients' injuries." *In re Coleman*, 793 N.W.2d 296, 308 (Minn. 2011) (alternation in original) (citation omitted) (internal quotation marks omitted). Here, Tayari-Garrett's misconduct harmed her client. Specifically, Tayari-Garrett delayed her client's trial and ultimately forced her client to retain other counsel. Further, her misconduct wasted the time of the witnesses and other people involved in the trial. More broadly, an attorney's "[f]ail[ure] to follow court rules harms public confidence in the legal system," *In re Ulanowski*, 800 N.W.2d 785, 801 (Minn. 2011), as do a lawyer's false and misleading statements to a court.

Additionally, we take into account the presence of aggravating and mitigating factors. Here, the referee determined that there are several aggravating factors and no mitigating factors.[3] The referee found that Tayari-Garrett's misconduct was aggravated

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[3] The referee also found that Tayari-Garrett had "substantial experience" in the practice of law but did not actually state in his conclusions of law that her experience was an aggravating factor and did not explicitly consider it in his disciplinary recommendation. While we have held that a lawyer's substantial experience in the practice of law may constitute an aggravating factor, because the referee did not consider

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by her selfish motive of facilitating a personal trip; that she exhibited no remorse for her misconduct; and that her refusal to acknowledge the wrongful nature of her conduct risks future similar misconduct. Because there is support in the record for these findings, the referee did not clearly err in concluding that these aggravating factors were present.[4] Tayari-Garrett did not ask the referee to find any mitigating factors in her answer to the

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Tayari-Garrett's experience in his recommendation for discipline, we decline to consider it in determining the appropriate discipline in this case. *See In re Nathanson*, 812 N.W.2d 70, 80 n.15 (Minn. 2012).

[4] The referee also found that the intentional nature of Tayari-Garrett's misconduct and the discovery of "additional misrepresentations" were aggravating factors. We have concerns, however, regarding the referee's findings and conclusions that the sanction for Tayari-Garrett's misconduct was aggravated by the intentional nature of her misconduct. As a matter of fairness, we question whether the intentional nature of an attorney's misconduct can be an aggravating factor when the rules of professional conduct at issue require proof of intent. *See In re Taplin*, 837 N.W.2d 306, 313 (Minn. 2013) ("[W]e have also cautioned the Director not to 'double count' the same acts of noncooperation as both additional misconduct and an aggravating factor."). Here, Rule 3.4(c) prohibits a lawyer from "knowingly" disobeying an obligation under the rules of a tribunal.

We are also concerned by the referee's finding that the sanction for Tayari-Garrett's misconduct was aggravated by the discovery of "additional misrepresentations" during the disciplinary hearing—namely that Tayari-Garrett told substitute counsel and a paralegal assisting her that she was admitted to the hospital on May 1 when she was not admitted until May 2. "[T]his court observes due process in exercising disciplinary jurisdiction." *In re Gherity*, 673 N.W.2d 474, 478 (Minn. 2004) (explaining that to comply with due process, disciplinary charges must "be sufficiently clear and specific and the attorney must be afforded an opportunity to anticipate, prepare and present a defense" at the disciplinary hearing). Such due process protections are weakened if the referee is permitted to consider uncharged violations of the Minnesota Rules of Professional Conduct under the guise of aggravating factors instead of requiring that allegations of additional misconduct be brought in a supplementary petition. However, we need not decide whether the referee clearly erred by finding either of these aggravating factors because their existence does not affect the discipline we impose in this case.

petition or in her proposed findings and brief to the referee. As a result, her claim that the referee clearly erred by declining to find any mitigating factors for her misconduct fails. *See In re Tigue*, 843 N.W.2d 583, 588 (Minn. 2014) ("[A] referee's failure to make a factual finding regarding remorse is clear error only when the respondent's remorse or lack thereof is raised as an issue in the proceedings before the referee.").

Finally, we consider similar cases to ensure that the discipline imposed is consistent with previous sanctions for similar conduct, *Nathanson*, 812 N.W.2d at 80, although we impose discipline based on the facts and circumstances of each case, *In re Redburn*, 746 N.W.2d 330, 334 (Minn. 2008). We have held that willful disobedience of a court order merits substantial discipline, including disbarment. *In re Daly*, 291 Minn. 488, 495, 189 N.W.2d 176, 181 (1971) ("Because it is elementary that our system of justice is founded on the rule of law, a willful disobedience to a single court order may alone justify disbarment."). In practice, we have generally reserved disbarment for attorneys who have repeatedly failed to comply with court orders or have committed additional serious misconduct. *See In re Lundeen*, 811 N.W.2d 602, 608 (Minn. 2012) (disbarring attorney who repeatedly failed to comply with court orders, misappropriated client funds, made multiple misrepresentations to tribunals and clients, and repeatedly neglected client matters); *In re Grzybek*, 567 N.W.2d 259, 264-65 (Minn. 1997) (stating that there were "at least three separate grounds upon which [the attorney] could be disbarred," including his "repeated failure to comply with court orders"); *cf. In re Hawkins*, 834 N.W.2d 663, 669-70 (Minn. 2013) (determining that disbarment was

appropriate reciprocal discipline for an attorney who, among other things, repeatedly and willfully defied court orders).

In the context of disobedience to a court mandate that is, as here, limited to a single matter, suspension is the more appropriate sanction. In *In re Michael*, we imposed a 30-day suspension for an attorney who violated a tribal court order, made a false statement to a court during a contempt hearing, made a frivolous argument, and improperly accused a judge of bias. 836 N.W.2d 753, 759-60, 768 (Minn. 2013). The attorney's conduct was aggravated by her lack of remorse and failure to accept responsibility for her conduct, but was mitigated by her lack of experience. *Id.* at 767. Although Tayari-Garrett's misconduct is similar in type to that of the attorney in *Michael*, Tayari-Garrett's conduct merits a greater sanction because Tayari-Garrett, unlike Michael, was *criminally convicted* for willfully disobeying a court mandate and made *multiple* false statements to a tribunal.

A greater suspension than that imposed in *Michael* is further supported by sanctions we have imposed for attorneys whose primary misconduct was misrepresentations to a tribunal. *See, e.g., In re Grigsby*, 815 N.W.2d 836, 845-47 (Minn. 2012) (imposing a 60-day suspension for an attorney who made a false statement to the court of appeals and practiced law while suspended); *In re Winter*, 770 N.W.2d 463, 470 (Minn. 2009) (imposing a 120-day suspension for an attorney with a prior disciplinary history who made false statements to a tribunal and to another attorney); *In re Van Liew*, 712 N.W.2d 758, 758 (Minn. 2006) (imposing a 90-day suspension for an attorney who made false statements to a tribunal and failed to file opposition to a motion

on behalf of a client). The imposition of suspensions for up to 120 days for attorneys who primarily were sanctioned for misrepresentations to a tribunal suggests that the recommended discipline is not disproportionate to Tayari-Garrett's misconduct, particularly when we take into account Tayari-Garrett's criminal conviction of willfully disobeying a court mandate and the presence of multiple aggravating factors.

Therefore, consistent with our previous decisions and the specific circumstances of this case, we conclude that an indefinite suspension with no right to petition for reinstatement for a minimum of 120 days is the appropriate discipline.

Accordingly, we order that:

1. Respondent Mpatanishi Syanaloli Tayari-Garrett is indefinitely suspended from the practice of law, effective 14 days from the date of the filing of this opinion, and she shall be ineligible to petition for reinstatement for a minimum of 120 days from the effective date of the suspension.

2. Respondent shall comply with the requirements of Rule 26, RLPR (requiring notice of suspension to clients, opposing counsel, and tribunals).

3. If respondent seeks reinstatement, she must comply with the requirements of Rule 18(a)–(d), RLPR. Reinstatement is conditioned on successful completion of the professional responsibility portion of the state bar examination and satisfaction of continuing legal education requirements, pursuant to Rule 18(e), RLPR.

4. Respondent shall pay $900 in costs pursuant to Rule 24, RLPR.

State of Minnesota, Supreme Court
I hereby Certify that the foregoing instrument is a true and correct copy of the original as the same appears on record in my office this 19 day of August 20 15

Assistant Clerk