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

IN THE MATTER OF	**§**	
NEJLA KASSANDRA KEYFLI LANE,	**§**	**CAUSE NO. 67623**
STATE BAR CARD NO. 24095557	**§**	

FIRST AMENDED PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Nejla Kassandra Keyfli Lane, (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 First Amended Petition for Reciprocal Discipline at Nejla Kassandra Keyfli Lane, 8004 Niederwald Strasse, Kyle, Texas 78640.

3. Attached hereto and made a part hereof for all intents and purposes as if the same were copied verbatim herein, is a true and correct copy of a set of documents in the Lane matter styled Before the Hearing Board of the Illinois Attorney Registration and Disciplinary Commission, *In the Matter of: Nejla K. Lane, Attorney-Respondent No. 6290003*, Commission No. 2019PR00074, consisting of the Administrator's Complaint filed on August

28, 2019; Report and Recommendation of the Hearing Board filed on November 4, 2021; Report and Recommendation of the Review Board filed July 12, 2022; and the Supreme Court Order and Mandate entered on January 17, 2023, relating to the matter styled **In Re: Nejla K. Lane**, Supreme Court No. M.R. 31402, Commission No. 2019PR00074 (Exhibit 1). Petitioner expects to introduce a certified copy of Exhibit 1 at the time of hearing of this cause.

4. On or about August 28, 2019, an Administrator's Complaint was filed Before the Hearing Board of the Illinois Attorney Registration and Disciplinary Commission, which states in pertinent part as follows:

> 28. By reason of the conduct described above, Respondent has engaged in the following misconduct:
>
> a. engaging in conduct intended to disrupt a tribunal, by conduct including sending emails on April 18, 2017, June 23, 2017 and June 26, 2017 to Judge Finnegan, Allison Engel, and Scott White, through the Proposed Order email account, which were disruptive and were intended to disrupt the court, in violation of Rule 3.5(d) of the Illinois Rules of Professional Conduct (2010);
>
> b. making a statement that a lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, by conduct including drafting and sending emails which questioned Judge Finnegan's integrity and impartiality by stating, in part: "Scott is the lucky guy who senses same as he can just pick up the phone to call you knowing he will get his way ... " in her April 18, 2017 email; "And I will call him to testy [sic] at trial to show the world what a corrupt lawyer he is! And the judges who protect this criminal by squeezing the discovery deadlines!!!" and "Judges are helping the criminal to escape punishment by forcing to shorten all deadlines!!! This Judge is violating my client's rights first by truncated discovery deadlines and now helping Plaintiff to escape punishment for wrongs she committed!" in her June 23, 2017 email; and "For anyone to insult me in this degree calls questions [sic] this court's sincerity and veracity," "Where do you get this information? Ex Parte communications with Defendant's attorney, Scott? - smearing dirt behind my

back?" and "The more I read this order, again and again, I am sick to my stomach, and I get filled with anger and disgust over this 'fraudulent' order by this court!" in her June 26, 2017 email, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct (2010); and

c. engaging in conduct that is prejudicial to the administration of justice, by conduct including sending emails on April 18, 2017, June 23, 2017 and June 26, 2017 to Judge Finnegan through the Proposed Order email account, which necessitated additional actions taken by Judge Finnegan and caused the expenditure of additional court resources, including Judge Finnegan's April 18, 2017 email to the parties limiting Respondent's future use of the proposed order email account, the entry of Judge Finnegan's June 27, 2017 court order prohibiting Respondent from sending any emails to her or her staff, and Judge Finnegan's referral of Respondent's conduct to the Executive Committee of the United States District Court for the Northern District of Illinois, in violation of Rule 8.4(d) of the Illinois Rules of Professional Conduct (2010).

5. On or about November 4, 2021, a Report and Recommendation of the Hearing Board was filed, which states in pertinent part as follows on page 1:

SUMMARY OF THE REPORT

Respondent engaged in misconduct when she sent multiple emails to a magistrate judge and her law clerk containing false or reckless statements impugning the judge's integrity. Based on the pattern of misconduct, the factors in aggravation, the minimal factors in mitigation, and the relevant case law, we recommend that Respondent be suspended for nine months, with the suspension stayed after six months by six months of probation.

6. On or about July 12, 2022, a Report and Recommendation of the Review Board was filed, which states in pertinent part as follows on page 26:

. . .We therefore adopt the sanction recommended by the Hearing Board. We find this recommended sanction to be commensurate with Respondent's misconduct, consistent with discipline that has been imposed for comparable misconduct, and sufficient to serve the goals of attorney discipline, act as a deterrent, and preserve the public's trust in the legal profession.

CONCLUSION

For the foregoing reasons, we recommend that Respondent be suspended from the practice of law for nine months, with the suspension stayed after six months by a six-month period of probation, subject to the conditions recommended by the Hearing Board.

7. On or about January 17, 2023, a Supreme Court Order and Mandate were entered in the Supreme Court of Illinois, which states in pertinent part as follows:

> Petition by respondent for leave to file exceptions to the report and recommendation of the Review Board. Denied. Respondent Nejla K. Lane is suspended from the practice of law for nine months, with the suspension stayed after six (6) months by a six (6) month period of probation subject to the following conditions, as recommended by the Review Board:
>
> a. Respondent's practice of law shall be supervised by a licensed attorney acceptable to the Administrator. Respondent shall provide the name, address, and telephone number of the supervising attorney to the Administrator. Within the first thirty (30) days of probation, respondent shall meet with the supervising attorney and meet at least once a month thereafter. Respondent shall authorize the supervising attorney to provide a report in writing to the Administrator, no less than once every quarter, regarding respondent's cooperation with the supervising attorney, the nature of respondent's work, and the supervising attorney's general appraisal of respondent's practice of law;
>
> b. Respondent shall provide notice to the Administrator of any change in supervising attorney within fourteen (14) days of the change;
>
> c. Prior to the completion of the period of probation, respondent shall attend and successfully complete the ARDC Professionalism Seminar;
>
> d. Respondent shall comply with the provisions of Article VII of the Illinois Supreme Court Rules on Admission and Discipline of Attorneys and the Illinois Rules of Professional Conduct and shall timely cooperate with the Administrator in providing information regarding any investigations relating to her conduct;

e. Respondent shall attend meetings as scheduled by the Commission probation officer;

f. Respondent shall notify the Administrator within fourteen (14) days of any change of address;

g. Respondent shall reimburse the Commission for the costs of this proceeding as defined in Supreme Court Rule 773, and shall reimburse the Commission for any further costs incurred during the period of probation; and

h. Probation shall be revoked if respondent is found to have violated any of the terms of probation. The remaining period of suspension shall commence from the date of the determination that any term of probation has been violated.

Suspension effective February 7, 2023.

Respondent Nejla K. Lane shall reimburse the Client Protection Program Trust Fund for any Client Protection payments arising from her conduct prior to the termination of the period of suspension/probation.

Order entered by the Court.

8. 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 Illinois and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

Judith Gres DeBerry
Assistant Disciplinary Counsel

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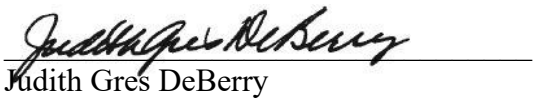


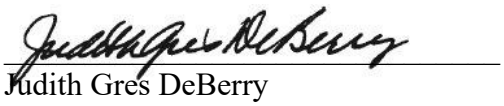
Judith Gres DeBerry
Bar Card No. 24040780

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 First Amended Petition for Reciprocal Discipline and the First Amended Order to Show Cause on Nejla Kassandra Keyfli Lane by personal service.

Nejla Kassandra Keyfli Lane
8004 Niederwald Strasse
Kyle, Texas 78640



Judith Gres DeBerry

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION
of the
SUPREME COURT OF ILLINOIS

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CERTIFICATION

I, Andrea L. Watson, Senior Deputy Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois, hereby certify that the following are true and correct copies of the Administrator's Complaint filed on August 28, 2019, Report and Recommendation of the Hearing Board filed on November 4, 2021, Report and Recommendation of the Review Board filed on July 12, 2022, and the Supreme Court Order and Mandate entered on January 17, 2023, relating to the matter entitled **In re: Nejla K. Lane**, Supreme Court No. M.R.31402, Commission No. 2019PR00074.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Michelle M. Thome, Clerk
Attorney Registration and
Disciplinary Commission

By: /s/ Andrea L. Watson
Andrea L. Watson
Senior Deputy Clerk

Dated: February 14, 2023

EXHIBIT
1

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

NEJLA K. LANE,

Attorney-Respondent

No. 6290003.

Commission No. 2019PR00074

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Christopher Heredia, pursuant to Supreme Court Rule 753(b), complains of Respondent, Nejla Kassandra Lane, who was licensed to practice law in Illinois on November 6, 2006, and alleges that Respondent has engaged in the following conduct which subjects Respondent to discipline pursuant to Supreme Court Rule 770:

(Conduct intended to disrupt a tribunal, false or reckless statements about a judge, and conduct prejudicial to the administration of justice)

1. At all times alleged in this complaint, Respondent owned and operated the law firm of Lane Legal Services, P.C., later known as the law firm of Lane Keyfli Law, Ltd. (collectively, "Respondent's law firm").

2. At all times alleged in this complaint, Respondent maintained and used the email addresses of nejlane@gmail.com and nejla@lanekeyfli.com.

3. On May 23, 2011, Paula Epstein ("Paula") filed a petition in the Circuit Court of Cook County seeking to dissolve her marriage to Barry Epstein ("Epstein"). The matter was captioned *Paula Epstein v. Barry Epstein*, and was assigned case number 11 D 5245.

FILED
8/28/2019 3:28 PM
ARDC Clerk

4. In or around August 2012, Respondent and Epstein agreed that Respondent would represent Epstein in the dissolution of marriage matter against Paula pending in the Circuit Court of Cook County. The parties agreed that Respondent's legal fee for her representation would be an hourly fee agreement, with a $10,000 security retainer, to be paid by Epstein at the outset of representation, and an hourly rate of $300 per hour for office work, and $350 per hour for time and work out of the office in court.

5. In or around October 2014, while the domestic relations matter was still pending, Respondent and Epstein agreed that Respondent would also represent Epstein in a federal action related to the dissolution of marriage matter, alleging multiple violations of the federal Wiretap Act under Title 18, Section 2520, of the United States Code. The parties agreed that Respondent's legal fee for her representation in relation to this federal action would be an hourly fee agreement, at an hourly rate of $400 per hour for office work, and $450 per hour for time and work out of the office in court.

6. On October 27, 2014, Respondent filed a complaint on Epstein's behalf against Paula and Jay Frank ("Frank"), Paula's attorney in the domestic relations matter, in the United States District Court for the Northern District of Illinois, Eastern Division. The matter was captioned *Barry Epstein v. Paula Epstein and Jay Frank*, case number 1:14-cv-08431, and assigned to Hon. Thomas M. Durkin ("Judge Durkin"), and Magistrate Judge Sheila Finnegan ("Judge Finnegan").

7. In relation to case number 14-cv-08431, attorney Scott Schaefers ("Schaefers") represented Paula, and attorney Norman Barry ("Barry") represented Frank, who was later dismissed as a co-defendant to the complaint.

8. In the complaint, described in paragraph 6, above, Epstein alleged that Paula and Frank violated the federal Wiretap Act by intercepting, accessing, downloading, and printing Epstein's private emails, without Epstein's authorization, in furtherance of Paula's interests in the then-pending state dissolution of marriage matter, described in paragraph 3, above.

9. During the pendency of case number 14-cv-08431, Judge Finnegan maintained an email account, known as the proposed order email account ("proposed order account"), with an email address of Proposed_Order_Finnegan@ilnd.uscourts.gov. Judge Finnegan maintained the proposed order account to allow the parties to communicate with the court regarding the submission of proposed orders, pre-settlement conference letters, scheduling issues, and other logistical matters. In maintaining the proposed order account, Judge Finnegan sent and received emails from the proposed order account, which was monitored by and accessible only to Judge Finnegan and members of her staff. Under Judge Finnegan's written case procedures and standing orders, the proposed order account was maintained and used, when appropriate, in all matters assigned to her docket.

10. April 17, 2017, Respondent filed an emergency motion on Epstein's behalf in case number 14-cv-08431 seeking an extension of time to complete Paula's deposition.

11. On April 18, 2017, Judge Finnegan entered an order in case number 14-cv-08431 denying Respondent's emergency motion, referred to in paragraph 10, above.

12. On that same date, in response to an email Judge Finnegan sent to the parties regarding the denial of Respondent's emergency motion, Respondent wrote an email addressed to Judge Finnegan, and sent it to the proposed order account, Schaefers and Scott White ("White"), Judge Finnegan's courtroom deputy, via their individual work email addresses.

13. In her April 18, 2019 email to Judge Finnegan, referred to in paragraph 12, above, Respondent stated, in part, the following:

> "Thank you for this quick response, Judge Finnegan. BUT … Today in court no matter what I said to you, you had already made up your mind…"
>
> * * *
>
> "…yet since the beginning you never seem to doubt anything he says, as you appear to doubt me."
>
> * * *
>
> "Still, I stated to you in open court that 'I don't want to be hated' for doing my job, but it sure seems that way, as I never get a break, Scott [Schaefers] is the lucky guy who senses same as he can just pick up the phone to call you knowing he will get his way…or for so-called the Posner Defense."
>
> * * *
>
> "Still, it's not fair that my client (and I) is [sic] being treated badly for suing his wife/ex wife, and everyone is protecting Paula - why? Since when does 'two' wrongs make a 'right'? How am I to prove my case if I am not given a fair chance to do my work, properly?"

14. On April 19, 2017, Judge Finnegan responded by email to Respondent's April 18, 2017 email, described to in paragraphs 12 and 13, above. Judge Finnegan, in her April 19, 2017 email sent to Respondent, Schaefers, and White, admonished Respondent for Respondent's use of the proposed order account, and stated that Respondent was prohibited from sending any emails to the proposed order account in the future in order to argue the merits of a motion, share feelings about past rulings, or discuss the case generally. Judge Finnegan also stated that in the event that Respondent sent additional emails similar to her April 18, 2017 email, she would enter an order barring all emails to the proposed order account without leave of the court.

15. On June 15, 2017, Respondent filed a motion on Epstein's behalf in case number 14-cv-08431 seeking an extension of time to complete discovery and for leave to depose Frank, who had already been dismissed as a co-defendant.

16. On June 23, 2017, Judge Finnegan entered an order in case number 14-cv-08431 denying Respondent's motion, described in paragraph 15, above. On the same date, Allison Engel ("Engel"), Judge Finnegan's law clerk, emailed a copy of Judge Finnegan's June 23, 2017 order to Respondent and Schaefers.

17. On that same date, in response to Engel's June 23, 2017 email, described in paragraph 16, above, Respondent wrote an email addressed to Engel, and sent it to the proposed order account, Engel, and Schaefers, via their individual work email addresses.

18. In her June 23, 2017 email to Engel, referred to in paragraph 17, above, Respondent stated, in part, the following:

> "I'm very upset, I do not agree with Judge Finnegan's order and I will depose the former co-defendant, Jay Frank, despite the fact this court is protecting him and his co-conspirer! Scott Schaefers had no standing to challenge my subpoena to depose Jay Frank! I'm entitled to depose him! And I will call him to testy [sic] at trial to show the world what a corrupt lawyer he is! And the judges who protect this criminal by squeezing the discovery deadlines!!! No no no! This is outrageous order of Judge Finnegan and it will be addressed accordingly! Judges are helping the criminal to escape punishment by forcing to shorten all deadlines!!! This Judge is violating my client's rights first by the truncated discovery deadlines and now helping Plaintiff to escape punishment for wrongs she committed! I'm outraged by the miscarriage of justice and judges are in this to delay and deny justice for my client! I'm sickened by this Order!!!"

19. On June 26, 2017, also in response to Engel's June 23, 2017 email, Respondent wrote another email addressed to Engel, and sent it to the proposed order account, Engel, and Schaefers, via their individual work email addresses.

20. In her June 26, 2017 email to Engel, referred to in paragraph 19, above, Respondent described what she perceived to be errors in Judge Finnegan's June 23, 2017 order, characterized the order as "flawed", accused Judge Finnegan of engaging in *ex parte* communications, and stated, in part, the following:

> "Plaintiff's motion is not late just because this court decided not to extend discovery deadlines, to protect the Defendant! I have asked this court numerous times for an extension of all cutoff deadlines, without avail. Take this into account when drafting your flawed order."
>
> * * *
>
> "For anyone to insult me in this degree calls questions [sic] this court's sincerity and veracity. How dare you accuse me of not having looked at the SC docket regularly."
>
> * * *
>
> "How do you know I did not see the SC order???? Where do you get this information? Ex Parte communications with Defendant's attorney, Scott? - smearing dirt behind my back?"
>
> * * *
>
> "The more I read this order, again and again, I am sick to my stomach, and I get filled with anger and disgust over this 'fraudulent' order by this court!"
>
> * * *
>
> "You both, Allison and J. Finnegan, have done me wrong, and depicted me very poorly in your public order. How dare you do that to me?! What goes around comes around, justice will be done at the end! I wonder how you people sleep at night? Including Scott! Thank you Allison! Great job!"

21. At the time Respondent wrote and sent the emails described in paragraphs 13, 18, and 20, above, Respondent's conduct was disruptive and was intended to disrupt the court. At the time Respondent sent the emails described in paragraphs 13, 18, and 20, above, Respondent

knew or should have known that her statements to Judge Finnegan and her staff members would unnecessarily prolong the proceeding, and disparage the court and its process.

22. At the time Respondent wrote and sent the emails described in paragraphs 13, 18, and 20, above, Respondent's statements about Judge Finnegan's integrity and impartiality were false.

23. At the time Respondent wrote and sent the emails described in paragraphs 13, 18, and 20, above, Respondent knew that her statements about Judge Finnegan's integrity and impartiality were false or made with reckless disregard as to their truth or falsity.

24. On June 27, 2017, Judge Finnegan entered an order in case number 14-cv-08431 admonishing Respondent for violating her directives regarding the proposed order account in her April 19, 2017 email, referred to in paragraph 14, above, and for making statements in her emails which Judge Finnegan described as "highly inappropriate." Judge Finnegan ordered Respondent to immediately cease all email communications with her and her staff, ordered Respondent to address any scheduling issues by contacting only the courtroom deputy, and that additional action would be taken to address Respondent's conduct.

25. On October 31, 2017, after the conclusion of Epstein's federal action and state dissolution of marriage proceeding, Judge Finnegan submitted a complaint to the Executive Committee of the United States District Court for the Northern District of Illinois ("Executive Committee") based on Respondent's conduct, described in paragraphs 13, 18, and 20, above.

26. On November 14, 2017, the Executive Committee issued a citation ordering Respondent to respond to Judge Finnegan's submission, and inform the court why the imposition of discipline against her would be unwarranted.

27. On January 22, 2018, following Respondent's citation response and the Executive Committee's review of the matter, the Executive Committee entered an order finding that Respondent engaged in the conduct described paragraphs 13, 18, and 20, above, in violation of Rules 3.5(d) and 8.4(d) of the Rules of Professional Conduct. In imposing discipline on Respondent for her conduct, the Executive Committee's order suspended Respondent from practicing before the General Bar for a period of six months from, and the Trial Bar for a period of 12 months, and prohibited her from serving as lead counsel in any trial for at least one year. The order also required that, as part of any reinstatement petition, Respondent must demonstrate having sought professional assistance in her compliance with the Rules of Professional Conduct and anger management.

28. By reason of the conduct described above, Respondent has engaged in the following misconduct:

a. engaging in conduct intended to disrupt a tribunal, by conduct including sending emails on April 18, 2017, June 23, 2017 and June 26, 2017 to Judge Finnegan, Allison Engel, and Scott White, through the Proposed Order email account, which were disruptive and were intended to disrupt the court, in violation of Rule 3.5(d) of the Illinois Rules of Professional Conduct (2010);

b. making a statement that a lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, by conduct including drafting and sending emails which questioned Judge Finnegan's integrity and impartiality by stating, in part: "Scott is the lucky guy who senses same as he can just pick up the phone to call you knowing he will get his way…" in her April 18, 2017 email; "And I will call him to testy [sic] at trial to show the world what a corrupt lawyer he is! And the judges who protect this criminal by squeezing the discovery deadlines!!!" and "Judges are helping the criminal to escape punishment by forcing to shorten all deadlines!!! This Judge is violating my client's rights first by truncated discovery deadlines and now helping Plaintiff to escape punishment for

wrongs she committed!" in her June 23, 2017 email; and "For anyone to insult me in this degree calls questions [sic] this court's sincerity and veracity," "Where do you get this information? Ex Parte communications with Defendant's attorney, Scott? - smearing dirt behind my back?" and "The more I read this order, again and again, I am sick to my stomach, and I get filled with anger and disgust over this 'fraudulent' order by this court!" in her June 26, 2017 email, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct (2010); and

c. engaging in conduct that is prejudicial to the administration of justice, by conduct including sending emails on April 18, 2017, June 23, 2017 and June 26, 2017 to Judge Finnegan through the Proposed Order email account, which necessitated additional actions taken by Judge Finnegan and caused the expenditure of additional court resources, including Judge Finnegan's April 18, 2017 email to the parties limiting Respondent's future use of the proposed order email account, the entry of Judge Finnegan's June 27, 2017 court order prohibiting Respondent from sending any emails to her or her staff, and Judge Finnegan's referral of Respondent's conduct to the Executive Committee of the United States District Court for the Northern District of Illinois, in violation of Rule 8.4(d) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator respectfully requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact and law, and a recommendation for such discipline as is warranted.

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Christopher Heredia
Christopher Heredia

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Counsel for the Administrator
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MAINLIB_#1160562_v1

In re Nejla K. Lane
Attorney-Respondent

Commission No. 2019PR00074

Synopsis of Hearing Board Report and Recommendation
(November 2021)

The Administrator filed a one-count Complaint against Respondent, alleging she sent multiple emails to a magistrate judge and her law clerk that contained false or reckless statements impugning the judge's integrity, were intended to disrupt the tribunal, and prejudiced the administration of justice. The Hearing Panel found the Administrator proved the charged misconduct by clear and convincing evidence. It recommended that Respondent be suspended for nine months, with the suspension stayed after six months by six months of probation.

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of: **NEJLA K. LANE,** Attorney-Respondent, No. 6290003.	Commission No. 2019PR00074

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

Respondent engaged in misconduct when she sent multiple emails to a magistrate judge and her law clerk containing false or reckless statements impugning the judge's integrity. Based on the pattern of misconduct, the factors in aggravation, the minimal factors in mitigation, and the relevant case law, we recommend that Respondent be suspended for nine months, with the suspension stayed after six months by six months of probation.

INTRODUCTION

The hearing in this matter was held remotely by video conference on March 16 and 17, 2021, before a Panel of the Hearing Board consisting of Stephen S. Mitchell, Chair, Giel Stein, and Julie McCormack. Marcia Topper Wolf represented the Administrator. Respondent was present and represented herself.

PLEADINGS

The Administrator's one-count Complaint alleges Respondent engaged in misconduct by sending emails containing false or reckless statements about Magistrate Judge Sheila Finnegan to

the judge's proposed order account and other persons. In her Answer, Respondent admits she drafted and sent the emails at issue but denies engaging in misconduct.

ALLEGED MISCONDUCT

The Administrator charged Respondent with the following misconduct: (1) in representing a client, engaging in conduct intended to disrupt a tribunal; (2) making a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge; and (3) engaging in conduct that is prejudicial to the administration of justice, in violation of Rules 3.5(d), 8.2(a), and 8.4(d) of the Illinois Rules of Professional Conduct (2010).

EVIDENCE

The Administrator presented testimony from Respondent as an adverse witness. The Administrator's Exhibits 1-13 were admitted into evidence. (Tr. 16). Respondent testified on her own behalf and presented Michael Fields as a character witness. Respondent's Exhibits 1.1-1.3, 2.1-2.3, 3.1, 3.3, 3.4, 5.9, 5.10, 5.28, 5.30, 5.31, 5.33-5.38, 6.1-6.3, 9.23, 10.1-10.5, 11.3, 11.5, 11.7, and 11.8 were admitted into evidence. (Tr. 487-521).[1]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Administrator bears the burden of proving the charges of misconduct by clear and convincing evidence. In re Thomas, 2012 IL 113035, ¶ 56. Clear and convincing evidence constitutes a high level of certainty, which is greater than a preponderance of the evidence but less stringent than proof beyond a reasonable doubt. People v. Williams, 143 Ill. 2d 477, 577 N.E.2d 762 (1991). The Hearing Board assesses witness credibility, resolves conflicting testimony, makes factual findings, and determines whether the Administrator met the burden of proof. In re Winthrop, 219 Ill. 2d 526, 542-43, 848 N.E.2d 961 (2006).

Respondent is charged with making false or reckless statements impugning Magistrate Judge Finnegan's integrity, engaging in conduct intended to disrupt a tribunal, and engaging in conduct prejudicial to the administration of justice, in violation of Rules 3.5(d), 8.2(a) and 8.4(d).

A. Summary

The Administrator proved by clear and convincing evidence that Respondent sent three emails to Magistrate Judge Finnegan's email account containing statements about Magistrate Judge Finnegan's integrity that were false or made with reckless disregard as to their truth or falsity. By sending the inappropriate emails, particularly after being instructed not to do so, Respondent engaged in conduct that disrupted the tribunal and prejudiced the administration of justice.

B. Admitted Facts and Evidence Considered

Respondent has been licensed to practice in Illinois since 2006. She is also licensed in Texas and Michigan. (Tr. 54-55).

Barry Epstein hired Respondent in 2012 to represent him in a dissolution proceeding filed by Paula Epstein. In 2014, Respondent filed a complaint on Barry's behalf in the United States District Court for the Northern District of Illinois, alleging that Paula and her attorney, Jay Frank, violated federal law by accessing Barry's private emails without his authorization. (Tr. 55). Magistrate Judge Sheila Finnegan (Judge Finnegan) supervised discovery in the federal proceeding. Judge Finnegan maintained an email account known as the "proposed order account". The charges before us arise from three email messages Respondent sent to the proposed order account and others involved in the Epstein proceedings. (Tr. 56).

Respondent sent the first email at issue on April 18, 2017, after Judge Finnegan denied her emergency motion for an extension of time to take Paula's deposition. Respondent sent the email

to the proposed order account, opposing counsel Scott Schaefers, and Scott White, the courtroom deputy. It stated as follows in relevant part:

> Today in court, no matter what I said to you, you had already made up your mind, and even questioned my sincerity with regard to my preparation for upcoming trial.
>
> ***
>
> . . . since the beginning, you never seem to doubt anything he [Schaefers] says, as you appear to doubt me. Still, I stated to you in open court that "I don't want to be hated" for doing my job, but it sure seems that way, as I never get a break. Scott is the lucky guy who senses same as he can just pick up the phone to call you knowing he will get his way…or for so-called the Posner Defense[2].
>
> ***
>
> It's not fair that my client (and I) is [sic] being treated badly for suing his wife/ex wife, and everyone is protecting Paula – why? Since when does "two" wrongs make a "right"? [sic] How am I to prove my case if I am not given a fair chance to do my work, properly.

(Adm. Ex. 1).

The following day, Judge Finnegan instructed Respondent that the parties were not to use the proposed order account to argue the merits of a motion, share their feelings about a ruling, or talk generally about the case with her. She told Respondent her email was improper and directed her not to send any such emails in the future. (Adm. Ex. 1). Respondent received and understood Judge Finnegan's instructions. (Tr. 69-70).

On June 15, 2017, Respondent filed a motion to extend discovery and for leave to depose Jay Frank. Judge Finnegan denied the motion. Allison Engel, Judge Finnegan's law clerk, emailed a copy of Judge Finnegan's order to Respondent and Schaefers at 6:37 p.m. on June 23, 2017. Two hours later, Respondent sent an email to Engel, Schaefers, and the proposed order account which stated as follows, in relevant part:

> I'm very upset, I do not agree with Judge Finnegan's order and I will depose the former co-defendant, Jay Frank, despite the fact this court is protecting him and his co-conspirer! Scott Schaefers had no standing to challenge my subpoena to depose

> Jay Frank! I'm entitled to depose him! And I will call him to testy [sic] at trial to show the world what a corrupt lawyer he is! And the judges who protect this criminal by squeezing the discovery deadlines!!! No no no!
>
> This is outrageous order of Judge Finnegan and it will be addressed accordingly! Judges are helping the criminal to escape punishment by forcing to shorten all deadlines!!!
>
> This Judge is violating my client's rights first by the truncated discovery deadlines and now helping Plaintiff to escape punishment for wrongs she committed!
>
> I'm outraged by the miscarriage of justice and judges are in this to delay and deny justice for my client!
>
> I'm sickened by this Order!!!

(Adm. Ex. 2).

On June 26, 2017, Respondent sent another email to Engel, Schaefers, and the proposed order account, which stated as follows in relevant part:

> Plaintiff's motion is not late just because this court decided not to extend discovery deadlines, to protect the Defendant! I have asked this court numerous times for an extension of all cutoff deadlines, without avail. Take this into account when drafting your flawed order.
>
> ***
>
> For anyone to insult me in this degree calls questions [sic] this court's sincerity and veracity. How dare you accuse me of not having looked at the SC docket regularly.
>
> ***
>
> How do you know I did not see the SC order???? Where do you get this information? Exparte communications with Defendant's attorney, Scott? – smearing dirt behind my back?
>
> The more I read this order, again and again, I am sick to my stomach, and I get filled with anger and disgust over this 'fraudulent' order by this court!
>
> ***
>
> You both, Allison and J. Finnegan, have done me wrong, and depicted me very poorly in your public order. How dare you do that to me?!
>
> What goes around comes around, justice will be done at the end! I wonder how you people sleep at night? Including Scott!

(Adm. Ex. 3).

On June 27, 2017, Judge Finnegan entered an order admonishing Respondent for violating her directives related to the proposed order account and making highly inappropriate statements. Judge Finnegan directed Respondent to immediately cease all email communication with her and her staff. (Adm. Ex. 4).

Respondent acknowledged it was wrong to send the emails but presented numerous explanations for her conduct. She testified she was under a great deal of stress due to a short discovery schedule in the federal case, her client's abusive behavior, and a dispute with a former partner. (Tr. 190-91, 213-217). She further testified she made poor word choices because English is not her native language and she wrote the emails "in the heat of the moment" when she felt the court was insulting her. In addition, she testified that the purpose of the proposed order account was unclear. (Tr. 164, 292). With respect to the second and third emails, she did not think she was violating Judge Finnegan's directives because she addressed the emails to Judge Finnegan's law clerk rather than to Judge Finnegan. (Tr. 68, 77).

Respondent's belief that she and her client were not being treated fairly was based upon the entirety of the record, including the short discovery schedule and rulings that were not favorable to her client. (Tr. 67-68).

After the Epstein matter ended, Judge Finnegan submitted a complaint about Respondent's conduct to the Executive Committee of the United States District Court for the Northern District of Illinois (Executive Committee). On January 22, 2018, the Executive Committee suspended Respondent from the general bar for six months and the trial bar for twelve months. The Executive Committee found that Respondent used "unprofessional, inappropriate, and threatening language" in her emails. In order to be reinstated, Respondent was required to demonstrate that she obtained professional assistance with managing her anger and complying with the Rules of Professional

Conduct. (Adm. Ex. 7). The Executive Committee reinstated Respondent to the general bar on August 7, 2018 and the trial bar on June 11, 2019. (Adm. Exs. 9, 10).

C. Analysis and Conclusions

Rule 8.2(a)

Attorneys may express disagreement with a judge's rulings but, as officers of the court, have a duty to protect the integrity of the courts and the legal profession. In re Walker, 2014PR00132, M.R. 28453 (March 20, 2017) (Hearing Bd. at 19-20). Consequently, Rule 8.2(a) prohibits an attorney from making a statement concerning the qualifications or integrity of a judge that she knows to be false or with reckless disregard as to its truth or falsity. Ill. R. Prof'l Conduct 8.2(a). Respondent is charged with violating Rule 8.2(a) when she made the statements set forth above impugning Judge Finnegan's integrity. We find the Administrator proved this charge by clear and convincing evidence.

It is undisputed that Respondent made the statements at issue. The fact that she made them in email messages rather than in a pleading or document available to the public makes no difference. Rule 8.2(a) applies broadly, with no limitation as to where or how a statement is made.

The statements at issue clearly pertained to Judge Finnegan's qualifications and integrity. Respondent not only expressly questioned Judge Finnegan's "sincerity and veracity" but accused her of protecting and assisting criminal conduct, participating in improper *ex parte* communications with attorney Schaefers, and entering a "fraudulent" order. These statements unquestionably crossed the line from expressing disagreement with rulings to making unsubstantiated accusations that maligned Judge Finnegan's honesty. An attorney violates Rule 8.2(a) by making such statements without a reasonable basis for believing they are true. There is no such reasonable basis on the record before us.

Although Respondent disputes that she knowingly or recklessly made false statements, she had no objective, factual basis for her comments. Subjective belief, suspicion, speculation, or conjecture does not constitute a reasonable belief. Walker, 2014PR00132 (Hearing Bd. at 21). Here, Judge Finnegan, who is presumed to be impartial, set forth the factual and legal reasons why she denied Respondent's requests to extend discovery. For Respondent to assert that Judge Finnegan made her rulings to deny justice to Barry Epstein and protect criminal conduct, rather than for the reasons articulated in her orders, was unreasonable and untenable. Respondent was not entitled to decisions in her client's favor, and a judge's rulings alone "almost never constitute a valid basis for a claim of judicial bias or partiality". See Eychaner v. Gross, 202 Ill. 2d 228, 280 (2002). Likewise, there are no objective facts whatsoever to support Respondent's accusations that Judge Finnegan's conduct was "fraudulent" or that she engaged in improper *ex parte* communications.

Accordingly, we find that the Administrator established by clear and convincing evidence that Respondent made statements concerning Judge Finnegan's qualifications and integrity that were false or made with reckless disregard for their truth or falsity, in violation of Rule 8.2(a).

Rule 3.5(d)

Rule 3.5(d) provides that a lawyer shall not engage in conduct intended to disrupt a tribunal. Ill. R. Prof'l Conduct 3.5(d). The duty to refrain from disruptive conduct applies to any proceeding of a tribunal. Comment [5] to Rule 3.5.

We find Respondent violated Rule 3.5(d) when she misused the proposed order account to express her anger with Judge Finnegan's rulings and make unfounded accusations against Judge Finnegan. Respondent's contention that the purpose of the proposed order account was unclear lacks merit. Respondent's emails were inappropriate and unprofessional under any circumstances. Moreover, after the first email in question, Judge Finnegan made it absolutely clear to Respondent

that her conduct was improper. The fact that Respondent continued to send inappropriate emails to the proposed order account after Judge Finnegan directed her to stop demonstrates that she acted with an intent to disrupt the tribunal.

Rule 8.4(d)

Rule 8.4(d) prohibits an attorney from engaging in conduct prejudicial to the administration of justice. Ill. R. Prof'l Conduct 8.4(d). In order to prove a violation of this Rule, the Adminstrator must establish actual prejudice. Evidence that a court had to spend time and resources addressing an attorney's inappropriate conduct establishes actual prejudice. See In re Cohn, 2018PR00109, M.R. 30545 (Jan. 21, 2021) (Hearing Bd. at 12). Here, the evidence that Judge Finnegan had to address Respondent's inappropriate conduct on two occasions and ultimately prohibit her from sending email to her and her staff was sufficient to establish actual prejudice to the administration of justice and a violation of Rule 8.4(d).

EVIDENCE IN AGGRAVATION AND MITIGATION

Aggravation

On July 4, 2017, Respondent sent an email to Barry Epstein's daughter accusing her and her mother of "destroying" Epstein. The email further stated, "You have no shame or respect…You and your loving, greedy mother will take nothing when you go face God or rot instead in hell…so if anything happens to your father, the blood is in your hands and your mother's hands". Respondent testified she got carried away when she wrote this email. (Tr. 296-97).

Mitigation

Respondent testified at length about stressful circumstances in her life around the time she sent the emails at issue. Her client, Barry Epstein, was abusive and threatening. She felt she was his "slave" and believes she is now being punished for doing his dirty work. (Tr. 213, 217). In

addition, in 2015 she was involved in a lawsuit against her former partner, which caused her stress. Respondent accused the former partner of stealing money and data from her. (Tr. 190-91).

Respondent has attended 40 to 50 sessions pertaining to anger management with Tony Pacione of the Lawyers Assistance Program. She also had what she considered to be informal therapy sessions with Dr. Michael Fields. (Tr. 336-337). Respondent presented evidence of legal education courses she has taken in order to fulfill her MCLE and PMBR requirements. (Resp. Ex. 9).

Since approximately 2007, Respondent has assisted the Turkish Consulate General and the Turkish community in Chicago with legal issues. (Tr. 417-18).

Dr. Michael Fields, a clinical and forensic psychologist, testified as a character witness. He has known Respondent for ten years. Respondent has hired him to perform evaluations of clients in immigration and criminal matters. (Tr. 353). He has not heard anything negative about Respondent. (Tr. 387). She expressed regret to him for writing the emails. (Tr. 373).

Prior Discipline

Respondent does not have any prior discipline from the Illinois Supreme Court.

RECOMMENDATION

A Summary

Based on the serious nature of the misconduct, the factors in aggravation, and the minimal amount of mitigation, the Hearing Board recommends that Respondent be suspended for nine months, with the suspension stayed after six months by six months of probation.

B. Analysis

The purpose of the disciplinary process is not to punish attorneys, but to protect the public, maintain the integrity of the legal profession, and safeguard the administration of justice from reproach. In re Edmonds, 2014IL117696, ¶ 90. In arriving at our recommendation, we consider

these purposes as well as the nature of the misconduct and any factors in mitigation and aggravation. In re Gorecki, 208 Ill. 2d 350, 360-61 (2003). We seek to recommend similar sanctions for similar types of misconduct, but must decide each case on its own unique facts. Edmonds, 2014IL117696,¶ 90.

The Administrator asks us to recommend a suspension of six months and until further order of the court. Respondent asserts no suspension is warranted because the federal court has already disciplined her for the misconduct at issue.

Respondent's false accusations against Judge Finnegan were very serious. The Supreme Court has made clear that unfounded attacks on the judiciary have the potential to damage the reputation of the judge involved and to undermine confidence in the integrity of the entire judicial process. This is the case even when the improper statements were made in a communication that was not available to the public, such as a telephone call or letter. See In re Hoffman, 2008PR00065, M.R. 24030 (Hearing Bd. at 42-43).

There is mitigation in this case. Respondent has been licensed since 2006 and has no prior discipline. She cooperated in this proceeding. Her misconduct arose from a misguided effort to help her client and not from a dishonest or improper motive. We also consider Respondent's service to the Turkish community in the Chicago area as another mitigating factor.

Respondent testified at length about the stressful circumstances in her life at the time of the misconduct. We accept Respondent's testimony but, for the following reasons, do not give it significant weight in mitigation. If a Respondent's circumstances contributed to an aberration in his or her behavior, we may consider that in mitigation. See In re Czarnik, 2016PR00131, M.R. 029949 (Sept. 16, 2019) (Hearing Bd. at 48). While we do not doubt that Respondent was under stress, her testimony and conduct in this disciplinary hearing lead us to conclude that her misconduct was not an aberration. Although Respondent expressed that what she did was wrong,

she spent a great deal of time maligning others and presenting numerous excuses for lashing out against Judge Finnegan. It also concerns us that Respondent called one of the Administrator's questions "so stupid" and accused others of criminal conduct in attempting to justify her own wrongful behavior. Based on these observations, we believe Respondent still has work to do on addressing and managing her anger.

Similarly, we do not give substantial weight to Respondent's expressions of remorse due to her repeated efforts to minimize the misconduct and portray herself as a victim. Respondent showed little concern for the effects of her words on Judge Finnegan or the legal profession.

In aggravation, we agree with the Executive Committee that Respondent's language toward Judge Finnegan and Allison Engel was threatening, in addition to being inappropriate and unprofessional. Respondent used particularly aggressive language in the June 26, 2017 email, which the recipients could have reasonably interpreted as threatening and concerning. Respondent used similarly inappropriate language in her email to Barry Epstein's daughter. Such language has no place in any legal matter.

Contrary to Respondent's assertion that she sent the emails "in the heat of the moment," they were not spontaneous outbursts. Respondent was not required to respond to Judge Finnegan and Allison Engel but chose to do so. She also had the time and opportunity to reflect on her words and actions before sending the emails, but instead chose to proceed with conduct she should have known was improper.

We further find that Respondent was not completely candid in her testimony. For example, she testified that when she sent the emails complaining about Judge Finnegan's order to Allison Engel, she thought she was just having a "lawyer to lawyer" conversation with Engel. This testimony is simply not plausible or truthful given Respondent's knowledge that Engel was Judge Finnegan's law clerk and had acted on Judge Finnegan's behalf in transmitting the orders.

Respondent's testimony that she was merely responding to Judge Finnegan and Allison Engel was also less than candid. No response was required, and Respondent's angry accusations clearly were not invited or appropriate under any circumstance.

Of the Administrator's cited cases, we find the misconduct in this case most similar to In re Sides, 2011PR00144, M.R. 26732 (Nov. 13, 2014). Sides falsely asserted in several pleadings that three specific judges and all of the judges in the Sixth Judicial Circuit were biased and had colluded against him. Similar to Respondent, Sides expressed remorse and recognized his language was inappropriate, but still believed the court had treated him unfairly. Sides, 2011PR00144 (Hearing Bd. at 60-61). Sides was suspended for five months, with the suspension stayed after 120 days by two years of probation. The probationary conditions included working with a supervising attorney who reviewed and appraised Sides' legal work. Sides, 2011PR00144 (Hearing Bd. at 68).

The recent case of In re Cohn, 2018PR00109, M.R. 030545 (Jan. 21, 2021) is instructive as well. Cohn was suspended for six months and until he completed the ARDC Professionalism Seminar for using vulgar and abusive language toward opposing counsel and making false accusations against a judge. Similar to Cohn, Respondent has no prior discipline but engaged in conduct during the hearing that was similar in nature to the proven misconduct. Unlike Respondent, Cohn had the additional misconduct of using vulgar and demeaning language toward opposing counsel.

We decline to rely on Hoffman, 2008PR00065, (Sept. 22, 2010) (six-month suspension until further order of the court for making insulting and disparaging comments about a judge and an administrative law judge and directing an insulting comment toward another attorney based on his ethnicity) or In re Walker, 2014PR00132, M.R.28453 (March 20, 2017) (two-year suspension until further order of the court for filing six pleadings attacking the integrity of several appellate

court justices). The misconduct in those cases was more extensive than the misconduct in the matter before us. Moreover, neither Hoffman nor Walker showed any recognition that they had acted improperly, which is not the case here.

Respondent did not cite any cases in support of her contention that no suspension is warranted.

Due to the serious nature of the misconduct and the substantial aggravating circumstances, we conclude that a period of suspension is warranted. Although the misconduct was limited to one matter, it is significant that Respondent knowingly defied Judge Finnegan's directives and used language that was not only inappropriate and unprofessional but threatening. We believe it is necessary to recommend a sanction that will deter Respondent and other attorneys from engaging in such conduct in the future.

We do not agree with Respondent that no suspension is warranted because the federal court already suspended her for the same misconduct. While we take that fact into consideration, we also note that the federal discipline did not affect Respondent's state practice. For this reason, the previous sanction was not the equivalent of a suspension from the Illinois Supreme Court. See In re Craddock, 2017PR00115, M.R. 030266 (March 13, 2020) (Hearing Bd. at 20-21). As in Craddock, we determine that additional discipline is warranted, even after taking the federal discipline into account.

We do not agree with the Administrator that a suspension until further order of the court (UFO) is necessary. A suspension UFO is the most severe sanction other than disbarment. In re Timpone, 208 Ill. 2d 371, 386, 804 N.E.2d 560 (2004). It is typically reserved for cases where there are issues of mental health or substance abuse, a disregard of ARDC proceedings, or other factors that call into question the attorney's ongoing fitness to practice law consistent with the Rules of Professional Conduct. In re Forrest, 2011PR00011, M.R. 26358 (Jan. 17, 2014). The

Administrator has not articulated what circumstances in this case warrant a suspension UFO, and we do not find any such circumstances on the record before us. Respondent recognizes that she acted inappropriately, even though she continues to place some of the blame for her conduct on others. In our view, this belief does not render her unfit to resume practice once the term of suspension is completed.

That said, based on our observations of Respondent, we believe she would benefit from a period of probation focused on her professionalism and communications with others. We also note that, while Respondent is a zealous advocate, her representation of herself in this proceeding was disorganized and often not on point. These issues support our recommendation that Respondent would benefit from a period of probation that includes working with a mentor.

Having considered the purposes of the disciplinary process, the nature of Respondent's misconduct, the factors in aggravation and mitigation, and the cases cited above, we recommend that Respondent, Nejla K. Lane, be suspended for nine months, with the suspension stayed after six months by six months of probation subject to the following conditions:

a. Respondent's practice of law shall be supervised by a licensed attorney acceptable to the Administrator. Respondent shall provide the name, address, and telephone number of the supervising attorney to the Administrator. Within the first thirty (30) days of probation, Respondent shall meet with the supervising attorney and meet at least once a month thereafter. Respondent shall authorize the supervising attorney to provide a report in writing to the Administrator, no less than once every quarter, regarding Respondent's cooperation with the supervising attorney, the nature of Respondent's work, and the supervising attorney's general appraisal of Respondent's practice of law;

b. Respondent shall provide notice to the Administrator of any change in supervising attorney within fourteen (14) days of the change;

c. Prior to the completion of the period of probation, Respondent shall attend and successfully complete the ARDC Professionalism Seminar;

d. Respondent shall comply with the provisions of Article VII of the Illinois Supreme Court Rules on Admission and Discipline of Attorneys and the

Illinois Rules of Professional Conduct and shall timely cooperate with the Administrator in providing information regarding any investigations relating to her conduct;

e. Respondent shall attend meetings as scheduled by the Commission probation officer;

f. Respondent shall notify the Administrator within fourteen (14) days of any change of address;

g. Respondent shall reimburse the Commission for the costs of this proceeding as defined in Supreme Court Rule 773, and shall reimburse the Commission for any further costs incurred during the period of probation; and

h. Probation shall be revoked if Respondent found to have violated any of the terms of probation. The remaining period of suspension shall commence from the date of the determination that any term of probation has been violated.

Respectfully submitted,

Stephen S. Mitchell
Giel Stein
Julie McCormack

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on November 4, 2021.

Michelle M. Thome

Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

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[1] The record remained open until May 4, 2021 to allow Respondent to organize her voluminous group exhibits in conformance with Commission rules and procedures. The Administrator was allowed to file written objections to Respondent's proposed exhibits, and Respondent was allowed to file a written response to the objections. The Administrator was then granted leave to file a reply, and Respondent was granted leave to file a surreply. An exhibit conference with the Chair and the parties took place on May 4, at which time the Chair ruled on Respondent's exhibits.

[2] The "Posner defense" refers to Judge Posner's comments in his concurring opinion in Epstein v. Epstein, 843 F.3d 1147 (7th Cir. 2016), which, according to Respondent, contributed to the difficulties she was experiencing.

In re Nejla K. Lane
Respondent-Appellant
Commission No. 2019PR00074

Synopsis of Review Board Report and Recommendation
(July 2022)

The Administrator brought a one-count complaint against Respondent, charging her with making a false or reckless statement impugning the integrity of a judge; engaging in conduct intended to disrupt a tribunal; and engaging in conduct that was prejudicial to the administration of justice, in violation of Rules 3.5(d), 8.2(a), and 8.4(d) of the Illinois Rules of Professional Conduct. The complaint alleged that Respondent sent three emails to a federal magistrate judge and others that contained false and reckless statements attacking the judge's integrity, which were intended to disrupt the court proceedings, and which prejudiced the administration of justice.

The Hearing Board found that Respondent had committed the charged misconduct and recommended that Respondent be suspended for nine months, with the suspension stayed after six months by a six-month period of probation, subject to conditions including supervision of her law practice.

Respondent appealed, challenging the Hearing Board's findings of misconduct and sanction recommendation, and asking that this matter be dismissed, or that the sanction be limited to a reprimand or censure.

The Review Board affirmed the Hearing Board's findings, and recommended that Respondent be suspended for nine months, with the suspension stayed after six months by a six-month period of probation, subject to the recommended conditions.

FILED

July 12, 2022

ARDC CLERK

BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

NEJLA K. LANE,

Respondent-Appellant,

No. 6290003.

Commission No. 2019PR00074

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

The Administrator brought a one-count complaint, charging Respondent with making a false or reckless statement impugning the integrity of a judge; engaging in conduct intended to disrupt a tribunal; and engaging in conduct that was prejudicial to the administration of justice, in violation of Rules 3.5(d), 8.2(a), and 8.4(d) of the Illinois Rules of Professional Conduct.

The complaint alleged that Respondent sent three emails to a federal magistrate judge and others that contained false and reckless statements attacking the judge's integrity, which were intended to disrupt the court proceedings, and which prejudiced the administration of justice.

Following a hearing at which Respondent appeared *pro se*, the Hearing Board found that Respondent had committed the charged misconduct and recommended that Respondent be suspended for nine months, with the suspension stayed after six months by a six-month period of probation, subject to conditions including supervision of her law practice.

Respondent appealed, challenging the Hearing Board's findings of misconduct and sanction recommendation, and asking that this matter be dismissed, or that the sanction be limited

to a reprimand or censure. The Administrator argues that the Hearing Board's findings should be affirmed and asks this Board to adopt the Hearing Board's recommended sanction.

For the reasons that follow, we affirm the Hearing Board's findings, and agree with its recommendation that Respondent be suspended for nine months, with the suspension stayed after six months by a six-month period of probation, subject to the recommended conditions.

FACTS

Respondent

Respondent has been licensed to practice law in Illinois since 2006. She is also licensed to practice law in Texas and Michigan. She is a solo practitioner, and her law firm – Lane Keyfli Law, Ltd. – focuses on civil, criminal, and immigration matters. She has no prior discipline.

Respondent's Misconduct

Respondent represented Barry Epstein in a divorce proceeding in 2012. Respondent filed a lawsuit in federal court in 2014, on behalf of Epstein, alleging that his wife, Paula Epstein, and her divorce attorney violated the federal wiretap statute by illegally accessing Epstein's emails. Magistrate Judge Sheila Finnegan ("the judge") supervised the discovery process in the federal case. The judge had an email account, known as the proposed order box, which allowed litigants to electronically submit proposed orders to the judge, and to address certain scheduling issues.

Respondent's First Email - April 18, 2017

In April 2017, Respondent filed an emergency motion seeking an extension of time to depose Paula Epstein. After hearing argument on the motion, the judge denied the motion. On April 18, Respondent sent an email to the judge asking her to reconsider that denial based on a supplemental filing made by opposing counsel. The judge denied Respondent's request.

That evening, Respondent sent another email to the judge, with copies to opposing counsel (Scott Schaefers), and to the judge's courtroom deputy. Respondent submitted the email

to the judge through the proposed order box. Respondent's email stated the following, in relevant part:

> Thank you for this quick response, Judge Finnegan.
>
> BUT…Today in court, no matter what I said to you, you had already made up your mind, and even questioned my sincerity with regard to my preparation for upcoming trial. ***
>
> [S]ince the beginning, you never seem to doubt anything [Scott Schaefers] says, as you appear to doubt me. Still, I stated to you in open court that "I don't want to be hated" for doing my job, but it sure seems that way, as I never get a break. Scott [Schaefers] is the lucky guy who senses same as he can just pick up the phone to call you knowing he will get his way. ***
>
> [A]ll the judges and attorneys…seemed to be emotionally charged and allowing their own emotions to rule instead of being objective …. And I do not get the RESPECT I deserve either for doing my job. ***
>
> Still, it's not fair that my client (and I) is being treated badly for suing his wife/ex wife, and everyone is protecting Paula [Epstein] – why? Since when does "two" wrongs make a "right"? How am I to prove my case if I am not given a fair chance to do my work, properly.

(Adm. Ex. 1 at 1-2.)

Judge Finnegan's Directive to Respondent

On April 19, 2017, the judge sent an email to Respondent, and her opposing counsel, in which the judge stated:

> As a convenience to parties, I sometimes allow them to communicate by email (to the proposed order box) regarding scheduling issues. I do not, however, allow lawyers to send emails to argue the merits of a motion, to share their feelings about my past rulings, or to talk generally about the case with me. Outside of the settlement context, everything must be filed so that it is part of the record. Therefore, you are not to send any future emails to my proposed order box such as the one sent yesterday. It is improper. I also do not wish to be copied on emails that the lawyers send to each other. If I receive another email of this type, I will enter an order that

> no emails of any kind may be sent to the proposed order box without leave of court.

(Adm. Ex. 1 at 1.) Respondent testified at the disciplinary hearing that she received the judge's email and understood it. (Tr. 70-71.)

Respondent's Second Email – June 23, 2017

In June 2017, Respondent filed a motion seeking to extend discovery and requesting permission to depose Jay Frank, opposing counsel in the divorce proceeding. The judge denied that motion in a written order. On June 23, the judge's law clerk emailed a copy of that order to Respondent and her opposing counsel, stating it would be uploaded to the docket in two days.

Two hours later, in contravention of the judge's directive, Respondent sent an email to the proposed order box and to opposing counsel, with a copy to the judge's law clerk, Allison Engel, in which Respondent stated:

> Dear Allison,
>
> I'm very upset, I do not agree with Judge Finnegan's order and I will depose … Jay Frank, despite the fact this court is protecting him and his co-conspirer! Scott Schaefers had no standing to challenge my subpoena to depose Jay Frank! I'm entitled to depose him! And I will call him to [testify] at trial to show the world what a corrupt lawyer he is! And the judges who protect this criminal by squeezing the discovery deadlines!!! No no no!
>
> This is outrageous order of Judge Finnegan and it will be addressed accordingly! Judges are helping the criminal to escape punishment by forcing to shorten all deadlines!!!
>
> This Judge is violating my client's rights first by the truncated discovery deadlines and now helping Plaintiff to escape punishment for wrongs she committed!
>
> I'm outraged by the miscarriage of justice and judges are in this to delay and deny justice for my client!
>
> I'm sickened by this Order!!!

(Adm. Ex. 2 at 1.)

Respondent's Third Email – June 26, 2017

On June 26, 2017, again in contravention of the judge's directive, Respondent sent an email to the proposed order box and to the judge's law clerk, with a copy to opposing counsel, in which Respondent stated the following, in relevant part:

> Dear Allison, ***
>
> Plaintiff's motion is not late just because this court decided not to extend discovery deadlines, to protect the Defendant! I have asked this court numerous times for an extension of all cutoff deadlines, without avail. Take this into account when drafting your flawed order. ***
>
> For anyone to insult me in this degree calls questions this court's sincerity and veracity. How dare you accuse me of not having looked at the [Supreme Court] docket regularly….so refrain from accusing me of such ugly conducts, publicly…. How do you know I did not see the [Supreme Court] order???? Where do you get this information? Ex Parte communications with Defendant's attorney, Scott [Schaefers]? – smearing dirt behind my back?
>
> The more I read this order, again and again, I am sick to my stomach, and I get filled with anger and disgust over this "fraudulent" order by this court! This Court has always treated my client and myself with disrespect!!!! ***
>
> You both, Allison and J. Finnegan, have done me wrong, and depicted me very poorly in your public order. How dare you do that to me?!
>
> What goes around comes around, justice will be done at the end! I wonder how you people sleep at night? Including Scott [Schaefers]!

(Adm. Ex. 3 at 1-2.)

Judge Finnegan's Order

> The next day, the judge issued an order in which she stated:
>
> On 6/23/2017 … and on 6/26/2017 … Attorney Lane sent emails to the proposed order box (also emailed to the Court's law clerk and to opposing counsel) in which she argued the merits of a written Order issued on 6/23/2017 and made several statements that this Court

> considers to be highly inappropriate. Attorney Lane shall immediately cease all email communications with the Court (via the proposed order box or otherwise) and with all members of the Court's staff …. The Court will take further action to address the failure to comply with the Court's directive on 4/19/2017 and the inappropriate content of counsel's two most recent emails in due course.

(Adm. Ex. 4 at 1.)

Judge Durkin's Memorandum and Order addressing Respondent's Claims of Bias

Approximately one month after Respondent sent the three emails, Respondent filed a motion to recuse Judge Finnegan and Judge Thomas M. Durkin, who was presiding over the federal case, claiming that they were biased against Respondent and her client, Barry Epstein. Judge Durkin wrote an opinion denying Respondent's motion for recusal and finding that Judge Finnegan had not acted in a biased manner against Respondent or her client. Judge Durkin stated, in part:

> [Barry Epstein's] affidavit, in large part, tracks the progress of the docket in this matter, summarizing rulings made by Judge Finnegan and this Court regarding scheduling [and] discovery …. [Epstein] prefaces this chronology with his conclusion that "both judges have consistently ruled against me and blocked my progress at every turn."… It is well established that "rulings by the judge almost never constitute a valid basis for a bias or partiality motion." … Indeed, they will only do so "if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." … No such favoritism or antagonism can be gleaned from the rulings in this case. Even the selected docket entries on the plaintiff's timeline show multiple orders favorable to the plaintiff's litigation position …. [T]he discovery and trial schedules impact preparation for both sides, and so tend to be relatively neutral in their effect. It is therefore difficult for the plaintiff to claim that the schedule was biased against him and in favor of the defendant. The Court notes now, as it has previously, that discovery in this case was open for more than five months, which is typical of a case of this size and complexity.

(Appellant's Ex. 5 at 1614-16) (citations and references to the record omitted).

Executive Committee Sanction

After the federal case ended, Judge Finnegan filed a complaint with the federal court's Executive Committee for the Northern District of Illinois concerning Respondent's conduct. In January 2018, the Executive Committee found that Respondent had violated Rules 3.5(d) and 8.4(d) of the Model Rules of Professional Conduct, by engaging in conduct intended to disrupt a tribunal and conduct that was prejudicial to the administration of justice. The Executive Committee issued an order, explaining the need to sanction respondent, stating, in part:

> Despite being advised in writing by Judge Finnegan that the communication was improper, Ms. Lane continued sending lengthy emails, using unprofessional, inappropriate, and threatening language during the course of the proceedings…. Some of the misconduct included referring to Judge Finnegan's orders as "outrageous" and stating that, "Judges are helping the criminal to escape punishment by forcing to shorten all deadlines!!!" … In her response [to the Executive Committee], Ms. Lane apologized to Judge Finnegan …. Ms. Lane attempted to explain her conduct by asserting that she was "under extreme pressure to ensure that justice was served" and that she harbors "deep concerns about Judge Finnegan's impartiality." While Ms. Lane apologized, she continued to support her decision to use unprofessional and inappropriate language.

(Adm. Ex. 7 at 1-2.) The Executive Committee sanctioned Respondent by suspending her from the federal trial bar for twelve months, and from the federal bar for six months. Respondent was eventually reinstated.

Respondent's Testimony and Character Witness

At the disciplinary hearing, Respondent admitted that she sent the three emails to the judge. Respondent testified that it was wrong to send the emails and she regretted having done so. She testified that she believed the judge was biased against her, and was treating her unfairly, based on the judge's actions, which included unfavorable rulings and a short discovery schedule.

Respondent called Dr. Michael Fields as a character witness. He testified that Respondent regretted sending the emails; she was taking the disciplinary proceedings seriously; and he did not believe that Respondent would engage in similar misconduct in the future.

HEARING BOARD'S FINDINGS AND SANCTION RECOMMENDATION

Misconduct Findings

The Hearing Board found that the Administrator proved all of the charges by clear and convincing evidence. Specifically, the Hearing Board found that Respondent's knowing and reckless falsehoods impugning the integrity of the judge violated Rule 8.2(a). The Hearing Board stated,

> The statements at issue clearly pertained to Judge Finnegan's qualifications and integrity. Respondent not only expressly questioned Judge Finnegan's "sincerity and veracity" but accused her of protecting and assisting criminal conduct, participating in improper *ex parte* communications with attorney Schaefers, and entering a "fraudulent" order. These statements unquestionably crossed the line from expressing disagreement with rulings to making unsubstantiated accusations that maligned Judge Finnegan's honesty. An attorney violates Rule 8.2(a) by making such statements without a reasonable basis for believing they are true. There is no such reasonable basis on the record before us.

(Hearing Bd. Report at 7.)

The Hearing Board also found that Respondent violated Rule 3.5(d) by engaging in conduct intended to disrupt a tribunal, because Respondent sent inappropriate emails to the proposed order box, which was intentionally disruptive.

The Hearing Board further found that Respondent violated Rule 8.4(d) by sending the emails, which was prejudicial to the administration of justice.

Aggravation and Mitigation Findings

In aggravation, the Hearing Board found that Respondent sent an inappropriate email to Barry Epstein's adult daughter, in July 2017, in which Respondent explained that Epstein

was ill and asked the daughter, who was estranged, to contact him. The email stated, in relevant part:

> Between you and your mother – you guys are destroying him…. YOU and your Loving GREEDY mother will take nothing when you go to face GOD or rotten instead in HELL…. So if anything happens to your father - the blood is in both your and your mother's HANDS! I am awaiting that you will make peace with your father, and if NOT I already know who you are!!!

(Resp. Ex. 3 at 514-15.)

In mitigation, the Hearing Board found that Respondent had received professional assistance through the Lawyers Assistance Program pertaining to anger management; she had participated in conversations with a therapist that she considered informal therapy sessions; she had taken CLE courses; and she presented a character witness at the disciplinary hearing. Additionally, Respondent had provided legal assistance to the Turkish Consulate General and the Turkish community in the Chicago area since 2007. The Hearing Board also found that Respondent's misconduct did not arise from a dishonest or improper motive. Furthermore, Respondent had practiced law since 2006, and had no prior discipline.

Recommendation

The Hearing Board recommended a nine-month suspension, stayed after six months by a six-month period of probation, with conditions.

ANALYSIS

Respondent challenges the Hearing Board's findings of misconduct, including that her statements in the emails were false or reckless; that her conduct intentionally disrupted the tribunal; and that her conduct prejudiced the administration of justice. Respondent also argues that her statements in the emails were protected by the First Amendment.

In challenging the Hearing Board's findings of fact, Respondent must establish that those findings are against the manifest weight of the evidence. *In re Timpone*, 208 Ill. 2d 371, 380, 804 N.E.2d 560 (2004). A factual finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident or the finding appears unreasonable, arbitrary, or not based on the evidence. *Leonardi v. Loyola University*, 168 Ill. 2d 83, 106, 658 N.E.2d 450 (1995). That the opposite conclusion is reasonable is not sufficient. *In re Winthrop*, 219 Ill. 2d 526, 542, 848 N.E.2d 961 (2006). Moreover, while the Review Board gives deference to all of the Hearing Board's factual determinations, it does so particularly to those concerning the credibility of witnesses, because the Hearing Board is able to observe the testimony of witnesses, and therefore is in a superior position to assess their demeanor, judge their credibility, and evaluate conflicts in their testimony. *In re Wigoda*, 77 Ill. 2d 154, 158, 395 N.E.2d 571 (1979). We conclude that the Hearing Board's findings are not against the manifest weight of the evidence.

1. The Hearing Board's finding that Respondent's knowing and reckless falsehoods violated Rule 8.2(a) is not against the manifest weight of the evidence

Rule 8.2(a) provides that a "lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge." The Hearing Board found that Respondent violated Rule 8.2(a). Respondent argues that she subjectively believed her statements were true, because she thought the judge was biased and unfair, and therefore the Hearing Board erred in finding that Respondent violated Rule 8.2(a).

Impugning a judge's integrity violates Rule 8.2(a), unless there is an objectively reasonable basis for the relevant statements. *See In re Denison*, 2013PR00001 (Review Bd., May 28, 2015) at 2-4, *approved and confirmed*, M.R. 27522 (Sept. 21, 2015) (attorney who failed to provide an objective factual basis for statements impugning a judge's integrity violated Rule

8.2(a)). "A reasonable belief must be based on objective facts. Thus, subjective belief, suspicion, speculation, or conjecture does not constitute a reasonable belief." *In re Walker*, 2014PR00132 (Hearing Bd., Dec. 18, 2015) at 21, *affirmed*, (Review Bd., Nov. 4, 2016), *recommendation adopted*, M.R. 28453 (March 20, 2017); *see also In re Amu*, 2011PR00106 (Review Bd., Dec. 13, 2013), *recommendation adopted*, M.R. 26545 (May 16, 2014) (attorney violated Rule 8.2(a) by basing "his statements on his own subjective beliefs that the judges were corrupt rather than on any objective facts."); *In re Hoffman*, 08 SH 65 (Review Bd., June 23, 2010), *petition for leave to file exceptions denied and recommendation adopted*, M.R. 24030 (Sept. 22, 2010) (insinuation in lawyer's statements that judge's rulings were based on personal vendetta rather than on facts and law attacked judge's honesty and integrity violated Rule 8.2(a)). The mere fact that a judge has ruled against a party is insufficient to establish bias on the part of the judge, for disqualification purposes. *See People v. Patterson*, 192 Ill. 2d 93, 131-32 (2000) (*citing Liteky v. U.S.*, 510 U.S. 540, 555 (1994) ("judicial rulings alone almost never constitute a valid basis for a bias or partiality motion"); *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002) ("Allegedly erroneous findings and rulings by the trial court are insufficient reasons to believe that the court has a personal bias for or against a litigant.").

In this case, the record shows that Respondent impugned the judge's integrity by making false accusations that the judge was acting unethically based on her bias, rather than acting based on the facts and law. Respondent's knowing and reckless falsehoods included the following:

- the judge had issued a fraudulent order;
- the judge had engaged in *ex parte* communications with opposing counsel, smearing dirt behind Respondent's back;
- the judge was protecting a criminal and helping that criminal to escape punishment;

- the judge's sincerity and veracity were called into question;
- the judge was not objective;
- the judge was denying justice to Respondent's client;
- and the judge was not giving Respondent a fair chance, was treating Respondent badly, and was protecting the opposing party.

Although Respondent was given the opportunity to provide an objective factual basis for the truth of her statements at the disciplinary hearing, Respondent failed to do so. For example, when Respondent was asked during her testimony what evidence she had to accuse the judge of entering a fraudulent order, other than the judge's having denied Respondent's motion, Respondent replied, "She denied my motion with seven pages of insult and misstatement of fact …. [and] this choice of words was inappropriate." (Tr. 83.) Respondent did not offer any factual evidence that the judge committed fraud; Respondent did not deny that the statement was false; and she did not attempt to show that she ever believed that statement to be true. Instead, Respondent testified that she did not mean to use the word "fraudulent." We reject that argument. In the June 26th email, Respondent stated "The more I read this order, again and again, I am sick to my stomach, and I get filled with anger and disgust over this "fraudulent" order by this court! This Court has always treated my client and myself with disrespect!!!!" (Adm. Ex. 3 at 1-2.) Nothing in the email, including the context in which Respondent used the word, suggests she made a mistake. Respondent wrote that she was sick, angry, and disgusted by the judge's order, and she used the word fraudulent to describe that order. She put the word in quotes, thereby emphasizing it. She ended that sentence with an exclamation point, and the next sentence with four exclamation points, thereby emphasizing those sentences. We conclude that Respondent intentionally accused the judge of fraud, knowing that statement was false.

Another example, also in the June 26th email, is Respondent's insinuation that the judge engaged in *ex parte* communications. Respondent wrote: "How do you know I did not see the [Supreme Court] order???? Where do you get this information? Ex Parte communications with Defendant's attorney, Scott? – smearing dirt behind my back?" (*Id*.) Respondent did not deny that the statement was false and did not attempt to show that she ever believed it was true. Instead, in closing argument, Respondent argued that she did not make a false statement because she included a question mark at the end of each sentence. (Tr. 450.) We reject that argument. Her statements strongly implied that the judge acted improperly or was willing to act improperly, which was a false attack on the judge's integrity, regardless of the punctuation.

Another example is in the June 23rd email, in which Respondent falsely accused the judge of protecting a criminal, namely, Jay Frank, who was opposing counsel in the divorce proceeding. Respondent wrote, "[I will] show the world what a corrupt lawyer he is! And the judges who protect this criminal by squeezing the discovery deadlines!!! No no no! This is outrageous order of Judge Finnegan and it will be addressed accordingly! Judges are helping the criminal to escape punishment by forcing to shorten all deadlines!!!" (Adm. Ex. 2 at 1.) When asked what evidence Respondent had to show that Jay Frank was a criminal and corrupt, Respondent testified that Jay Frank "is a good person," and Respondent had "apologized to him." (Tr. 74.) Thus, Respondent admitted that Jay Frank was neither corrupt nor a criminal. Although Respondent had seen an article about Jay Frank, and she thought he had stolen emails from her client, she had no objective factual evidence that he had been convicted of a crime or engaged in corrupt activities. (*See* Tr. 74-77.) Thus, Respondent falsely accused the judge of protecting and assisting a criminal, even though Respondent knew that Jay Frank was not a criminal.

In reaching its determination concerning Respondent's violation of Rule 8.2(d), the Hearing Board stated:

> Although Respondent disputes that she knowingly or recklessly made false statements, she had no objective, factual basis for her comments. Subjective belief, suspicion, speculation, or conjecture does not constitute a reasonable belief. *Walker*, 2014PR00132 (Hearing Bd. at 21). Here, Judge Finnegan, who is presumed to be impartial, set forth the factual and legal reasons why she denied Respondent's requests to extend discovery. For Respondent to assert that Judge Finnegan made her rulings to deny justice to Barry Epstein and protect criminal conduct, rather than for the reasons articulated in her orders, was unreasonable and untenable. Respondent was not entitled to decisions in her client's favor, and a judge's rulings alone "almost never constitute a valid basis for a claim of judicial bias or partiality." *See Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). Likewise, there are no objective facts whatsoever to support Respondent's accusations that Judge Finnegan's conduct was "fraudulent" or that she engaged in improper ex parte communications.

(Hearing Bd. Report at 8.) Respondent has failed to show that the Hearing Board's findings that she violated Rule 8.2(a) are against the manifest weight of the evidence.

2. The Hearing Board's finding that Respondent intended to disrupt a tribunal in violation of Rule 3.5(d) is not against the manifest weight of the evidence

Rule 3.5(d) provides that a lawyer shall not "engage in conduct intended to disrupt a tribunal." The Hearing Board found that Respondent violated Rule 3.5(d). Respondent argues there is no evidence that she intended to disrupt the proceedings, and therefore the Hearing Board erred in finding that she violated Rule 3.5(d). That argument is not persuasive.

The evidence shows that Respondent's emails needlessly interrupted the case in front of the judge, caused the judge to unnecessarily expend time reviewing and addressing Respondent's emails, and diverted the judge's attention away from other matters. Moreover, as the Hearing Board concluded, Respondent's misuse of the judge's proposed order box was, in itself, intentionally disruptive. The proposed order box was limited to very specific purposes, which did not include the submission of emails falsely accusing the judge of misconduct. By sending the emails to the proposed order box, Respondent circumvented the established legal procedures for

filing a motion in the public record, according to the rules of procedure, which would have allowed opposing counsel to respond, and would have allowed the public to review those motions.

Respondent argues that in sending the emails, she was simply venting her frustration and anger at the judge's negative rulings because she believed the judge was treating her unfairly. That argument falls flat. *See e.g. In re Garza*, 2012PR00035 (Hearing Bd., July 24, 2013), *affirmed*, (Review Bd., Jan. 24, 2014), *approved and confirmed*, M.R. 26657 (May 16, 2014) (attorney who vented her frustration and anger at a judge's negative rulings, by cursing and raising her voice, disrupted the court proceedings in violation of Rule 3.5(d)). If all of the angry, frustrated attorneys, who believed they were being treated unfairly, were permitted to falsely accuse judges of misconduct, or otherwise verbally abuse a judge based on negative rulings, it would undermine the legal system and make judges' jobs intolerable. Such verbal attacks would clearly be disruptive.

Moreover, the record shows that Respondent intended to disrupt the proceedings by preventing the judge from filing the order in June. Respondent states in her opening brief, "In point of fact, she composed the emails, in an effort to stop the order from being electronically filed." (Appellant's Br. at 37.) Respondent cites to her testimony at the disciplinary hearing, where she testified, "I am reading the order. They're beating me up; public humiliating me. That's what I was trying to stop." (Tr. at 85.) Respondent's intentional attempt to prevent the judge from filing the order was disruptive. For the foregoing reasons, we affirm the Hearing Board's finding that Respondent violated Rule 3.5(d).

3. The Hearing Board's finding that Respondent's violated Rule 8.4(d) is not against the manifest weight of the evidence

Rule 8.4(d) provides that a lawyer shall not "engage in conduct that is prejudicial to the administration of justice." The Hearing Board found that Respondent violated Rule 8.4(d),

by causing the judge to take needless actions in response to Respondent's emails. Respondent argues that her emails did not result in any additional work for the judge, since judges routinely respond to litigant's emails and issue orders, and therefore the Hearing Board erred in its conclusion.

An attorney's "conduct prejudices the administration of justice if it causes judges or other attorneys to perform additional work." *In re Cohn*, 2018PR00109 (Hearing Bd., Oct. 9, 2020) at 11, *affirmed*, (Review Bd., Oct. 9, 2020), *petitions for leave to file exceptions allowed and sanction increased*, M.R. 030545 (Jan. 21, 2021); *see also In re Hoffman*, 08 SH 65 (Review Bd., June 23, 2010), *petition for leave to file exceptions denied and recommendation adopted*, M.R. 24030 (Sept. 22, 2010) (the judge "had to issue orders specifically addressing Respondent's behavior and ordering him to appear. This misconduct … clearly interfered with the effective functioning of the judicial process."); *In re Zurek,* 99 CH 45 (Review Bd., March 28, 2002), at 10, *petition for leave to file exceptions denied,* M.R. 18164 (Sept. 25, 2002) ("Misconduct of this nature [involving false accusations against a judge and opposing counsel] during the course of ongoing litigation clearly interferes with the effective functioning of the judicial process and thereby causes prejudice to the administration of justice.").

The Hearing Board stated, "Judge Finnegan had to address Respondent's inappropriate conduct on two occasions and ultimately prohibit her from sending email to her and her staff, [which] was sufficient to establish actual prejudice to the administration of justice and a violation of Rule 8.4(d)." (Hearing Bd. Report at 9.) We agree that Respondent caused the judge to needlessly spend time addressing the emails. We see no basis in the record for reversing the Hearing Board's conclusion that Respondent violated Rule 8.4(d).

4. Respondent's knowing and reckless falsehoods are not protected by the First Amendment

Respondent argues that her statements in the emails are protected by the First Amendment of the United States Constitution, and therefore sanctioning her for what she said about the judge violates her First Amendment rights. That argument raises questions of law, which are reviewed *de novo*. *See In re Thomas*, 2012 IL 113035 ¶ 56 (2012).

"It has been long and consistently established in Illinois disciplinary cases that attorney statements attacking the integrity, honesty, fairness, or competency of a judge, when the attorney knows such statements are false or when the attorney made the statements with reckless disregard as to their truth or falsity, are not protected speech." *See In re Walker*, 2014PR00132 (Hearing Bd., Dec. 18, 2015), at 26-27, *affirmed*, (Review Bd., Nov. 4, 2016), *recommendation adopted*, M.R. 28453 (March 20, 2017) (also stating that the First Amendment does not protect "an attorney for making accusations regarding a judge's integrity or overall character that have no basis in fact." (collecting cases)). "[T]he established law [is] that the First Amendment does not protect false statements or those made with reckless disregard for the truth." *In re Harrison*, 06 CH 36 (Review Bd., Oct. 14, 2008) at 5, *approved and confirmed*, M.R. 22839 (March 16, 2009); *see also Hoffman,* 08 SH 65 (Review Bd. at 17) ("It has long been established that attorneys' First Amendment rights do not extend to false statements made with knowledge of their falsity or with reckless disregard for the truth."). "A lawyer does not enjoy the same freedoms as a private citizen when it comes to professional discipline." *In re Betts*, 90 SH 49 (Review Bd., June 16, 1993) at 15, *approved and confirmed*, M.R. 9296 (Sept. 27, 1993).

Respondent argues that the Comments to Rule 8.2(a) indicate that Rule 8.2(a) applies only to false statements made publicly concerning judges running for office. The plain language of Rule 8.2(a), however, includes no such limitation. Respondent cites no cases

supporting that proposition and ignores the many cases in which attorneys have been disciplined under Rule 8.2(a), in matters unrelated to judges running for office. That argument is not supported by the law.

Nevertheless, based on this faulty premise, Respondent argues that the First Amendment protects all false and reckless statements concerning judges who are not running for office, and the sole purpose of imposing discipline relating to such statements is the suppression of expression, which is prohibited by the First Amendment, *citing Procunier v. Martinez*, 416 U.S. 396 (1974) (requiring an important government interest and limitations no greater than necessary, in order to regulate speech) and *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1054-55 (1991) (citing *Procunier*; holding that Nevada's rule prohibiting attorneys from making certain public pretrial statements was void for vagueness). That argument is unpersuasive.

Rule 8.2(a) does not violate the First Amendment because the Rule only imposes narrow limits on attorneys' speech, prohibiting knowing and reckless falsehoods, which can disrupt and prejudice the administration of justice, undermine public confidence in the integrity and impartiality of the judiciary, and unfairly damage a judge's reputation. *See Matter of Palmisano*, 70 F.3d 483, 487 (7th Cir. 1995) ("Indiscriminate accusations of dishonesty … impair [the judicial system's] functioning – for judges do not take to the talk shows to defend themselves, and few litigants can separate accurate from spurious claims of judicial misconduct."). As explained in *In re Cohn*:

> While attorneys do not lose their First Amendment rights by becoming attorneys, as officers of the court they accept the imposition of certain ethical standards intended to maintain faith in the integrity of the judiciary and the profession, even though some of those standards impact their personal rights. *Ditkowsky*, 2012PR00014 (Hearing Bd. at 23-24). For this reason, it has long been recognized that attorneys who make unfounded statements impugning the integrity or competence of a judge are subject to discipline. *Id.* …. [A] long line of cases holds that Rule 8.2(a) does

> not violate the Constitution. In *In re Denison*, for example, the Review Board determined that "[no] ruling of the United States Supreme Court or any other court supports the conclusion that Rules 8.2(a) or 8.4(c) are unconstitutional, or that enforcing the rules in this case violates [Denison's] First Amendment Rights." *In re Denison*, 2013PR00001, M.R. 27522 (Review Bd. at 5).

Cohn, 2018PR00109 (Hearing Bd., at 12-13); *See also In re Mann*, 06 CH 38 (Review Bd., March 29, 2010) at 10-14, *petition for leave to file exceptions denied and recommendation adopted*, M.R. 23935 (Sept. 20, 2010) (attorney's false accusations of corruption by judges were not protected by the First Amendment); *In re Gerstein*, 99 SH 1 (Review Bd., Aug. 12, 2002) at 9-13, *petition for leave to file exceptions denied and recommendation adopted*, M.R. 18377 (Nov. 26, 2002) (First Amendment did not protect attorney's verbal abuse of others); *In re Kozel*, 96 CH 50 (Review Bd., Dec. 30, 1999), at 14, *petitions for leave to file exceptions allowed and sanction increased*, M.R. 16530 (June 30, 2000) (First Amendment does not protect "statements which might appear to be matter of opinion, where those statements imply a factual basis and where there is no support for that factual basis."); *In re Chiang*, 07 CH 67 (Review Bd., Jan. 30, 2009), at 11, *petition for leave to file exceptions denied*, M.R. 23022 (May 18, 2009) ("an attorney cannot unjustly impugn the character or integrity of a judge without having any basis for doing so"); a*ccord Garrison v. Louisiana*, 379 U.S. 64, 75 (1964) ("the knowingly false statement and the false statement made with reckless disregard of the truth, do not enjoy constitutional protection"); *Alvarez v. United States*, 567 U.S. 709, 719 (2012) ("a knowing or reckless falsehood" is not protected by the First Amendment under certain circumstances).

Based on the authority cited above, it is clear that the First Amendment does not protect Respondent's knowing and reckless falsehoods in this case. Respondent's argument therefore fails.

SANCTION RECOMMENDATION

The Hearing Board recommended Respondent be suspended for nine months, with the suspension stayed after six months by a six-month period of probation, subject to conditions. Respondent challenges the Hearing Board's sanction recommendation and argues that the sanction should be limited to a reprimand or censure. The Administrator argues that the Hearing Board's recommendation is appropriate and asks this Board to make the same recommendation.

We review the Hearing Board's sanction recommendations *de novo* and have done so in this matter. *See In re Storment*, 2018PR00032 (Review Bd., January 23, 2020) at 15, *petition for leave to file exceptions denied,* M.R. 30336 (May 18, 2020). In making our own sanction recommendation, we consider the nature of the proved misconduct and any aggravating and mitigating circumstances shown by the evidence, *In re Gorecki*, 208 Ill. 2d 350, 360-61, 802 N.E.2d 1194, 1200 (2003), while keeping in mind that the purpose of discipline is not to punish but rather to protect the public, maintain the integrity of the legal profession, and protect the administration of justice from reproach. *In re Timpone*, 157 Ill. 2d 178, 197, 623 N.E.2d 300 (1993). We also consider the deterrent value of attorney discipline and whether the sanction will help preserve public confidence in the legal profession. *Gorecki*, 208 Ill. 2d at 361 (citing *In re Discipio*, 163 Ill. 2d 515, 528, 645 N.E.2d 906 (1994)). Finally, we seek to recommend a sanction that is consistent with sanctions imposed in similar cases, *Timpone*, 157 Ill. 2d at 197, while considering the case's unique facts. *In re Witt*, 145 Ill. 2d 380, 398, 583 N.E.2d 526 (1991).

Based upon our review of the record, we agree with the Hearing Board's recommended sanction. Respondent's misconduct was very serious. On three separate occasions, Respondent sent emails that contained false accusations against the judge. As the Hearing Board explained, "unfounded attacks on the judiciary have the potential to damage the reputation of the judge involved and to undermine confidence in the integrity of the entire judicial process."

(Hearing Bd. Report at 11.) Respondent also used aggressive and threatening language in her last email. Significantly, Respondent sent the last two emails after the judge warned Respondent that her first email was improper, and specifically directed Respondent not to submit similar emails to the proposed order box.

Although Respondent testified that she was sorry she sent the emails, and expressed remorse to some extent, Respondent has not fully accepted responsibility, nor wholly recognized the wrongfulness of her misconduct. The Hearing Board noted that "Respondent showed little concern for the effects of her words on Judge Finnegan or the legal profession." (Hearing Bd. Report at 12.) It appears that Respondent persists in the misguided belief that she had the right and the responsibility to accuse the judge of acting dishonestly. For example, Respondent claims that she "felt duty-bound" to write the first email to the judge because the judge "appeared to question Respondent's sincerity." (Appellant's Br. at 31.) The Illinois Supreme Court has held that an "attorney's failure to recognize the wrongfulness of his conduct often necessitates a greater degree of discipline than is otherwise necessary, in order that the attorney will come to appreciate the wrongfulness of his conduct and not again victimize members of the public with such misconduct." *In re Mason*, 122 Ill. 2d 163, 173-74, 522 N.E.2d 1233, 1238 (1988).

Respondent has also attempted to minimize and defend her wrongdoing. The Hearing Board explained that it did not give "substantial weight to Respondent's expressions of remorse due to her repeated efforts to minimize the misconduct and portray herself as a victim." (Hearing Bd. Report at 12.) The Hearing Board also found that certain portions of Respondent's testimony, in which she attempted to minimize her misconduct, were less than candid, including her testimony that she was just having a lawyer-to-lawyer conversation with the law clerk; she was merely sending a response to the judge and her law clerk; and the emails were spontaneous outbursts.

Additionally, Respondent blames others for making her angry and provoking her to write the emails, including the judge, the judge's law clerk, Respondent's client, Respondent's former partner, and opposing counsel. The Hearing Board pointed out that Respondent spent a great deal of time maligning others in an effort to justify her own misconduct. Based on their observations of Respondent during the disciplinary hearing, the Hearing Board concluded, and we agree, that Respondent needs to work on addressing and managing her anger.

Respondent next argues that her conduct was an aberration, and therefore the recommended sanction is too harsh. That argument lacks support. Respondent sent three emails, separated by weeks, and sent the last two emails after the judge directed her not to do so; Respondent also sent an inappropriate email to her client's daughter. That conduct shows this was not an aberration.

Respondent, however, argues that Hearing Board erred by considering the email to the client's daughter in aggravation, because the email was unrelated to the charged misconduct. That argument misses the mark. The Hearing Board properly considered that email because it was another instance where Respondent lashed out and attacked others in an inappropriate manner, which was similar to the charged misconduct and showed a pattern. *See In re Storment*, 203 Ill. 2d 378, 400 (2000) (holding that it is appropriate to consider uncharged conduct in aggravation when that conduct is similar to the charged misconduct); *In re Elias*, 114 Ill. 2d 321, 336 (1986) (holding that uncharged incidents may be considered in aggravation if the incidents show a pattern).

Additionally, throughout the disciplinary process, Respondent has repeatedly continued to lash out at the judge, which also shows that Respondent's misconduct was not an aberration. In the federal case, Judge Durkin, who was familiar with the facts and legal issues of that case, reviewed Respondent's claims of bias, and found that Judge Finnegan had not acted with bias against Respondent. Despite that, Respondent has continued to lambast the judge. In

responding to the Executive Committee, Respondent went so far as to assert to that "Judge Finnegan brings this complaint against me in bad faith, for personal vengeance." (Adm. Ex. 6 at 6.) There is nothing in the record indicating that Respondent had an objective factual basis for making that statement.

Respondent next argues that she should not be suspended because she was previously sanctioned by the Executive Committee. We disagree. That sanction was limited to Respondent's federal court practice, and Respondent had only twelve cases in federal court between 2013 and 2018. The Hearing Board properly concluded that the federal sanction was not the equivalent of the recommended suspension because it did not prevent Respondent from practicing law generally.

Another point relating to the Executive Committee's sanction concerns Respondent's testimony at the disciplinary hearing. Respondent testified that she accepted the Executive Committee's findings. (Tr. 101-02.) Those findings included the following: "This Order finds that attorney Nejla Kassandra Lane has committed misconduct in violation of [Model] Rules of Professional Conduct 3.5(d) and 8.4(d) … by repeatedly acting in an unprofessional, disrespectful, and threatening manner, including sending inappropriate email messages to a judge's Proposed Order email account." (Adm. Ex. 7 at 1.) Although Respondent testified under oath that she accepted the Executive Committee's findings, she contends on appeal that she did not violate Rules 3.5(d) and 8.4(d) of the Illinois Rules of Professional Conduct.[1] Respondent now asserts that her statements were discourteous but were not unethical. We consider it an aggravating factor that Respondent testified that she accepted the Executive Committee's findings, but now rejects those findings.

Finally, Respondent argues that discipline in this matter should have been left to Judge Finnegan and the federal court, since that is where the conduct took place, and the judge had

the power to hold Respondent in contempt if the judge had deemed it appropriate. Respondent argues that this disciplinary proceeding is therefore unnecessary and should be dismissed. The Illinois Supreme Court has inherent authority to discipline attorneys who are admitted to practice, even if the misconduct occurred in federal court. *See In re Chiang*, 07 CH 67 (Review Bd., Jan. 30, 2009), at 12, *petition for leave to file exceptions denied*, M.R. 23022 (May 18, 2009); *See also In re Jafree*, 93 111. 2d 450, 456, 444 N.E.2d 143 (1982) ("That certain instances of respondent's alleged misconduct occurred before other tribunals does not affect our power, and indeed duty, to consider the propriety of his conduct."); *In re Mitan*, 75 Ill. 2d 118, 123 (1979), *cert. denied*, 444 U.S. 916 (1979) ("This court has the inherent power to … discipline attorneys who have been admitted to practice before it."). Respondent's argument on this point is not supported by the law.

In making our recommendation, we have given careful consideration to the mitigating factors in this matter, including Respondent's legal assistance to the Turkish Consulate General and the Turkish community; her mental health counseling; the testimony of Respondent's character witness; Respondent's lack of prior discipline; and the other mitigating factors identified by the Hearing Board. We conclude that the need for a harsher sanction is offset by the mitigating factors. We also conclude, however, that the mitigating factors here are insufficient to avoid suspension, and probation as recommended.

The two cases cited by the Hearing Board in its report provide guidance as to an appropriate sanction in this case. *See In re Cohn*, 2018PR00109 (Review Bd., Oct. 9, 2020), *petitions for leave to file exceptions allowed and sanction increased*, M.R. 030545 (Jan. 21, 2021); and *In re Sides*, 2011PR00144 (Review Bd., March 31, 2014), *petitions for leave to appeal allowed and sanction modified,* M.R. 26732 (Nov. 13, 2014).

In *Cohn,* the attorney was suspended for six months and until he completed the ARDC Professionalism Seminar. Cohn made false statements concerning a judge's integrity and

used abusive language to opposing counsel. Cohn falsely claimed that the judge was acting out of anger. In that case, as in this one, there was no factual basis for making the statements attacking the judge. In both cases, the conduct involved statements against one judge, in one proceeding. In both cases, the attorneys failed to fully acknowledge their wrongdoing or its impact; failed to express sincere remorse; and attempted to rationalize their misconduct, which included blaming the judge.

In *Sides,* the attorney was suspended for five months, with the suspension stayed after sixty days by a two-year period of probation, subject to conditions. The attorney made false and reckless statements about the integrity of judges in the judicial circuit and about another attorney. The attorney acknowledged wrongdoing and expressed remorse, although he continued to believe that he had been treated unfairly by the judges. The aggravating factors in the instant case are greater than in *Sides*, including that Respondent used threatening language, Respondent disregarded the judge's directive concerning sending additional emails, and Respondent failed to fully acknowledge her wrongdoing and attempted to minimize and defend her conduct.

Other relevant authority also provides guidance in terms of the appropriate sanction. *See In re Dore*, 07 CH 122, *petition for leave to file exceptions denied,* M.R. 24566 (Sept. 20, 2011) (attorney was suspended for five months, and until he completed the ARDC Professionalism Seminar, for making false statements about the integrity of a judge, and asserting frivolous claims or positions in three matters); *In re O'Shea*, 02 SH 64 (Review Bd., July 16, 2004), *petitions for leave to file exceptions allowed*, M.R. 19680 (Nov. 17, 2004) (attorney was suspended for five months for making improper and insulting remarks about opposing counsel; making insulting comments about participants in the disciplinary process; engaging in a conflict of interest and failing to acknowledge his wrongdoing).

We therefore adopt the sanction recommended by the Hearing Board. We find this recommended sanction to be commensurate with Respondent's misconduct, consistent with discipline that has been imposed for comparable misconduct, and sufficient to serve the goals of attorney discipline, act as a deterrent, and preserve the public's trust in the legal profession.

CONCLUSION

For the foregoing reasons, we recommend that Respondent be suspended from the practice of law for nine months, with the suspension stayed after six months by a six-month period of probation, subject to the conditions recommended by the Hearing Board.

Respectfully submitted,

Leslie D. Davis
George E. Marron III
Michael T. Reagan

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Review Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on July 12, 2022.

/s/ Michelle M. Thome
Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

MAINLIB_#1519974_v1

[1] Rules 3.5(d) and 8.4(d) are the same in the Model Rules of Professional Conduct and the Illinois Rules of Professional Conduct.

BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of: **NEJLA K. LANE,** Respondent-Appellant, No. 6290003.	Commission No. 2019PR00074

PROOF OF SERVICE
OF THE REPORT AND RECOMMENDATION
OF THE REVIEW BOARD

I, Andrea L. Watson, hereby certify that I served a copy of the Report and Recommendation of the Review Board on the parties listed at the addresses shown below by e-mail service on July 12, 2022, at or before 5:00 p.m. At the same time, a copy was sent to Counsel for the Administrator-Appellee by e-mail service.

Michael E. Piston
Counsel for Respondent-Appellant
Michaelpiston4@gmail.com

Nejla K. Lane
Respondent-Appellant
Nejla@LaneKeyfli.com

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Michelle M. Thome,
Clerk

/s/ Andrea L. Watson
By: Andrea L. Watson
Senior Deputy Clerk

MAINLIB_#1519974_v1

FILED

July 12, 2022

ARDC CLERK

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CYNTHIA A. GRANT
Clerk of the Court

(217) 782-2035
TDD: (217) 524-8132

January 17, 2023

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

Nejla K. Lane
6000 N Cicero Ave. Apt. 503
Chicago, IL 60646

In re: In re: Nejla K. Lane
M.R.031402

Today the following order was entered in the captioned case:

Petition by respondent for leave to file exceptions to the report and recommendation of the Review Board. Denied. Respondent Nejla K. Lane is suspended from the practice of law for nine (9) months, with the suspension stayed after six (6) months by a six (6) month period of probation subject to the following conditions, as recommended by the Review Board:

a. Respondent's practice of law shall be supervised by a licensed attorney acceptable to the Administrator. Respondent shall provide the name, address, and telephone number of the supervising attorney to the Administrator. Within the first thirty (30) days of probation, respondent shall meet with the supervising attorney and meet at least once a month thereafter. Respondent shall authorize the supervising attorney to provide a report in writing to the Administrator, no less than once every quarter, regarding respondent's cooperation with the supervising attorney, the nature of respondent's work, and the supervising attorney's general appraisal of respondent's practice of law;

b. Respondent shall provide notice to the Administrator of any change in supervising attorney within fourteen (14) days of the change;

c. Prior to the completion of the period of probation, respondent shall attend and successfully complete the ARDC Professionalism Seminar;

d. Respondent shall comply with the provisions of Article VII of the Illinois Supreme Court Rules on Admission and Discipline of Attorneys and the Illinois Rules of Professional Conduct and shall timely cooperate with the Administrator in providing information regarding any investigations relating to her conduct;

e. Respondent shall attend meetings as scheduled by the Commission probation officer;

f. Respondent shall notify the Administrator within fourteen (14) days of any change of address;

g. Respondent shall reimburse the Commission for the costs of this proceeding as defined in Supreme Court Rule 773, and shall reimburse the Commission for any further costs incurred during the period of probation; and

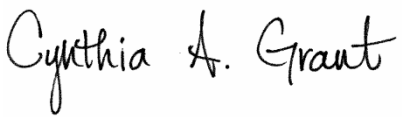
h. Probation shall be revoked if respondent is found to have violated any of the terms of probation. The remaining period of suspension shall commence from the date of the determination that any term of probation has been violated.

Suspension effective February 7, 2023.

Respondent Nejla K. Lane shall reimburse the Client Protection Program Trust Fund for any Client Protection payments arising from her conduct prior to the termination of the period of suspension/probation.

Order entered by the Court.

Very truly yours,



Clerk of the Supreme Court

cc: Michelle Thome
Steven Robert Splitt

STATE OF ILLINOIS
SUPREME COURT

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the 9th day of January, 2023.

Present: Mary Jane Theis, Chief Justice

Justice P. Scott Neville, Jr.	Justice David K. Overstreet
Justice Lisa Holder White	Justice Joy V. Cunningham
Justice Elizabeth M. Rochford	Justice Mary K. O'Brien

On the 17th day of January, 2023, the Supreme Court entered the following judgment:

M.R.031402

In re:

Nejla K. Lane.

FILED

January 17, 2023

ARDC CLERK

Attorney Registration & Disciplinary Commission

2019PR00074

Petition by respondent for leave to file exceptions to the report and recommendation of the Review Board. Denied. Respondent Nejla K. Lane is suspended from the practice of law for nine (9) months, with the suspension stayed after six (6) months by a six (6) month period of probation subject to the following conditions, as recommended by the Review Board:

a. Respondent's practice of law shall be supervised by a licensed attorney acceptable to the Administrator. Respondent shall provide the name, address, and telephone number of the supervising attorney to the Administrator. Within the first thirty (30) days of probation, respondent shall meet with the supervising attorney and meet at least once a month thereafter. Respondent shall authorize the supervising attorney to provide a report in writing to the Administrator, no less than once every quarter, regarding respondent's cooperation with the supervising attorney, the nature of respondent's work, and the supervising attorney's general appraisal of respondent's practice of law;

b. Respondent shall provide notice to the Administrator of any change in supervising attorney within fourteen (14) days of the change;

c. Prior to the completion of the period of probation, respondent shall attend and successfully complete the ARDC Professionalism Seminar;

d. Respondent shall comply with the provisions of Article VII of the Illinois Supreme Court Rules on Admission and Discipline of Attorneys and the Illinois Rules of Professional Conduct and shall timely cooperate with the Administrator in providing information regarding any investigations relating to her conduct;

e. Respondent shall attend meetings as scheduled by the Commission probation officer;

f. Respondent shall notify the Administrator within fourteen (14) days of any change of address;

g. Respondent shall reimburse the Commission for the costs of this proceeding as defined in Supreme Court Rule 773, and shall reimburse the Commission for any further costs incurred during the period of probation; and

h. Probation shall be revoked if respondent is found to have violated any of the terms of probation. The remaining period of suspension shall commence from the date of the determination that any term of probation has been violated.

Suspension effective February 7, 2023.

Respondent Nejla K. Lane shall reimburse the Client Protection Program Trust Fund for any Client Protection payments arising from her conduct prior to the termination of the period of suspension/probation.

As Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, I certify that the foregoing is a true copy of the final order entered in this case.

SEAL OF THE SUPREME COURT
STATE OF ILLINOIS
AUG. 26, 1818

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of said Supreme Court, in Springfield, in said State, this 17th day of January, 2023.

Cynthia A. Grant
Clerk,
Supreme Court of the State of Illinois

INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through June 21, 2018

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INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Current through June 21, 2018

I. 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 [17.01] 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 must 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 [2.22], 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 [2.22], 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.

II. 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 himor 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.

III. 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.

IV. 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 [2.20] consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21 [2.20].

(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 [2.20].

(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 [2.23], 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[1]) 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.

[1] So in original.

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 [2.26]. 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.

V. 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 [2.22].

(b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23 [2.22], 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.

VI. 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 must 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.

VII. RECIPROCAL DISCIPLINE

Rule 7.01. Initiation of Proceeding

To initiate an action for reciprocal discipline under TRDP Part IX, the CDC must file a petition with BODA and request an Order to Show Cause. 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.

VIII. 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 must 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 must comply with Rule 1.06.

(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.

IX. 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.

X. 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.