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

IN THE MATTER OF	§	
NEJLA KASSANDRA KEYFLI LANE,	§	TX CAUSE NO. 67623
STATE BAR CARD NO. 24095557	§	IL SUP. CT. NO. M.R.31402
	§	IL ARDC NO. 2019PR74
	§	
ATTORNEY RESPONSE AND OBJECTION	§	FEDERAL COURT NO. 18MC40

TABLE OF CONENTS

TO: ATTORNEY'S RESPONSE AND OBJECTION TO FIRST AMENDED ORDER TO SHOW CAUSE ON PETITION FOR RECIPROCAL DISCIPLINE

TABLE OF APPENDICES

Exh. 1, Hrng Bd. RR

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.

RULE 3.5: IMPARTIALITY AND DECORUM OF THE TRIBUNAL

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate *ex parte* with such a person during the proceeding unless authorized to do so by law or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress or harassment;

or

(d) engage in conduct intended to disrupt a tribunal.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the Illinois Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions. See Rule 8.4(f).

[2] During a proceeding a lawyer may not communicate *ex parte* with persons serving in an official capacity in the proceeding, such as judges, masters or jurors, unless authorized to do so by law or court order.

[3] A lawyer may on occasion want to communicate with a juror or prospective juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited by law or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

[4] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

[5] The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition. See Rule 1.0(m).

Adopted July 1, 2009, effective January 1, 2010.

RULE 8.2: JUDICIAL AND LEGAL OFFICIALS

(a) 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, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

Adopted July 1, 2009, effective January 1, 2010.

RULE 8.4: MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(d) engage in conduct that is prejudicial to the administration of justice.

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law. Nor shall a lawyer give or lend anything of value to a judge, official, or employee of a tribunal, except those gifts or loans that a judge or a member of the judge's family may receive under Rule 65(C)(4) of the Illinois Code of Judicial Conduct. Permissible campaign contributions to a judge or candidate for judicial office may be made only by check, draft, or other instrument payable to or to the order of an entity that the lawyer reasonably believes to be a political committee supporting such judge or candidate. Provision of volunteer services by a lawyer to a political committee shall not be deemed to violate this paragraph.

(g) present, participate in presenting, or threaten to present criminal or professional disciplinary charges to obtain an advantage in a civil matter.

(h) enter into an agreement with a client or former client limiting or purporting to limit the right of the client or former client to file or pursue any complaint before the Illinois Attorney Registration and Disciplinary Commission.

(i) avoid in bad faith the repayment of an education loan guaranteed by the Illinois Student Assistance Commission or other governmental entity. The lawful discharge of an education loan in a bankruptcy proceeding shall not constitute bad faith under this paragraph, but the discharge shall not preclude a review of the lawyer's conduct to determine if it constitutes bad faith.

(j) violate a federal, state or local statute or ordinance that prohibits discrimination based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status by conduct that reflects adversely on the lawyer's fitness as a lawyer. Whether a discriminatory act reflects adversely on a lawyer's fitness as a lawyer shall be determined after consideration of all the circumstances, including: the seriousness of the act; whether the lawyer knew that the act was prohibited by statute or ordinance; whether the act was part of a pattern of prohibited conduct; and whether the act was committed in connection with the lawyer's professional activities. No charge of professional misconduct may be brought pursuant to this paragraph until a court or administrative agency of competent jurisdiction has found that the lawyer has engaged in an unlawful discriminatory act, and the finding of the court or administrative agency has become final and enforceable and any right of judicial review has been exhausted.

(k) if the lawyer holds public office:

(1) use that office to obtain, or attempt to obtain, a special advantage in a legislative matter for a client under circumstances where the lawyer knows or reasonably should know that such

action is not in the public interest;

(2) use that office to influence, or attempt to influence, a tribunal to act in favor of a client; or

(3) represent any client, including a municipal corporation or other public body, in the promotion or defeat of legislative or other proposals pending before the public body of which such lawyer is a member or by which such lawyer is employed.

Adopted July 1, 2009, effective January 1, 2010.

Comment

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.

[4] A lawyer may refuse to comply with an obligation imposed by law upon a good-faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good-faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other

organization.

Adopted July 1, 2009, effective January 1, 2010.

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

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

NOTICE OF FILING

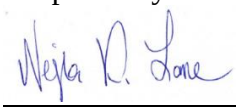
TO: Administrator
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois
ARDCeService@iardc.org

Attorney for the Administrator
Marcia Topper Wolf
mwolf@iardc.org

PLEASE TAKE NOTICE that November 29, 2021, I will e-file *The Notice of Exceptions by The Respondent-Appellant*, to the Clerk of the Attorney Registration and Disciplinary Commission in Chicago, Illinois for filing.

On that same date, a copy was served via email on Administrator's counsel at mwolf@iardc.org at or before 4:00 p.m.

Respectfully submitted,



For Respondent *Pro Se*

Nejla K. Lane, Esq., *Pro Se*
ARDC# 629003
6000 North Cicero Avenue, Apt. 503
Chicago, Illinois 60646
Phone: (773) 777-4440
Nejla@LaneKeyfli.com

FILED
11/29/2021 9:50 AM
ARDC Clerk

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

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

NOTICE OF EXCEPTIONS BY THE RESPONDENT-APPELLANT

NEJLA KASSANDRA LANE, Respondent-Appellant, *Pro Se*, pursuant to Illinois Supreme Court Rule 753(d)(2), excepts to the sanction recommendation contained in the Hearing Board's report.

Respectfully submitted,

Nejla Kassandra Lane

Nejla Kassandra Lane, Esq., *Pro Se*
Respondent/Appellant
ARDC# 629003
6000 North Cicero Avenue, Apt. 503
Chicago, Illinois 60646
Phone: (773) 777-4440
Nejla@LaneKeyfli.com

PROOF OF SERVICE

I, Nejla Lane, hereby certify that I served a copy of this Notice on the Administrator via e-mail address shown on the foregoing Notice, by e-mail service on November 29, 2021, at or before 5:00 p.m.

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.

Nejla Kassandra Lane

FILED
11/29/2021 9:50 AM
ARDC Clerk

Exh. 2, Review Bd RR

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

Exh. 1, Mandate

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

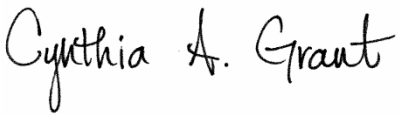
h. Probation shall be revoked if respondent is found to have violated any of the terms of probation. The remaining period of suspension shall commence from the date of the determination that any term of probation has been violated.

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.

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.

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

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION
of the
SUPREME COURT OF ILLINOIS

One Prudential Plaza
130 East Randolph Drive, Suite 1500
Chicago, Illinois 60601-6219
(312) 565-2600 (800) 826-8625
Fax (312) 565-2320

3161 West White Oaks Drive, Suite 301
Springfield, IL 62704
(217) 546-3523 (800) 252-8048
Fax (217) 546-3785

Michael Piston
Counsel for Respondent
38-08 Union Street-Suite 9A
Flushing, NY 11354-5673

Sent via email: michaelpiston4@gmail.com

Chicago
February 3, 2023

Supreme Court No. M.R. 31402
Commission No. 2019PR00074

In Re: Nejla K. Lane

Notice: Ms. Lane must acknowledge that she has received and reviewed this letter and Supreme Court Rule 764 and she must acknowledge receipt of these materials by return email to the email address listed below or by letter addressed to me within 7 days.

Dear Mr. Piston:

On January 17, 2023, the Supreme Court issued an order suspending Ms. Lane 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, with conditions. The order was served upon Ms. Lane by the Clerk of the Court and and will become effective on February 7, 2023. A copy of the Order is enclosed.

Ms. Lane may not practice from the effective date of discipline until the period of suspension ends. The suspension includes conditions that must be met before the suspension will end. Ms. Lane will be contacted shortly by Michelle M. Burton, ARDC Probabtion Officer, to discuss the terms and conditions of her probation.

A copy of Supreme Court Rule 764 is enclosed. The Rule sets forth a number of requirements for action that must be taken by Ms. Lane to terminate her practice. An affidavit showing compliance with those requirements must be filed with the Clerk of the Supreme Court within 35 days of the effective date of the order of discipline.

If you or Ms. Lane has any questions about the requirements of Rule 764, please contact me at jwier@iardc.org.

It is our practice to assign investigators to verify compliance with an order of suspension and with Rule 764. The failure to comply may result in criminal charges, charges of contempt of court, and/or further discipline.

Thank you for your cooperation.

Very truly yours,

/s/ Jonathan M. Wier

Jonathan M. Wier
Group Manager
ARDC Litigation Division

JMW:srh
Enclosure

RULE 764. Duties of a Disciplined Attorney and Attorneys Affiliated with Disciplined Attorneys

An attorney who is disbarred, disbarred on consent, or suspended for six months or more shall comply with each of the following requirements. Compliance with each requirement shall be condition to the reinstatement of the disciplined attorney. Failure to comply shall constitute contempt of court.

Any and all attorneys who are affiliated with the disciplined attorney as a partner or associate shall take reasonable action necessary to insure that the disciplined attorney complies with the provisions of paragraphs (a), (b), (c), (d), and (e) below. Within 35 days of the effective date of the order of discipline, each affiliated attorney or a representative thereof shall file with the clerk of the Supreme Court and serve upon the Administrator a certification setting forth in detail the actions taken to insure compliance with paragraphs (a), (b), (c), (d), and (e) below.

(a) **Maintenance of Records.** The disciplined attorney shall maintain:

(1) files, documents, and other records relating to any matter which was the subject of a disciplinary investigation or proceedings;

(2) files, documents, and other records relating to any and all terminated matters in which the disciplined attorney represented a client at any time prior to the imposition of discipline;

(3) files, documents, and other records of pending matters in which the disciplined attorney had some responsibility on the date of, or represented a client during the year prior to, the imposition of discipline;

(4) all financial records related to the disciplined attorney's practice of law during the seven years preceding the imposition of discipline, including but not limited to bank statements, time and billing records, checks, check stubs, journals, ledgers, audits, financial statements, tax returns and tax reports; and

(5) all records related to compliance with this rule.

(b) **Withdrawal from Law Office and Removal of Indicia as Lawyer.** Upon entry of the final order of discipline, the disciplined attorney shall not maintain a presence of occupy an office where the practice of law is conducted. The disciplined attorney shall take such action necessary to cause the removal of any indicia of the disciplined attorney as lawyer, counselor at law, legal assistant, legal clerk, or similar title.

(c) **Notification to Client.** Within 21 days after the entry of the final order of discipline, the disciplined attorney shall notify, by certified mail, return receipt requested, all clients whom the disciplined attorney represented on the date of the imposition of discipline, of the following;

(1) the action taken by the Supreme Court;

(2) that the disciplined attorney may not continue to represent them during the period of discipline;

(3) that they have the right to retain another attorney; and

(4) that their files, documents, and other records are available to them, designating the place where they are available.

(d) **List of Clients.** Within 21 days after the effective date of an order of discipline, the disciplined attorney shall file with the clerk of the Supreme Court and serve upon the Administrator an alphabetical list of the names, addresses, telephone numbers and file numbers of all clients whom the disciplined attorney represented on the date of, or during the year prior to, the imposition of discipline. At the same time, the disciplined attorney shall serve upon the Administrator a copy of each notification served pursuant to paragraph (c) above.

(e) **Notification to Courts.** Within 21 days of the effective date of the order of disciplined, the disciplined attorney shall file a notice before the court in all pending matters in which the disciplined attorney is counsel of record and request withdrawal of his appearance. The notice shall advise the court of the action taken by the Supreme Court. The notice shall be served upon the disciplined attorney's former client and all other parties who have entered an appearance.

(f) **Notification to Others.** Within 21 days of the effective date of the order of discipline, the disciplined attorney shall, by certified mail, return receipt requested, notify the following of the action taken by the Supreme Court and his inability, during the period of discipline, to practice law in the State of Illinois:

(1) all attorneys with whom the disciplined attorney was associated in the practice of law on the effective date of the order of discipline;

(2) all attorneys of record in matters in which the disciplined attorney represented a client on the effective date of the order of discipline;

(3) all parties not represented by an attorney in matters in which the disciplined attorney represented a client on the effective date of the order of discipline;

(4) all other jurisdictions in which the disciplined attorney is licensed to practice law; and

(5) all governmental agencies before which the disciplined attorney is entitled to represent a person.

(g) **Affidavit** o**f Disciplined Attorney.** Within 35 days after the effective date of an order of discipline, the disciplined attorney shall file with the clerk of the Supreme Court and serve upon the Administrator an affidavit stating

(1) the action the disciplined attorney has taken to comply with the order of discipline;

(2) the action the disciplined attorney has taken t comply with this rule;

(3) the arrangements made t maintain the files and other records specified in paragraph (a) above;

(4) the address and telephone number at which subsequent communications may be directed to him; and

(5) the identity and address of all other State, Federal and administrative jurisdictions to which the disciplined attorney is admitted to practice law.

(h) **Compensation arising from former law Practice.** Provided that the disciplined attorney complies with the provisions of this rule, the disciplined attorney may receive compensation on a quantum merit basis for legal services rendered prior to the effective date of the order of discipline. The disciplined attorney may not receive any compensation related to the referral of a legal matter to an attorney or attributed to the good will of her former law office.

(1) Matters in which legal Proceedings Instituted. The disciplined attorney shall not receive any compensation regarding a matter in which a legal proceeding was instituted at any time prior to the imposition of discipline without first receiving approval of the tribunal.

(2) Other Aspects of Former Law Office. The disciplined attorney shall not receive any compensation related to any agreement, sale, assignment or transfer of any aspect of the disciplined attorney's former law office without first receiving the approval f the Supreme Court. Prior to entering into any such transaction, the disciplined attorney shall file a petition in the Supreme Court and serve a copy upon the administrator. The petition shall disclose fully the transaction contemplated, shall attach any and all related proposed agreements and documents, and shall request approval of the transaction. The Administrator shall answer or otherwise plead to the petition within 28 days of service of the petition on the Administrator. If the Supreme Court determines that an evidentiary hearing is necessary, it my refer the matter to the circuit court for hearing.

(i) **Change of Address or Telephone Number.** Within 35 days of any change of the disciplined attorney's address or telephone number during the period of discipline, the disciplined attorney shall notify the Administrator of the change.

(j) **Modification of Requirements.** On its own motion or at the request of the Administrator or Respondent, the Supreme Court may modify any of the above requirements.

IN THE SUPREME COURT OF ILLINOIS

In the Matter of:	
NEJLA K. LANE,	Supreme Court No. M.R. 31402
Respondent,	Commission No. 2019PR00074
No. 6290003.	

STATEMENT OF COSTS

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Jonathan M. Wier, pursuant to Supreme Court Rule 773(c), files this Statement of Costs in the amount of $1,500. An itemization of all Rule 773 costs incurred in connection with the matter is attached.

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Jonathan M. Wier
Jonathan M. Wier

Jonathan M. Wier
Counsel for Administrator
One Prudential Plaza
130 East Randolph Drive, Suite 1500
Chicago, Illinois 60601
Telephone: (312) 565-2600
Email: jwier@iardc.org
MAINLIB_#1588269_v1

Attorney Registration and Disciplinary Commission

One Prudential Plaza
130 East Randolph Drive Suite 1500
Chicago, Illinois 60601 312 565-2600

INVOICE NUMBER	9348
INVOICE DATE	31-Jan-23
COMMISSION NUMBERS	2019PR00074
TERMS	net 30 days

TO:
Nejla K. Lane

Re: **Nejla K. Lane**
Atty #: **6290003**

Index	DESCRIPTION		AMOUNT
A.	**Witness Fee Cost**		0.00
B.	**Court Reporter Cost**		5,872.25
C.	**Miscellaneous Cost**		0.00
		Subtotal	$5,872.25
		Reduced by Rule 773	(4,372.25)
		Amount Owed	$1,500.00

We Accept MasterCard and Visa Cards
Card No. Exp. Date

|_|_|_|_| |_|_|_|_| |_|_|_|_| |_|_|_|_| |_|_|_|_|

MAKE ALL CHECKS PAYABLE TO:
A.R.D.C. Sundry
P.O. Box 20335
Springfield, IL 62708

Print Name CVV #

|_|_|_|

Signature

Attorney Registration and Disciplinary Commission

One Prudential Plaza
130 East Randolph Drive
Chicago, Illinois 312 565-2600

INVOICE NUMBER	9348
INVOICE DATE	31-Jan-23
COMMISSION NUMBERS	2019PR00074
PAGE	Two of Two

TO:
Nejla K. Lane

DATE		UNIT PRICE	AMOUNT
	A. WITNESS FEE COST		
			0.00
	B. COURT REPORTER COST		
6/7/2019	Annette Washington	838.00	
9/5/2020	Deborah J. Roberts	449.00	
9/5/2020	Deborah J. Roberts	225.00	
10/12/2020	Deborah J. Roberts	925.75	
3/16/2021	Christine Rockwell	2,989.00	
5/4/2021	Christine Rockwell	445.50	
			5,872.25
	C. MISCELLANEOUS COST		
		0.00	
			0.00
			5,872.25

IN THE SUPREME COURT OF ILLINOIS

In the Matter of:	
NEJLA K. LANE,	Supreme Court No. M.R. 31402
Respondent,	Commission No. 2019PR00074
No. 6290003.	

NOTICE OF FILING

TO: Michael Piston
Counsel for Respondent
Michaelpiston4@gmail.com

PLEASE TAKE NOTICE that on February 3, 2023, an electronic copy of the Administrator's STATEMENT OF COSTS was submitted to the Clerk of the Supreme Court for filing. On that same date, one copy was served on Counsel for Respondent via email at Michaelpiston4@gmail.com at or before 5:00 p.m.

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Jonathan M. Wier
Jonathan M. Wier

Jonathan M. Wier
Counsel for Administrator
One Prudential Plaza
130 East Randolph Drive, Suite 1500
Chicago, Illinois 60601
Telephone: (312) 565-2600
Email: jwier@iardc.org

PROOF OF SERVICE

The undersigned, an attorney, hereby certifies, pursuant to Illinois Code of Civil Procedure, 735-ILCS-5/109, that the Administrator served copies of the Administrator's Notice of Filing and Administrator's STATEMENT OF COSTS, on the individual on the forgoing Notice of Filing, sent via email at Michaelpiston4@gmail.com on February 3, 2023 at or before 5:00 p.m.

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 he verily believes the same to be true.

/s/ Jonathan M. Wier
Jonathan M. Wier

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

BARRY EPSTEIN,	)	
	)	Case No. 1:14-cv-08431
Plaintiff,	)	
	)	Hon. Judge Durkin
vs.	)	Magistrate Judge Sheila Finnegan
	)	
PAULA EPSTEIN,	)	
	)	
Defendant.	)	

MOTION FOR RECUSALS OF JUDGES THOMAS M. DURKIN AND SHEILA FINNEGAN

NOW COMES, the Plaintiff, BARRY EPSTEIN ("Barry") and moves to recuse Judge Thomas M. Durkin from the above-captioned matter pursuant to 28 U.S.C. § 144 and 28 U.S.C.§ 455. In support thereof, Plaintiff states as follows:

Introduction

1. On October 27, 2014, Barry filed suit in the Northern District of Illinois, Eastern Division against Defendant Paula Epstein ("Paula"), his wife at the time, and former Defendant Jay Frank ("Frank"), her attorney in the parties' underlying dissolution of marriage proceeding, currently pending before the Circuit Court of Cook County, Illinois. [DE #1]
2. The initial complaint alleged violations of the Wiretap Act, 18 U.S. Code § 2511, against Paula for her unlawful interception of Barry's private e-mails, and against both Paula and Frank for their unlawful use and disclosure of said e-mails in the underlying dissolution proceeding.[1]
3. Both Paula and Frank moved to dismiss Barry's complaint for failure to state a claim, pursuant to Rule 12(b)(6). Barry amended his complaint and Defendants renewed their

[1] Barry also alleged a single state law claim against Paula for invasion of privacy by intrusion upon seclusion.

motions. On April 20, 2015, this Court entered an order granting Defendant's motions, dismissing Barry's Wiretap Act claims against both Defendants with prejudice. [DE #36]

4. On May 18, 2015, Barry appealed this Court's decision of April 20, 2015, to the United States Court of Appeals for the Seventh Circuit. [DE #42]. After a full briefing of the issues and oral argument before a panel of three judges, the Seventh Circuit issued its decision on December 14, 2016, reversing the dismissal of Barry's claims against Paula, affirming the dismissal of his claims against Frank, and remanding the case back to this Court for further proceedings. [DE #61, 62]

5. On January 6, 2017, this Honorable Court held its first hearing in this matter following the Seventh Circuit's mandate, setting this matter for an expedited trial on June 5, 2017, and opening discovery. [DE #55]. Prior to this date, the case had been on appeal since May of 2015, and no parties had conducted any discovery.

6. At that status hearing, Judge Durkin set the tone for this case, pushing to set it immediately for trial. Counsel for Barry tried to explain the complexity of prosecuting the case, how the issues had broadened requiring amendment of the complaint, and other time commitments that Barry faced in the parties' divorce proceeding. (Exhibit 1 – Pp. 3-4). However, based on Paula's Counsel's request, that "[o]ur clients aren't getting any younger, so we'd like to move on this now", (Exhibit 1 – Pg. 3 Ln 4-5), the Court set the matter for trial in a mere five (5) months, and granted only three and a half (3 ½) months to complete all of fact discovery. (Exhibit 1 – Pg. 4, Ln 4-5; Pg. 10, Ln 7-8). Barry's Counsel warned that this schedule would not provide enough time to have experts review Paula's expected discovery, but the Court refused to extend the trial date, stating that the experts "who are paid for their time, will be happy to work within those constraints."

(Exhibit 1 – Pg. 4, Ln 6-7; Pg. 5, Ln 8-20). After hearing Barry's concerns about being unable to adequately prepare this case for trial, Judge Durkin noted that the "threat of a trial date" would encourage the parties to "talk reasonably and settle about [sic] this case". (Exhibit 1 – Pg. 5, Ln 13-14).

7. At that same hearing, Barry's Counsel noted acrimony between the attorneys, and Judge Durkin warned that, "if I form an unfavorable opinion about one of you, either side, because of … your lack of professionalism, as a matter of human nature … I'll do my best to make sure it doesn't rub off and hurt your client. But you don't want to even put that risk to your client." (Exhibit 1 – Pg. 27, Ln. 4-9).
8. On January 26, 2017, the Court granted Barry's motion for a protective order to seal several documents listing the names and e-mails of certain third-parties, and the parties were instructed to submit an agreed order as to the documents to be sealed. [DE #65, 69]. It was former Defendant Jay Frank who first published the names of these third-parties into the record. [See DE #18-1]; [See DE #65]. Some of the documents to be sealed were e-mails which Barry attached to his first amended complaint. [DE #20].
9. Judge Durkin also referred the matter to Magistrate Judge Sheila Finnegan for a settlement conference, who he indicated "has a lot of experience dealing with parties who just don't like each other". (Exhibit 1 – Pg. 27, Ln. 14-18); [DE #56].
10. At the February 2, 2017, settlement conference, [DE #75] Magistrate Judge Finnegan showed a clear affinity for Paula, and bias against Barry, stating that Paula was "the nicest lady that she has ever met" and that Barry would do very poorly before a jury because of his demeaner at the settlement conference. She said that, when this case went to trial, she would be "taking her robe off" to sit and watch it.

11. On February 7, 2017, Judge Durkin denied several of Barry's motions, to wit: motions to continue trial and discovery, to quash Paula's subpoenas, and for a protective order. [DE 73, 77, 78, 82].

12. The motion for the protective order was based on Paula's electronically filing Barry's private e-mails as exhibits, making them forever part of the public record. [DE #78]. Paula's exhibits were some of the very e-mails that she unlawfully obtained from Barry, in violation of his privacy; Barry filed suit seeking damages specifically for these kinds of disclosures by Paula. [See DE #70]. These e-mails had not previously been published, and caused Barry new injury. Judge Durkin denied the motion, stating that "if you don't want things public that might be embarrassing…go to arbitration" and that the harm of Paula publishing these new e-mails "seems self-inflicted to me", meaning that Barry brought this upon himself[2]. (Exhibit 2 – Pg. 8, Ln 12-14; Pg. 9, Ln. 4-5).

13. When Barry tried to point out that Paula had used this same strategy to extort a more favorable settlement from him in the divorce, Judge Durkin claimed that it was "[Barry] doing the extorting. He's telling his wife, or ex-wife 'if you don't settle with me, I'm going to the FBI and get you criminally prosecuted.'" (Exhibit 2 – Pg. 11, Ln. 9-11).

14. In denying Barry's motion for an extension of the trial date, Judge Durkin agreed with Paula's statement that she "'should not have to endure yet another delay in getting on with her life merely because plaintiff supposedly cannot afford to ***sue her over his extramarital e-mails***…'" (Exhibit 2 – Pg. 26, Ln. 8-14). In denying the motion, Judge Durkin disregarded the fact that Barry could not fund his litigation because Paula and former co-

[2] Counsel for Paula has latched onto this phrase "self-inflicted", and has since used it against Barry whenever he complains of the various injuries or prejudices caused by Paula's conduct or the Court's refusal to modify its trial and discovery schedule. (Exhibit 3 – pg. 4).

defendant Frank were using an injunction to hold Barry's funds hostage in the divorce proceeding, and delaying resolution of his petitions for disbursement of marital funds. [DE #73, ¶¶ 12-17].

15. Considering the arguments of the case, Judge Durkin indicated his reluctance to hear the matter himself, stating that "I'm not sure if I want to be the one deciding this case. I'd rather let a group of 12 citizens decide it." (Exhibit 2 – Pg. 23, Ln. 18-19). He then referred discovery to Magistrate Judge Finnegan, just days after she had met the parties at the settlement conference and formed her personal opinions about them. [DE #82, 83].

16. On February 17, 2017, Judge Finnegan heard Paula's motion to compel discovery. [DE #97]. At the outset of this hearing, when Barry's Counsel was merely arguing the merits of his first discovery objection, Judge Finnegan interjected, "maybe you haven't done a lot of discovery in federal court in a lawsuit like this, but I can't sit here and educate you" before overruling her. (Exhibit 4 – Pp. 8-9). This statement evinced Judge Finnegan's antagonism and bias against Barry and his Counsel, which permeated the discovery proceedings.

17. At said hearing, Judge Finnegan proceeded to side with Paula, and overruled nearly all of Barry's objections to Paula's discovery requests, without granting the opportunity for a written response.[3] (Exhibit 4 – Pg. 6, Ln. 16-24); [DE #97]. She granted Paula's blanket request to identify conversations between the parties about Barry's alleged "relationships" with the third-parties, with little limitation as to the topic, and no limitation as to the timeframe. (Exhibit 3 – Pg. 18-25). She also compelled Barry to tender his confidential

[3] She reasoned that there was no time for a written response, yet on subsequent motions to compel filed months later she permitted a briefing schedule. [See DE 141, 156]. She also indicated that Barry should have known that she would not allow a written response because most magistrate judges have standing orders generally disallowing them, even though she has no such standing order. (Exhibit 4 – Pg. 6, Ln. 16-24).

complaints filed with law enforcement agencies against Paula and Frank, for their illegal conduct. (Exhibit 4 – Pg. 32).

18. Judge Finnegan did bar Paula from discovering Barry's computer and e-mail passwords. (Exhibit 4 – Pg. 12, Ln. 20-24). However, she later denied ever making such a ruling, at a subsequent hearing, and in discussions with Judge Durkin. (Exhibit 5 – Pg. 17, Ln. 11); (Exhibit 6 – Pg. 18, 15-19) (Judge Durkin stated that "[Judge Finnegan's] recollection was it's not something that needs to be put in a public filing").

19. In the minute entry for the February 17, 2017, hearing, Judge Finnegan claimed that "Plaintiff has ***indicated*** that he does not expect to retain a damages expert". (emphasis added) [DE #97]. Barry's Counsel made no such representation. (Exhibit 4 – Pg. 40, Ln. 7-9). It was *Paula's Counsel* who stated that he hadn't "heard any ***indication***" that Plaintiff was retaining a damages expert. (emphasis added) (Exhibit 4 – Pg. 31, Ln. 8-10, 12).

20. Judge Finnegan also disregarded the January 27, 2017, protective order regarding the names of third-parties, by naming each woman in her publicly filed ruling. [DE #97]. She has, on at least one occasion, stated that she disagreed with Judge Durkin entering the protective order and that she would never have entered it.

21. On April 13, 2017, during Barry's deposition, Paula's Counsel asked highly inappropriate questions as to whether Barry had "sexual intercourse" with other women. (Exhibit 7 – Pp. 59-61). When Barry's Counsel objected to the harassing and embarrassing nature of these question, Paula's Counsel called Judge Finnegan's chambers in the middle of the deposition, to compel Barry to answer. (Exhibit 7 – Pp. 62-66). Judge Finnegan overruled Barry's objections, and allowed Paula's Counsel to make scandalous and inflammatory inquiries into sex and the touching of genitals. *Id.*

22. On April 18, 2017, Judge Finnegan denied Barry's emergency motion to continue Paula's April 20, 2017, deposition, even though Barry had just received voluminous discovery production from Paula the day before, which was eighteen (18) days past due from the March 30, 2017, deadline to respond to Barry's production requests. [DE #146]. Judge Finnegan again showed her bias against Barry's Counsel, questioned her honesty regarding the reasons why a continuance was necessary. Notably, Judge Finnegan interrogated Barry's Counsel about another conflicting case, as though to catch her in a lie.[4] (Exhibit 8 – Pp. 2-5). In stark contrast, when Paula's Counsel misrepresented that his April 17, 2017, production consisted of only 48 pages of documents Barry already had, Judge Finnegan took his statements entirely at face value. (Exhibit 8 – Pp. 5-7, 9-11).

23. Paula's misrepresentations about her April 17, 2017, production were later proven to be false. [DE #147]. In her supplemental filing, Paula claims that only five of the 400 pages produced were "new", which Barry disputes. Regardless, when Paula unloaded 400 pages of production, only she knew which documents were new. Barry's Counsel had to interrupt their deposition preparations to sift through and catalog these pages without the benefit of that information, and had to cross reference these documents with the thousands of pages of Paula's prior production to verify what was duplicative. However, Judge Finnegan had already fixed her position to deny Plaintiff's requests, based on an agreed deposition schedule entered weeks before Paula's belated production. [DE #116].

24. On May 2, 2017, at a hearing before Judge Finnegan, Barry's Counsel made an oral request to extend the April 28, 2017, fact discovery cutoff. [DE #114]. The extension was necessary because Paula had blocked Barry's access to marital funds to conduct discovery

[4] Later that day, Barry's Counsel forwarded to Judge Finnegan the case management order from the case in question, to prove that she was telling the truth.

until April 6, 2017, Barry's experts did not have enough time to review Paula's belated and voluminous discovery responses, and his Counsel needed additional time to issue follow up discovery thereafter. Despite the fact that Judge Durkin had just continued the trial date to July 24, 2017, Judge Finnegan denied Barry's request and refused to re-open fact discovery. [DE #139]; (See Exhibit 5 – Pp. 14-15). As a result, Barry was unable to issue follow up discovery.

25. On May 9, 2017, Judge Durkin castigated Barry for his refusal to reveal his private e-mail passwords at his April 13, 2017, deposition, even though Barry had properly objected based upon Judge Finnegan's February 17, 2017, ruling, which denied Paula's discovery into his passwords, and was in full force and effect as of his deposition. (Exhibit 6 – Pp. 16-18).

26. In her June 26, 2017, memorandum opinion, Judge Finnegan went beyond denying Barry's motion, and attacked the competence of his Counsel. She spent an entire half of a page ridiculing Barry's Counsel regarding the statement that Paula's Counsel notified her of the Supreme Court's May 22, 2017, order, speculating that Barry's Counsel went days without seeing the order in the mail, and accusing her of not knowing how to search for the Supreme Court's "Order List" online. [DE #221, pg. 4]. This portion of the ruling was immaterial to the decision to deny Barry's motion, and its only purpose was to publicly shame his Counsel.

27. Barry's Counsel was, admittedly, very distraught by the above comments in the June 26, 2017, opinion. She later explained to the Court that she had been keeping an eye out for the Supreme Court's decision since May 18, 2017, and that Paula's Counsel e-mailed her at 12:30 P.M. on May 22, 2017, just hours after the opinion came down. (Exhibit 9).

28. The June 26, 2017, order also falsely represented the procedural history of Barry's claims against Jay Frank, claiming that "Plaintiff's request for rehearing was denied on January 3, 2017". [DE #221, pg. 2]. A review of the appellate history clearly shows that it was Paula who unsuccessfully sought a panel rehearing. (Exhibit 10); [DE #60].

29. On July 6, 2017, Judge Durkin issued his oral opinion on Barry's second motion to continue trial and extend discovery. [DE #250]. In denying this motion, Judge Durkin construed the facts in a manner skewed towards Paula:

    a. Judge Durkin opined that Barry had "plenty of time to conduct discovery" and that his "difficulties meeting various deadlines…were ***self-inflicted***". (Exhibit 11 – Pg. 3, Ln. 21-23). This ignored the fact that Barry was forced to conduct nearly all of fact discovery without access to marital funds, because of Paula's injunction in the divorce proceeding, and her efforts to delay the resolution of his January 23, 2017, petition for fees from the marital estate until April 6, 2017. [DE #247, pg. 5].

    b. He stated that Barry did not seek a disbursement from the divorce court until June 5, 2017. (Exhibit 11 – Pg. 4, Ln. 6-11). Barry filed his first such petition on January 23, 2017, and the second on June 3, 2017.

    c. He stated that discovery had been extended "repeatedly…by agreement of the parties and on motion", and stayed open until June 30, 2017. (Exhibit 11 – Pg. 4, Ln. 17-19). Fact discovery was only continued once, and closed on April 28, 2017, well before June 30, 2017. [DE #114].

    d. In claiming that Barry had plenty of time to prepare for trial, Judge Durkin asserted that the facts were "relatively straightforward" (Exhibit 11 – Pg. 4, Ln. 4), but when

defending his partiality, he admitted that "I don't know any of the facts of this case". (Exhibit 11 – Pg. 13, Ln. 17-18).

e. Judge Durkin selectively adopted and rejected the divorce court's rulings to favor Paula's arguments: when Barry pointed out that the July 15, 2016, injunctive order did not find that he had dissipated marital funds, Judge Durkin "presume[d]" that the order was entered "for cause". (Exhibit 11 – Pg. 5, Ln. 13). But when faced with the March 3, 2015, order denying Paula's request, in her December 2014 petition, to "[e]njoin[] and restrain BARRY EPSTEIN from expending or transferring any funds to his divorce counsel…" [DE #247-7]; [DE #247-6, pg. 5], Judge Durkin opined that Paula's alleged grievances were "reasonable" (Exhibit 11 – Pg. 5, Ln. 22-25), even though the divorce court found that they were not reasonable. [See DE #247-8 ("I'm not shocked by the fees on either side. I'm not going to grant the preliminary injunction for that.")]

f. When Barry complained about Paula's conduct in dragging the third-parties from his e-mails into the case, subpoenaing them to testify, and continuing to publish more of their e-mails, Judge Durkin claimed that it was Barry's Counsel who started it when he "put their e-mails as an attachment to the complaint when [she] filed the case". (Exhibit 11 – Pg. 16, Ln. 8-9). Barry did not attach the e-mails when he filed the case. [DE #1]. As Barry pointed out in his motion to seal [DE #65], it was Jay Frank who first published the third-parties' names into the record. [DE #18-1]. The e-mails were only attached to the amended complaint, filed after Jay Frank's disclosure of the third-parties, and only after Paula claimed that Barry's complaint was defective without them. [See DE #15, pg. 2, 5].

LAW AND ARGUMENT

30. Under 28 U.S.C. § 144, "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding." 28 U.S.C. § 144.

31. Under 28 U.S.C. § 144, "[t]he facts averred must be sufficiently definite and particular to convince a reasonable person that bias exists." *United States v. Sykes*, 7 F.3d 1331, 1339 (7th Cir. 1993).

32. Equally importantly, a judge's comment is disqualifying only if it connotes a fixed opinion - "a closed mind on the merits of the case." *United States v. Haldeman*, 181 U.S. App. D.C. 254, 559 F.2d 31, 136 (1976).

33. Under 28 U.S.C. § 455, a judge shall disqualify himself or herself "[w]here [s]he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." 28 U.S.C. § 455.

34. "28 USCUS 455(a) requires the disqualification of any justice, judge, or magistrate of the United States in any proceeding in which such a person's impartiality might reasonably be questioned." *Liteky v. United States*, 510 U.S. 540, 541 (1994).

35. Judicial remarks made during the course of a trial *may* support a charge of bias or impartiality if they "reveal an opinion that derives from an extrajudicial source", but "they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible". *Id.* at 555.

36. Barry's affidavit and motion show that Judges Thomas M. Durkin and Sheila Finnegan have a personal bias or prejudice against Barry, and in favor of Paula, which is sufficiently definite and particular to convince a reasonable person that bias exists.

37. Judge Durkin's bias against Barry and in favor of Paula is evident in his emphasis of Paula's rights to a swift trial over Barry's rights to have the time to properly investigate and prepare for trial.

38. Barry repeatedly presented substantial evidence of his need for a continuance in his first and second motions to continue trial, including Paula's use of the injunction in the divorce proceedings to interfere with Barry's ability to pay his federal litigation expenses. [See DE #73]; [See DE #219]; [See DE #247]. In denying these requests, Judge Durkin's misstatements, contradictory statements, and selective treatment of the record in the divorce proceedings evidenced his "closed mind" to the merits of Barry's request. *Haldeman*, 559 F.2d at 136.

39. Judge Durkin has claimed that he does not know the facts of the case, and that he neither wanted to try Barry's case nor oversee discovery. However, Judge Durkin's statements that Barry's injuries from Paula's publishing his e-mails is "self-inflicted", and his reluctance to protect Barry's privacy interests when Paula continues to publish more such e-mails into the record, shows that he has made up his mind as to the material issues of Barry's privacy interests. (Exhibit 2 – Pg. 9, Ln. 2-7).

40. The affidavit and verified motion also shows Judge Finnegan's bias and impartiality. Her statements at the February 2, 2017, settlement conference revealed her personal opinion about the parties, derived from her extrajudicial opinion about how much she liked Paula and disliked Barry. These statements also showed a "high degree of favoritism" towards

Paula, and antagonism against Barry, which played out when she was subsequently assigned to oversee discovery. *Liteky*, 510 U.S. at 555.

41. The parties' counsel were present at the February 2, 2017, settlement conference. From her first February 17, 2017, discovery hearing, Judge Finnegan has also shown bias against Barry's Counsel and in Paula's Counsel's favor. (Affidavit of Barry Epstein, ¶¶ 19, 24, 25, 26, 28).

42. Judge Finnegan's bias has colored her impression and recollection of the facts of the case, leading to several verifiable errors, all of which are skewed in Paula's favor:

    a. The February 17, 2017, minute entry in which she incorrectly stated that Barry's Counsel was not seeking a damages expert, when it was Paula's Counsel who stated that rather than Barry;

    b. Her misremembering her February 17, 2017, decision to disallow Paula's discovery into Barry's passwords;

    c. Her misattributing the petition for rehearing in the appellate court to Barry rather than Paula;

43. Judge Finnegan has also failed to protect Barry's privacy interests in this case, including her disregard (whether conscious or unconscious) of the January 27, 2017, protective order, and the carte blanche that she gave Paula to inquire into Barry's private matters, beyond what was necessary to prove her "Posner Defense".

44. Together, these "definite and particular" instances paint a clear pattern of conscious or unconscious bias against Barry and for Paula, which has prejudiced Barry in his ability to prepare for trial. As a result of Judge Finnegan's impartiality, Barry is being denied his

day in court. A reasonable person, viewing the totality of the proceedings, would be convinced that a bias exists.

45. Judges Durkin's and Finnegan's impartiality could reasonably be questioned due to their statements and markedly unequal treatment of the parties throughout this litigation. Their bias has already impaired Barry's ability to prepare this matter for trial through the denial of his many requests.

46. Judges Durkin and Finnegan cannot be impartial about this case and as such, should recuse themselves.

WHEREFORE, the Plaintiff, BARRY EPSTEIN requests that this Honorable Court grant the following relief:

A. That Judge Thomas M. Durkin recuse himself;

B. That Judge Sheila Finnegan recuse herself; and

C. Any such other relief which this Court finds to be just and equitable.

July 17, 2017 Respectfully Submitted,

By: /s/ Nejla K. Lane /
Nejla K. Lane, Esq.

Attorneys for Plaintiff:
Lane Keyfli Law, LTD.
Nejla K. Lane
ARDC: 6290003
Tel. 773-777-4440
Fax: 866-444-4024
E-MAIL: Nejla@LaneKeyfli.com
E-MAIL: info@LaneKeyfli.com

VERIFICATION BY CERTIFICATION

The undersigned hereby certifies, pursuant to 28 U.S. Code § 1746, under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

July 17, 2017

Barry J. Epstein

CERTIFICATE OF SERVICE

I, Nejla K. Lane, an attorney of record for this matter, hereby certify that on July 17, 2017, I caused a true and correct copy of the foregoing to be served upon all counsel of record by filing same with the CM/ECF system, which will send notification of such filing to all attorneys of record.

Attorneys for Defendant:
Scott A. Schaefers
Brotschul Potts LLC
30 N. LaSalle St., Ste 1402
Chicago, IL 60602
(312) 551-9003
sschaefers@brotschulpotts.com

/s/ Nejla K. Lane Esq.
Lane Keyfli Law, Ltd.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

BARRY EPSTEIN,	)	
	)	Case No. 1:14-cv-08431
Plaintiff,	)	
	)	
vs.	)	
	)	
PAULA EPSTEIN,	)	
	)	
Defendant.	)	

PLAINTIFF BARRY EPSTEIN'S AFFIDAVIT IN SUPPORT OF HIS MOTION FOR RECUSALS OF JUDGES THOMAS M. DURKIN AND SHEILA FINNEGAN

Plaintiff, BARRY EPSTEIN ("Barry"), on oath deposes and states that he has personal knowledge of the facts hereinafter set forth and if called as witness herein could competently testify on the matters stated:

1. Judges Sheila M. Finnegan and Thomas M. Durkin are biased and prejudiced against me in this case.
2. Throughout the case, both judges have consistently ruled against me and blocked my progress at every turn. Here is a complete history of the docket entries regarding my motions in this Court:
    a. Plaintiff's Motion for Protective Order to Seal Certain Documents was granted by Judge Durkin, on January 26, 2017. [DE #65]; [DE #69]. This motion sealed the names of third parties in the case as well as exhibits containing identifying information of third parties.
    b. Plaintiff's Motion for Extension of Trial and the Discovery Cutoff Date was denied by Judge Durkin on February 7, 2017. [DE #73]; [DE #82]. This motion requested an extension of the trial date and discovery cutoff because Plaintiff's counsel has not been paid and the case requires extensive discovery. This denial of an extension began the prejudice against me in my requests for more time to complete discovery and trial preparation.
    c. Plaintiff's Motion to Quash/Modify the Subpoenas to Yahoo! Inc. and Russell Novak and Company, LLP was denied by Judge Durkin on February 7, 2017. [DE #77]; [DE #82]. This motion sought to quash the contents of the emails sought by the Defendant from the Plaintiff's email accounts. The judges have repeatedly

allowed the discovery of irrelevant and prejudicial facts, including the contents of emails referring to third parties.

d. Plaintiff's Motion for a Protective Order was denied on February 7, 2017, by Judge Durkin. [DE #80]; [DE #82]. This motion sought a protective order for a sealed email and a confidential settlement communication from me to the Defendant included as an exhibit in the Defendant's opposition to Plaintiff's Motion for Extension. The judges continually allow the Defendant to publish my private information.
e. Plaintiff's Motion to Stay Proceedings Pending Resolution of Petition for a Writ of Certiorari was denied on March 13, 2017, by Judge Durkin. [DE #108]; [DE #113]. This motion asked for a stay regarding pending proceedings for a writ of certiorari on whether Jay Frank would be a co-defendant to this case. This motion to stay was denied in another flagrant attempt by Judge Durkin to prevent me from having sufficient time to obtain necessary facts to prepare for trial.
f. Plaintiff's Oral Motion to Extend Discovery is granted on March 13, 2017, by Judge Finnegan. [DE #114].
g. Plaintiff's Emergency Motion to Extend the Deposition of Paula Epstein was denied on April 18, 2017, by Judge Finnegan. [DE #143]; [DE #146]. This prevented me from having sufficient time to review Paula's new discovery and prepare for her deposition.
h. Plaintiff's Motion to Seal was granted on May 2, 2017, by Judge Finnegan. [DE #154]; [DE 156].
i. Plaintiff was granted leave to file an amended complaint May 9, 2017, by Judge Durkin.
j. Plaintiff's motion to compel discovery of Paula's laptop computer was granted in part and denied in part on June 9, 2017. Judge Finnegan did not allow my request for forensic imaging of the Defendant's computer and only allowed the Defendant's expert to search the computer and produce responsive documents. This is another clear example of bias against me as I was not able to have my own expert image the Defendant's computer, which is a vital piece of evidence.
k. Plaintiff's oral request for an extension of time to file response to defendant's motion to strike jury demand is granted June 12, 2017, by Judge Durkin.
l. Plaintiff's Motion for Extension of time to complete discovery and leave to depose Jay Frank denied on June 22, 2017, by Judge Finnegan. Jay Frank is an important witness to this case and without his deposition, I will struggle to prove certain points in this trial. Again, the judges denied me more time to adequately prepare for my case.
m. Plaintiff's Emergency Combined Motions to Reconsider the Court's Order of June 22, 2017, and Grant Leave to Depose Jay Frank and Extending the Deadline for Dispositive Motions was denied by Judge Finnegan on June 27, 2017. Again, Judge Finnegan denied my reasonable request to depose an essential witness in this case and to properly prepare for trial.
n. Plaintiff's Emergency Combined Motions to Reconsider the Court's orders of June 22, 2017, and Granting Leave to Depose Jay Frank; March 13, 2017, and Extending the Deadline to File Dispositive Motions was denied on June 29, 2017,

by Judge Durkin. Yet again, the judges prejudicially blocked me from a rightful and vital deposition, and from time to file dispositive motions.

o. Plaintiff's request to file a motion for summary judgment is denied on June 29, 2017, by Judge Durkin.
p. Plaintiff's Second Motion for Extension of Trial and the Discovery Cutoff Date was denied by Judge Durkin on July 6, 2017.

3. Throughout each of these denials, the judges have shown their prejudice against me. They have repeatedly blocked my legitimate discovery, while allowing the discovery of prejudicial, irrelevant information by the Defendant.
4. Judges Finnegan and Durkin have repeatedly blocked my motions and granted those of the Defendant to my detriment.
5. Additionally, Judges Finnegan and Durkin have made clear their personal, extrajudicial bias against me through various personal statements and comments.
6. On January 6, 2017, Judge Durkin set a short trial date, and granted insufficient time for discovery after Paula's Counsel stated "[o]ur clients aren't getting any younger, so we'd like to move on this now". (Exhibit 1 – Pg. 3 Ln 4-5). In doing so, he disregarded the difficulties I faced in being able to prepare for trial, and the conflicts with other deadlines in the underlying divorce. (Exhibit 1 – Pp. 3-4).
7. When my attorney noted that our experts would not have enough time to review Paula's discovery, Judge Durkin responded that experts "are paid for their time" and would "be happy" to work in the short time provided. (Exhibit 1 – Pg. 4, Ln 6-7; Pg. 5, Ln 8-20). He also stated that the "threat of a trial date" would encourage the parties to "talk reasonably and settle about this case". (Exhibit 1 – Pg. 5, Ln 13-14).
8. Judge Durkin was intent on setting this matter to trial as soon as possible, considering only Paula's wishes for a quick trial, and none of the issues that I faced in preparing this complex case.

9. On January 6, 2017, Judge Durkin also stated that "if I form an unfavorable opinion about one of you, either side, because of … your lack of professionalism, as a matter of human nature … I'll do my best to make sure it doesn't rub off and hurt your client. But you don't want to even put that risk to your client." (Exhibit 1 – Pg. 27, Ln. 4-9).
10. On February 7, 2017, Judge Durkin stated that "If you want to go private, you go to an arbitration," referring to my seeking to seal the record with regards to private communications between myself and third parties. (Exhibit 2 – Pg. 5, Ln. 19).
11. On February 7, 2017, Judge Durkin stated that "If you don't want things public that might be embarrassing, might be something the parties would view as intrusive, go to arbitration." (Exhibit 2 - Pg. 8, Ln. 12-14).
12. On February 7, 2017, Judge Durkin stated that "If you want to renew your motion because there's something about what is happening to him because this email is public – it seems self-inflicted to me, but I'll consider it." (Exhibit 2 – Pg. 9, Ln. 2-5).
13. Judge Durkin feels that the invasion of my privacy due to the publication of my email address in the public record is "self-inflicted" and that my personal, confidential information should be made public.
14. On February 7, 2017, Judge Durkin stated that "He's the one doing the extorting. He's telling his wife, or ex-wife 'if you don't settle with me, I'm going to the FBI and get you criminally prosecuted.'" (Exhibit 2 – Pg. 11, Ln. 9-11).
15. In this statement, Judge Durkin reveals that he feels that my case is "extorting" the Defendant. This is a personal evaluation of the case prior to the presentation of evidence, and reveals extrajudicial prejudice against me.

16. On February 7, 2017, Judge Durkin stated "I'm not sure if I want to be the one deciding this case. I'd rather let a group of 12 citizens decide it." (Exhibit 2 – Pg. 23, Ln. 18-19), and referred discovery to be heard before Judge Finnegan. This showed his reluctance to hear my case.
17. Before being assigned to discovery, Magistrate Judge Finnegan conducted a settlement conference on February 2, 2017. At that conference, she developed a personal bias in favor of Paula, who she remarked that "Paula (the defendant) is the nicest woman I have ever met", and expressed a desire for the case to finish quickly for Paula's sake. She showed a clear personal bias against me, stating that because of my demeanor I would do poorly before a Jury, and stated that she wanted to take off her robe and watch this case when it went to trial. As a result, she later denied my requests for discovery extensions.
18. Since this settlement conference, Judge Finnegan has shown extreme bias toward myself and deference towards Paula.
19. On February 17, 2017, Judge Finnegan granted Paula's broad discovery into my private life, responding to my attorney's objections by stating, "maybe you haven't done a lot of discovery in federal court in a lawsuit like this, but I can't sit here and educate you". (Exhibit 4 – Pg. 8-9).
20. Judge Finnegan repeatedly referred to "extramarital relationships" between myself and others, and broadly allowed discovery into my private life without regard to my own privacy concerns, even though I filed suit to protect myself from these kinds of intrusions by Paula. (Exhibit 4 – Pp. 20-28). Judge Finnegan expressed this biased opinion of me and my case even though there is no evidence to support Paula's allegations of an extramarital affair, and that such allegations are utterly immaterial and prejudicial.

21. She also allowed Paula to discover the private and confidential complaints that I filed with law enforcement regarding her and Jay Frank's illegal conduct. (Exhibit 4 – Pg. 32).
22. Judge Finnegan did properly bar Paula from gaining access to my e-mail passwords. (Exhibit 4 – Pg. 12, Ln. 20-24). But when Paula attempted to circumvent the February 17, 2017, court order at my deposition, Judge Finnegan denied ever making such a ruling, at a subsequent hearing, and in discussions with Judge Durkin. (Exhibit 5 – Pg. 17, Ln. 11); (Exhibit 6 – Pg. 18, 15-19).
23. On February 17, 2017, my attorney indicated that she did not know yet whether I would be calling a damages expert. (Exhibit 4 – Pg. 40, Ln. 7-9). However, Judge Finnegan misstated in her order that "Plaintiff has indicated that he does not expect to retain a damages expert". [DE #97]. It was only Paula's Counsel who made that claim. (Exhibit 4 – Pg. 31, Ln. 8-10, 12).
24. At my April 13, 2017, deposition, Paula's Counsel asked me scandalous and inflammatory questions about sex and the touching of genitals, intended to harass and provoke me. In a telephonic ruling, Judge Finnegan refused to limit these inquiries in any respect. (Exhibit 7 – Pp. 59-66, 71).
25. On April 18, 2017, at the hearing on my motion to continue Paula's deposition, Judge Finnegan treated my attorney with unwarranted skepticism, interrogating her about why the continuance was necessary. (Exhibit 8 – Pp. 2-5). By contrast, she readily believed Paula's false claim that she only produced 48 pages of documents which were not new, when in fact Paula produced 400 pages of documents, which included new documents.

26. On May 2, 2017, Judge Finnegan denied my attorney's request to re-open fact discovery, even though trial had previously been continued by more than two-and-a-half months. (See Exhibit 5 – Pp. 14-15).

27. On May 9, 2017, Judge Durkin admonished me for objecting to reveal my e-mail passwords, even though Judge Finnegan had previously ordered that Paula was not entitled to them in her February 17, 2017, ruling. (Exhibit 6 – Pg. 16-18).

28. In her June 26, 2017, opinion, Judge Finnegan went beyond the issues in my motion to depose Jay Frank to attack my attorney, speculating that she had waited days before looking for the Supreme Court's May 22, 2017, ruling on my petition for *writ of certiorari*, and accusing her of not being able to perform a simple Google search. [DE #221, pg. 4]; (Exhibit 9).

29. The June 26, 2017, opinion also falsely stated that I had requested and been denied a rehearing by the Seventh Circuit Court of Appeals, when it was Paula who made said request. [DE #221, pg. 2]; (Exhibit 10); [DE #60].

30. In his July 6, 2017, opinion denying my request for a trial continuance, Judge Durkin selectively applied, or misstated, the facts so as to favor Paula:

    a. He stated that my "difficulties meeting various deadlines…were self-inflicted", even though my attorneys had to conduct nearly all of fact discovery without funds to pay experts or process Paula's production, until April 6, 2017. (Exhibit 11 – Pg. 3, Ln. 21-23).

    b. He stated that I did not seek a disbursement from the divorce court until June 5, 2017, when I had filed two such petitions before that date, on January 23, 2017, and June 3, 2017. (Exhibit 11 – Pg. 4, Ln. 6-11).

c. He stated that discovery had been extended "repeatedly…by agreement of the parties and on motion" until June 30, 2017, when it had only been continued once, to April 28, 2017. (Exhibit 11 – Pg. 4, Ln. 17-19); [DE #114].

d. He stated that I had plenty of time to prepare for trial because the facts were "relatively straightforward" (Exhibit 11 – Pg. 4, Ln. 4), but in claiming that he was unbiased, he admitted that "I don't know any of the facts of this case" (Exhibit 11 – Pg. 13, Ln. 17-18).

e. Judge Durkin selectively adopted and rejected the divorce court's rulings to favor Paula's arguments: when I pointed out that the July 15, 2016, injunctive order did not find that he had dissipated marital funds, Judge Durkin "presume[d]" that the order was entered "for cause". (Exhibit 11 – Pg. 5, Ln. 13). But when faced with the March 3, 2015 order denying Paula's request, in her December 2014, petition, to "Enjoin[] and restrain BARRY EPSTEIN from expending or transferring any funds to his divorce counsel…" [DE #247-7]; [DE #247-6, pg. 5], Judge Durkin opined that Paula's alleged grievances were "reasonable" (Exhibit 11 – Pg. 5, Ln. 22-25), even though the divorce court found that they were not reasonable. [See DE #247-8] ("I'm not shocked by the fees on either side. I'm not going to grant the preliminary injunction for that").

f. When I complained about Paula's dragging the third-parties from my e-mails into the case, subpoenaing them to testify, and continuing to publish more of my e-mails, Judge Durkin blamed my attorney for attaching some of my e-mails to the first complaint. (Exhibit 11 – Pg. 16, Ln. 8-9). I did not attach these e-mails to the complaint when I filed this case. [DE #1]. Jay Frank first published the third-

parties' names into the record as an exhibit. [DE #18-1]; [See DE #65]. The e-mails were only attached to the amended complaint later, and only after Paula claimed that my complaint was defective without them. [See DE #15, pg. 2, 5].

31. Both Judge Durkin and Judge Finnegan have shown bias and prejudice against me, both through their rulings and their comments and remarks against me and in favor of Paula.

Further affiant sayeth not.

Barry Epstein

VERIFICATION BY CERTIFICATION

The undersigned hereby certifies, pursuant to 28 U.S. Code § 1746, under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 17, 2017

Barry J. Epstein

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BARRY EPSTEIN,	)	Docket No. 14 C 8431
	)	
Plaintiff,	)	Chicago, Illinois
	)	January 6, 2017
v.	)	9:15 a.m.
	)	
PAULA EPSTEIN,	)	
	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS - Status
BEFORE THE HONORABLE THOMAS M. DURKIN

APPEARANCES:

For the Plaintiff: LANE KEYFLI LAW LTD. by
MS. NEJLA K. LANE
5901 N. Cicero Avenue
Suite 200
Chicago, IL 60646

For the Defendant: BROTSCHUL POTTS LLC by
MR. SCOTT A. SCHAEFERS
30 N. LaSalle Street
Suite 1402
Chicago, IL 60602

Court Reporter: LAURA R. RENKE, CSR, RDR, CRR
Official Court Reporter
219 S. Dearborn Street, Room 1432
Chicago, IL 60604
312.435.6053
laura_renke@ilnd.uscourts.gov

this, if at all?

MR. SCHAEFERS: I think it does not, your Honor. I made a settlement offer a couple days ago. It was rejected without counter. Our clients aren't getting any younger, so we'd like to move on this now.

THE COURT: Fine.

MR. SCHAEFERS: Okay.

THE COURT: Well, what kind of discovery do you need in this case? Why don't we just set it for trial?

MR. SCHAEFERS: That's fine.

MS. LANE: Well, your Honor, first of all, I had a proposed amended complaint back then when we moved it to the appeal process. I would like to have some time, sometime in February to complete, maybe change some of the proposed amendments or add to it, to have the leave to it, even if it's joinder or no joinder.

I would like to finish my written closing arguments, which is voluminous work that I need to complete. And I would like to handle that myself instead of delegating some portions of it.

So if I could come back with my amended complaint, and we can start discovery. But with the discovery, I do seek to have an expert witness, forensic computer expert witness, because I don't think it is a simple issue. This is a little bit complex, and it needs handling and proper preparation for a

trial.

THE COURT: All right. Well, let's set a trial date and work backwards.

Sandy, what do we have in June? June 5th is available, isn't it?

MS. LANE: Judge, I was just actually hoping maybe that we could get at least six months for the expert witness.

THE COURT: No, no. This is not -- this is -- you can make it very complicated.

MR. SCHAEFERS: No.

THE COURT: But setting a trial date in a case like this where the issues are relatively straightforward -- I mean, an expert can explain whether or not this rule allowed for instantaneous transmission of the e-mails or whether there was a gap.

I read the 7th Circuit opinion carefully. They made pretty clear what would be a violation of the --

MR. SCHAEFERS: Right.

THE COURT: -- Stored Communications Act and what wouldn't.

MR. SCHAEFERS: It --

THE COURT: Go ahead.

MR. SCHAEFERS: I'm sorry, Judge. You said Stored Communications Act. It's Wiretap Act. I'm --

THE COURT: Correct.

MR. SCHAEFERS: -- not trying to be cute --
THE COURT: You are correct.
MR. SCHAEFERS: -- but there are --
THE COURT: You are correct.
MR. SCHAEFERS: -- material differences between them. That's --
THE COURT: Yeah.
MS. LANE: And that's why I want to amend it to add or subtract from my complaint, to bring you the proper complaint.
THE COURT: Well, you can do that. You can amend a complaint up until and, in fact, even during trial. But we need to set a trial date, and then all things flow from that.
If you're going to talk reasonably and settle about this case -- settle this case, you'll do it under threat of a trial date.
If you're going to conduct discovery in the case with experts, you'll do it with a firm trial date in place. And then experts, who are paid for their time, will be happy to work within those constraints. You give them nine months to work on something, they'll take all nine months, if not more.
MS. LANE: Mm-hmm.
THE COURT: And we just have to get the case done. It's not that complicated.
All right. And it's -- it was filed --
MR. SCHAEFERS: Your Honor --

MS. LANE: Your Honor --
THE COURT: June 5th it is.
MS. LANE: -- June is not a good month for me because that's my annual CLE conferences outside the state.
THE COURT: For the whole month?
MS. LANE: No, but it is toward the end, but it's -- it's just June is not a good month for me.
THE COURT: It's a good month for me, and right now you've got basically -- and I don't mean to be arbitrary about this, but I have trials lined up -- including incarcerated defendants, as you just saw -- lined up for a good part of the spring. And if I don't set dates that are necessary for the court schedule, cases don't get done.
So I think you're going to have to -- if your CLE is toward the end of the month, you'll be --
MS. LANE: It is end of the month.
THE COURT: -- able to approach it with a clear mind because you won't have this trial to worry about. So June 5th it is. We'll set it, a one-week jury trial, the week of June 5th.
What I'd like you both to do is go in the hallway and discuss time -- a discovery schedule that will fit within this -- within this schedule, within this trial schedule. Also discuss deadlines that you both want to impose on each other for either filing an amended complaint --

MS. LANE: Mm-hmm.

THE COURT: -- which I'll let you do, or filing a counterclaim, which I'll also let you do. But you need to come back in with a proposed discovery schedule or come back to me with your differences after you're done in the hall, and I'll rule on them at that time.

MR. SCHAEFERS: Do you want a dispositive motion schedule too, Judge, or --

THE COURT: If you insist on filing one, when you finish discovery, you can file it. But --

MR. SCHAEFERS: Right.

THE COURT: -- if you finish discovery on June 2nd, then you're not going to get a chance to file a dispositive motion for a June 5th trial.

MR. SCHAEFERS: Right.

THE COURT: If you finish discovery earlier and you want to file dispositive motions --

MR. SCHAEFERS: Okay.

THE COURT: -- the more time you take on discovery, the less time you'll have to brief it.

MR. SCHAEFERS: Understood.

MS. LANE: How long could I have? Could I have at least the first week of February to come with the amended complaint because it's --

THE COURT: That's what I want you to talk about in

THE COURT: Well, lower the temperature between the two of you. I'm not casting stones on either side. And just act professionally because if you don't, it will inure to the detriment of your clients. If I receive a -- if I form an unfavorable opinion about one of you, either side, because of the -- your lack of professionalism, as a matter of human nature, it -- it -- I'll do my best to make sure it doesn't rub off and hurt your client. But you don't want to even put that risk to your client.

MS. LANE: I don't.

THE COURT: So do your best to act professionally. I'm sure you both will.

MR. SCHAEFERS: Understood.

THE COURT: Judge Finnegan is a very skilled magistrate judge who has a lot of experience dealing with parties who just don't like each other and then -- not lawyers, parties that don't like each other -- and then getting them to a point where they can agree to move on with their lives.

So I'll see if Judge -- I'll make the referral. Discovery will continue. We've got a schedule set for all the pleadings. And I'll ask Judge Finnegan to see if she can make an exception and try and accelerate the date for the settlement conference in this case.

MR. SCHAEFERS: But we can start discovery today then.

THE COURT: You can.

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BARRY EPSTEIN,	)	Docket No. 14 C 8431
	)	
Plaintiff,	)	Chicago, Illinois
	)	February 7, 2017
v.	)	9:11 a.m.
	)	
PAULA EPSTEIN,	)	
	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS - Motion Hearing
BEFORE THE HONORABLE THOMAS M. DURKIN

APPEARANCES:

For the Plaintiff: LANE KEYFLI LAW LTD. by
MS. NEJLA K. LANE
5901 N. Cicero Avenue
Suite 200
Chicago, IL 60646

For the Defendant: BROTSCHUL POTTS LLC by
MR. SCOTT A. SCHAEFERS
30 N. LaSalle Street
Suite 1402
Chicago, IL 60602

Court Reporter: LAURA R. RENKE, CSR, RDR, CRR
Official Court Reporter
219 S. Dearborn Street, Room 1432
Chicago, IL 60604
312.435.6053
laura_renke@ilnd.uscourts.gov

Epstein's -- does he still have a Yahoo! account? Is that still his account?

MS. LANE: Yes, I think he does. And I just -- in the past, I put BE@gmail, BE@yahoo for both of the parties because they will be getting love letters, hate letters, all of the things. And that's exactly what I was trying to rectify by sealing those.

THE COURT: They're getting love letters?

MS. LANE: That's my way of saying it, hate letters or whatever he received already, calls. And it's just --

THE COURT: Oh, relating to this litigation.

MS. LANE: Yes, about this litigation.

THE COURT: All right. Well, as to Exhibit 6, there's nothing about the content that is -- needs to be private. Judge Posner has made very clear, as has Judge Easterbrook and the 7th Circuit, that if you intend to go to a court to get your case resolved, you have to live with the contents of what the dispute is about.

If you want to go privately, you go to an arbitration. If you want the courts to resolve disputes, the people that pay our salaries, the taxpayers, are entitled to know what we're considering and why we're reaching decisions.

So there's a bias against sealing records. None of this is the formula of Coca-Cola.

I will, consistent with the previous order, order that

fully understand why he attached them. It's to resist your motion to move a trial date.

So there's nothing inappropriate about what he attached to the complaint. My only concern is whether or not the -- because I may rely upon those things in deciding the motion. And as I mentioned a moment ago, if I'm going to rely on documents to support a decision, the public is entitled to know what I rely upon.

In this case, in the other five cases I just heard, or in the other two or three I'm going to hear today or the hundreds I have, that's a very clear directive from the 7th Circuit. If you don't want things public that might be embarrassing, might be something the parties would view as intrusive, go to arbitration.

And that's the price people pay when they go to courts. They have to live with the consequence that they're -- absent a significant proprietary interest or a significant damage to a third party, which is why I sealed the names of the women he was e-mailing, there's nothing that requires -- or, frankly, it's to the contrary. I'm supposed to keep these things public.

I don't -- absent you coming in and telling me that because Barry Epstein's e-mail has been hijacked by people who are harassing him because of the positions he's taken in this case, I'm not going to seal Exhibit 6. I've reconsidered.

MR. SCHAEFERS: Okay.

THE COURT: If you want to renew your motion because there's something about what is happening to him because this e-mail is public -- it seems self-inflicted to me, but I'll consider it.

But currently I'm going to deny the motion to seal this exhibit. You can, as I said, renew it if you find some -- if you provide me some other reason, or he changes his e-mail address. That's his call.

But, otherwise, you can renew your motion with specific examples where he's being harassed through the electronic media.

As I told you before, even though I sealed my opinion and redacted at least the portion that included the names of the women, I can't stop the fact that Westlaw has it on publication already. I sealed it from the court record, but any reasonably competent person who is looking to find out those names can just go on Westlaw and find them in a heartbeat.

I did the best I could, but that's not going to prevent people from finding out the names of any of the people involved in this.

What was the other part you wanted redacted?

MS. LANE: Well, I want the entire e-mail Exhibit 6 gone. I want the entire e-mail 7 gone. What is the purpose

it's not doing anybody any good. Yes, my client is 70, turned yesterday 71, and he -- this is going to cause any healthy person even issues. He was just fighting for his right that was violated, that they were trying to extort funds from him.

But Judge Posner has taken care of that, that he tried to --

THE COURT: Sounds like --

MS. LANE: -- prove it --

THE COURT: -- he's the one doing the extorting. He's telling his wife, or ex-wife, "If you don't settle with me, I'm going to go to the FBI and get you criminally prosecuted."

MS. LANE: He's already done that, your Honor.

THE COURT: Pardon?

MS. LANE: He was just saying he already has done all of that the day he discovered. He went against the attorney because he believed that the attorney, from his magazines, that he always said how he can use, why he can use the adulterous affairs or whatever to get more settlement, from that moment on from his articles and what Jay Frank had already stated and the way was going because he was subpoenaing these people from those e-mails to embarrass and humiliate more.

At that point Mr. Epstein did go to the FBI. He did report him to the ARDC. This is not something he is going to do. He didn't threaten her to do anything. But he feels it's Jay Frank who has escaped, who is the culprit of the matter,

THE COURT: Did you ever answer the complaint?

MR. SCHAEFERS: I have never -- no, we filed a motion to dismiss, which you granted and which was reversed. And we will file our answer this Friday.

THE COURT: Are you going to make a jury demand?

MR. SCHAEFERS: I don't know.

THE COURT: All right. Well, if neither side makes a jury demand, I'm not sure I'm going to hear this as a bench. You still -- if either side demands a jury, I still have to consent to a bench. I'm not sure I want a bench in this case. I --

MR. SCHAEFERS: Oh, okay.

THE COURT: I'm -- it's -- I'll check the rules, but although there is a -- a right to a jury trial, the right to a bench also typically -- at least in criminal cases, which I'm more familiar with -- requires the judge to agree too.

MR. SCHAEFERS: Interesting. Okay.

THE COURT: I'm not sure I want to be the one deciding this case. I'd rather let a group of 12 citizens decide it.

But we shall see what you file in your -- when you answer the complaint.

Did plaintiff -- I don't believe you asked for a jury, did you?

MS. LANE: I do not recall.

THE COURT: Okay.

great -- you basically jumped a number of other parties to get before Judge Finnegan where she devoted a good part of a day to your settlement conference. It's unusual to get in that quickly. I asked her as -- given the nature of this case and the heavy emotions on both sides to do that. She did that, to the jeopardy of other lawsuits that have been filed and pending longer. You got your time.

I think what defense counsel said in his response, "Either way, neither party is getting any younger, and defendant should not have to endure yet another delay in getting on with her life merely because plaintiff supposedly cannot afford to sue her over his extramarital e-mails she found on their shared home computers."

I agree. It's time to get this case on, on track. June 5th trial date stands. Nothing encourages parties to settle more than a firm trial date. I hope you settle.

MR. SCHAEFERS: Thank you, Judge.

THE COURT: For the sake of both the plaintiff and defendant.

MS. LANE: Correct.

THE COURT: I mean that sincerely.

MS. LANE: If I may say one more thing, your --

THE COURT: Sure.

MS. LANE: -- Honor, to you. I apologize to interrupt you. But --

Exhibit 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BARRY EPSTEIN, Plaintiff,	)	No. 14 C 8431
vs.	)	Chicago, Illinois
PAULA EPSTEIN, Defendant.	)	March 13, 2017 9:38 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HON. SHEILA M. FINNEGAN, MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: MS. NEJLA K. LANE
Lane Keyfli Law, Ltd.,
5901 North Cicero Avenue, Suite 200,
Chicago, Illinois 60646

For the Defendant: MR. SCOTT A. SCHAEFERS
Brotschul Potts LLC,
30 North LaSalle Street, Suite 1402,
Chicago, Illinois 60602

PATRICK J. MULLEN
Official Court Reporter
United States District Court
219 South Dearborn Street, Room 1412
Chicago, Illinois 60604
(312) 435-5565

09:19:47

less than the merits, but any delay would seem like a recipe for further delay, and it's only the result of, I believe, a self-inflicted injury.

MS. LANE: If I may, Your Honor, he keeps saying self-inflicted, and I object. It's not even proper. He is very well aware that the expert was gone for a week. We tried to -- they are entitled to their own, you know, schedule. I cannot make him do it. So it's not self-inflicted. We're doing our best.

We did already the teleconference, and he explained what needs to be done. We are not experts, and pushing them because of our discovery cutoff date, we are basically pushing them to get it faster than fast when in reality he stated till end of March he would get some analysis then for me to review and then to send it out to Mr. Schaefers. He can do the same with his. It's just not our doing. It's not self-inflicted.

THE COURT: Well, let me just make -- I just want to make sure if I extend this that you're not going to come back and ask for another extension. So I want to know in more detail what's going to be happening. You know, right now it's March 13. So have the computers been sent now?

MS. LANE: They are scheduled this week, as a matter of fact today.

THE COURT: Okay. So the expert will have the computers today.

Exhibit 4

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BARRY EPSTEIN, Plaintiff,	)	No. 14 C 8431
vs.	)	Chicago, Illinois
PAULA EPSTEIN, Defendant.	)	February 17, 2017 10:00 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HON. SHEILA M. FINNEGAN, MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: MS. NEJLA K. LANE
Lane Keyfli Law, Ltd.,
5901 North Cicero Avenue, Suite 200,
Chicago, Illinois 60646

For the Defendant: MR. SCOTT A. SCHAEFERS
Brotschul Potts LLC,
30 North LaSalle Street, Suite 1402,
Chicago, Illinois 60602

PATRICK J. MULLEN
Official Court Reporter
United States District Court
219 South Dearborn Street, Room 1412
Chicago, Illinois 60604
(312) 435-5565

09:19:47

which specific device was used. After an internal forensic inspection and a report of plaintiff's devices, it will be made available. Investigation continues."

So let me just ask plaintiff's counsel. Do you have your IT person working on this by now? 09:28:17

MS. LANE: Yes, we just retained IT counsel, and he specifically said the same thing. It is not the exact devices. These are Internet providers for Yahoo or Google or Columbia. So devices are not necessary for that. As long as we have the headers, all you need to do is go to Google.com or Yahoo.com. 09:28:58 So the devices, I don't know how much material it will give, but we just retained him.

I like to be amicable with the opposing counsel when it comes to the discovery. We can always talk about and make available what's available, but the way -- the direction it's 09:29:53 going, I'm being bullied, I'm being threatened, and then the phones get hung up on my face. That's not how I operate. I'm just doing my job.

And if I told him we can make it available to you but there is nothing that we can find out, and we have just 09:30:13 retained the IT investigator, he has to say, and we want it to be -- if they want the computer devices, we don't know which one. We don't know which location she entered them into. She supposedly had two of her own, one laptop and one computer in the home. We don't know. 09:30:47

time. Now you're moving into whether the discovery is timely or not. That's a different question. All right?

So there is discovery that's been propounded. Is it your argument that he's not entitled to any discovery because it's too late?

09:33:41

MS. LANE: No, it's not too late or too early.

THE COURT: All right.

MS. LANE: We just started everything, and with his questions, none of the questions were in the negative: "Investigation continues."

09:34:06

THE COURT: We'll take them. We're going to take the questions one by one.

MS. LANE: And if I may then answer his compel in writing so this Honorable Court has it in writing, my response to it.

09:34:41

THE COURT: We don't have time for that. I think we do need to take these up and get moving. So you'll notice in federal court with most of the magistrate judges, some of them actually have an order, a standing order that if a motion to compel discovery is filed, you cannot file a response unless the judge asks for it. We want to get you in. We want to get rulings out. If something comes up and I decide I need a written response, then I will ask you for it and we will have a expedited schedule, but here we don't have much time.

09:35:16

09:35:38

So are you seeking any devices to forensically

allegation, then he should be able to identify his computers.

THE COURT: Right. So what you can do on that one is you can answer that Barry doesn't know if she used her own computer or not. He has no idea what computer she used. But whatever the answer is, he knows what the answer is now. He either knows or he doesn't know. You know, you need to put it in writing.

If he doesn't know, then he won't be testifying at trial that Paula used her laptop computer that she used to keep in the kitchen, right? Because if he has that information, he'd be disclosing it right now.

MS. LANE: Correct.

THE COURT: Maybe Paula told him what computers. Maybe he saw her. We don't know, and that's what this discovery is for. So you can answer, but it needs to be -- to the extent he's able to identify any computers that he believes she used, then you need to identify those as well.

MS. LANE: Your Honor, if I may just assert because it's in the answer, now it seems like the direction is changing. If they are alleging that the e-mails, she was accessing her own e-mail and it got populated or whatnot, if that's the case, then yeah, she did use his computer. But if it's not, because some of the entries, if we find out they were from Columbia College, then no, she did not enter them as she states here on the home computer. It was the work computer.

But we don't have the answers.

THE COURT: Here's what you have to keep in mind. You're being asked to provide -- maybe you haven't done a lot of discovery in federal court in a lawsuit like this, but I can't sit here and educate you. You know what your client knows, and they're entitled to find out now what your client knows, what documents he has, and to get that discovery.

09:41:19

So it's not a question of you needing to know what Paula's theory is and whether it's changing and what she's going to do. They're going to ask questions of you or of your client, what does he know, what documents does he have, what devices does he have, and they'll use that however they want to use it to defend against the claims of your client. So it doesn't really matter at this juncture what Paula said or did. I just need to know that we move ahead and get this discovery done.

09:41:40

09:42:01

MS. LANE: And I thought we did exactly the best we could in saying "investigation continues."

THE COURT: Well, we're going to go through them one by one. Let's not talk in the abstract. All right. So plaintiff's 1 was to produce for forensic inspection each device that Paula used or accessed to intercept or access any of plaintiff's electronic communications, and you said that you can't do that till you have an internal forensic inspection.

09:42:35

MS. LANE: Correct.

09:42:55

me know what's happening.

MR. SCHAEFERS: Your Honor, can I suggest this?

THE COURT: Yes.

MR. SCHAEFERS: I'd like plaintiff to answer interrogatory number 1 which is to identify the devices, because it may be that my expert says, well, those types of devices, you know, take some kind of a special access or special examination. So I'd like to know which devices we're talking about before I can educate my forensic expert as to what he's going to be doing.

Frankly, I have talked to my forensic expert, but I haven't engaged him yet because I don't know if the computers are still there. I don't know if they still exist. I didn't want to pay a $1500 retainer if the computers were gone. Do you see what I mean?

THE COURT: So I will have plaintiff's counsel very quickly identify the specific computers that are in your possession. So that's answering interrogatory number 1, as to the ones that you know of and are having your expert examine.

One of the questions in 1, I don't think at this point the passwords and all applications necessarily need to be identified. Certainly your expert is going to get access to the computers. So to the extent there's a password needed to actually do the review, we'll talk about that. But I do require plaintiff to respond to B, the make, model, SKU number,

MR. SCHAEFERS: Right.

THE COURT: If you get new information, you update.

All right. So for now I'm not going to require the exact dollar of the advantage, but if Barry Epstein is seeking the unfair financial advantage in the divorce as a component of damages in this case, then he does need to provide an answer to that information. So you'll supplement it if that's the case.

11:07:26

MR. SCHAEFERS: Your Honor, you referred to an expert. Do you believe that plaintiff said that she's going to get a damages expert? Is that what you're referring to?

11:08:04

THE COURT: Well, I looked at your --

MR. SCHAEFERS: Because I haven't heard any indication.

THE COURT: We're going to talk about that in a minute, but you've given me dates for disclosure of experts so I just didn't know.

11:08:24

MR. SCHAEFERS: Okay. Yeah, I guess I was just thinking forensic experts.

THE COURT: Right.

MR. SCHAEFERS: All right. We'll address that if we need to.

11:08:37

THE COURT: On number 10, he's asking to identify a law enforcement agency or other authorities to whom plaintiffs or agents reported any of the conduct alleged in any of the complaints. By "complaints," do you mean the civil lawsuits

11:09:04

(Discussion off the record.)

THE COURT: -- the close of fact discovery, plaintiff has proposed April 30th. Defendant proposed April 7th. I will pick a date in the middle. I'm going to go with the 19th of April.

11:32:49

You are in agreement that -- no, you're not in agreement. Expert disclosures, does plaintiff expect to have any experts beyond IT or electronic forensic examiners?

MS. LANE: Unknown at the time, Your Honor.

11:33:22

THE COURT: Okay.

MR. SCHAEFERS: Your Honor, if fact is going to close 4/19, can we get a little more time than I suggested? My expert might need to see the dep transcripts or (inaudible).

THE COURT: All right. So the expert disclosures

11:34:19

would be April 30th, I guess. That's not really going to be enough time.

MR. SCHAEFERS: Yeah.

THE COURT: All right. Let's say April 14th for close of fact discovery.

11:35:01

MS. LANE: April 14th?

THE COURT: Yes, for fact, not expert. So that gives you two months from now. Expert disclosures by April 28th. You'll have to have your experts ready to be deposed, I mean, to get the dates reserved on their calendars now, given how

11:35:42

little time you have, and you'll need to block out dates now

Exhibit 5

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BARRY EPSTEIN, Plaintiff,	)	No. 14 C 8431
vs.	)	Chicago, Illinois
PAULA EPSTEIN, Defendant.	)	May 2, 2017 11:07 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HON. SHEILA M. FINNEGAN, MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: MS. NEJLA K. LANE
Lane Keyfli Law, Ltd.,
5901 North Cicero Avenue, Suite 200,
Chicago, Illinois 60646

For the Defendant: MR. SCOTT A. SCHAEFERS
Brotschul Potts LLC,
30 North LaSalle Street, Suite 1402,
Chicago, Illinois 60602

PATRICK J. MULLEN
Official Court Reporter
United States District Court
219 South Dearborn Street, Room 1412
Chicago, Illinois 60604
(312) 435-5565

09:19:47

MS. LANE: And, Your Honor, I would like to extend the fact discovery while we're working with the experts until at least the end of May while we're still exchanging productions.

THE COURT: What is the discovery, the fact discovery that remains to be done that I'd be extending discovery for?

MS. LANE: We don't have the full discovery from the defendants yet, the e-mails. As I already indicated before, we feel there are missing e-mails. At the deposition, Ms. Epstein stated certain e-mails that she had taken for --

THE COURT: So that's the subject of your motion to compel which I'm going to give briefing on.

MS. LANE: Yeah, we would like to get --

THE COURT: So, I mean, to say discovery is -- obviously, if you get productions and you think you haven't gotten things or you learn things at depositions, you can seek, if you can't agree, you can seek leave to serve additional discovery or file motions to compel, but that's different from reopening discovery which would allow, you know, all new discovery. So I have no problem with that.

If I grant your motion to compel, then defendant is going to have to produce those documents. It doesn't matter that, you know, the deadline is past. If you learn something at a deposition and you think you need to serve new discovery, you know, see if you can reach agreement. If you can't, ask me for permission. But if it's something you couldn't have known

and, you know, you just learned of, there might be good reason to allow that additional discovery to be served.

MR. SCHAEFERS: On those lines, Your Honor, I offered to reproduce Ms. Epstein for an hour of deposition for the 05:14:05 additional e-mails that we located the day before her deposition, and I think we have an agreement on that.

MS. LANE: Yes, we do.

MR. SCHAEFERS: Yeah.

MS. LANE: And because of the, I guess, timeline and 05:14:29 the pressure and everything, we don't even have the transcripts of, you know, the parties, Your Honor. So we can't work with it. That is, miracles don't happen.

MR. SCHAEFERS: I think --

THE COURT: When do you think you'll have them? I 05:14:55 mean, you were relying on Paula Epstein's deposition for your motion to compel. Is there going to be a factual dispute about statements made by Ms. Epstein that plaintiff is relying on in support of the motion to compel?

MR. SCHAEFERS: Maybe, maybe. I only got her motion 05:15:32 to compel last night, so I didn't have a chance to --

THE COURT: So if there are, then I might need to defer that until I see the portions of the transcript if they matter.

MR. SCHAEFERS: I'm guessing we get the transcript 05:16:36 this Thursday. The normal turnaround is two weeks, and this

and evidentiary sanctions, do I do that with you or Judge Durkin?

THE COURT: Judge Durkin.

MR. SCHAEFERS: Okay.

05:19:15 MS. LANE: And, Your Honor, if I may remind this Court, this Court said specifically: Passwords are privileged. You don't need that.

It was on March 13th you came for your motion to compel. This Court already answered that he didn't have to

05:19:38 provide the passwords.

THE COURT: I don't remember that. So if you find that order, you can certainly cite to it.

MR. SCHAEFERS: What I believe you said is: She doesn't have to identify the answers in the interrogatory

05:20:11 response. Why don't you work on it with your expert protocols.

That is what I believe we discussed.

MS. LANE: I think --

MR. SCHAEFERS: But I don't see how he can't provide a password if she alleged that my client used it.

05:20:42 MS. LANE: Why should he provide any of his passwords?

THE COURT: Can't you change it? I mean, he can change his password.

MS. LANE: He can, but why does he need to know my client's password? As a matter of fact, my client said he

05:21:27 can't even recall what he did. You know, he changes them

Exhibit 6

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BARRY EPSTEIN,	)	Docket No. 14 C 8431
	)	
Plaintiff,	)	Chicago, Illinois
	)	May 9, 2017
v.	)	9:27 a.m.
	)	
PAULA EPSTEIN,	)	
	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS - Motion Hearing
BEFORE THE HONORABLE THOMAS M. DURKIN

APPEARANCES:

For the Plaintiff: LANE KEYFLI LAW LTD. by
MS. NEJLA K. LANE
5901 N. Cicero Avenue
Suite 200
Chicago, IL 60646

For the Defendant: BROTSCHUL POTTS LLC by
MR. SCOTT A. SCHAEFERS
30 N. LaSalle Street
Suite 1402
Chicago, IL 60602

Court Reporter: LAURA R. RENKE, CSR, RDR, CRR
Official Court Reporter
219 S. Dearborn Street, Room 1432
Chicago, IL 60604
312.435.6053
laura_renke@ilnd.uscourts.gov

goose chase. Why should my client ever disclose his passwords? She has a brand-new laptop, and I'm seeking to find out information from that, which he's trying not to let me get the laptop that she had in possession after 2012. With that we would know if she accessed -- accessed Mr. -- Dr. Epstein's e-mails and used the passwords or not.

THE COURT: Why would he refuse to answer -- not put out publicly, but why would he refuse to answer a question of what his passwords were years and years ago?

MS. LANE: Well, first, as he stated, he wasn't sure. But he felt that's intrusion into his, you know, privileged information.

THE COURT: It's not a privilege.

MS. LANE: My passwords are because --

THE COURT: No, they're not. No. Stop. They're not privileged. You can take a Fifth Amendment privilege if you believe your answer will incriminate you. If that's the case, were I a prosecutor as I was 24 years ago, I either immunize you or you take the Fifth. Adverse inference in a civil case is drawn from taking the Fifth.

Passwords are not privileged. If your client doesn't want to disclose relevant information now, I'll dismiss the case as a sanction for failure to cooperate in the discovery process.

This is nonsense. Passwords are not privileged. They

may not be something that is given to the world. It may be something that you have to seal the portion of the transcript on where he discloses it. It may be, if it's part of an interrogatory answer, those answers get sealed. It may be, if parties were cooperative, that you would provide it in a letter which the parties would agree answers the discovery but does not become part of the public record.

But if you're saying his client hacked his account and had access to his password, you need to tell defense lawyer -- the defense lawyer what that password is. If your client doesn't remember it, say so. But refusal to answer a question in a deposition without seeking a protective order is not allowed in federal court.

And if your client's going to take the Fifth on whether or not he had extramarital affairs, so be it. Apparently there's a statute making adultery a crime in Illinois. So be it.

But refusal to answer questions about what his password were -- passwords were -- not even are, what they were at the time she supposedly hacked into his account -- is not a good-faith response.

And the sanction for not answering discovery in a case like this is I can dismiss your case. And I won't hesitate to do it if that's going to be the way you want to proceed.

So answer the -- provide the answers as to what the

passwords were.

As to the adverse inference issue, you can brief that. I'm not going to rule on that till trial either. But as to the adverse inference issue, you can brief it. How much time do you want to respond to his motion?

MS. LANE: Well, I would need at least 28 days for that --

THE COURT: That's fine.

MS. LANE: -- since it's not going to be.

But, your Honor, Judge Finnegan addressed the password issue. She said my client does not have to answer that. So it was in the court order.

THE COURT: I talked to Judge Finnegan this morning.

MS. LANE: It's in the court order.

THE COURT: She didn't want it -- I talked to her this morning because I knew this was coming up. I don't think she has a transcript of it. Her recollection -- and she freely admits that she doesn't have a transcript. Her recollection was it's not something that needs to be put in a public filing.

But even if Judge Finnegan said that's not something he has to answer, I'm the trial judge in this case, and I'm saying he does. So he does need to answer that.

My suggestion is you do it in a letter. Failing that, you can do it in an interrogatory. Failing that -- I don't want more depositions in this case. You've deposed the

Ex. 5 DE-Important NDIL

Exhibit 7

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BARRY EPSTEIN,)
Plaintiff,) No. 1:14-CV-8431
vs.) Judge Thomas M. Durkin
PAULA EPSTEIN,) Magistrate Judge Sheila
Defendant.) Finnegan

The deposition of BARRY EPSTEIN, called for examination, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before Diana L. Coconato, a Notary Public within and for the County of Cook, State of Illinois, and a Certified Shorthand Reporter, CSR. No. 84-3042, of said state, at Suite 1402, 30 North LaSalle Street, Chicago, Illinois, on Thursday, April 13, 2017, at 11:00 a.m.

REPORTED BY: DIANA L. COCONATO, CSR No. 84-3042.

Page 58

When did you and [redacted] first meet?
A. Probably in the late 1970s, I would guess.
Q. Was she a coworker?
A. Yeah.
Q. At Alexander & Grant?
A. Alexander Grant & Company.
Q. You were on the professional staff. Was she on the professional staff, too?
A. She was a secretary.
Q. Did she start there after you?
A. Yeah.
Q. How long did she work there?
A. I don't know.
Q. You worked there until what, 1985?
A. '2.
Q. 1982. Was she still working there when you left?
A. I think so.
Q. Did you have a relationship with her while working there?
A. She was a coworker. That was a relationship.
Q. Did you have any romantic relationship

Page 59

while you were working there?
MS. LANE: Objection. Objection. It's beyond the scope of the case that we filed.
BY MR. SCHAEFERS:
Q. So did you ever have -- back in the '70s, early '80s, did you have sexual intercourse with her?
MS. LANE: Objection. That's outside our complaint. That is wiretap violation.
MR. SCHAEFERS: Judge Posner would disagree. And I think our judges would, too --
MS. LANE: I don't think Judge Posner said ask if this man had sex with women or his wife or anything. Sex was not.
MR. SCHAEFERS: He said if the issue was raised, he would not enforce the Wiretap Act against Mrs. --
MS. LANE: He gave a dictum of his opinion. It's not the order.
BY MR. SCHAEFERS:
Q. Did you have sexual intercourse with her back in the '70s or early '80s?
MS. LANE: This one you don't have to answer. It's called only -- this is just asked to harass you

Page 60

and badger the witness.
MR. SCHAEFERS: I made affirmative defenses, and this is relevant to that.
MS. LANE: This has nothing to do with your Wiretap.
MR. SCHAEFERS: You haven't moved to strike my affirmative defenses so. . . .
BY MR. SCHAEFERS:
Q. Are you going to answer whether or not you ever had any sexual contact with --
A. You will be happy to know -- just let me, you will be happy to know -- Paula sitting there will be happy to know, I'm not going to raise anything in this case, including in her deposition or trial, regarding her personal behavior or practices or habits. And I'm not going to talk about my personal behavior. So the answer is no.
Q. The not going to answer?
A. Yeah, I'm not going to answer.
Q. I think you said in Exhibit 6, Paragraph 7, your interrogatory responses that in the 1980s you were told about an alleged meeting between Paula and [redacted] at Paula's workplace. In response to which he was also upset about the allegations made

Page 61

against him.
What were the allegations made against you?
A. It was all hearsay. Paula claimed that she met with [redacted]. I wasn't there.
Q. What were the allegations made against you? You said you were upset by the allegations made against you. What were those allegations?
A. Probably had to do with a presumed relationship.
Q. What was that presumed relationship? Were you lovers?
A. I don't know what was said. I wasn't there for the information.
MS. LANE: Objection.
BY MR. SCHAEFERS:
Q. Did you have a romantic relationship with [redacted] --
MS. LANE: Objection.
BY MR. SCHAEFERS:
Q. Back in the '70s and early '80s?
MS. LANE: Client doesn't have to answer that. It's asked only to embarrass and harass my client.
BY MR. SCHAEFERS:

Page 62

Q. So you're not going to answer it?
A. I'm not going to answer it.
Q. At this time I'm going to call Judge Finnegan's chambers to see if I can get a ruling on this.
THE REPORTER: Do you want this on the record?
MR. SCHAEFERS: Yes, please.
A WOMAN: Judge Finnegan's chambers.
MR. SCHAEFERS: Hi, my name is Scott Schaefers. I'm an attorney on the Epstein versus Epstein case with Judge Finnegan. We're at the plaintiff's deposition. I would like to get a ruling from Judge Finnegan on some questions that I'm asking, which the witness is refusing to --
A WOMAN: You're in a deposition now?
MR. SCHAEFERS: That's right. Is she available?
A WOMAN: I'm sorry, your name again is?
MR. SCHAEFERS: Scott Schaefers, I'm an attorney for the defendant in the Epstein case. We were before her this morning, so she should have some familiarity, I believe.
A WOMAN: Okay. Can you hold, please.
MR. SCHAEFERS: Thank you.

Page 63

JUDGE FINNEGAN'S LAW CLERK: Counsel, this is Allison Angle (phonetic), I'm the judge's law clerk. She has requested that I obtain additional information from you.
MR. SCHAEFERS: Sure. This is Scott Schaefers. I'm the attorney for defendant. We're on the record here and plaintiff is -- at plaintiff's deposition, and he is represented by his counsel, Ms. Nejla Lane. I'm asking him whether he ever had a sexual or romantic relationship with the three women with whom he exchanged e-mails. And that my client accessed.
I believe it's relevant to my affirmative defenses, which are based, in part, on Judge Posner's concurrence in the Seventh Circuit decision in this case. And the plaintiff is refusing to answer based on advice of counsel.
JUDGE FINNEGAN'S LAW CLERK: You're talking about [redacted] and [redacted].
MR. SCHAEFERS: [redacted], and [redacted].
JUDGE FINNEGAN'S LAW CLERK: I'm sorry, who is the third person?
MR. SCHAEFERS: [redacted], [redacted].

Page 64

JUDGE FINNEGAN'S LAW CLERK: Hang on just a minute.
MR. SCHAEFERS: Thank you.
THE WITNESS: Any chance of getting the air conditioner going?
MR. SCHAEFERS: This is as low as it goes.
THE WITNESS: 'Cause Paula is looking warm. Melting.
THE COURT: Good morning, this Judge Finnegan.
MR. SCHAEFERS: Good morning, Judge, this is Scott Schaefers, attorney for defendant, Paula Epstein.
MS. LANE: Your Honor, Nejla Lane, on behalf of Barry Epstein. We believe that counsel is --
THE COURT: You're on the record, correct?
MR. SCHAEFERS: That's right.
MS. LANE: Correct.
THE COURT: So, go ahead.
MR. SCHAEFERS: Your Honor, I had asked the witness whether he had any sexual relationship or romantic relationship with the three women with whom he exchanged e-mails that he alleged that my client accessed.
I believe those are relevant to my

Page 65

affirmative defenses, as informed by Judge Posner's concurrence, that his seeking to obtain recovery based on those accesses are against public policy. And the witness is refusing to answer whether he had such relationships.
MS. LANE: And if I may, your Honor, Judge Posner's dicta, his opinion, was not an order, and neither are the questions related to Wiretap or Communication Act violation. This is asked just for improper purpose to harass and embarrass the client further.
THE COURT: All right. I view it as a relevancy objection, and I think there's an argument, a good faith argument, that it is relevant. Relevancy objections are not proper at a deposition. So, the witness does need to answer the question.
And I don't expect the parties to be calling with relevancy objections. If you think there's a basis to stop the deposition and seek a protective order, you can do that. If you're wrong, sanctions will be imposed. So I would suggest that on relevancy issues that those questions should be answered, rather stopping the deposition. And you

Page 66

shouldn't be calling a judge with relevancy objections.
MR. SCHAEFERS: Thank you, Judge. I did it just to avoid having to come back at some future date or raise it in a motion. But I appreciate your ruling. Thank you.
MS. LANE: And if I may, your Honor, this is not only relevancy question. This has nothing to do with the claims, the complaint that we filed. And it is for pure purpose of harassment and embarrassment. And Judge Posner's dicta opinions has no bearing on the question to be sought for the Wiretap violation. So other than violating --
THE COURT: Your objection is overruled. He must answer the questions.
MR. SCHAEFERS: Thank you, Judge.
MS. LANE: I would like to have a few minutes with my client. Let's step outside.
MR. SCHAEFERS: Let me -- there's a question pending.
MS. LANE: Or you can leave these questions until the end of it.
MR. SCHAEFERS: No, no.
MS. LANE: Okay. Otherwise, I have to speak

Page 67

with my client and maybe terminate pursuant to Rule 30(d)(3). Your questions are improper.
MR. SCHAEFERS: You heard if you terminate and --
MS. LANE: I will discuss with my client.
MR. SCHAEFERS: -- and she will sanction you. You heard that.
MS. LANE: The sanction. We will deal with the sanction. This has nothing to do with the complaint other than harassing the client.
BY MR. SCHAEFERS:
Q. So, sir, did you have sex with [redacted] back in the '70s or '80s?
A. I need to take a break.
Q. I insist that you answer the question now, but I can't forcibly stop you from leaving the room. Are you going to leave the room while the question is pending?
MS. LANE: Yes, two-minute recess, please.
(WHEREUPON, a recess was had at 12:09 to 12:11.)
BY MR. SCHAEFERS:
Q. I repeat the question. Did you ever have sex with [redacted] in the late '70s or early

Page 68

'80s?
A. I'm exercising --
MS. LANE: (Talking on top of each other.)
THE REPORTER: I didn't hear what you said.
THE WITNESS: I said it. I'm asserting my rights under the Fifth Amendment, and I'm not answering that question.
BY MR. SCHAEFERS:
Q. It's been almost 40 years since that happened?
A. It didn't happen.
Q. It's been almost -- you can't invoke the Fifth Amendment?
MS. LANE: Objection, counsel. He asserted his Fifth Amendment right. Move to the next question.
MR. SCHAEFERS: You cannot invoke your Fifth Amendment right if the Statute of Limitations has expired.
MS. LANE: That is to be argued before the judge, if necessary. But at this moment, he is asserting his Fifth Amendment right.
BY MR. SCHAEFERS:
Q. Do you know if, other than the visit that you testified to in your interrogatory response that

Page 69

[redacted] paid to Paula in the 1980s, do you know if [redacted] had contacted Paula at any other time, ever?
A. I don't know. Or vice versa for that matter.
Q. So, you don't know one way or another whether [redacted] contacted Paula?
A. Or Paula contacted [redacted], that's right.
Q. Did you ever tell Paula back in the '80s or '90s that you would have no further contact with [redacted]?
A. I don't recall.
Q. Did you and [redacted] renew a relationship in the 2000s?
A. Renew would imply there was something previous. I will not answer that question.
Q. Did you have a relationship with [redacted] in the 2000s?
MS. LANE: Objection. The client has asserted his Fifth Amendment rights so. . . .
BY MR. SCHAEFERS:
Q. You're not going to answer that question?
A. No.
Q. Did you ever go on vacations together?
A. I'm not going to answer that question.

Ex. 5 DE-Important NDIL

Page 70

Q. Did ever go on trips together?
A. Same answer.
(WHEREUPON, discussion was had off the record.)
BY MR. SCHAEFERS:
Q. Did you go out to dinner together?
A. Don't recall.
Q. Did you ever go to museums together?
A. Don't recall.
Q. Did you ever hang out on weekends together?
A. I don't know what hang out means.
Q. Did you ever spend time together on the weekends, sir?
MS. LANE: Objection, counsel, you're harassing the witness. This asks for another improper question.
MR. SCHAEFERS: Words like harassing are going to get you into trouble. The judge just overruled your objection, so to have the audacity to say you're harassing.
MS. LANE: But you are.
MR. SCHAEFERS: Okay.
MS. LANE: And I'm making the record. And

Page 71

other than Judge Finnegan, Judge Durkin can hear it or the Seventh Circuit can hear it.
BY MR. SCHAEFERS:
Q. Since the year 2000, have you ever had sexual intercourse with [redacted]?
MS. LANE: Objection.
BY THE WITNESS:
A. I'm not answering.
Q. Have you had ever had any other kind of sexual contact with [redacted] since 2000?
A. What do you mean other?
MS. LANE: Objection.
BY MR. SCHAEFERS:
Q. Other sexual contact, did you touch each other's genitals? How's that?
A. Scott, your scandalizing me.
Q. Are you going to answer the question?
A. No.
MS. LANE: Objection.
BY MR. SCHAEFERS:
Q. Did you ever have romantic feelings for her since 2000?
A. I don't know what that means.
Q. Did you ever have affection for her?

Page 72

A. As a human being, I suppose, but not otherwise.
Q. All right. So, we're going to go through your e-mails with [redacted].
Exhibit 13.
(WHEREUPON, a certain document was marked Defendant's Deposition Exhibit No. 13 for identification as of 04-13-17.)
BY MR. SCHAEFERS:
Q. Before you look at the e-mails, I don't want to go through the contents in any real detail. Right now you can look at them. Feel free to look at them.
The questions I'm going to ask are, largely, do you know when they were forwarded to Paula? Do you have any information to that effect? And do you have any evidence of the forwarding other than the e-mail itself. Okay?
All right. Exhibit 13.
Exhibit 13, Bates Numbers Paula 1924 to 1925, and for the rest of this deposition, I'm not going to use the word Paula when I refer to a Bates number. I'm just going to use the number. Okay?

Page 73

Is this a copy of an e-mail exchange between you and [redacted] on May 26th of 2007?
A. I don't know.
Q. Do you recall exchanging e-mails with these contents with her on that date?
A. I don't recall doing this, no.
Q. Do you know when Paula first forwarded this e-mail to herself?
A. I only know what's on the page here. And I don't know that it's valid or legitimate, so no.
Q. And you don't have any other information as to when Paula forwarded this e-mail to herself --
MS. LANE: Objection.
BY MR. SCHAEFERS:
Q. -- other than what's on the page?
MS. LANE: Objection, seeking conclusion. That's not in my client's --
MR. SCHAEFERS: I just want to know whether he has any information. If the answer is no, that's great.
MS. LANE: But he said the document speaks for itself.
BY MR. SCHAEFERS:
Q. Do you have any other information as to

Exhibit 8

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BARRY EPSTEIN,	)	No. 14 C 8431
Plaintiff,	)	
vs.	)	Chicago, Illinois
PAULA EPSTEIN,	)	
Defendant.	)	April 18, 2017 11:34 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HON. SHEILA M. FINNEGAN, MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: MS. NEJLA K. LANE
Lane Keyfli Law, Ltd.,
5901 North Cicero Avenue, Suite 200,
Chicago, Illinois 60646

For the Defendant: MR. SCOTT A. SCHAEFERS
Brotschul Potts LLC,
30 North LaSalle Street, Suite 1402,
Chicago, Illinois 60602

PATRICK J. MULLEN
Official Court Reporter
United States District Court
219 South Dearborn Street, Room 1412
Chicago, Illinois 60604
(312) 435-5565

09:19:47

THE CLERK: 14 C 8431, Epstein versus Epstein, et al., here on motion hearing.

MS. LANE: Good morning, Your Honor. Nejla Lane on behalf of Barry Epstein.

02:06:08 MR. SCHAEFERS: Good morning, Scott Schaefers, S-c-h-a-e-f-e-r-s, on behalf of the defendant.

THE COURT: Good morning. All right. I've reviewed the plaintiff's emergency motion to extend the deposition of Paula Epstein, and I have reviewed the defendant's opposition

02:06:38 to that. I had a couple questions. This deposition was set on March 21st, 2017. The parties agreed on it, and then I said the deposition shall take place on that date. On April 17th, 2017, at 12:29 p.m., plaintiff's counsel sent an e-mail to defense counsel asking to reschedule it and said:

02:07:16 "Since the trial date in this matter is moved to July 2017, I'd like to reschedule to mid-May or mid to late May, if possible, or thereafter" -- and then noted -- "I have other pressing trial preparation, and I would greatly appreciate the postponement."

02:07:53 So a question to plaintiff's counsel: What was the other pressing trial preparation? You know, when did you know that you had it to deal with?

MS. LANE: They've been on the record, Your Honor, that we know for sure that it's going to go to trial, but

02:08:40 they're almost all at the same time as this trial. But other

than that, we didn't really finish the entire discovery yet. We still --

THE COURT: All right. But that's a different question.

02:08:55 MS. LANE: Yes, that's different, yes.

THE COURT: So let me just first focus on this.

MS. LANE: I knew of them, and I was kind of relieved when we got extra six, seven weeks on this case so I could just balance, you know, the discovery on both.

02:10:19 THE COURT: Can you be more specific about what the pressing trial preparation is that you're saying was why you needed to yesterday at the lunch hour ask to move the deposition?

MS. LANE: The case is in the law division. It's a

02:10:54 wrongful death action.

THE COURT: Can you give me a name?

MS. LANE: Yes, the Estate of Stan Back.

THE COURT: Can you spell that?

MS. LANE: S-t-a-n and B-a-c-k versus San Franciscan.

02:11:35 I don't know the exact spelling of it. We were the second attorney, and when we got on the case, right when we were preparing for trial we found out that the expert who wrote the report has since died.

THE COURT: In that case?

02:11:51 MS. LANE: In that case. So when we took it over, we

thought we had an expert report and we can just proceed with the discovery. When he died, that put us in a zero. Then we went before Judge, I think, Flanagan, and he gave us only like extension of -- it's supposed to be in May -- three months. He
02:12:23 gave us extension to August, early August on.

So we had to find a doctor. One doctor, he took the cases, the boxes, and he didn't get back to us in two month, and then we got another expert who took the box and he shredded the box. So we had to go get the new box, so the first expert
02:12:55 is on there.

THE COURT: Is there a document? Is there something that I can verify this in the docket?

MS. LANE: Yes, we have it also written. We have written motions to the judge, Judge Gillespie, on this case.

02:13:25 THE COURT: I thought it was Judge Flanagan, no?

MS. LANE: Flanagan was the trial coordinating judge who you have to go before.

THE COURT: The motions judge?

MS. LANE: The motions judge. Then they set you. We
02:14:10 don't know who the trial judge is going to be. So they put us so we have to update our 213(f)'s.

THE COURT: I mean, what do you have scheduled on April 20th that prevents you from being at her deposition?

MS. LANE: We just provided the 213s, and we have all
02:15:33 these nurses to depose and at least two experts to depose.

It's a different procedure, and I felt I can balance it better if I have just a little bit of time to go through, you know, the questions for the nurses, for the doctors, and communicate with our co-counsel just to get a ruling, because there's no way --

02:16:06

THE COURT: I mean, Judge Durkin only moved this trial -- you know, it's not moved much.

MS. LANE: Yeah.

THE COURT: I counted. You've got 33 business days extra for this case.

02:16:21

MS. LANE: I just --

THE COURT: Let me ask this question. How many documents were produced to you that were new on the 17th?

MR. SCHAEFERS: I can answer that, Your Honor, if that's all right. None of them were new. What happened was I had produced Paula's Yahoo e-mails that were responsive back either on August -- April 4th or April 6th. My expert prepared a PST of those e-mails, and I produced the PST yesterday as well as additional printouts of those same e-mails.

02:16:39

02:17:22

MS. LANE: I have counted. Like I have one binder that I have received over 2,000 e-mails.

THE COURT: But I'm asking you because you got a production on April 4th and April 6th and you didn't file a motion. You didn't come in and say: I can't do the deposition.

02:17:51

So the only thing that happened recently is yesterday you got 48 pages, and I'm hearing from defense counsel that those are all documents you already had anyway.

MS. LANE: No, I didn't. First of all, he is picking through the 23,000 e-mails which ones to use and additional e-mails from her own possession that I didn't have. I didn't have them. Only e-mails that I had were from Columbia College where she had Outlook. The other --

THE COURT: Are you telling me on the 17th you got new documents that you had never seen before?

MS. LANE: Correct.

Is that when you sent me some of the --

MR. SCHAEFERS: No.

MS. LANE: Because he's adding new ones. Like before depositions, I'm getting new ones, and I just discussed with counsel that I don't believe that I have received all of the e-mails from Paula because I know with certainty, let's put it that way, there are other e-mails she has not disclosed yet. We also discussed a little while ago if she would consent to the content of some e-mails that we are seeking from Google, which we agreed there may be nothing on it but at least we tried to get them.

I know I don't have all her e-mails, and as it was with various imaging of computers that you see e-mails, with hers I don't -- I have questions, for example, if she --

THE COURT: Well, here's the problem. I mean, you agreed to this date, I ordered it, and two days before the deposition or three days before the deposition you're saying: I've got other pressing trial preparation in other cases. I want to move it.

02:20:57

You know, you agreed. I ordered it. I get that you have other cases. This is a pressing case, too, given that the trial date is in July, very close, and there's a lot to be done. If you're right when you depose her and it turns out that she didn't turn over documents and you have new documents, you're going to get to redepose her, probably. I mean, she's pressing to go ahead.

02:21:22

MR. SCHAEFERS: Yeah.

THE COURT: So I can't.

MS. LANE: But I don't have everything.

02:21:39

THE COURT: At this juncture, you know, I don't see the basis. Unless you were to tell me that yesterday he dumped a bunch of new documents on you, that would be a good cause, but I don't hear that. I hear you got 48 pages and they're all documents that you had before. So you have not given me -- and that wasn't frankly what you put in the e-mail. You didn't say in your e-mail: Hey, you just gave me a document dump of new things. I don't have time to prepare for her deposition. They're late. You know, they're new. I've never seen them before, and you gave them to me three days before the

02:22:04

02:22:40

Exhibit 9

Lane Keyfli Law, Ltd. <info@lanekeyfli.com>

RE: Please either respond to the US Supreme Court ASAP or waive to respond so not to delay ..

1 message

Scott A. Schaefers <sschaefers@brotschulpotts.com> Mon, May 22, 2017 at 12:30 PM
To: "Lane Keyfli Law, Ltd." <Info@lanekeyfli.com>

Cert petition denied.

Scott A. Schaefers

Brotschul Potts LLC

30 N. LaSalle St., Ste. 1402

Chicago, IL 60602

Direct: (312) 268-6795

Office: (312) 551-9003

Cell: (773) 816-4747

Fax: (312) 277-3278

Email: sschaefers@brotschulpotts.com

Website: http://www.brotschulpotts.com

From: Lane Keyfli Law, Ltd. [mailto:Info@lanekeyfli.com]
Sent: Monday, April 10, 2017 6:52 PM
To: Scott A. Schaefers <sschaefers@brotschulpotts.com>; Lane Keyfli Law, Ltd. Ofc <info@lanekeyfli.com>
Subject: Please either respond to the US Supreme Court ASAP or waive to respond so not to delay ..

Counsel,

As a professional courtesy find attached again - action needed.

We previously forward to you this attached document from the United States Supreme Court but we see that you have not yet taken an action. Perhaps you are not familiar with US Supreme Rules, but ...

Either you act by filing a "Waiver" or respond ASAP (prior 4/26) hopefully sooner!

Yes you !

PLEASE NOTE OUR NEW EMAIL ADDRESSES AS SET BELOW. ALTHOUGH THE OLD EMAIL ADDRESSES ARE BEING FORWARDED TO THE NEW EMAIL ACCOUNTS- BUT PLEASE USE THE FOLLOWING EMAIL ADDRESSES GOING FORWARD:

OUR GENERAL/MAIN EMAIL ACCOUNT IS:

INFO@LANEKEYFLI.COM

ATTORNEYS:

NEJLA@LANEKEYFLI.COM

BRIAN@LANEKEYFLI.COM
JKNORPS@LANEKEYFLI.COM

Yours very truly,

~

Dedicated Attorneys

LANE KEYFLI

Lane Keyfli Law, Ltd.

Av. Nejla K. Lane, Esq. - President

Brian Douglas Moore Goodrich, Esq.

Christopher J. "Jack" Knorps, Esq.

Rocio Marquez, Paralegal

5901 North Cicero Avenue, Ste. 200

Chicago, IL 60646-5701
Phone: 773.777.4440
Fax: 866.444.4024

Website: www.LaneKeyfli.com

Office E-mail: Info@LaneKeyfli.com

20170522 - US SCT docket - cert petition denied.pdf
188K

Ex. 5 DE-Important NDIL

Exhibit 10

No. 15-2076

In the United States Court of Appeals for the Seventh Circuit

BARRY EPSTEIN,

Plaintiff-Appellant,

vs.

PAULA EPSTEIN,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division, No. 1:14-cv-8431
The Honorable **Thomas M. Durkin**, District Judge.

DEFENDANT-APPELLEE PAULA EPSTEIN'S
FED. R. APP. PROC. RULE 40 PETITION FOR PANEL REHEARING

Scott A. Schaefers
BROTSCHUL POTTS LLC
30 N. LaSalle St., Ste. 1402
Chicago, IL 60602
Phone: (312) 551-9003
Email: sschaefers@brotschulpotts.com

Attorney for Defendant-Appellee
Paula Epstein

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 15-2076

Short Caption: Barry Epstein v. Paula Epstein

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

Paula Epstein, defendant-appellee

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Scott A. Schaefers

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Attorney's Signature: s/ Scott Schaefers Date: December 22, 2016

Attorney's Printed Name: Scott A. Schaefers

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** X **No** ____

Address: 30 N. LaSalle St., Ste. 1402
Chicago, IL 60602

Phone Number: (312) 551-9003 Fax Number: (312) 277-3278

E-Mail Address: sschaefers@brotschulpotts.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

JURISDICTIONAL STATEMENT

This Court has jurisdiction to rehear its December 14, 2016 Opinion and Judgment under Federal Rule of Appellate Procedure 40. That rule provides that a petition for panel rehearing may be filed within 14 days after entry of judgment, unless shortened or extended by order or local rule. Fed. R. App. Proc. Rule 40(a). 7th Circuit Rule 40(d) does not alter the 14-day period for judgments issued via ECF. 7th Cir. R. 40(d).

STATEMENT OF THE ISSUE PRESENTED FOR REHEARING

The issues presented for rehearing are as follows:

1. Whether the Court overlooked or misapprehended (a) defendant's arguments in her appellate brief, in her district court reply, and at oral argument on appeal that plaintiff waived and forfeited the argument that his emails were not intercepted contemporaneously with their transmission, and (b) the district court's finding that plaintiff abandoned his contemporaneity allegation; and

2. If plaintiff did waive, forfeit, and abandon such arguments, whether the Wiretap Act requires "contemporaneous" interception of emails.

STATEMENT OF THE CASE FOR THIS PETITION

In its December 14, 2016 Opinion (attached as exhibit 1 in the accompanying Appendix ("Appx.")), the Court did not address defendant's arguments in this Court and in the district court that plaintiff waived, forfeited, and abandoned the argument that his emails were not intercepted contemporaneously with their initial transmissions. Nor did the Court address

the district court's finding that plaintiff abandoned his contemporaneity allegation in his response to the motion to dismiss.

Because plaintiff did in fact waive, forfeit, and abandon that argument, the Court should affirm the judgment below because (1) the Wiretap Act requires contemporaneous interception, and (2) none of his emails at issue in the amended complaint were intercepted contemporaneously. Paula should not have to pay for plaintiff's failure to properly prepare and defend his allegations in the district court. Especially in a case which, as Judge Posner said in his concurrence, is a pure waste of judicial resources, where plaintiff merely seeks a reward for his criminal, adulterous activity. (Appx. ex. 1, p. 12).

I. The District Court Proceedings.

On October 27, 2014, plaintiff filed his original complaint against Paula and her divorce attorney, Jay Frank. (R. 1, Appx. exhibit 2).[1] He alleged violations of the federal Wiretap Act (18 U.S.C. § 2510 *et seq.*) in connection with his emails that Paula forwarded to herself. On December 9, 2014, both defendants moved to dismiss. (Paula's Br., R. 15, Appx. exhibit 3). In their motions, defendants argued that the complaint failed to allege contemporaneous interception of plaintiff's emails. Rather than contest those motions, plaintiff requested leave to amend his complaint, which the district court granted on December 17th. (R. 20).

[1] All references in this petition to the district court record are to the district court docket numbers, though the district court documents themselves included in the accompanying appendix are from the record on appeal.

On January 12, 2015, plaintiff filed his amended complaint. (R. 21, Appx. exhibit 4). In relevant part, he alleged that (a) he and Paula had separate computers in their home which they used for personal and work emails, and neither was authorized to use the other's computer (¶ 10), and (b) beginning in June 2007, Paula accessed plaintiff's computer without his consent and, on information and belief, secretly caused a "Rule" to be placed on plaintiff's work and personal email accounts such that his "private" emails would be automatically forwarded to her from their host email servers. (¶¶ 12-18). Plaintiff also publicly attached the "personal and private" emails as exhibit C to the amended complaint. (R. 22-3, ex. 5, ex. C thereto).

On January 30, 2015, Paula filed her motion to dismiss the amended complaint and supporting brief. (Paula's Br., R. 24, Appx. exhibit 5). In her brief, Paula argued that the emails attached to the amended complaint themselves showed that they were not intercepted contemporaneously with their initial transmissions, which contradicted plaintiff's contemporaneity allegation in the complaint. (*Id.*, pp. 1, 2, 3-5). The court was not bound by plaintiff's characterizations of his exhibits, Paula argued, but rather should independently examine them and form its own opinions. (*Id.*, p. 3). She specifically contended that each email printout showed the exact dates and times at which the original emails between plaintiff and the other women were originally sent and later forwarded to Paula's account. (*Id.*, pp. 2, 4-5). All of the emails were forwarded to Paula after they were transmitted to their intended recipient; in most cases, days, weeks, months and years after. (*Id.*, p.

4). Thus, because the Wiretap Act required that the interception occur contemporaneously with the initial transmission, plaintiff pled himself out of court. (*Id.*, p. 5).

On March 5, 2015, plaintiff responded to Paula's motion to dismiss. (R. 31, Appx. exhibit 6). In his response, plaintiff did not defend his allegations that Paula used an auto-rule to intercept his emails contemporaneously with their initial transmissions. Rather, plaintiff argued that the Wiretap Act does not require contemporaneous interception, thus revealing that he did not believe his own contemporaneity allegation. (*Id.*, pp. 3-6). In another show of abandonment of those allegations, plaintiff sought to distinguish this Court's decision in *U.S. v. Szymuszkiewicz,* 622 F.3d 701, 705-06 (7th Cir. 2010), a case in which defendant actually used an auto-forwarding rule, because there, plaintiff here pointed out, the intercepted emails arrived within an "eyeblink" of the intended emails. (Appx. ex. 6, p. 5). Plaintiff ended by arguing that even if the Act required contemporaneous interception, he should be allowed discovery to determine whether any **other** emails were captured that way. (p. 6). Tellingly, plaintiff did not request discovery to determine how the emails he attached were forwarded. Indeed, he would not need discovery for that. He had alleged in his amended complaint, his second attempt to state a claim, that he controlled his computer and email accounts. (Appx. ex. 4, ¶¶ 10-11).

On March 20, 2015, Paula filed her amended reply[2] in support of the motion to dismiss. (R. 20, Appx. exhibit 7). She began by pointing out that plaintiff "waived, abandoned, and forfeited" any opposition to the fact that none of his emails were contemporaneously intercepted. (*Id.*, p. 1). In section I(A), Paula again argued that plaintiff's failure to oppose her contention that the emails themselves showed that they were not contemporaneously intercepted constituted a waiver and forfeiture of that argument. (*Id.*, p. 2, *citing Bank of Camden v. Village of West Dundee*, No. 12-cv-6699, 2014 WL 6655892, at * 4 (N.D. Ill. Nov. 21, 2014).

On April 20, 2015, the district court issued a memorandum opinion and order dismissing the amended complaint with prejudice, and entered judgment against plaintiff and in favor of defendants. (Mem. Op. & Order, R. 36, Appx. exhibit 8; Judgment, R. 37, Appx. exhibit 9). The court ultimately found that plaintiff "effectively abandoned" his contemporaneity allegation because he had already amended his complaint to re-attempt to state a Wiretap Act claim, yet attached the emails to the amendment which showed that there were not intercepted in transit, and did not defend his contemporaneity allegation in his response to the motion to dismiss. (*Id.*, p. 8). The district court noted plaintiff's allegation in paragraph 17 of the amended complaint that "the interception was contemporaneous with the transmission insofar as the

[2] Paula filed her initial reply on March 19, 2015, but filed an amended reply on March 20th to make very minor corrections that are irrelevant here. Plaintiff did not object to the corrected reply, nor did the district court strike it.

electronic messages destined for Plaintiff's receipt were forwarded to [Paula] at the same time they were received by the respective servers" of plaintiff's email domains. (Ex. 8, p. 3). But the emails themselves showed that they were forwarded to Paula's account many "months," "years," and "hours" after Barry sent or received the emails, the district court held, which Paula had argued and plaintiff had not contested. (*Id.*, pp. 3-4).

The court also carefully reviewed the language and history of the Wiretap Act, and agreed with the cases that interpreted the terms "interception" of "electronic messages" under the Act to require contemporaneous interception. (*Id.*, pp. 5-8). The court thus concluded that "the alleged interception in this case (retransmission hours or days after the initial email was sent or received) was not 'contemporaneous' under any reasonable definition of that word." (*Id.*, p. 8). The court rejected plaintiff's request for discovery to determine whether any other contemporaneously-intercepted emails existed because such was "pure speculation," and dismissed all Wiretap Act claims with prejudice. (*Id.*).

II. The Parties' Arguments on Appeal and the Court's Opinion.

On August 10, 2015, plaintiff filed his appellant's brief. (AR. 14, Appx. exhibit 10). In section I of his argument, plaintiff argued at great length that the Wiretap Act did not require contemporaneous interception, again indicating, as he did in his motion to dismiss response, that he had abandoned his contemporaneity allegation. (*Id.*, pp. 11-26). In section II, plaintiff for the first time argued that two or three of his emails may have been intercepted contemporaneously. (*Id.*, pp. 27-29). In section III, plaintiff argued, also for

the first time, that he should have been allowed discovery to determine how the "rule" worked. (*Id.*, pp. 29-32). In his motion to dismiss response, however, he only asked for discovery as to whether any other emails existed which may have been intercepted contemporaneously. (Appx. ex. 6, p. 6).

On September 10, 2015, Paula filed her appellee's brief. (AR. 18, Appx. exhibit 11). In section II(B) of her statement of the case, Paula pointed out that in his response to the motion to dismiss, "plaintiff did not dispute that the emails attached to the amended complaint were not intercepted contemporaneously with their initially being sent." (*Id.*, pp. 5-6). In section II(C) of her statement, Paula said that in her 3/20/15 reply in support of her motion to dismiss, she "pointed out that plaintiff's failure in his response to dispute that the emails were not contemporaneously intercepted constituted a waiver and abandonment of any argument against that fact." (*Id.*, p. 7). In section II(D), Paula referred to the district court's holding that none of the emails were contemporaneously intercepted, based on the comparison of the dates and times of initial transmission and subsequent forwarding. (*Id.*).

In her summary of the argument, Paula said that plaintiff's appellate arguments should be stricken, including the argument that two or three of his emails were contemporaneously intercepted, because plaintiff did not raise them in his response to the motion to dismiss. (*Id.*, p. 9). In section I of her argument, Paula first argued that a plaintiff may plead himself out of court by attaching documents to the complaint which show that he is not entitled to judgment. (*Id.*, p. 11, *citing Massey v. Merrill Lynch & Co.*, 464 F.3d 642, 645

(7th Cir. 2006)). Paula then cited *Forrest v. Universal Sav. Bank,* 507 F.3d 540, 542 (7th Cir. 2007) for the proposition that "a court is not bound by the party's characterization of an exhibit and may independently examine and form its own opinions about the document."

Next, Paula cited *Alioto v. Town of Lisbon*, 651 F.3d 175, 721 (7th Cir. 2011) for the proposition that "a party's failure to respond to arguments the opposing party makes in a motion to dismiss operates as a waiver or forfeiture of the claim and an abandonment of any argument against dismissing the claim." (*Id.*, p. 11). Paula then cited *G & S Holdings LLC v. Cont'l Cas. Co.*, 697 F.3d 534, 538 (7th Cir. 2012) for the proposition that arguments on appeal are waived where they were not raised in the district court, including arguments in favor of or against a complaint's dismissal. (*Id.*). Paula then again cited *G & S Holdings* for the policy behind the waiver and forfeiture rule: "The obligation to raise the relevant arguments rests squarely with the parties, because, as we have repeatedly explained:

> 'Our system of justice is adversarial, and our judges are busy people. If they are given plausible reasons for dismissing a complaint, they are not going to do the plaintiff's research and try to discover whether there might be something to say against the defendants' reasoning.'"

Id., *citing Kirksey v. R.J. Reynolds Tobacco Co.*, 168 F.3d 1039, 1041 (7th Cir. 1999), and *Alioto*, 651 F.3d at 721. (*Id.*, pp. 11-12). Paula also argued that complaints may not be amended in district court or appellate briefs. (*Id.*, p. 12, *citing Thomason v. Nachtrieb*, 888 F.2d 1202, 1205 (7th Cir. 1989)).

Finally, in section II(A) of her argument, Paula specifically argued that by failing to oppose the argument in his motion to dismiss, plaintiff waived and forfeited the argument that his emails were intercepted contemporaneously with their initial transmissions. (*Id.*, pp. 12-13).

On September 25, 2015, plaintiff filed his appellate reply. (AR. 22, Appx. exhibit 12). Plaintiff argued that he did not waive the argument that his emails were not contemporaneously intercepted, but only because he had alleged contemporaneous interception in his amended complaint. (*Id.*, p. 4). He then said that he properly made that argument on appeal because it was in direct response to the district court's erroneous conclusion that "the shortest interval between receipt and interception of the emails was approximately three hours," instead of two minutes. (*Id.*, pp. 4-5). But plaintiff did not say in his appellate reply, nor could he have said, that he raised the argument in his response to Paula's motion to dismiss.

On December 10, 2015, the Court held oral argument in this case. Paula's counsel argued several times that plaintiff waived the contention that his emails were not contemporaneously intercepted. (12/10/15 audio recording of oral argument, beginning at 19:30). Plaintiff should be strictly held to that waiver, Paula's attorney argued, because he was the one in control of his computer and email account. (*Id.*). In her rebuttal time, plaintiff's attorney said that she did not respond to Paula's non-contemporaneity challenge because she could only say so much in response to a pleading motion without discovery. (At 38:30). But as Judge Sykes reminded counsel,

it was plaintiff's own computer and email account, for which plaintiff did not need discovery to find out what happened. (At 37:00 and after).

On December 14, 2016, the Court issued its Opinion, in which the Court affirmed the judgment as to defendant Jay Frank, but reversed as to Paula. (Appx. ex. 1). The Opinion held that it was unnecessary to decide whether the Wiretap Act requires contemporaneous interception, because the amended complaint sufficiently alleged contemporaneity. (*Id.*, p. 5). The emails that plaintiff attached to the complaint were inconclusive as to whether they were intercepted contemporaneously with their initial transmissions, the Court held, and plaintiff's allegation that they were contemporaneously intercepted must be taken as true absent "impenetrable" contrary evidence. (*Id.*, pp. 5-8).

The Opinion did not address, however, Paula's waiver and forfeiture arguments that she made in the district court and in this Court, or the district court's finding that plaintiff abandoned his contemporaneity allegation.

SUMMARY OF THE ARGUMENT

Plaintiff's failure to argue in his response to Paula's motion to dismiss that his emails were intercepted contemporaneously with their initial transmissions constituted a waiver and forfeiture of that argument in the district court and on appeal. Paula made that waiver and forfeiture argument in her reply in support of her motion to dismiss, in her appellee's brief in this court, and at the oral argument in this case. And the district court found in its dismissal opinion that plaintiff abandoned his contemporaneity allegation. Yet the Court's Opinion did not address that argument or finding.

The waiver and forfeiture argument is not merely pedantic. Plaintiff had two opportunities to state a Wiretap Act claim, and he was in control of his computer and email account with the ability to find out exactly what happened. Nevertheless, in his response to the motion to dismiss, he (1) was silent as to Paula's contemporaneity challenge, (2) argued that the Act did not require contemporaneous interception, (3) sought to distinguish *Szymuszkiewicz*, a Seventh Circuit auto-forwarding case, and (4) requested discovery only as to **other** emails. Thus, the district court held, plaintiff had abandoned his contemporaneity allegation. Many of this Court's cases confirm that reasoning, as Paula had pointed out in her motion to dismiss briefs.

Finally, because the other Circuits to have considered the question are unanimous that the Wiretap Act requires contemporaneous interception, Paula asks this Court to adopt that same requirement and affirm the district court's judgment in its entirety.

ARGUMENT

I. Applicable Legal Standards.

Under F.R.A.P. 40(c), a petition for panel rehearing "must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition." Fed. R. App. Proc. 40(c). "Panel rehearing is not a vehicle for presenting new arguments, and, absent extraordinary circumstances, [courts] shall not entertain arguments raised for the first time in a petition for rehearing." *Easely v. Reuss*, 532 F.3d 592, 593-94 (7th Cir. 2008).

As Paula said in this Court and in the district court, "a party's failure to respond to arguments the opposing party makes in a motion to dismiss operates as a waiver or forfeiture of the claim and an abandonment of any argument against dismissing the claim." *Alioto,* 651 F.3d at 721. Similarly, an appellant who did not present arguments or issues to the District Court waived those arguments and issues on appeal. *G & S Holdings,* 697 F.3d at 538. "That is true whether it is an affirmative argument in support of a motion to dismiss or an argument establishing that dismissal is inappropriate." *Id.* "The obligation to raise the relevant arguments rests squarely with the parties, because, as we have repeatedly explained:

> 'Our system of justice is adversarial, and our judges are busy people. If they are given plausible reasons for dismissing a complaint, they are not going to do the plaintiff's research and try to discover whether there might be something to say against the defendants' reasoning.'"

Id., *citing Kirksey,* 168 F.3d at 1041, and *Alioto*, 651 F.3d at 721. Similarly, "it is a basic principle that the complaint may not be amended by the briefs in opposition to a motion to dismiss, nor can it be amended by the briefs on appeal." *Thomason,* 888 F.2d at 1205.

Further, a plaintiff may plead himself out of court by attaching documents to his complaint which defeat his claims. *Massey*, 464 F.3d at 645. A court is not bound by plaintiff's characterization of his exhibits, but rather may make its own independent judgment. *Forrest*, 507 F.3d at 542.

II. Plaintiff Waived, Forfeited, and Abandoned the Argument that His Emails Were Not Intercepted Contemporaneously with Their Initial Transmissions.

The Court's Opinion did not mention Paula's argument that plaintiff waived and forfeited the contention that the emails were intercepted contemporaneously. Nor did the Opinion address the district court's finding that plaintiff abandoned his contemporaneity allegation. Rather, the Court offered three possible explanations of how his emails may have been intercepted at the server while they were in transit, even though plaintiff did not make any of those arguments in the district court. (Appx. ex. 1, pp. 6-8).

But as a long line of this Court's cases have held, plaintiff's failure to respond to Paula's non-contemporaneity argument in the district court, together with his arguing in his response against the contemporaneity requirement and his differentiating the auto-forwarding *Szymuszkiewicz* case, constituted a waiver, forfeiture, and abandonment of any argument or allegation that his emails were intercepted contemporaneously. *Alioto, supra*, 651 F.3d at 721; *G & S Holdings,* 697 F.3d at 538. Indeed, it was plaintiff's second attempt to plead a Wiretap Act claim, but instead of defending his contemporaneity allegation, he argued that the requirement did not exist, or that there may be **other** emails out there that Paula intercepted contemporaneously. (Appx. ex. 6, pp. 3-7). But as Judge Sykes reminded plaintiff's attorney at oral argument, he did not need discovery for that. These were his email accounts and his computers. (Audio recording, at 37:00 *et seq.*). Whether any other contemporaneously-intercepted emails existed was

"pure speculation," as the district court correctly pointed out when it denied him a third bite at the apple. (Appx. ex. 8, p. 8).

III. The District Court's Judgment Should Be Affirmed Because the Wiretap Act Requires Contemporaneous Interception.

As the Court noted in the Opinion, the other Circuit Courts to have considered the term "interception" of electronic messages under the Wiretap Act have held that it requires the interception to occur contemporaneously with their initial transmissions; that is, while the messages are in transit. (Op., Appx. ex. 1, pp. 4-5, *citing Fraser v. Nationwide Mut. Ins. Co.,* 352 F.3d 107, 113 (3rd Cir. 2003); *U.S. v. Steiger,* 318 F.3d 1039, 1047 (11th Cir. 2003); *Konop v. Hawaiian Airlines, Inc.,* 302 F.3d 868, 878-79 (9th Cir. 2002); and *Steven Jackson Games, Inc. v. U.S. Secret Service,* 36 F.3d 457, 460-64 (5th Cir. 1994)). This Court's 2010 decision in *Szymuszkiewicz,* 622 F.3d at 705-06, also indicated (though did not formally hold) that contemporaneous interception was required, where the Court said that defendant's placement of an auto-forwarding rule on his supervisor's email account, which resulted in defendant's receiving the emails "within an eyeblink" of their intended recipients, was "contemporaneous by any standard." *Id.*

As Paula argued in her appellee's brief (Appx. ex. 11, pp. 16-18), these cases based the contemporaneity requirement on (1) the contrasting definitions of "electronic communication" and "wire communication" under the Act – the former did not specifically include communications "in storage," while the latter included such communications, and the "electronic communication" definition

expressly excluded "wire communications"; (2) the 2002 PATRIOT Act amendment of the Wiretap Act, which left those definitions intact at a time when the prevailing judicial interpretation of the terms required contemporaneity; (3) the co-existence of the Stored Communications Act, which specifically addresses the unauthorized access of electronic communications in storage; and (4) the dictionary definition of "intercept," which meant "to stop, seize, or interrupt in progress or course before arrival." *See Konop*, 302 F.3d at 878; *Steiger*, 318 F.3d at 1048, both *citing Webster's Ninth New Collegiate Dictionary* 630 (1985).

Paula asks this Court to adopt and apply that reasoning here, and hold that the district court properly dismissed the amended complaint with prejudice because plaintiff waived, forfeited, and abandoned his contemporaneity allegation.

CONCLUSION

For the foregoing reasons, Paula requests the Court to grant this petition for rehearing, and affirm the judgment of the district court in its entirety.

DATE: December 22, 2016

Respectfully submitted,

Scott A. Schaefers
BROTSCHUL POTTS LLC
30 N. LaSalle St., Ste. 1402
Chicago, IL 60602
Phone: (312) 551-9003

PAULA EPSTEIN,
Defendant-Appellee.

By: /s/ *Scott A. Schaefers*
One of her attorneys

CERTIFICATE OF COMPLIANCE

Scott A. Schaefers, attorney for defendant-appellee Paula Epstein, pursuant to Fed. R. App. Proc. Rule 40(b)(1), 28 U.S.C. § 1746(2), and subject to penalty of perjury, hereby certifies that this petition complies with the type-volume limitations set forth in Fed. R. App. Proc. Rule 32(a)(7)(B). This petition was prepared in Bookman Old Style 12-point font, and, exclusive of the cover page, the Disclosure Statement, the Tables of Contents and Authorities, the signature block, this Certificate of Compliance and the Certificate of Service, contains 3,766 words.

/s/ Scott A. Schaefers
Scott A. Schaefers
BROTSCHUL POTTS LLC
30 N. LaSalle St., Ste. 1402
Chicago, IL 60602
Phone: (312) 551-9003
Attorney for Defendant-Appellee Paula Epstein

CERTIFICATE OF SERVICE

Scott A. Schaefers, an attorney for defendant-appellee Paula Epstein, certifies that on December 22, 2016, he filed her **Fed. R. App. Proc. Rule 40 Petition For Panel Rehearing** with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system, which in turn served the Petition on the following counsel of record:

Nejla Lane
LANE KEYFLI LAW, LTD.
5901 N. Cicero Ave., Ste. 200
Chicago, IL 60646
Attorney for plaintiff-appellant
Barry Epstein

Norman J. Barry, Jr.
DONOHUE BROWN MATHEWSON & SMYTH LLC
140 S. Dearborn St., Ste. 800
Chicago, IL 60603
Attorney for defendant-appellee
Jay Frank

Karen Kies DeGrand
DONOHUE BROWN MATHEWSON & SMYTH LLC
140 S. Dearborn St., Ste. 800
Chicago, IL 60603
Attorney for defendant-appellee
Jay Frank

/s/ Scott A. Schaefers
Scott A. Schaefers
BROTSCHUL POTTS LLC
30 N. LaSalle St., Ste. 1402
Chicago, IL 60602
Phone: (312) 551-9003
Attorney for Defendant-Appellee
Paula Epstein

Exhibit 11

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BARRY EPSTEIN,	)	Docket No. 14 C 8431
	)	
Plaintiff,	)	Chicago, Illinois
	)	July 6, 2017
v.	)	9:54 a.m.
	)	
PAULA EPSTEIN,	)	
	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS - Motion Hearing
BEFORE THE HONORABLE THOMAS M. DURKIN

APPEARANCES:

For the Plaintiff: LANE KEYFLI LAW LTD. by
MS. NEJLA K. LANE
5901 N. Cicero Avenue
Suite 200
Chicago, IL 60646

For the Defendant: BROTSCHUL POTTS LLC by
MR. SCOTT A. SCHAEFERS
30 N. LaSalle Street
Suite 1402
Chicago, IL 60602

Court Reporter: LAURA R. RENKE, CSR, RDR, CRR
Official Court Reporter
219 S. Dearborn Street, Room 1432
Chicago, IL 60604
312.435.6053
laura_renke@ilnd.uscourts.gov

I've read.

And then, finally, late last night, the plaintiff filed a reply to that.

Anything additional I should know beyond all those filings?

MR. SCHAEFERS: I don't think so, Judge.

MS. LANE: I don't think so either, your Honor.

THE COURT: All right. I'm going to deny the motion. We're going to trial on July 31st.

I've reviewed the voluminous submissions on this motion for extension. And in doing so, three themes have emerged.

I do not find that Mrs. Epstein strategically used any injunction in the state divorce court as a weapon to deprive Barry Epstein, the plaintiff, of the necessary funds to pursue this case in federal court.

I don't -- I was concerned about that. That was the primary and really the only reason I thought would be a credible basis to continue the trial date in this case, because I'd already addressed all the other issues before. There was plenty of time to conduct discovery; and if there were a difficulty meeting various deadlines, in my opinion, many of the wounds were self-inflicted on that.

But I did not -- the one thing that did concern me because I didn't have knowledge of it was the state bankruptcy

[*sic*] courts and the availability of funds.

I find that Mrs. Epstein did not seek an injunction to prevent Mr. Epstein from litigating the federal case and has not used or manipulated the injunction to that effect since the case was reinstated in January of this year.

Since the case was reinstated in January, Mr. Epstein's counsel did not seek a reimburse -- a disbursement in state court for fees connected to these proceedings until June 5th, 2017. This is puzzling given that this Court instructed her to do so in early February so the case could proceed expeditiously toward trial.

Even after Mr. Epstein's earlier-filed motion for payment of fees was granted in part and denied in part on April 6, 2017, his counsel did not make a new request for disbursement until June 5th, well after the end of fact discovery and weeks into the expert discovery schedule.

The discovery and trial deadlines have repeatedly been extended in this case by agreement of the parties and upon motion. Discovery was open from January 6th until June 30th. This is a long and fair discovery timeline for a case of this nature involving two individual noncorporate parties, a discrete timeline of relevant events, and relatively straightforward facts.

I have created a bit of a timeline, which I'll read into the record. And that will reinforce the reasons I'm

denying the motion for -- to change the trial date and to extend the discovery cutoff.

On July 15th, 2016, Mrs. Epstein obtained an injunction in divorce proceedings against Mr. Epstein's dissipation of marital funds.

The parties dispute whether the injunction was a response to the overpayment by Mr. Epstein of his 2015 taxes. The order does not conclusively establish that issue one way or the other.

Whatever the case, the Court notes that Judge Murphy saw fit to restrain Mr. Epstein from dissipating funds "for a purpose not in the usual course of business or for the necessities of life." The Court presumes he did so for cause.

Counsel for Mr. Epstein argues that Mrs. Epstein sought the injunction "specifically to prevent Barry from paying his legal fees."

In support of this proposition, she points to two things: first, a petition Mrs. Epstein filed in 2014 to restrain Mr. Epstein from "expenditures of extraordinary amounts of money for (A) donations and gifts and (B) exorbitant counsel fees."

In her motion, she cataloged gifts from 2010 to 2013 totaling nearly half a million dollars. She also noted that Mr. Epstein's legal fees were twice as high as her own. These are reasonable grievances and do not suggest an ulterior motive

of exhibits, motions after motions, I believe that this Court is abusing its discretion by truncating the discovery period to on purpose and intentionally undermine his success in this case.

And I would have to bring a motion to recuse the judges from this case. If this is going to trial, then I think my client is entitled to an unbiased judge to go through trial with this.

THE COURT: File your motion. I'm happy to consider any motion you file.

Usually a party that loses a contested motion, that's not a basis to recuse a judge. But if you have a basis under the rules and under the law, under the U.S. Code, to ask me to recuse myself, I'll consider that motion if that's your request.

But I don't have -- I can state for the record I'm not biased against your client. I don't know any of the facts of this case. I dismissed the case on legal issues. 7th Circuit partially reversed me on legal issues.

I don't know the facts of the case. I've never met your client. I've never met the defendant.

I have not participated in settlement discussions, nor will -- should I since it's a bench trial.

I have ruled on the motions after giving each one of them due consideration. I kept in mind this case was filed in

Dr. Epstein further.

And the other three women from the e-mails constantly being mentioned, even though we sealed the names to protect them and -- or so they don't bring some lawsuit against the defendant. Again and again, they have done --

THE COURT: Ms. Lane --

MS. LANE: -- everything in their power.

THE COURT: Ms. Lane, you put their e-mails as an attachment to the complaint when you filed the case.

If anybody has a gripe -- if anyone has a complaint among the women about being hauled -- being subject to some type of public scorn, I think their first complaint might be with you for putting their names as attachments to the complaint to begin with.

Upon a prompt motion to seal that was brought, I granted that motion, and every effort has been made to protect their identities since that time, at least when it's been before me.

MS. LANE: They have been subpoenaed. The subpoenas have been there. Transcript pages are there. The counsel for defendant enjoys just publicating everything, publishing everything that is not even related, including my e-mail to Dr. Epstein's daughter. What has that got to do with his reply to the fees?

Yes, Ms. Epstein and her counsel Jay Frank both

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF LIVE, Ver 6.1.1.2
Eastern Division

Barry Epstein

Plaintiff,

v.

Case No.: 1:14−cv−08431
Honorable Thomas M. Durkin

Paula Epstein, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, July 24, 2017:

MINUTE entry before the Honorable Thomas M. Durkin:Plaintiff's motion for recusal [268] is denied. A written opinion will follow. Defendant's motions to seal [278] [281] are granted. Motion hearing held on 7/24/2017.Plaintiff's response to defendant's motion to strike [262]is due by 7/26/2017. Plaintiff is to turn over to defendant a revised exhibit list by 7/26/2017. Defendant is to provide her exhibit list by 7/28/2017. Case will proceed to a jury trial on 8/1/2017 over defendant's objections. Mailed notice(srn,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at ***www.ilnd.uscourts.gov***.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BARRY EPSTEIN,	)	
	)	
PLAINTIFF,	)	
	)	No. 14 C 8431
v.	)	
	)	Judge Thomas M. Durkin
PAULA EPSTEIN,	)	
	)	
DEFENDANT.	)	

MEMORANDUM OPINION AND ORDER

Plaintiff seeks the recusal of this Court and Magistrate Judge Finnegan on the basis of bias against him and in favor of his former spouse, the defendant in this case.[1] He moves under two statutes: 28 U.S.C. § 144, which requires that a new judge be assigned if a party "files a timely and sufficient affidavit that the judge . . . has a personal bias against him or in favor of any adverse party," and 28 U.S.C. § 455, which requires that judges disqualify themselves when their "impartiality might reasonably be questioned" or when they have "a personal bias or prejudice

[1] Courts have held that the proper procedure for removing a magistrate judge is through a motion for recusal first presented to the challenged magistrate judge. *See, e.g.*, *Clay v. Brown, Hopkins & Stambaugh*, 892 F. Supp. 11, 13 (D.D.C. 1995) (citing authority) ("Fundamental principles of due process require that the judge being accused of bias be given an opportunity to respond."). Nevertheless, district court judges have ruled on combined motions to disqualify themselves and the magistrate judge under circumstances similar to those confronting this Court, *see, e.g.*, *Bowers v. Gaunt*, 2009 WL 1241187, at *1 (S.D. Ind. May 4, 2009); *Lindell v. Casperson*, 2004 WL 3053632, at * 1 (E.D. Wisc. Dec. 27, 2004); *see also Marozsan v. United States*, 90 F.3d 1284, 1290 (7th Cir. 1996) (affirming the substantive correctness of a decision by the district court judge who denied a party's motion to recuse the magistrate judge, but noting that parties may only seek review of a request for recusal by moving for a writ of mandamus at the time the request is denied). In the interest of expediency, and because Judge Finnegan's role in this case is likely now over in any event, this decision will address the allegations against both Judge Finnegan and this Court.

concerning a party." While a federal judge has a duty not to sit where disqualified for bias, he has "a duty to *sit* where *not disqualified* which is equally as strong." *Laird v. Tatum*, 409 U.S. 824, 837 (1972) (emphasis in original); *see also In re United States*, 572 F.3d 301, 308 (7th Cir. 2009) ("[N]eedless recusals exact a significant toll; judges therefore should exercise care in determining whether recusal is necessary, especially when proceedings already are underway."). For the reasons set forth below, the plaintiff's recusal motion is denied.

Discussion

Recusal under section 144 is mandatory once a party submits a timely and sufficient affidavit and his counsel presents a certificate stating that the affidavit is made in good faith. *See United States v. Sykes*, 7 F.3d 1331, 1339 (7th Cir. 1993) (citation omitted); 28 U.S.C. § 144. To be timely, a section 144 affidavit "must be filed as soon as the basis for disqualification is known." *Carter v. Meyers*, 295 Fed. App'x 836, 837 (7th Cir. 2008) (citing *Tezak v. United States*, 256 F.3d 703, 717 n. 5 (7th Cir. 2001)). Moreover, the statutory requirement that counsel certify that the affidavit is filed in good-faith is "enforced strictly," *United States v. Betts-Gaston*, 860 F.3d 525, 537 (7th Cir. 2017), such that "[f]ailure to submit counsel's certificate of good faith alone is grounds for denying [a recusal] motion," *United States v. Robinson*, 2002 WL 31426182, at * 3 (N.D. Ill. Oct. 28, 2002). In passing on the legal sufficiency of the affidavit, the court must assume the truth of its factual assertions, provided they are "sufficiently definite and particular to convince a reasonable

person that bias exists; simple conclusions, opinions, or rumors are insufficient." *Sykes*, 7 F.3d at 1339.

The defendant argues that the recusal motion is both untimely and procedurally defective. R. 275 at 2. She points out that the timeline of grievances set forth in the plaintiff's affidavit establishes that as early as January or February of 2017, the plaintiff became concerned that Judge Finnegan and this Court may have been biased against him and in favor of the defendant. Giving the plaintiff the benefit of the doubt that the cumulative effect of the courts' conduct over several months is what gives rise to this motion, as opposed to any single incident on any date in particular, the Court will not penalize the plaintiff for the timing of his filing. The defendant also correctly notes that plaintiff's counsel did not file a certificate of good faith in connection with his affidavit. While the Court would be justified in denying the recusal motion on that basis, *see Betts-Gaston*, 860 F.3d at 537, the court will assume, arguendo, that the affidavit was filed in good faith, and will rely on the legal memorandum filed by counsel to reach the merits of the motion. *See Marino v. United States*, 1999 WL 39008, at * 5-6 (N.D. Ill. Jan. 15, 1999) (assuming for purposes of analysis that the "strict procedural requirements of § 144" were met).

As to the merits, because the standard of "personal bias" bears the same meaning under both sections 144 and 455, *see id.* at *6 (citing authority), the Court will simultaneously analyze the purported bias under both statutes. The relevant question for purposes of disqualification is whether "the judge's impartiality might

reasonably be questioned by a well-informed, thoughtful observer rather than [by] a hypersensitive or unduly suspicious person." *O'Regan v. Arbitration Forums, Inc.*, 246 F.3d 975, 988 (7th Cir. 2001) (internal quotation marks and citation omitted). The standard is an objective one: "That an unreasonable person, focusing only on one aspect of the story, might perceive a risk of bias is irrelevant . . . [A] reasonable person is able to appreciate the significance of the facts in light of relevant legal standards and judicial practice and can discern whether any appearance of impropriety is merely an illusion." *In re Sherwin-Williams Co.*, 607 F.3d 474, 477-78 (7th Cir. 2010); *see also Matter of Mason*, 916 F.2d 384, 386 (7th Cir. 1990) ("An objective standard is essential when the question is how things appear to the well-informed, thoughtful observer rather than to a hypersensitive or unduly suspicious person. Because some people see goblins behind every tree, a subjective approach would approximate automatic disqualification").

A. Rulings by the Court and Judge Finnegan

The plaintiff'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, discovery, and the protected or privileged status of various information relevant to the plaintiff's claims.[2] R. 268-1 at 1-3. The plaintiff prefaces this chronology with his conclusion that "both judges have consistently ruled against me and blocked my progress at every turn." *Id.* ¶ 2. It is well established that "rulings

[2] The plaintiff also disputes the propriety of the Court's review of the facts pertaining to whether the defendant intentionally obstructed his ability to fund his prosecution of this case. R. 268-1 ¶¶ 6, 30. The Court stands by its exhaustive review of the records relevant to that ruling. *See* R. 258 (Tr. Oral Ruling July 6, 2017) at 3-9.

by the judge almost never constitute a valid basis for a bias or partiality motion." *Szach v. Village of Lindenhurst*, 2015 WL 3964237, at *4 (N.D. Ill. June 25, 2015) (internal quotation marks omitted) (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)). Indeed, they will only do so "if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." *Liteky*, 510 U.S. at 555.

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. *See* R. 268-1 ¶¶ 2a, 2h (referring to R. 69 and R. 154, granting the plaintiff's motions to seal), *id.* ¶ 2f (referring to R. 114, granting the plaintiff's motion to extend fact discovery), *id.* ¶ 2j (referring to R. 183 and R. 196, effectively granting all substantive aspects of the plaintiff's motion to compel a forensic review of the defendant's laptop computer), *id.* ¶ 2k (referring to R. 198, granting the plaintiff additional time to respond to the defendant's motion to strike his jury demand). A more complete review of the docket reveals a number of additional rulings benefitting the plaintiff. *See, e.g.*, R. 98 (extending discovery deadlines), R. 139 (continuing the trial date); R. 156 and R. 187 (extending expert discovery deadlines).

Moreover, bias is not simply a matter of counting rulings against you and rulings in your favor. Indeed, half of the litigants before the Court are likely disappointed by its rulings, since, for the most part, the Court can only decide an issue in favor one side. To the extent the plaintiff disputes the correctness of certain

rulings, he may raise his concerns on appeal, but recusal is not an appropriate remedy. *See In re City of Milwaukee*, 788 F.3d 717, 722 (7th Cir. 2015) ("Despite our best efforts, federal judges sometime make mistakes or see factual or legal issues differently. Such ordinary errors or disagreements provided a basis for appeal, but not recusal."). Still, to clarify the courts' position, the following responses to the plaintiff's affidavit are warranted.

1. Scheduling

The plaintiff expresses frustration with the pace of discovery and the trial date set in this case, claiming he needed more time to adequately marshal evidence given what he perceives to be the complexity of his claims. *See* R. 168-1 ¶¶ 2b, 2e, 2l, 2p, 6-8. While the Court understands that the plaintiff carries the burden of proving his claims, it is likewise true that he holds the proverbial reins in the litigation, deciding which claims to prosecute in the first place. Moreover, where the defendant carries the burden on her affirmative defenses, as she does here, the 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. *See* R. 158 (Hrg. Tr. July 6, 2017) at 4. In order to manage its docket of more than 350 cases, this Court sets trial dates, and tries whenever possible to keep them. Doing so allows for the orderly administration of the Court's calendar and, at

times, encourages settlement. The trial date in this case has been extended twice and discovery deadlines have been extended accordingly. While it is clear the plaintiff desires even more time, the Court is required to balance that desire with the defendant's equal right to have the claims against her expeditiously adjudicated. The scheduling in this case does not reflect bias, but practicality and consideration of interests on both sides.

2. Scope of Discovery

The plaintiff also argues bias in the courts' discovery rulings. *See* R. 268-1 ¶¶ 3, 19, 20, 24. Specifically, the plaintiff seems to believe that the content of the allegedly intercepted emails and the defendant's motivation in intercepting them are irrelevant, and should therefore have been held beyond the scope of discovery. *See id*. ¶ 3 (characterizing the courts' rulings as "allowing the discovery of prejudicial, irrelevant information by the Defendant"). The plaintiff is incorrect. As he is aware, Judge Posner indicated in his concurrence to the decision on the plaintiff's appeal that the content of the emails and the defendant's motivation in intercepting them could create a legal defense to the plaintiff's claims. Judge Posner wrote:

> I would vote to interpret the Act as being inapplicable to—and therefore failing to create a remedy for—wiretaps intended, and reasonably likely, to obtain evidence of crime, as in this case, in which the plaintiff invoked the Act in an effort to hide evidence of his adultery from his wife.

Epstein v. Epstein, 843 F.3d 1147, 1153 (7th Cir. 2017). Even without what the parties have dubbed "the Posner defense," the subject-matter of the emails would

still be relevant to the case, and thus discoverable, in light of various allegations set forth in the operative complaint. *See, e.g.*, R. 178 ¶¶ 22, 28, 34, 49, 72-73 (alleging that the plaintiff sought to use these emails as leverage in divorce proceedings); *id.* ¶¶ 35, 41-42, 60-62, 65-68 (alleging, as a basis for damages, that the defendant's allegations of infidelity were "extremely humiliating" to the plaintiff and caused him "severe mental anguish"). Any perception of bias by the plaintiff in the discovery process reflects an unreasonable, one-sided view of what matters in this case. *See Sherwin-Williams*, 607 F.3d at 778 ("a reasonable person is able to appreciate the significance of the facts in light of relevant legal standards").

3. Privacy

The plaintiff expresses particular frustration over what he perceives as bias in rulings regarding his "private information." *See* R. 268-1 ¶ 2d ("The judges continually allow the Defendant to publish my private information."); *id.* ¶¶ 10-13 (Judge Durkin feels . . . that my personal, confidential information should be made public."). The Court has repeatedly reminded the plaintiff of the strong presumption in the Seventh Circuit in favor of public access to judicial records, particularly those upon which courts rely in reaching their rulings. *See, e.g.,* R. 105 (Hrg. Tr. Feb. 7, 2017) at 8-9, 13-14; *see also Smith v. U.S. District Court for the Southern District of Illinois*, 956 F.2d 647, 650 (7th Cir. 1992). More importantly, the Court, Judge Finnegan and the defendant have gone to significant lengths to accommodate the plaintiff's privacy concerns, despite the fact that some of those concerns were occasioned by his own inadvertence in publicly filing documents in this case

containing the information he now so vigorously seeks to protect. *See* R. 268-1 ¶ 8 (admitting that "[s]ome of the documents to be sealed were e-mails which [the plaintiff] attached to his first amended complaint"); *see also* R. 268-1 ¶ 30 (also admitting that the e-mails were attached to the amended complaint and noting that the now-dismissed co-defendant also published the e-mails in an unsealed 2015 filing, to which the plaintiff failed to object for approximately two years). The Court granted the plaintiff's motion for protective order immediately upon remand of the case from the Seventh Circuit, *see* R. 69, and furthermore sealed a years-earlier issued Memorandum Opinion & Order and filed a redacted version in its place, *see* R. 36, 68. Moreover, despite the defendant's disagreement with the plaintiff's position regarding what information is truly private, she has filed multiple exhibits under seal on her own motion to accommodate the plaintiff's privacy concerns; all of those motions have been granted by Judge Finnegan and this Court.[3] *See, e.g.,* R. 101, 168, 174, 209, 226, 252, 256, 272. Accordingly, any perception of bias as it relates to the handling of private information in this case is unfounded.

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[3] The plaintiff has only been denied leave to seal two documents, neither of which contain sensitive third-party information or, with respect to the parties, the type of personal identifying information typically subject to protection. *See* R. 82 (denying without prejudice the motion to seal two e-mails, one of which redacts all third-party information but contains the plaintiff's e-mail address, and another which was sent by the plaintiff to the defendant and thus contains both parties' e-mail addresses but no other identifying or private information); *see also* R. 105 at 13 (explaining that the e-mail from the plaintiff to the defendant would not be sealed because "[w]hen you're communicating with someone who you're adverse with in a divorce proceeding and it's not through counsel, you take the risk that that communication is going to become public, not private, not part of a settlement discussion, not covered under the rules of evidence.).

B. Statements by the Court and Judge Finnegan

Following his docket review, the plaintiff states, "[a]dditionally, Judges Finnegan and Durkin have made clear their personal, extrajudicial bias against me through various personal statements and bias." R. 268-1 ¶ 5. The plaintiff misunderstands the term "extrajudicial." Every statement he cites was made in court, at the settlement conference, or in a written ruling based on case materials or representations by the parties; in other words, the plaintiff cites only judicial statements. "Only in the rarest circumstances will judicial statements show the degree of favoritism or antagonism required when no extrajudicial source is involved." *City of Milwaukee*, 788 F.3d at 721 (internal punctuation omitted) (citing *Liteky*, 510 U.S. at 555). To show bias warranting recusal in a judicial statement, a party must allege more than that "a judge rejected [his] arguments or spoke harshly to him: Expressions of impatience, dissatisfaction, annoyance, and even anger are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display." *Szach*, 2015 WL 3964237 at * 4 (internal punctuation omitted) (quoting *Liteky*, 510 U.S. at 555-56).

This is not one of those "rarest of circumstances" where judicial statements show impermissible bias. Most of the quotes the plaintiff cites have no bearing on bias. *See* R. 268-1 ¶¶ 7, 10-12 (quoting the judge's impressions of the litigation process generally); *id.* ¶ 16 (quoting an entirely neutral remark about the court's preference for a jury trial); *id.* ¶¶ 23, 29 (quoting alleged misstatements in written decisions that have no functional significance or impact on the issues decided in

those opinions or on the case more broadly); *id.* ¶ 27 (quoting the Court's objective, legal view of what material is privileged or protected by the Fifth Amendment right against self-incrimination, and what material may be private, but nevertheless subject to disclosure in civil litigation). The Court briefly responds to three averments, which, taken out of context as they were in the plaintiff's affidavit, warrant explanation.

First, the plaintiff states that at the settlement conference held on February 2, 2017, Judge Finnegan expressed impermissible bias when she remarked that "[the defendant] is the nicest woman I have ever met," and that, in her view, the plaintiff's demeanor would not be well-received by a jury. R. 268-1 ¶ 17. While the plaintiff may have been disappointed by Judge Finnegan's assessment, it is not a basis for recusal. The plaintiff, a career expert-witness, has expressed his belief to the defendant that he is likely to prevail in this case because juries find him compelling. *See* R. 76-7 at 3 ("Recall, too, that I will be testifying, and I've never ever lost a jury trial (albeit before always as an expert, not as a litigant).") In attempting to move the case toward settlement, Judge Finnegan may have considered it useful to challenge the plaintiff's opinion of himself. After all, it is the nature of a settlement conference that in attempting to facilitate a resolution of the case, the judge informs both parties of her assessment of the strengths and weaknesses of their respective positions. "A judge's frank assessments in conferences are not guaranteed to be infallible, but they can be helpful in coping with attorneys' sometimes unrealistic devotion, on all sides, to their clients' causes."

In re Milwaukee, 788 F.3d at 722. Without expressing any opinion on the correctness of Judge Finnegan's assessment of the parties' respective jury-appeal (because the Court has not met either of the parties), the Court believes that Judge Finnegan intended to be helpful in sharing her view. Moreover, the plaintiff has no idea what Judge Finnegan said to the defendant, and the Court has every reason to believe she was equally frank in her assessment of the obstacles the defendant may face at trial. Recusal is unwarranted.

Second, the plaintiff argues that this Court has formed an antagonistic view of him based on a comment made to counsel from the bench at a motion hearing on February 7, 2017. The comment followed a lengthy statement by plaintiff's counsel impugning the motivation and tactics of opposing counsel in attaching to a response brief a non-privileged e-mail from the plaintiff to the defendant. Specifically, plaintiff's counsel accused opposing counsel of attaching the e-mail as a means of "extortion." The Court responded with the following assessment of the e-mail: "[It] [s]ounds like he," referring to the plaintiff, "[i]s the one doing the extorting. He's telling his wife, or ex-wife, 'If you don't settle with me, I'm going to go to the FBI and get you criminally prosecuted.'" *See* R. 105 at 9-14. The e-mail reads as follows:

> You will face likely criminal investigation and defense costs, and may well be found liable for money penalties and even jail time . . . Before any of this goes forward, I am holding out a possibility of making all of this come to an end – the legal fees, the uncertainty of an award to be paid by you in the federal civil trial, the risk of criminal prosecution and incarceration . . . But the time for this is very short, as the federal appellate court mandate should be coming in a few weeks, after which I definitely won't be willing to withdraw the suit or the criminal complaint against you.

R. 76-7. Having now reread the e-mail, the Court's statement on February 7 continues to reflect its view of the e-mail's content. Contrary to the plaintiff's assertions, however, that view does not make it impossible for the Court to be fair in this case. *See United States v. Diekemper*, 604 F.3d 345, 352 (7th Cir. 2010) (holding that the sentencing judge's comment that the defendant was "manipulative, narcissistic, and twisted" was not a basis for recusal where it was merely "a reflection of the facts before the district court"). As noted earlier, the Court has never met the plaintiff, and the Court's view of one e-mail he sent does not mean that the Court feels deeply, or even slightly, antagonistic toward him. The Court can hold the stated view regarding the e-mail and continue to evaluate the case fairly.

Finally, the plaintiff contends that certain statements made by Judge Finnegan and this Court reflect bias against his counsel, manifesting "unwarranted skepticism," admonishment, and diminution of counsel's capabilities and conduct in this case. *See* R. 268-1 ¶¶ 9, 25-28. The Court disputes this characterization of the comments at issue. Even if the characterization were accurate, however, recusal would not be required for two reasons. First, the comments were made in the context of judicial efforts to keep this case on course. "[A] judge's ordinary efforts at courtroom administration remain immune from charges of partiality, even if the judge exhibits impatience, dissatisfaction, annoyance, and even anger." *In re Milwaukee*, 788 F.3d at 723 (internal punctuation and citation omitted). Second, to support recusal, the bias alleged must be against the party and not simply his

counsel, "because antipathy to an attorney is insufficient grounds for disqualification" unless the facts suggest that the "bias against [the] attorney can reasonably be imputed to [her client]." *Sykes*, 7 F.3d at 1339 (citation omitted). The plaintiff attempts to show that this Court imputed bias toward counsel to him, citing the following excerpt from the January 6, 2017 hearing transcript:

> If I form an unfavorable opinion about one of you, either side, because of … your lack of professionalism, as a matter of human nature . . . I'll do my best to make sure it doesn't rub off and hurt your client.

R. 268-1 ¶ 9. Of course this statement says nothing about the Court *actually* holding an unfavorable opinion of counsel for either side or imputing that opinion to either party. In fact, it promises that the Court will make every effort not to do any such thing. Moreover, the purpose of the comment was to dissuade counsel from engaging in inappropriate, unprofessional conduct. It was made following a representation by plaintiff's counsel that "right now the attorneys are hating each other" and "emotional[ly] attacking . . . each other." R. 148 (Hrg. Tr. Jan. 6, 2017) at 26. Placed in context, the Court's response was as follows:

> Well, we don't need to go there. I don't see hate being exhibited. . . [L]ower the temperature between the two of you. I'm not casting stones on either side. And just act professionally because if you don't, it will inure to the detriment of your clients. If I receive a -- if I form an unfavorable opinion about one of you, either side, because of the -- your lack of professionalism, as a matter of human nature, it -- it – I'll do my best to make sure it doesn't rub off and hurt your client. But you don't want to even put that risk to your client . . . So do your best to act professionally. I'm sure you both will.

Id. at 26-27. From counsel's response—"Understood"—the Court is satisfied that the purpose of the warning was clear, *see id.* at 27. Far from

demonstrating bias, this warning, applicable to both sides, was intended to set a tone of civility in a case where it appears personal animus between the parties runs high.

Conclusion

The Court previously found that the plaintiff inexcusably waived his jury demand in this matter and that permitting him to withdraw that waiver would unduly prejudice the defendant. The Court stands firmly behind that analysis. However, the allegations of bias set forth in the recusal motion put a wrinkle in the Court's earlier assessment of relative prejudice. "It is a fundamental principle of justice that it is important that a litigant not only actually receive justice, but that he believe he has received justice." *United States v. Pfizer, Inc.*, 569 F.2d 319, 323 (8th Cir. 1977) (internal quotation marks and citation omitted). To that end, even when there is no actual bias, but merely a perception of bias by one party such that an unfavorable verdict would lead him to feel he had been treated unfairly, courts must consider whether to apply their discretion to order a jury trial. *Id.* (holding that where trial judge expressed strong opinions on the legal and factual issues of a case during settlement negotiations, it was an abuse of discretion to order a bench trial); *see also Chanofsky v. Chase Manhattan Corp.*, 530 F.2d 470, 473 (2d Cir. 1976) ("Inasmuch as Judge Duffy has already indicated his views on the factual questions to be tried [by way of a summary judgment ruling], we think that withdrawal of plaintiff's [jury] waiver should be permitted regardless of the technical merits of his Rule 39 argument.").

Rule 39(b) of the Federal Rules of Civil Procedure grants courts broad discretion in determining whether to relieve a party from waiver. It requires that if a jury trial has been waived, as it has been here, a motion is necessary to invoke the court's discretion. *See Swofford v. B&W, Inc.*, 336 F2d 406, 409 (5th Cir. 1964). The Court will construe the recusal motion as motion pursuant to Rule 39(b), or alternatively reconsiders on its own motion its previous order striking the plaintiff's jury demand. *See Horowitz v. Alloy Automotive Co.*, 677 F. Supp. 564, 567 (N.D. Ill. 1988) (construing a belated jury demand as a Rule 39(b) motion). To avoid any perception of injustice at trial and in the rendering of a verdict, the Court orders this case to be tried to a jury.

ENTERED:

Thomas M Durkin

Honorable Thomas M. Durkin
United States District Judge

Dated: July 26, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In the Matter of	)	
	)	No. 17 D 43
Nejla Kassandra Lane	)	
	)	(Before the Executive Committee)
An Attorney	)	

CITATION

It appearing that the following facts are true:

1. Nejla Kassandra Lane was admitted to practice before the general bar of this Court on January 11, 2007 and before the trial bar of this Court on August 27, 2014;
2. On March 30, 2017, Ms. Lane renewed her trial bar membership;
3. On October 31, 2017, the Honorable Sheila Finnegan notified the Executive Committee of the attached memorandum and exhibits outlining Ms. Lane's correspondence and actions before the Court while she was representing the plaintiff in case number 14 C 8431 *Barry Epstein v. Paula Epstein*;
4. Beginning on April 17, 2017, Ms. Lane sent emails to Magistrate Judge Finnegan's Proposed Order email account to complain about rulings. Despite being informed in writing by Magistrate Judge Finnegan that the communication was improper, Ms. Lane continued sending lengthy emails, using unprofessional and inappropriate language;
5. Pursuant to the American Bar Association Model Rules of Professional Conduct, Rule 3.5(d), a lawyer shall not engage in conduct intended to disrupt a tribunal;
6. Pursuant to the American Bar Association Model Rules of Professional Conduct, Rule 8.4(d), it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice;
7. The Executive Committee has reviewed Magistrate Judge Finnegan's report and exhibits, therefore

IT IS ORDERED that, pursuant to Rule 83.28(c) of the Local Rules of this Court, Nejla Kassandra Lane inform this Court, within twenty-eight (28) days of receipt of this Citation, of any claim by her, predicated upon the grounds set forth in Local Rule 83.28, why the imposition of discipline by this Court, due to Ms. Lane's actions before Magistrate Judge Finnegan, would be unwarranted and the reasons therefore.

ENTER:

FOR THE EXECUTIVE COMMITTEE

Chief Judge

DATED: November 17, 2017

MEMORANDUM

To: Executive Committee
U.S. District Court for the Northern District of Illinois

From: Sheila Finnegan SF
U.S. Magistrate Judge

Re: Attorney Nejla Lane

Date: October 31, 2017

I am writing to report misconduct by attorney Nejla Lane that occurred while she was representing the plaintiff in *Barry Epstein v. Paula Epstein*, 14 C 8431. The misconduct occurred while I was supervising discovery in this matter assigned to Judge Durkin. The parties later reached a settlement (shortly after opening statements to the jury), but the lawsuit was not dismissed with prejudice until last month since the global settlement included the parties' ongoing state-court divorce case. With the lawsuit now finally dismissed, I am bringing Ms. Lane's misconduct to your attention.

The misconduct involved Ms. Lane sending emails to my Proposed Order email account to complain about rulings. After the first such email (on April 17, 2017), I informed Ms. Lane in writing that the communication was improper and instructed her not to do this again. Despite this, on June 23, 2017 and again on June 26, 2017, Ms. Lane sent lengthy emails criticizing another ruling. Not only did Ms. Lane violate my April 17, 2017 order, but the language that she used in the emails was wholly unprofessional and extremely inappropriate. For example, she stated in the final email on June 26, 2017 (also sent to my law clerk, Allison Engel): "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!" Ms. Lane concluded: "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, Paula Epstein's attorney]! Thank you Allison! Great job!" Copies of these emails are attached (Exs. 1-3), as well as a chronology (Ex. 4) that provides the full content of the emails and summarizes certain other emails and events that may be helpful for context.

On June 27, 2017, I entered an order reprimanding Ms. Lane for violating my April 19, 2017 order and for making "highly inappropriate" statements. I also ordered her to immediately cease all email communications with my staff and me, and concluded: "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." *See* Ex. 5.

It appears that the misconduct directed at me was not an aberration. On July 4, 2017, Ms. Lane sent an email to the adult daughter of Barry and Paula Epstein that contained extremely offensive language. *See* Ex. 6.

Ms. Lane's appearance form in the *Epstein* case indicates that she is a member of the Northern District Trial Bar. According to CM-ECF, she has represented parties in approximately 13 cases since 2013.

If you have any questions or require further information, please let me know. Thank you for your attention to this matter.

Exhibit 1

Re: Epstein v. Epstein, 14-cv-8431
Proposed Order Finnegan to: Nejla Lane 04/19/2017 06:53 AM
Sent by: Sheila Finnegan
Cc: nejla, Proposed_Order_Finnegan, Scott_White, "Scott A. Schaefers"

From: Proposed Order Finnegan/ILND/07/USCOURTS
To: Nejla Lane <nejlane@gmail.com>
Cc: nejla@lanekeyfli.com, Proposed_Order_Finnegan@ilnd.uscourts.gov, Scott_White@ilnd.uscourts.gov, "Scott A. Schaefers" <sschaefers@brotschulpotts.com>

Counsel,

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.

Sheila Finnegan
U.S. Magistrate Judge

Nejla Lane Thank you for this quick response, Judge Finneg... 04/18/2017 09:03:08 PM

From: Nejla Lane <nejlane@gmail.com>
To: Proposed_Order_Finnegan@ilnd.uscourts.gov
Cc: "Scott A. Schaefers" <sschaefers@brotschulpotts.com>, Scott_White@ilnd.uscourts.gov, nejla@lanekeyfli.com
Date: 04/18/2017 09:03 PM
Subject: Re: Epstein v. Epstein, 14-cv-8431

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. I have now attached the Order from 4/13 for your review regarding the case I mentioned this morning in court: The Estate of Stanback/Marion Gray, Case No. 12 L 13678, Trial date 8/9/2017, currently before J. Gillespie. All party deposition to be completed by June 9 or they are waived, and **yes I did find out about this after I appeared before you on Thursday 4/12 and 4/13** - that these deposition had to be completed quickly. I am providing to you this information for cross reference, to make your inquiry on me easier, I consider myself honorable and honest person. I was and always will be honest to this court as I am honest in my entire life, at least I try my best every day.
Today, you heard Scott's representation in court, he corrected his statements before, which I really appreciate, and you have also seen my email responses to Scott's Supplemental Response(?) not agreeing to but asking for extra time, 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 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.

It is really unfortunate what happened or is still happening between the couple, real bad, because these people are not in their 20-30s anymore, if they were in their 20-30s nobody would care or protect either one of them. But they are older couple who have age related health issues, my client had a "heart attack" already and everybody involved, including all the judges and attorneys, who seemed to be emotionally charged and allowing their own emotions to rule instead of being objective. It appears that "Paula" as you stated during the settlement conference was the "nicest" lady you ever met or this "little old lady" can't do no wrong, but she did violate the law evidenced with those emails. This is not about "catching a cheater or infidelity" and Posner's dicta is not the law, there is no such Posner Defense! This case is not filed for moral rights/wrongs nor is there any "bounty hunter" who has escaped breaking the law or exempt from breaking the law or violating this act! And I do not get the RESPECT I deserve either for doing my job.

Well this is a human institution after all.

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 - 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.

I apologize for this message, Judge Finnegan, but I am under a lot of pressure, too, and it's "I" who is being punished here because it's "I" who has to spend endless hours in the office, but ...
Again, my sincere apology and I will adhere to your instructions.
I will remain silent now. Good night everyone.

Yours very truly,

~

Nejla K. Lane, Esq.
Dedicated Attorneys
Lane Keyfli Law, Ltd. Team

LANE KEYFLI

5901 North Cicero Avenue, Suite 200
Chicago, Illinois 60646-5701
Phone: (773) 777-4440
Direct Ofc.: 312-709-0766
Fax: (866) 444-4024
Website: www.LaneKeyLaw.com
Office E-mail: Nejla@LaneKeyLaw.com

"We are not interested in the possibilities of defeat. They do not exist." Queen Victoria

"What you are is what you have been, and what you will be is what you do now." Buddha

On Tue, Apr 18, 2017 at 7:31 PM, <Proposed_Order_Finnegan@ilnd.uscourts.gov> wrote:

Counsel,

I reviewed the supplement. My order remains that the deposition is to proceed in the agreed date that I then ordered.

Sheila Finnegan

Sent from my iPhone

On Apr 18, 2017, at 6:38 PM, Nejla Lane <nejlane@gmail.com> wrote:

> Dear Judge Finnegan,
>
> After receiving the email regarding the clarification, I did ask Scott for an agree, off the record 14 day postponement of Ms. Epstein's deposition.
>
> All I want at this point is 14 days, to avoid having to re-depose her for the second time.
>
> If you are willing, in the light of Scott's Suppl Motion, grant me 14 days to depose Ms Epstein, and allow me Response to Scott's Suppl Motion, I am willing to do so, but if you outright will deny the extension then, I do not want to wast any more of your or my time with motions/responses.
>
> Please let me know how to proceed at this juncture. Thank you in advance, and again I apologize taking your time for this matter.
>
> Attached is my plea to Scott for 14 days.
>
> Yours very truly,
>
> ~
>
> Nejla K. Lane, Esq.
> Dedicated Attorneys
> Lane Keyfli Law, Ltd. Team
>
> LANE KEYFLI
>
> 5901 North Cicero Avenue, Suite 200
> Chicago, Illinois 60646-5701
> Phone: (773) 777-4440
> Direct Ofc.: 312-709-0766
> Fax: (866) 444-4024
> Website: www.LaneKeyLaw.com
> Office E-mail: Nejla@LaneKeyLaw.com

Exhibit 2

From: Nejla Lane
To: Scott A. Schaefers; Proposed_Order_Finnegan@ilnd.uscourts.gov
Cc: Allison_Engel@ilnd.uscourts.gov
Subject: Re: Epstein v. Epstein, 14 C 8431
Date: 06/23/2017 08:56 PM

Dear Allison,

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 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 !!!

Yours very truly,

~ Nejla K. Lane, Esq.

Lane Keyfli Law, Ltd.
5901 North Cicero Avenue, Suite 200
Chicago, Illinois 60646-5701
Phone: (773) 777-4440
Direct Ofc.: (312) 709-0766
Cell: (773) 621-1389
Fax: (866) 444-4024
Website: www.LaneKeyfli.com
Office E-mail: Nejla@LaneKeyfli.com

On Jun 23, 2017, at 6:42 PM, Scott A. Schaefers <sschaefers@brotschulpotts.com> wrote:

Thank you, Ms. Engel.

Scott A. Schaefers
BROTSCHUL POTTS LLC
30 N. LaSalle St., Ste. 1402
Chicago, IL 60602
Direct: (312) 268-6795
Main: (312) 551-9003
Cell: (773) 816-4747
Email: sschaefers@brotschulpotts.com
My Profile

From: Allison_Engel@ilnd.uscourts.gov [mailto:Allison_Engel@ilnd.uscourts.gov]
Sent: Friday, June 23, 2017 6:37 PM
To: neila@lanekeyfli.com; Scott A. Schaefers <sschaefers@brotschulpotts.com>
Subject: Epstein v. Epstein, 14 C 8431

Counsel,

Attached is the Order denying Plaintiff's Motion for Extension of Time to Complete Discovery and Leave to Depose Jay Frank [207]. It will be uploaded to the docket on Monday.

Allison M. Engel
Career Law Clerk to the Honorable Sheila Finnegan
United States District Court
Northern District of Illinois
219 S. Dearborn St., Suite 2206
Chicago, IL 60604
312.408.5056
allison_engel@ilnd.uscourts.gov

Exhibit 3

From:	Nella Lane
To:	Allison_Engel@ilnd.uscourts.gov; Proposed_Order_Finnegan@ilnd.uscourts.gov
Cc:	Scott A. Schaefers
Subject:	Re: Epstein v. Epstein, 14 C 8431
Date:	06/26/2017 06:05 PM

Dear Allison,

After having read your/Judge Finnegan's order dated June 23 - I found errors and misstatement of facts that needs to be corrected, which I am attempting to correct with this email.

1. Page 2, you stated: "After Plaintiff's request for rehearing was denied ...." this is incorrect !!! It was Defendant, Paula Epstein, who requested the hearing which was denied.
2. Page 3, second paragraph - same misstatement of fact, Plaintiff did not file pet for cert two month after denial of his pet for rehearing.

3. This court accuses Plaintiff's counsel of being "disingenuous" because of mixing up the deposition deadline for witness with expert witness ... How about Defendant's counsels flat out lie to this court on April 18? and filing a "Defendant's Supplemental Response to Plaintiff's Emergency Motion to Extend the Deposition of Paula Epstein DE147? Then lying to J. Finn by saying that his misstatement/lies in court should not warrant an extension to depose Paula after all. So this court should be mindful when accusing Lane of any sort of "disingenuousness" as I have provided this court with everything in my possession to with regards to my statements in open court. I do not lie, especially not purposefully as did Scott.
4. Plaintiff's motion is not late just because this court decided not to extend the 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 your account when drafting this flawed order.

5. I knew of the Supreme Court docket and waited for their response impatiently, the docket entry was attached to my motion. 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 the SC docket regularly. I was the person telling Scott that he needs to file a waiver or file an objection as the SC was delayed for his lack of knowledge what to do next - so refrain from accusing me of such ugly conducts, publicly. Order page 4. 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! This court has always treated my client and myself with disrespect!!!! You may not like my client, but he has a cause of action against the "little old lady" you can't do no wrong by YOU!

I will stop going through with all of the mischaracterization in this order!!!

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!

On Fri, Jun 23, 2017 at 6:37 PM, <Allison_Engel@ilnd.uscourts.gov> wrote:

Counsel,

Attached is the Order denying Plaintiff's Motion for Extension of Time to Complete Discovery and Leave to Depose Jay Frank [207]. It will be uploaded to the docket on Monday.

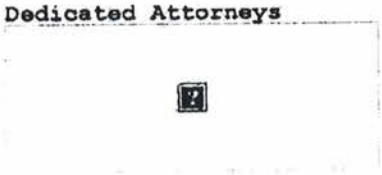
Allison M. Engel
Career Law Clerk to the Honorable Sheila Finnegan
United States District Court
Northern District of Illinois
219 S. Dearborn St., Suite 2206
Chicago, IL 60604
312.408.5056
allison_engel@ilnd.uscourts.gov

--

Yours very truly,

-

Dedicated Attorneys



Av. Nejla K. Lane, Esq. - President
Brian Douglas Moore Goodrich, Esq.
Alexandra Olkowski, Esq.
Rocio Marquez, Paralegal
5901 North Cicero Avenue, Ste. 200
Chicago, IL 60646-5701
Phone: 773.777.4440
Fax: 866.444.4024
Website: www.LaneKeyfli.com
Office E-mail: Info@LaneKeyfli.com

Exhibit 4

CHRONOLOGY

3/13/17 MINUTE entry before the Honorable Sheila M. Finnegan: Magistrate Judge status hearing held on 3/13/2017 and continued to 4/14/2017 at 9:00 a.m. For reasons stated on the record, **Plaintiff's oral motion to extend discovery schedule is granted. Fact discovery to close on 4/28/2017.** Dispositive motions (if any) to be filed by 5/5/2017. Expert disclosure and any reports to be served by 5/12/2017. Deposition of expert witnesses to be completed by 5/26/2017. The parties are to confer regarding deposition date for Plaintiff and provide this to the Court by email (sent to Proposed_Order_Finnegan@ilnd.uscourts.gov) by close of business on 3/14/2017. [114]

3/21/17 **AGREED Order** signed by the Honorable Sheila M. Finnegan on 3/21/2017. Plaintiff's deposition shall take place on April 13, 2017. **Defendant's deposition shall take place on April 20, 2017.** [116]

4/17/17 (Mon at 7:11 p.m.) Plaintiff files Emergency Motion to Extend the Deposition of Paula Epstein (defendant) [143]. Noticed for hearing on Tues, 4/18/2017, at 9:15 a.m. [144]

+ Motion notes that the deposition is set for 4/20/2017 and seeks to move it to 5/15/2017 based on recent production of new emails and the district judge's decision on 4/13/2017 to move the trial date from 6/5/2017 to 7/24/2017.

4/17/17 (Mon at 9:34 p.m.) Defendant files an opposition brief to the emergency motion. [145]

4/17/17 (Mon at 9:49 p.m.) Email from defense counsel to Proposed_Order_Finnegan@ilnd.uscourts.gov. "We are attorneys for Defendant Paula Epstein. Plaintiff's attorney is copied on this email. Attached is a copy of her opposition to Plaintiff's emergency motion to extend Defendant's 4/20/17 deposition and its exhibits 1-4. I will have a paper copy delivered to you first thing tomorrow morning. I request that you reset the time of the motion to 10:30 or 10:45, as I have a 9:00 am hearing in DuPage County that only I in my office can cover. I see on your calendar for tomorrow that you have two 9:15s, a 10:15, and settlement conferences at 11 am and 1:30 pm. I should be able to make it to your courtroom by 10:30 or 10:45. I could not have scheduled around plaintiff's motion, as I first received plaintiff's motion at 7:13 pm this evening.

4/17/17 (Mon at 10:04 p.m.) Judge Finnegan replies to the above emails, informing the parties that the hearing on the emergency motion will take place at 11:30 a.m. the next day.

4/18/17 (Tues at 2:05 a.m.) Plaintiff's counsel, Nejla Lane, replies with a thank you and asks whether she can bring a courtesy copy of the motion when she comes at 11:30 or email it to the Proposed Order email account.

4/18/17 (Tues at 4:58 a.m.) Judge Finnegan replies that if the motion was filed, there is no need to bring a courtesy copy to chambers.

4/18/17 (Tues at 11:30 a.m.) Hearing on emergency motion. Judge Finnegan order states: Emergency motion hearing held on 4/18/2017 as to emergency motion to extend the deposition of Paula Epstein 143. For reasons stated on the record, the motion is denied. [146]

4/18/17 (Tues at 5:28 p.m.) Defendant files supplement to memorandum in opposition to motion 145 (clarifying and correcting defendant's attorney's 4/18/17 in-court statements). [147]

4/18/17 (Tues at 5:34 p.m.) Defense counsel sends email to Proposed Order email account, stating that he has filed the attached supplemental response and then continuing: "It does not change your ruling, in my opinion, but I submitted it to clarify and correct my in-court statements today. I believe Ms. Lane still intends to conduct Ms. Epstein's deposition on 4/20."

4/18/17 (Tues at 6:38 p.m.) Plaintiff's counsel, Ms. Lane, replies to the above email: "Dear Judge Finnegan, After receiving the email regarding the clarification, I did ask Scott for an agree, off the record 14 day postponement of Ms. Epstein's deposition. All I want at this point is 14 days, to avoid having to re-depose her for the second time. If you are willing, in the light of Scott's Suppl Motion, grant me 14 days to depose Ms Epstein, and allow me Response to Scott's Suppl Motion, I am willing to do so, but if you outright will deny the extension then, I do not want to wast[e] any more of your or my time with motions/responses. Please let me know how to proceed at this juncture. Thank you in advance, and again I apologize taking your time for this matter. Attached is my plea to Scott for 14 days."

4/18/17 (Tues at 7:31 p.m.) Judge Finnegan replies to above email: "Counsel, I reviewed the supplement. My order remains that the deposition is to proceed in the agreed date that I then ordered. Sheila Finnegan"

4/18/17 (Tues at 9:03 p.m.) Plaintiff's counsel, Ms. Lane, replies to the above email: "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. I have

now attached the Order from 4/13 for your review regarding the case I mentioned this morning in court: The Estate of Stanback/Marion Gray, Case No. 12 L 13678, Trial date 8/9/2017, currently before J. Gillespie. All party deposition to be completed by June 9 or they are waived, and **yes I did find out about this after I appeared before you on Thursday 4/12 and 4/13** - that these deposition had to be completed quickly. I am providing to you this information for cross reference, to make your inquiry on me easier, I consider myself honorable and honest person. I was and always will be honest to this court as I am honest in my entire life, at least I try my best every day. Today, you heard Scott's representation in court, he corrected his statements before, which I really appreciate, and you have also seen my email responses to Scott's Supplemental Response(?) not agreeing to but asking for extra time, 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 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. It is really unfortunate what happened or is still happening between the couple, real bad, because these people are not in their 20-30s anymore, if they were in their 20-30s nobody would care or protect either one of them. But they are older couple who have age related health issues, my client had a 'heart attack' already and everybody involved, including all the judges and attorneys, who seemed to be emotionally charged and allowing their own emotions to rule instead of being objective. It appears that 'Paula' as you stated during the settlement conference was the 'nicest' lady you ever met or this 'little old lady' can't do no wrong, but she did violate the law evidenced with those emails. This is not about 'catching a cheater or infidelity' and Posner's dicta is not the law, there is no such Posner Defense! This case is not filed for moral rights/wrongs nor is there any 'bounty hunter' who has escaped breaking the law or exempt from breaking the law or violating this act! And I do not get the RESPECT I deserve either for doing my job. Well this is a human institution after all. 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 - 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. I apologize for this message, Judge Finnegan, but I am under a lot of pressure, too, and it's 'I' who is being punished here because it's 'I' who has to spend endless hours in the office, but ... Again, my sincere apology and I will adhere to your instructions. I will remain silent now. Good night everyone." Ex. 1 (emphasis in original).

4/19/17 (Wed at 6:53 a.m.) Judge Finnegan replies to the above email: "Counsel, 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. Sheila Finnegan U.S. Magistrate Judge" Ex. 1.

* * *

6/23/17 (Fri: 6:37 p.m.) Email from Judge Finnegan's law clerk, Allison Engel, from her work email (not from the Proposed Order email account): "Attached is the Order denying Plaintiff's Motion for Extension of time to complete discovery and leave to depose Jay Frank [207]. It will be uploaded to the docket on Monday."

6/23/17 (Fri at 6:42 p.m.) Defense counsel replies to above email: "Thank you, Ms. Engel."

6/23/17 (Fri at 8:56 p.m.) Plaintiff's counsel, Ms. Lane, replies to the above email (to law clerk Engel and defense counsel) but also **adds the Proposed Order email account.**

+ "Dear Allison, 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 !!!" Ex. 2.

6/26/17 (Mon. at 8:25 a.m.) Order that was emailed to the parties on Friday evening is uploaded on CM-ECF. [221]

6/26/17 (Mon at 6:05 p.m.) Plaintiff's counsel, Ms. Lane, sends another email to law clerk Engel, defense counsel, and the Court's proposed order email account.

+ Dear Allison, After having read your/Judge Finnegan's order dated June 23 - I found errors and misstatement of facts that needs to be corrected, which I am attempting to correct with this email. 1. Page 2, you stated: "After Plaintiff's request for rehearing was denied ...." this is incorrect !!! It was Defendant, Paula Epstein, who requested the hearing which was denied. 2. Page 3, second paragraph - same misstatement of fact, Plaintiff did not file pet for cert two month after denial of his pet for rehearing.3. This court accuses Plaintiff's counsel of being "disingenuous" because of mixing up the deposition deadline for witness with expert witness ... How about Defendant's counsels flat out lie to this court on April 18? and filing a "Defendant's Supplemental Response to Plaintiff's Emergency Motion to Extend the Deposition of Paula Epstein DE147? Then lying to J. Finn by saying that his misstatement/lies in court should not warrant an extension to depose Paula after all. So this court should be mindful when accusing Lane of any sort of "disingenuousness" as I have provided this court with everything in my possession to with regards to my statements in open court. I do not lie, especially not purposefully as did Scott. 4. Plaintiff's motion is not late just because this court decided not to extend the 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 your account when drafting this flawed order. 5. I knew of the Supreme Court docket and waited for their response impatiently, the docket entry was attached to my motion. 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 the SC docket regularly. I was the person telling Scott that he needs to file a waiver or file an objection as the SC was delayed for his lack of knowledge what to do next - so refrain from accusing me of such ugly conducts, publicly. Order page 4. 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! This court has always treated my client and myself with disrespect!!!! You may not like my client, but he has a cause of action against the "little old lady" you can't do no wrong by YOU! I will stop going through with all of the mischaracterization in this order!!! 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! Ex. 3.

6/2717 MINUTE entry before the Honorable Sheila M. Finnegan: On 4/18/2017, Plaintiff's counsel, Nejla Lane, sent a lengthy email to the Court's proposed order box (with a copy to opposing counsel) setting forth her disagreements with a recent ruling and generally arguing the merits of the case. On 4/19/2017, the Court responded to the email, writing that the Court does not allow lawyers to send emails to the proposed order box "to argue the merits of a motion, to share their feelings about my past rulings, or to talk generally about the case with me." The Court further stated that "[o]utside 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." On 6/23/2017 (at 8:56 p.m.) and again on 6/26/2017 (at 6:05 p.m.), 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. If she needs to discuss a scheduling issue, she may contact the courtroom deputy by telephone (312-408-5110) but opposing counsel must also be on the call. Counsel of course may continue to electronically file documents in the case. 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. Mailed notice (sxw,) Ex. 5.

7/17/17 MOTION by Plaintiff Barry Epstein for Recusal of Judge Thomas M. Durkin and Judge Finnegan, noticed for hearing on 7/24/2017 (the day the trial is to begin). [268]

7/24/2017 Judge Durkin denies the motion for recusal [287], issuing written opinion on 7/26/2017 [301]. Jury trial is reset to 8/1/2017.

Exhibit 5

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1.1.2
Eastern Division

Barry Epstein

Plaintiff,

v.

Case No.: 1:14-cv-08431
Honorable Thomas M. Durkin

Paula Epstein, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, June 27, 2017:

MINUTE entry before the Honorable Sheila M. Finnegan: On 4/18/2017, Plaintiff's counsel, Nejla Lane, sent a lengthy email to the Court's proposed order box (with a copy to opposing counsel) setting forth her disagreements with a recent ruling and generally arguing the merits of the case. On 4/19/2017, the Court responded to the email, writing that the Court does not allow lawyers to send emails to the proposed order box "to argue the merits of a motion, to share their feelings about my past rulings, or to talk generally about the case with me." The Court further stated that "[o]utside 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." On 6/23/2017 (at 8:56 p.m.) and again on 6/26/2017 (at 6:05 p.m.), 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. If she needs to discuss a scheduling issue, she may contact the courtroom deputy by telephone (312-408-5110) but opposing counsel must also be on the call. Counsel of course may continue to electronically file documents in the case. 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.Mailed notice(sxw,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our

Scott A. Schaefers

From: B.J. (Epstein) Woodstein <bj@awaywithwords.se>
Sent: Wednesday, July 5, 2017 12:38 AM
To: Scott A. Schaefers; Jay Frank; Paula Epstein
Subject: Fwd: Hi BJ this is Nejla Lane, your dad's attorney

Dear Scott and Jay,

I have received this message from Nejla Lane. I find it highly inappropriate that she has contacted me like this, and of course what she has written is incredibly offensive.

I know there isn't anything you can do about it, but I just thought you should see it.

Best wishes,
Brett (Paula Epstein's daughter)

P.S. Please contact me at bwoodstein@gmail.com rather than this email address, if you reply.

-------- Original Message --------
Subject: Hi BJ this is Nejla Lane, your dad's attorney
Date: Tue, 4 Jul 2017 09:04:55 -0500
From: Nejla Lane <nejla@lanekeyfli.com>
To:bj@awaywithwords.se

I want you to know that your father is not well (emotionally) I think you should try to reach out to him and make mends.

One thing I know is that actions speaks louder than words! And he has given you everything! Education, money, attention and love (just because he doesn't know how to show his feelings doesn't mean he doesn't care or he has no feelings).

Between you and your mother - you guys are destroying him. It's all about money, isn't it?

And if he is dead you and your mother will go to another cruise - right?

After all that money he gave, which you used to buy your home in England - you have no shame or respect. Bam Bam thank you DAD! You took what made you who you are and now you turn your back on that ONE man who gave you everything.

Greed is SIN! YOU and your Loving GREEDY mother will take nothing when going to face GOD or rotten instead in HELL - I am a daughter myself and I wished we could've traded places!

Who you have become is rather disappointing. 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!!!

Yours very truly,

~ Nejla
Dedicated Attorneys

Av. Nejla K. Lane, Esq. - President
Brian Douglas Moore Goodrich, Esq.
Alexandra Olkowski, Esq.
Rocio Marquez, Paralegal
5901 North Cicero Avenue, Ste. 200
Chicago, IL 60646-5701
Phone: 773.777.4440
Fax: 866.444.4024
Website: www.LaneKeyfli.com
Office E-mail: Info@LaneKeyfli.com

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B.J. (Epstein) Woodstein
bj@awaywithwords.se
http://www.awaywithwords.se

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In the Matter of	)	No. 17 D 43
	)	
Nejla Kassandra Lane	)	(Before the Executive Committee)
An Attorney	)	
	)	**Response of Attorney**

On November 24, 2017, I received the above-referenced citation (hereinafter, the "Citation"), issued against me, arising from a complaint filed by the Magistrate Judge Sheila Finnegan.

First and foremost, I want to sincerely apologize to the United States District Court for the Northern District of Illinois and to Judge Sheila Finnegan, for sending the emotionally charged e-mails that now appear to have been inappropriate, which resulted in this citation. Although I do not seek to justify my conduct, I appreciate the opportunity to explain the context within which these e-mails were formulated and sent. Please consider this as my response to your Order of November 14, 2017, pursuant to Local Rule 83.28(c) of this Court, to inform the Court why the imposition of discipline would be unwarranted.

FACTUAL BACKGROUND

I am incorporating by reference the entire factual allegations of paragraphs 1 through 7 of said Citation and Judge Finnegan's accompanying memorandum, which states that the conduct in question arose from the case of *Barry Epstein v. Paula Epstein*, Federal Case No. 1:14-cv-08431 (Federal Action) filed on October 14, 2014, before the Federal District Court of the Northern District of Illinois, Eastern Division. I was Barry Epstein's ("Barry") retained Counsel both in his dissolution action, which was filed by Paula Epstein ("Paula") on May 23, 2011, captioned: *Paula*

Epstein v. Barry Epstein, 2011 D 05245, and the related Federal Action. This case sprung from a highly contentious, long-running divorce involving the Epsteins. There were millions of dollars at stake in the underlying divorce. This case had been simmering for six (6) years and I was engaged for the last five (5) out of six (6) years at the time of said conduct — I filed my appearance in the original dissolution matter in August of 2012.

In brief, I am an attorney at law duly licensed to practice in the State of Illinois since 2006, in the State of Michigan since 2005, and in the State of Texas since 2015. I am admitted to the U.S. District Court of the Northern District of Illinois, Eastern Division (General and Trial Bars); U.S. District Court of the Southern District of Illinois; U.S. District Court of the Eastern District of Michigan; U.S. District Court of the Eastern District of Wisconsin; U.S. District Court of the Northern District of Indiana; U.S. District Court of the Northern District of Texas; in addition to several other State and Federal Courts, and I am also admitted to the Supreme Court of the United States.

As a solo practitioner, I am the owner of Lane Keyfli Law, Ltd., a specialized law firm, with concentrations in Family Law, Civil Litigation, Criminal, and Immigration Law. I have represented clients in several Michigan State and Federal Courts, as well as in several Illinois and Indiana State and Federal Courts regarding civil, criminal and immigration matters, including for both civil and criminal trials, just to mention a few areas of experience, and I have never been disciplined by any of these courts.

I am also a licensed Private Detective (115002187) since June 1, 2010, and own a private investigation agency under the name "Key Private Investigation Bureau, LLC" (117.001701), which is an adjunct to my successful law practice, consonant with my commitment to ensuring that my clients receive the optimum results in all areas of law and corollary matters.

After Judge Thomas M. Durkin dismissed several counts of Barry's First Amended Complaint (his entire federal claims) on April 20, 2015, and declined to exercise its supplemental jurisdiction over Barry's state-law privacy claims, on May 19, 2015, I represented Barry as he appealed this judgment to the Court of Appeals for the Seventh Circuit.

I presented the Oral Argument before the Court of Appeals for the Seventh Circuit on December 10, 2015, Case No. 15-2076, which resulted in the successful partial reversal of the District Court's dismissal of Barry's case (with respect to Paula, but not Jay Frank), and it was remanded to the District Court on December 23, 2016. The Federal Action involved several complex issues such as analysis of nuanced federal electronic privacy laws, the intersection of spousal privacy rights, etc. This was a precedent-setting case, exploring areas never before decided by the District Court or Seventh Circuit.

On March 3, 2017, I also filed, with the guidance of outside counsel, Barry's Petition for a Writ of Certiorari Case No. 16-1162, (one was filed "under seal" to protected innocent third-parties and the other one was a "redacted" version), regarding the portion of the original District Court case dismissal that was not reversed by the Circuit Court, which was unfortunately denied on May 22, 2017. (See Exhibit A, Supreme Court Records).

After this matter was remanded for further proceedings to the Northern District of Illinois on December 23, 2016, the District Court, Judge Thomas M. Durkin, imposed a truncated discovery schedule by setting a very short trial date, initially June 5, 2017, subsequently moved to July 31, 2017. In preparation for this accelerated federal trial, my entire staff and I spent numerous hours, days, weeks and months by exchanging discovery, resolving discovery disputes, deposing the parties and non-parties, subpoenaing documents from third-parties, etc. These tasks imposed

much strain on me, and frankly it became at times unbearable for me, and I sought medical attention.

I was under extreme pressure to ensure that justice was served. Not only was I under a lot of pressure from a highly knowledgeable but also sometimes difficult client, who justifiably could not understand multiple erroneous and seemingly biased judicial rulings in his matter — this instant case — but I also had to endure constant unfair treatment and comments by Judge Finnegan, which put me under more pressure to assure that there would be an unbiased and unprejudiced outcome in this matter.

Against this backdrop, I had deep concerns about Judge Finnegan's impartiality, as she expressed a clear bias against both my client and myself from the very outset of her involvement in the case — the settlement conference. At the first proceeding she conducted, a settlement conference on February 2, 2017, Judge Finnegan expressed a clear opinion of the parties, calling the defendant/opposing party "the nicest lady she has ever met" and stating that my client would fare poorly before a jury. It appeared that Judge Finnegan had picked one side over the other from the start and she showed her strong bias again at a hearing on a motion to compel discovery on February 17, 2017, when she cut me off during an argument with an unfounded suggestion that I was unfamiliar with federal discovery procedures and an admonishment that "I can't sit here and educate you." My comments on the record had indeed nothing to do with "federal discovery procedure," but her statement set the tone for subsequent matters before her and clearly displayed her bias.

On another occasion, Judge Finnegan, in my presence, encouraged opposing counsel to attempt to employ a so-called "Posner defense," based on Appellate Judge Posner's rather remarkable concurring opinion restoring Barry's action against Paula, publicly extolling Paula's

patently illegal theft of electronic communications and even urging the state divorce case judge (Timothy Murphy) to award her an extra-generous settlement based on the unproven (indeed, irrelevant) suspicions of marital infidelity. It might be noted that Barry lodged an appropriate complaint against Judge Posner, who recently retired from the bench with only a 24-hour notice mere days after the Chief Judge of the Seventh Circuit dismissed Barry's expansively documented complaint. Suggesting trial strategy to a litigant — under any circumstances but most egregiously under these specific ones — would hardly appear to have been consistent with the requisite impartial administration of justice, and further underscores why both Barry himself and myself, as his counsel, were exceptionally frustrated and thus prone to strong expressions of emotion.

On May 2, 2017, after Judge Durkin had continued the trial date to July 24, 2017, I made a renewed oral request to extend the April 28, 2017, fact discovery cutoff, explaining the reasons for this request [DE#114]. Judge Finnegan denied our request and refused to re-open fact discovery [DE#139]. Even more disconcerting to me were her biased rulings, granting benefits to the opposing party that were not extended to me. After numerous ignored requests, motions and oral motions to re-open the fact discovery cutoff date, I had moved to depose a necessary trial witness, Jay Frank, after the close of discovery, and filed a Brief fully explaining my reasons for re-opening discovery and a Motion for Extension of Time to Complete Discovery and Leave to Depose Jay Frank (See Brief in Support of Motion and Exhibits DE#207; DE#212). Judge Finnegan denied this request, primarily on grounds that discovery had already closed, and the request came too close to the start of trial, knowing that she denied each request and that it was almost impossible to depose him prior to the original cutoff date of April 28, 2017 [DE#114, Discovery cutoff dates]. (See Exhibit DE#221, 6/23/17 Order of Judge Finnegan, denying Barry's Motion to Depose Jay Frank.)

However, on June 26, 2017, when opposing counsel later moved to depose a psychologist, Dr. Michael Fields, an expert witness for Barry, after the closing of expert witnesses' deposition deadline on May 26, 2017, Judge Finnegan granted the request without any explanation. (See Exhibit DE#222, Defendant's Combined Motion ... (2) For an Extension of Time to Depose the Psychologist etc.) (See Exhibit DE#226, Minute Entry, granting defense counsel request to depose the witness), (See also Judge Finnegan's Exhibit 4, entry of 3/13/17). I was at a loss to understand this unequal treatment, and I could not even begin to explain it to my client, particularly because Judge Finnegan did not see fit to issue any explanation for her ruling in favor of opposing counsel's motion.

This was not an isolated instance; Judge Finnegan also ruled against me on a motion to re-open fact discovery when my deposition of Paula revealed valid reasons to re-open discovery to examine her computer. (See Exhibit DE#153, Motion to Compel Discovery; Exhibit DE# 189, Brief in support of that Motion; and Exhibit DE#197, Order of Judge Finnegan.)

I believe Judge Finnegan's bias against me carries through even to the present Citation itself, as evidenced by the inclusion of my e-mail to Brett Epstein (marked as her Citation Exhibit 6), my client's daughter and a non-party. This private e-mail strictly discussed my client's well-being and did not mention or reference the case in any way, and therefore should not be considered as evidence of any misconduct toward a Judge. Her inclusion of this private e-mail is to strengthen her weak grievance and to secure an unfair outcome in this matter. Judge Finnegan's initial threat for my emotionally charged e-mail violation was to bar my future e-mails to the proposed order box, which she did, however, her continued bias toward is evidence with her extreme conduct of reporting this e-mail violation to the Executive Committee, Judge Ruben Castillo. Judge Finnegan brings this complaint against me in bad faith, for personal vengeance, in order to penalize me for

speaking out and/or standing up for my client and myself, but it shall be noted that nobody is above the law – specifically a judge who must conduct her/himself in accordance with the law.

Furthermore, on information and belief, Brett Epstein on advice of Jay Frank (hereinafter "Frank"), Paula Epstein's divorce attorney, and Scott Schaefers (hereinafter "Scott"), Paula Epstein's Federal Action attorney, filed a grievance with the IARDC attaching said private e-mail, which was the subject of a separate investigation that has since been closed without discipline, which also confirms that there was no attorney misconduct in connection therewith. It is quite clear that Frank's action was in whole or in large part retaliation for Barry's ARDC complaints against him, for Frank's ostensible and self-disclosed involvement (as instigator, co-conspirator, or, at minimum, as accessory after the fact) in the theft of Barry's private personal and business e-mails, obtained by Paula in violation of federal and state laws, and used by Frank to attempt to extort an unreasonable settlement from Barry in the underlying divorce action. (Barry's last ARDC complaint against Jay Frank, upon information and belief, has yet to be resolved by the ARDC.) Frank, together with Scott, swayed Barry's daughter Brett, whose estrangement during the pendency of the divorce action imposed serious emotional harm on Barry, to cooperate with their scheme to use my well-intentioned entreaty to Brett to try to mend the relationship with her father, as the basis for seeking disciplinary action against me. After Brett testified against her father on July 11, 2016, approximately in August of 2016, Barry's doctor diagnosed him as having suffered a "myocardial infarction" which is having suffered a minor heart attack and other heart conditions. None of this has anything to do with my communications with Judge Finnegan, of course, and is being used only to "pad" the complaint against me by Judge Finnegan.

Notwithstanding that it did not involve communications between myself and the Court, said e-mail to Brett Epstein was the product of the same stress imposed by the truncated time frame

of the Federal Action, and the pressure and extreme emotional state of mind that caused the impassioned outpouring in my e-mails to Judge Finnegan and her law clerk, Allision Engel. Thus, to the extent it is considered in conjunction with this citation, it should be viewed as part of the same aberration that caused my conduct toward Judge Finnegan, and not, as Judge Finnegan suggests, evidence of a pattern of this type of behavior. It might also be noted that, although my failed attempt to encourage a father-daughter reconciliation had not been authorized by Barry, he did not object to my good-faith effort after being made aware of it.

Attorneys must rely on the neutrality and impartiality of judges to bring about justice for their clients, a need that is safeguarded by Model Code of Judicial Conduct, Canon 1 of the Code of Conduct for United States Judges, which states, in part: "A judge shall uphold and promote the independence, *integrity*, and impartiality of the judiciary, and shall avoid impropriety and the appearance of the impropriety." In the face of Judge Finnegan's rulings and statements, I felt helpless to procure justice and was extremely worried that my client would suffer an unfair and irreparable harm because of her misconduct. I was concerned enough to file a Motion for Judge Finnegan to recuse herself, along with the presiding Judge, Thomas M. Durkin. (Exhibit DE#268, Motion for Recusals of Judges Thomas M. Durkin and Sheila Finnegan). This was the only time in my 13-year career as an attorney that I moved for a Judge to recuse herself or himself from a case based on a lack of impartiality, but I felt it was warranted based on the clear and extreme bias that Judge Finnegan demonstrated from beginning of this case. (See Exhibit B, Barry's E-mail). I considered bringing a formal complaint against Judge Finnegan for her preferential treatment during this matter, and only out of professional courtesy to our judicial system I refrained from doing so.

Although I had never before felt the need to take such an extreme action against any presiding judge, it should properly be viewed in the context of the fact that our judicial system, like most other societal organizations, is a "human institution," and accordingly that passions may trigger what in hindsight might be seen as intemperate comments. I strongly believe that the unfortunate episode Judge Finnegan describes might more reasonably be attributed either to mere personality clashes between Judge Finnegan and myself, to an abuse of discretion on Judge Finnegan's part, or to a clear bias by Judge Finnegan against my client or me or both us.

In any event, Judge Finnegan's role as one of the judges presiding over this case was bound by the Model Code of Judicial Conduct, the Rule 1.2, "Promoting Confidence in the Judiciary" and Comment on Rule 1.2, specifically stating: [1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge; [2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code; [3] Conduct that compromises or appears to comprise the independence, ***integrity***, and ***impartiality*** of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessary cast in general terms; [4] Judges should participate in activities that ***promote ethical conduct*** among the judge and ***lawyers***, ***support professionalism within the judiciary and the legal profession***, and promote access to justice for all; [5] Actual improprieties include the violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable mind a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, ***impartiality***, ***temperament***, or ***fitness*** to ***serve as a judge***; etc.".

When examining the e-mails I sent to Judge Finnegan's "Proposed Order email account" you will clearly see that it was a product of my frustration with her continuous rulings in favor of the defendant, Paula. On page 2 of Judge Finnegan's Memorandum, Chronology - Exhibit 4, the entry on 4/18/17 (Tues at 5:28 p.m.), she states that it was Scott Schaefers, attorney for the defendant, who sent an email to Judge Finnegan informing her that he has filed the attached supplemental response and then continuing: "It does not change your ruling, in my opinion, but I submitted it to clarify and correct my in-court statements today. ***I believe Ms. Lane still intends to conduct Ms. Epstein's deposition on 4/20.***" The issue with Scott Schaefers' e-mail was that he blatantly lied in court about sending to me only 48 pages on April 17, 2017, when in fact it was over 400 pages of new materials, which Scott attempted to correct by filing his "Supplemental Response to Plaintiff's Emergency Motion to Extend the Deposition of Paula Epstein" on April 18, 2017. Yet in this same e-mail Scott lied again that "Ms. Lane still intends to conduct Ms. Epstein's deposition on 4/20" which was a bigger lie than in open court, and even after finding out about this falsehood, Judge Finnegan forced Paula's deposition on April 20, 2017, presumably hoping that I would be ill-prepared for said deposition, and thereby serve to further protect Paula. On 4/18/2017 (Tues at 6:38 p.m.), my response was to correct the untruth set forth by Scott's e-mail, and I provided Judge Finnegan with e-mail evidence that defense had lied again about "my intentions to go forward with the scheduled deposition" when in fact I had pleaded with Scott for a 14-days extension. Yet, even after reviewing defense counsel's "Supplemental Response," admitting lying in court to Judge Finnegan, she still ordered the deposition to go forward as scheduled. Judge Finnegan's conduct was contrary to Model Code of Judicial Conduct, Canon 1, which states, in part: "A judge shall uphold and promote the independence, *integrity*, and ***impartiality*** of the judiciary, and shall avoid impropriety and the appearance of the impropriety."

On page 2 of Judge Finnegan's Memorandum, Chronology - Exhibit 4, the entry on 4/18/17 (Tues between 5:28 p.m. and 9:03 p.m.), I expressed my opinion of Judge Finnegan's bias by stating, *inter alia*: "... Today in court no matter what I said to you, you had already made up your mind, and even questioned my sincerity with regards to my preparation for upcoming trial. I have now attached the Order from 4/13 for your review regarding the case I mentioned this morning in court. [] I am providing to you this information for cross reference, to make your inquiry on me easier, I consider myself honorable and honest person. I was and always will be honest to this court as I am honest in my entire life, at least I try my best every day. [See entire email] I apologize for this message, Judge Finnegan, but ***I am under a lot of pressure***, too, and it's "I" who is being ***punished*** here because it's "I" who has to spend endless hours in the office, but .... Again, ***my sincere apology*** and ***I will adhere to your instructions. I will remain silent now.*** Good night everyone." If my e-mails do not convey a clear and classic exemplar of the heart-felt expressions of an exhausted, distressed and worried professional about this judge's misconduct, then I don't know what would have done so. When reading my e-mails in their entirety you will find that I tried very hard to remain professional before this Judge, but being a human being under extreme pressure, I was unable to control myself, for which I am now sorry.

On page 4 of Judge Finnegan's Memorandum, Chronology-Exhibit 4, the entry on 4/19/17 (Wed at 6:53 a.m.), Judge Finnegan's e-mail response to me was to threaten that "if" I were to write to her another improper e-mail then she would enter an order barring me from sending "any" ***future e-mails*** to the proposed order box without leave of court. I refrained from sending any improper e-mails to the proposed order box from April 19, 2017 through June 23, 2017, which was not yet uploaded to the docket. But after reading Judge Finnegan's June 23, 2017, Order (coming from Allison Engel's mailbox), the DE#221 – denying the deposition of Jay Frank (former

co-defendant to Paula), yet going beyond denying Barry's motion to reopen discovery, rendering this entire order a misstatement of facts and a personal attack on me, my ability as a federal attorney and public humiliation – under the extreme trial preparation pressure and to correct said order before it was uploaded to the docket, I put my thoughts and opinion into words and sent those two e-mails to Allison Engel (to avoid *ex parte* communication I included the parties and the Judge's proposed order e-mail account). However, as stated before, I was under tremendous pressure, but my e-mails were nothing but the truth, and the truth and/or my opinion about said order cannot and must not be construed as misconduct. Indeed, if anything, an attorney's conduct pointing to certain wrongs must be commended, rather than being punished for speaking out the truth. I consider myself a very hardworking and honorable attorney, and I believe that nobody, including Judge Finnegan, is above the law. My communications were only meant to assert that foundational truth.

Nevertheless, I sincerely apologize for my impassioned outpouring in these e-mails to Judge Finnegan's "Proposed Order email account" and to her law clerk, Allison Engel. I repeat my belief that it was merely an aberration caused by a high-stress case that was derived from a feeling of desperation, and which does not warrant the imposition of discipline. I have been admitted before this Court since January 11, 2007, and as Judge Finnegan noted in her memorandum, I have represented parties in approximately 13 cases since my admission to the Trial Bar in 2013, and outside of this ***one*** case I have never been charged with any misconduct. This ***isolated*** instance toward Judge Finnegan was my only putative lapse, and it was not part of a pattern of behavior toward any judge in the Northern District of Illinois or in any other State or Federal Court.

Since this citation, having pondered deeply these e-mails to Judge Finnegan's "Proposed Order email account," and I regret having sent them. However, I am also only a human being, and my sense of better judgment was attenuated under extreme and unfair conditions. Without justifying my conduct, I attest that this will never happen again. Furthermore, and arguably of paramount importance, this definitely was not an attempt to circumvent the proper processes of the administration of justice.

APPLICABLE LAW

Although I regret and sincerely apologize for sending those e-mails to the Judge's "Proposed Order email account" and to the Judge's clerk, Allison Engel, I believe that discipline by the Executive Committee is completely unwarranted under these circumstances, because my conduct is wholly different from conduct generally sanctioned by the Rules cited.

In paragraphs 5 and 6 of the citation, the Executive Committee invokes American Bar Association Model Rules of Professional Conduct Rule 8.4(d) and 3.5(d) as grounds for discipline. However, neither of these rules should be used to discipline a mere expression of an opinion. After I was instructed not to send any e-mails to Judge Finnegan's "Proposed Order email account" on April 19, 2017, I did not send another communication directly to Judge Finnegan's "Proposed Order email account." My subsequent e-mails of June 23, 2017, and June 26, clearly were addressed to Allison Engle, and the only reason it was also sent to the "Proposed Order email account" was to avoid the appearance of any *ex-parte* communications with other parties.

American Bar Association Model Rules of Professional Conduct Rule 8.4(d) (Model Rule 8.4(d)):

Model Rule 8.4(d) prohibits "conduct that is prejudicial to the administration of justice," and nothing in the rule or its comments further defines this prohibition. However, case law for the parallel Illinois Rules of Professional Conduct and its preceding rules suggests it is a very high bar. For example, in a case in which a lawyer had no contact with clients for months after an initial consultation, the Court absolved the attorney of wrongdoing because the board hearing his case failed to specifically show how his conduct "derailed or complicated" judicial proceedings. (*In re Harris*, 514 N.E.2d 462 (Ill. 1987)). In another case, the Court found that even "an attorney's breach of fiduciary duty or conversion does not, standing alone, warrant the imposition of professional discipline." (*In re Karavidas*, 999 N.E. 2d 296 (Ill. 2013), citing *In re Mulroe*, 956 N.E. 2d 422 (Ill. 2011) and *In re Merriwether*, 561 N.E.2d 662 (Ill. 1990)). The prohibition on conduct prejudicial to the administration of justice is reserved for such egregious offenses as practicing law without a license (*In re Howard*, 721 N.E.2d 1126 (Ill. 1999); *In re Thomas*, 962 N.E.2d 454 (Ill. 2012)), arranging a loan to a judge (*In re Powell*, 533 N.E.2d 831 (Ill. 1988)), and similar conduct that presents an obvious and immediate threat to the application of justice. Under this paradigm, merely expressing an opinion about a judge's decision – regardless of how colorful the expression might have been – does not come close to prejudice.

Model Rule 8.4(d) is a heavy hammer intended to be used on rogue lawyers who simply do not care whether justice is served. Although I do not seek to justify or excuse my own use of emotionally phrased expressions, I feel it is inappropriate to use such heavy punishment on conduct that is benign by comparison to the aforementioned cases. While my emotionally charged e-mails to Judge's "Proposed Order email account" are regrettable, they did not derail, disrupt or complicate the judicial proceedings in any way, shape or form, it did not involve a breach of duty, and it did not in any way prejudice the administration of justice in the underlying case. As Judge

Finnegan in her October 31, 2017, Memorandum herself puts it: "... the lawsuit now ***finally*** dismissed" -- acknowledging or implying her belief that this case was anything but bearable, and her relief that this was gratefully brought to a conclusion with a settlement between the parties on August 2, 2017, allowing Judge Finnegan to become extricated from the contentiousness and dubiously resolved, potentially appealable, issues with which she had been required to contend.

Model Rule 3.5(d) provides that a lawyer shall not "engage in conduct intended to disrupt a tribunal." The comments to this Rule define such conduct in several ways, none of which apply to this case: improper influence through criminal conduct, jury tampering, and *ex parte* communications. To the contrary, I sent those two subsequent e-mails to the Judge's law clerk, Allison Engle, on June 23 and June 26, with copies to the "Proposed Order email account" purely to avoid any accusation of any *ex parte* communications with the judicial system and/or the parties.

The comments also caution attorneys to refrain from "abusive or obstreperous conduct" toward a judge. The context of the comment appears to target only conduct in the courtroom and not outside e-mails.[1] In fact, in the rare examples in which an Illinois court has invoked the prohibition against "abusive or obstreperous" behavior, it has been for disparaging language in pleadings filed as part of the public record -- not for private e-mails to a judge and/or to a judge's law clerk. (*Grabs v. Safeway, Inc.*, 2013 IL App (1st) 121971-U; *Sousa v. Astra Zeneca Pharm., LP*, 2013 IL App (4th) 120415-U). And even in those cases, the court did not see fit to sanction the offending attorney, but rather issued a gentle reminder that the conduct was unacceptable. Still, I would like to address the issue of "abusive or obstreperous" behavior here. Nothing in the e-

[1] For reference, the full text of the comment is: "The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation: the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics." ABA MODEL RULES OF PROF'L CONDUCT R. 3.5 cmt. 4.

mails rose to the level of "abusive or obstreperous." I did not use any foul language, unkind and childish name-calling, or other typical characteristics of abusive emails – at my worst, I merely said that I was "outraged" and "sickened" by the Judge's rulings. These descriptions fairly and honestly communicated my reactions at the time, and described my emotions, and were not used in any manner to characterize the Court's behavior.

In retrospect, I see that my e-mails were inappropriate. However, I maintain that they were not abusive or obstreperous actions, but rather understandable (if unfortunate) expressions of desperation and frustration after five (5) years of enduring a high-stress, high-pressure situation, having to deal with clearly biased judge like Judge Finnegan. Discipline for expression of my strong opinion about and visceral reaction to the demonstrated bias of the judge in such e-mails is unwarranted under any Rule intended to target illegal activity and jury tampering.

CONCLUSION

I would like to close by saying again that after serious and lengthy reflection about these e-mails, I am extremely sorry that I did not file a proper motion or a motion to reconsider Judge Finnegan's June 23, 2017 Order instead of sending said e-mails. However, as time was of the essence, there was no occasion for me to file any motions or a motion to reconsider this ruling, because the trial was approaching in matter of days. I was very upset regarding what I believed was another clear expression of bias, as Judge Finnegan had granted yet another motion by defendant's lawyer, Scott, who had no legitimate standing to challenge my subpoena to depose Jay Frank. I sincerely apologize for sending said e-mails to Judge Finnegan and/or her law clerk expressing my disappointment over her/their rulings and to the Northern District Court. Although I regret having "pressed the send button" or this conduct, I want to emphasize that in this unique case, the judges' unfair or biased rulings have caused me extreme distress and anxiety from which

I have yet to recover. I do not mean to excuse nor justify my conduct, but merely to explain that it was indeed an aberration, in a very emotional time for me when I was under extreme stress from a high-stakes case. I would like to close this undesirable chapter and move on.

I believe I have shown cause why discipline would be unwarranted for this regrettable and unfortunate incident, and I look forward to appearing before this Honorable Court with proper, professional, lawyerly conduct in the future.

December 20, 2017

Respectfully Submitted,

By: /s/ Nejla Kassandra Lane /
Nejla K Lane, Attorney

Lane Keyfli Law, LTD.
Nejla K. Lane
ARDC: 6290003
Tel. 773-777-4440
Fax: 866-444-4024
E-MAIL: Nejla@LaneKeyfli.com

VERIFICATION BY CERTIFICATION

Pursuant to Title 28, Section 1746 of the US Code, the undersigned certifies under penalty of perjury that the statements set forth in the foregoing 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 I verily believe the same to be true. I further state that the statements made in the foregoing answer as to want of knowledge sufficient to form a belief are true.

/s/ Nejla K Lane
Nejla K Lane

CERTIFICATE OF SERVICE

I, Ruchira Ray, an attorney, hereby certify that on December 21, 2017, I caused a true and correct copy of the foregoing document to be delivered to Courtroom 2058.

/s/Ruchira Ray
Ruchira Ray

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

In the Matter of the Discipline of	)	
	)	No. 18 MC 40
Nejla Kassandra Lane,	)	
	)	(Before the Executive Committee)
an attorney	)	

ORDER

This Order finds that attorney Nejla Kassandra Lane has committed misconduct in violation of Rules of Professional Conduct 3.5(d) and 8.4(d), which are incorporated through Local Rule 83.50, by repeatedly acting in an unprofessional, disrespectful, and threatening manner, including sending inappropriate email messages to a judge's Proposed Order email account. This Order imposes discipline on Ms. Lane for those violations.

Ms. Lane has been a member of the General Bar of this Court since January 11, 2007, and became a member of the Trial Bar of this Court on August 27, 2014. Ms. Lane recently appeared in 14 C 8431, *Barry Epstein v. Paula Epstein*, before Magistrate Judge Sheila Finnegan.

On October 31, 2017, Judge Finnegan submitted a complaint to the Executive Committee. According to the complaint, beginning on April 17, 2017, Ms. Lane sent emails to Judge Finnegan's Proposed Order email account to complain about rulings. For example, Ms. Lane stated in her final email on June 26, 2017 (also sent to Judge Finnegan's law clerk, Allison Engel): "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!" Ms. Lane concluded: "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, Paula Epstein's attorney]! Thank you Allison! Great job!"

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 in *Epstein*. 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!!!"

On November 14, 2017, on behalf of the Executive Committee, the Clerk of Court sent a Citation to Ms. Lane along with a copy of Judge Finnegan's complaint, directing her to respond. In her response, Ms. Lane apologized to Judge Finnegan for sending the "emotionally charged emails that now appear to have been inappropriate . . ." 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.

In light of the record, the Executive Committee finds that Ms. Lane violated Rule of Professional Conduct 3.5(d) by "engag[ing] in conduct intended to disrupt a tribunal." Ms. Lane also violated Rule 8.4 by "engag[ing] in conduct that is prejudicial to the administration of justice." As described above, Ms. Lane's reactions to the judge's decisions prejudiced the administration of justice. Due to the misconduct, the Executive Committee finds that Ms. Lane intended to disrupt the proceedings.

On the question of what discipline to impose, the nature of the violation and the repeated instances of disruption weigh in favor of a serious disciplinary sanction. In mitigation, Ms. Lane has apologized to Judge Finnegan. On balance, the Executive Committee orders that

a. Nejla Kassandra Lane is suspended from the General Bar of this Court for six months. No sooner than six months from the date of this Order, Ms. Lane may petition the Executive Committee for reinstatement to the General Bar. Not only must the petition meet Local Rule 83.30(d)'s reinstatement standard and burden of proof, the petition must be supported by records demonstrating that Ms. Lane has sought professional assistance to comply with the Rules of Professional Conduct and to deal effectively with her management of anger.

b. Nejla Kassandra Lane is suspended from the Trial Bar for one year. No sooner than 12 months from the date of this Order, Ms. Lane may petition the Executive Committee for reinstatement to the Trial Bar. The Executive Committee finds that the misconduct committed shows that Ms. Lane is not able to serve as lead counsel during a trial for at least the one-year period. To lift the suspension, she must meet Local Rule 83.30(d)'s reinstatement standard and burden of proof at the end

of the one-year period. and must submit records demonstrating that she has sought professional assistance

c. Within 21 calendar days of the docketing of this order, Nejla Kassandra Lane shall notify by certified mail, return receipt requested, all clients to whom she is responsible for pending matters before this Court of the fact that she cannot continue to represent them during the suspension from the General Bar.

d. Any login credentials issued to Nejla Kassandra Lane for access to the electronic filing system of this Court shall be disabled until she is reinstated to active status in the general bar of this Court.

e. Within 35 days of the entry of this Order, Nejla Kassandra Lane shall file with the Assistant to the Clerk of the Court a declaration indicating her address to which subsequent communications may be addressed.

f. Nejla Kassandra Lane shall keep and maintain records evidencing her compliance with this order so that proof of compliance will be available if needed for any subsequent proceeding instituted by or against her.

g. Any further offensive behavior may lead to further disciplinary action, including, but not limited to, disbarment.

h. The Clerk is directed to enter this Order into the public record.

i. The Clerk is directed to send a copy of this order and all relevant documentation to the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois.

ENTER:

FOR THE EXECUTIVE COMMITTEE

Chief Judge

DATED: January 22, 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In the Matter of	)	No. 17 D 43
	)	
Nejla Kassandra Lane	)	(Before the Executive Committee)
An Attorney	)	
	)	Petition for Reinstatement to the General Bar

Petition for Reinstatement to the General Bar Pursuant to Local Rule 83.30(d)

On November 24, 2017, I received the above-referenced citation (hereinafter, the "Citation"), issued against me, arising from a complaint filed by the Magistrate Judge Sheila Finnegan. On or after January 22, 2018, this court found that I committed misconduct in violation of the Rules of Professional Conduct 3.5(d) and 8.4(d), which are incorporated through the Local Rule 83.50 for "…sending inappropriate email messages to a Judge's Proposed Order email account." The discipline imposed was that I was to be suspended from the General Bar of this Court for six (6) months; and, from the Trial Bar for one (1) year. This petition is seeking reinstatement to the General Bar pursuant to Local Rule 83.30(d) as I have obtained professional help to successfully deal with my work related emotional distress.

FACTUAL BACKGROUND THAT LED TO IMPROPER CONDUCT

My conduct that led to my disciplinary action and suspension from the General Bar originated in the case of *Barry Epstein v. Paula Epstein*, Federal Case No. 1:14-cv-08431 (Federal Action) filed on October 14, 2014. However, the main action was the highly contentious divorce action that was actually filed by Paula Epstein ("Paula") on May 23, 2011, captioned: *Paula Epstein v. Barry Epstein*, 2011 D 05245. The couple's bitter divorce battle lasted for over six (6)

years and I was involved in this case for more than five (5) out of six (6) years at the time said conduct occurred.

Now that I have had six (6) long months to reflect on my past conduct that led to this incident, including having to read my own name in several newspapers about a suspension over writing angry emails to a judge, and feeling the shame of being suspended from NDIL, this has made me realize the importance of properly recognizing and addressing the daily work stresses of an attorney. Unfortunately, I had to learn this lesson the hard way. However, after this incident I looked back and decided to make major changes to my legal professional career.

Yet, in order to truly understand what gave rise to this incident, it is imperative to have a small glimpse at my work situation and emotional state at the time of this unfortunate incident.

I attended Southwest Texas State University (n/k/a Texas State University) as a single parent of two young children, one in day care and the other one in first grade; I graduated Cum Laude in 1998. I attended law school in September of 1999 and I graduated from Michigan State College of Law in May of 2004. Life was not easy as a single mother of two (2) and with a deadbeat father. English was a foreign language for me, and I took odd jobs to make ends meet, but I still managed to overcome this adversity and maintain a positive outlook.

One of the main reasons leading to my emotional outburst perhaps arose when I decided to hire a 22-year-old law student, Stephen Le Brocq "Stephen", as my law clerk in late May of 2013, after practicing law for eight (8) years; and, this decision later turned out to be the worst decision I ever made and the beginning of a never-ending nightmare. After hiring him, I listened to Stephen's sob-story about how his parents neither supported him financially nor emotionally, causing him anger over the amount of his student loans. After having gone through my own share of struggles, I was sympathetic to his hardships and promised him that I would take him in and

help him like family to be debt-free within five (5) years. My first big mistake was not only trusting him blindly, giving excessive salary towards his student loans, but also giving him my business debit card. My second biggest mistake occurred after Stephen passed the Illinois bar exam, I provided him access to all my business bank accounts, as I considered him a silent partner. I helped him to prepare for both the Illinois and eventually the Texas Bar Exam. A week after Stephen passed Texas Bar Exam on April 30, 2015, on a Mother's Day, I came to my office to see the shock of my life. Stephen was gone, his office desk was empty, along with the work computer, monitor, and my cash. He left the office keys on the reception desk. My investigations later revealed that Stephen had absconded with more than just the items mentioned above, my entire law practice e-files and business secrets were gone. I was unable even to stop Stephen from continued fraudulent transfers from my business bank accounts to his personal bank accounts. It was pure nightmare.

On May 10, 2015, a Mother's Day present that I will never forget, was the beginning of the worst time of my law career. It was a very emotional time in my life, because it affected not only me, but also my clients (stolen e-files) and creating paranoia. I was forced to file a suit against Stephen on July 14, 2015, just to remedy my office losses and clients' files. (Lane Legal Services, P.C., et. al. v. Le Brocq Case No. 15-cv-6177).

In retaliation, Stephen filed a suit against me on October 5, 2015, in the Circuit Court of Cook County of Illinois titled: Stephen K. Le Brocq vs. Nejla K. Lane et. al., (Case No. 2015-M1-124207). On May 17, 2016, this case was dismissed without prejudice and with cost against Stephen. A few months after the dismissal of his Cook County State case, on October 6, 2016, Stephen filed yet another law suit against me in the Northern District of Texas "NDTX" (Case No 3:16-cv-02832-D) just to intimidate and harass me for filing the NDIL suit against him. This

forced me to travel to Texas, hire attorneys in Texas, and file for admission in the NDTX. This was a very stressful time for me. During this time, I was also preparing for the upcoming divorce trial of the Epsteins in Cook County, Illinois, before J. Murphy, details are below.

Soon after, on April 6, 2017, after pretrial motion practice, the Honorable Judge Fitzwater in the NDTX, granted my alternative motion to transfer this Texas lawsuit to NDIL, pursuant to the first-to-file rule. This matter was later consolidated with the initial NDIL case and set for trial but was settled on August 23, 2017 in my favor. While Stephen did not make full restitution, or repayment of the entire funds illegally taken by him, nonetheless, I did receive a letter of apology from him, which was read into the record along with $50,000 repayment over the next two (2) years. I only settled this personal lawsuit so that I could put this extremely stressful situation behind me and begin my focus on healing, my practice, my clients' matter and move on.

This personal ordeal coupled with Epsteins' acrimonious divorce matter caused me immense emotional distress, which I neglected to address. While the law suit against Stephen was ongoing, on November 19, 2015, the divorce trial of infamous Epsteins began. The overlap of these matters and the combined stress was unbearable. During the divorce trial, in August of 2016, I had to go the emergency room for a severe anxiety/panic attack. Subsequently, I was seen by my doctor who prescribed medication to help me with my anxiety during this stressful time.

To make things even worse, as the divorce trial came to an end in late October, on or after December 14, 2016, the Court of Appeals for the Seventh Circuit reversed and remanded Barry Epstein's Federal Case back to Judge Thomas M. Durkin for further proceedings, who immediately set this case for an ***accelerated*** trial schedule and trial on June 5, 2017 (No. 15-2076 to NDIL). To prepare a case of this magnitude within a very short time before trial caused me extreme stress and exacerbated my pre-existing anxiety condition.

The combined challenges of Stephen's and Epsteins' matters, not only led to my severe emotional distress, but also led to my untreated and unmanageable anger issues. The worst time in my law career was from May 2015 through August 2017. Regrettably, I did not recognize the symptoms of the deterioration of my emotional well-being. This was the product of long hours at work, daily work stress, months long trial preparations, and sleepless nights, coupled with an unreasonable client (Barry Epstein) that exacerbated my anxiety and depression. The Epstein cases, the divorce and federal matters, were not only very difficult and emotionally draining, but I was under a lot of pressure from highly educated and very difficult client, Barry Epstein, who did not fully comprehend the legal process. I was criticized for every negative ruling against him and accused of colluding with opposing counsel, which added enormous pressure to my situation.

I was too exhausted to stop and think before writing those unprofessional emails to Judge Finnegan and her law clerk, Allison Engel, for which I am very sorry. Judge Finnegan told me not to send her emotionally charged emails and I was wrong for sending subsequent unprofessional emails. Regardless of what was going on during this time in my world, I was wrong, and I am very sorry. As a human being under extreme work-related pressure, there is no doubt that I let it get to me when I lost my temper and wrote those emails. I am hopeful that after considering the facts that gave rise to this incident, which began in May of 2015, this Honorable Court will be benevolent and grant me a "second chance" to prove my professionalism to this Court.

Most importantly, I have taken this unfortunate event very seriously and since January 2018, even before receiving the order dated January 22, 2018, I have been attending Illinois Lawyers Assistants Program (LAP) on a regular basis, under the care of Tony Pacione (Pacione) LCSW, CSADC, the Deputy Director of LAP. (See Exhibit B, Letter from Mr. Pacione). Mr. Pacione recommended that I see a psychiatrist to obtain proper treatment, including medication, if

needed, to deal with my anxiety and depression. After several months of therapy with Pacione, I realized that I could progress even farther with the help and treatment of a psychiatrist. I recently began seeing Dr. Hong because I want to maintain my emotional health. I realize that by being emotionally healthy, I can best serve my clients, community, and family. (See Exhibit C, Letter from Dr. Hong).

Nothing can change the past, but I have learned from this incident and want to be a better person in the future. I have thought long and hard and chosen to limit my law practice to exclusive Immigration work. Among other changes, I have decided to reduce my work load, by taking fewer cases to make more time for my family and myself. I am taking a different approach to my law career so that something regretful like this prior incident never happens again.

However, as a solo practitioner, I still have several open Civil/Personal Injury cases that I must complete before limiting my practice area to Immigration work. Having said that, I still have one pending matter in the NDIL before Hon. Magistrate Judge Maria Valdez. Mr. Brian Goodrich is currently handling this matter (Maria Milbrandt et. al. vs. Dorothy Brown et. al. Case No.: 2015-cv-7050), but it needs my expertise and attention. I have been working on this case since August of 2014 (Maria Milbrandt vs. Cook County Case No.: 2015-L-7907) and my clients only trust me to complete their case coupled with their having no funds to hire new counsel that they trust to handle their sensitive employment discrimination case.

CONCLUSION

To summarize, I was wrong for sending unprofessional emails to the Judge and her law clerk, after I was told not to. I have publicly admitted to this wrong when I was interviewed by Law360 on January 30, 2018. On that day I stated: "***I take full responsibility for my conduct. I violated the judge's order asking me not to send emotionally charged emails, and I shouldn't***

have," which was published for the entire legal community to read. (See Exhibit A, Article Law360). I know that cannot change the past, but I have surely learned from it by living with daily shame for this conduct and being suspended for not controlling my anger in the past.

However, I have not only learned from this embarrassing experience, but I took this suspension extremely seriously by attending regularly therapy sessions with Tony Pacione and taking proper measures to recognize and handle my work stress better in the future.

I believe that I possess the requisite character and fitness for readmission to practice law before this Court; and, I believe, I deserve a second chance to prove that I can conduct myself as a professional. My resuming the practice of law will not be detrimental to the integrity and standing of the bar or the admirations of justice or subversive of the public interest. My character before this incident was impeccable and my record after this unfortunate incident will be as well. I have actively worked to remedy the professional stressors that led to this regretful incident. Now that I have the tools to maintain my emotional health and well-being with Pacione and Dr. Hong, I believe I deserve another chance to advocate for my clients before this Court again.

These six (6) months have provided me with the time for self-reflection, treatment, and improvement and I would like to continue to professionally and zealously advocate for my clients. I look forward to appearing before this Honorable Court with proper, professional, and lawyerly conduct in the future.

Respectfully Submitted,

July 24, 2018

By: /s/ Nejla Kassandra Lane /
Nejla K Lane, Attorney

Lane Keyfli Law, LTD.
ARDC: 6290003
E-MAIL: Nejla@LaneKeyfli.com

VERIFICATION BY CERTIFICATION

Pursuant to Title 28, Section 1746 of the US Code, the undersigned certifies under penalty of perjury that the statements set forth in the foregoing 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 I verily believe the same to be true. I further state that the statements made in the foregoing answer as to want of knowledge sufficient to form a belief are true.

/s/ Nejla K Lane
Nejla K Lane

CERTIFICATE OF SERVICE

I, Ruchira Ray, an attorney, hereby certify that on July 24, 2018, I caused a true and correct copy of the foregoing document to be delivered to Courtroom 2058.

/s/Ruchira Ray
Ruchira Ray

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

In the Matter of	)	
	)	17 D 43
Nejla K. Lane	)	
	)	(Before the Executive Committee)
An Attorney	)	

ORDER

Upon consideration of the motion of Nejla K. Lane for reinstatement to the general bar of this Court and it appearing that there is good cause shown, and the Executive Committee being fully advised in the premises;

IT IS ORDERED that Nejla K. Lane's motion for reinstatement to the general bar of this Court is granted.

ENTER:

FOR THE EXECUTIVE COMMITTEE

Chief Judge

DATED: August 7, 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

In the Matter of	)	
	)	17 D 43
Nejla K. Lane		
	)	(Before the Executive Committee)
An Attorney	)	

ORDER

Upon consideration of the motion of Nejla K. Lane to be reinstated to active status in the trial bar of this Court, and it appearing that there is good cause shown, and the Executive Committee being fully advised in the premises;

IT IS ORDERED that Nejla K. Lane's motion for reinstatement to active status in the trial bar of this Court is granted.

ENTER:

FOR THE EXECUTIVE COMMITTEE

Chief Judge

DATED: June 11, 2019

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**

TO: Administrator
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois
ARDCeService@iardc.org

Attorney for the Administrator
Christopher Heredia
cheredia@iardc.org

NOTICE OF FILING

PLEASE TAKE NOTICE that on the 26th day of **September, 2019**, the undersigned caused to be filed ***RESPONDENT'S ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSE,*** via the e-file IL System, with the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois Administrator, copies of which are attached and hereby served upon you.

PROOF OF SERVICE

The undersigned, being duly sworn on oath, deposes and says that he served a copy of the above Notice, together with said documents, upon the above-named parties via Electronic Mail from Chicago, Illinois on the 26th day of September, 2019.

/s/ Joseph A Bosco
Attorney for Respondent
Nejla K. Lane

Joseph A. Bosco
(ARDC No. 6182545)
LaRose & Bosco, Ltd.
200 North LaSalle Street, Suite 2810
Chicago, Illinois 60601
jbosco@laroseboscolaw.com
Tel. (312) 642-4414

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**

RESPONDENT'S ANSWER TO THE COMPLAINT

NOW COMES the Respondent, Nejla K. Lane, by and through her attorney, Joseph A. Bosco of LaRose & Bosco, Ltd., denying the allegation of the prefatory paragraph to the effect that she engaged in any conduct that subjects her to discipline pursuant to rule 770, and states, as follows for her answer to the Administrator's Complaint:

RESPONDENT'S STATEMENT PURSUANT TO COMMISSION RULE 231

A. Respondent is licensed to practice law in Illinois (admitted in 2006), Michigan (2005) and Texas (2015). Respondent is admitted to the U.S. District Court for the Northern District of Illinois, the U.S. District Seventh Circuit Court of Appeals, U.S. District Court for the Southern District of Illinois, U.S. District Court for the Eastern District of Michigan, U.S. District Court for the Eastern District of Wisconsin, U.S. District Court for the Northern District of Indiana, U.S. District Court for the Northern District of Texas, and the Supreme Court of the United States of America.

B. Respondent has also been a licensed Private Detective/Private Detective Agency since 2011.

ANSWER

(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").

ANSWER: Respondent admits the allegations in Paragraph 1.

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

ANSWER: Respondent admits the allegations in Paragraph 2.

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.

ANSWER: Respondent admits the allegations in Paragraph 3.

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.

ANSWER: Respondent admits the allegations in Paragraph 4.

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.

ANSWER: Respondent admits the allegations in Paragraph 5. Further, Respondent affirmatively states that among other counts Epstein alleged: violation of 18 U.S.C. § 2511, Violation of the United States Stored Communications Act, 18 U.S.C. § 2701 *et seq*. (the "SCA"), Unreasonable Intrusion Upon the Seclusion of Another, Intentional Infliction of Emotional Distress, Trespass to Chattels and **Temporary and Permanent Injunctive Relief Pursuant to 18 U.S.C. § 2520(b) and 18 U.S.C. § 2707(b).**

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").

ANSWER: Respondent admits the allegations in Paragraph 6. Further, Respondent affirmatively states that the Magistrate Judge Sheila Finnegan was initially assigned to conduct a settlement conference between the parties and later she was assigned to supervise the discovery. [DE56 & 63 & 75 & 82].

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.

ANSWER: Respondent admits the allegations in Paragraph 7. Further, Respondent affirmatively states that Jay Frank's dismissal was also affirmed by the Seventh Circuit, which enraged Barry Epstein, who then unsuccessfully appealed the Seventh Circuit dismissal in the U. S. Supreme Court.

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.

ANSWER: Respondent admits the allegations in Paragraph 8. Further, Respondent affirmatively states Epstein alleged more than only what is described in paragraph 8. See answer to paragraph 5, which is incorporated herein.

9. During the pendency of case number 14-ev-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.

ANSWER: Respondent admits the allegations in Paragraph 9 with regard to Judge Finnegan maintaining a proposed order account with an email address of

Proposed_Order_Finnegan@ilnd.uscourts.gov. Respondent does not have sufficient knowledge to admit or deny the remaining allegations in Paragraph 9.

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.

ANSWER: Respondent admits the allegations in Paragraph 10.

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.

ANSWER: Respondent makes no response to the allegation of Paragraph 11. The document speaks for itself. Respondent denies the allegations of Paragraph 11 to the extent that Paragraph 11 is inconsistent with the document it refers to.

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.

ANSWER: Respondent admits the allegations in Paragraph 12.

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?"

ANSWER: Respondent admits the allegations in Paragraph 13. Respondent further states that the information set forth in Paragraph 13 contains selected quotes but is not complete and taken out of context. Respondent further states that the use of "[sic]" is grammatically incorrect because Respondent was referring to "… my client is being treated badly …"

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.

ANSWER: Respondent makes no response to the allegations in Paragraph 14. The document speaks for itself. Respondent denies the allegations in Paragraph 14 to the extent that Paragraph 14 is inconsistent with the document it refers to.

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.

ANSWER: Respondent admits the allegations in Paragraph 15.

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.

ANSWER: Respondent admits the allegations in Paragraph 16.

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.

ANSWER: Respondent admits the allegations in Paragraph 17. Further, Respondent affirmatively states that said ORDER of Paragraph 17 was not yet uploaded to the docket until the following Monday, and Respondent's quick response was done to have the errors corrected prior to Monday.

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!!!"

ANSWER: Respondent admits the allegations in Paragraph 18.

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.

ANSWER: Respondent admits the allegations in Paragraph 19.

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 *cx 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!"

ANSWER: Respondent admits the allegations in Paragraph 20. Respondent further states that the information set forth in Paragraph 20 contains selected quotes which are excerpts and only portions of the paragraphs quoted and is not complete, and does not contain other portions of Respondent's e-mail which attempted to correct errors and misstatements contained in the Court's Order.

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.

ANSWER: Respondent denies the allegations in Paragraph 21. Further, Respondent affirmatively states that the proceedings were not prolonged. The trial date set by the District Judge Durkin and Judge Finnegan's discovery supervision and discovery deadlines were not changed or delayed. [DE82 – no extension granted to complete discovery].

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.

ANSWER: Respondent denies the allegations in Paragraph 22.

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.

ANSWER: Respondent denies the allegations in Paragraph 23.

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.

ANSWER: Respondent makes no response to the allegations in Paragraph 24, as the document speaks for itself. The Respondent denies the allegations in Paragraph 24 to the extent Paragraph 24 is inconsistent with the document it refers to.

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.

ANSWER: Respondent makes no response to the allegations in Paragraph 25, as the document speaks for itself. The Respondent denies the allegations in Paragraph 25 to the extent Paragraph 25 is inconsistent with the document it refers to.

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.

ANSWER: Respondent makes no response to the allegations in Paragraph 26, as the document speaks for itself. The Respondent denies the allegations in Paragraph 26 to the extent Paragraph 26 is inconsistent with the document it refers to.

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.

ANSWER: Respondent admits the allegations in Paragraph 27. Respondent further states that she complied with all of the requirements for reinstatement and is now fully reinstated and in good standing to both the General Bar and Trial Bar. (Orders of Reinstatement attached as Exhibit D).

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 gay 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 1 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 1 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).

ANSWER: The allegations in Paragraph 28 state legal conclusions to which no answer is required. To the extent an answer is required, Respondent denies the allegations contained in Paragraph 28, including sub-sections a-c.

AFFIRMATIVE DEFENSE TO COMPLAINT

The actions of Respondent as described in this Complaint were made in the midst of an extremely demanding, emotionally-charged suit involving allegations of violations of federal

wiretapping laws and store communication act, which arose out of a six-year, extremely contentious divorce case in Illinois state court and the divorce trial lasted from November 19, 2015 through October 4, 2016. Respondent had represented Mr. Barry Epstein in the divorce litigation for five of the six years it was pending. In the course of this litigation, Respondent developed type-2 diabetes, and was treated for anxiety, inability to sleep and panic attacks. By the time of Respondent's alleged incidents of misconduct as described in this Complaint, Respondent was experiencing physical and emotional problems on a number of levels due to the pending federal and underlying state divorce litigation. In addition, Respondent was dealing with a client who was extremely demanding blaming Respondent for every negative ruling against him. Additionally a Temporary Restraining Order (TRO) was put in place in the divorce proceeding preventing Epstein from paying attorney's fees and Respondent ultimately financed Epstein's divorce and Federal litigation by paying for out-of-pocket expenses and the entire staff's salaries for months and years to fight Epstein's bitter causes of actions in the state and federal courts. This added to Respondent's trouble paying her staff and properly working this complex federal case. During this time, defense counsel was peppering Respondent with motions, which pushed Respondent to her breaking point. This series of events ultimately culminated in the April 2017 e-mails to Judge Finnegan's proposed order e-mail account, and then another e-mail on June 26, 2017 sent to Judge Finnegan's law clerk, Allison Engel, again complaining about the ruling and containing emotional outbursts, which in hindsight, Respondent fully acknowledges were inappropriate.

During the ARDC's investigation to date, Respondent has repeatedly acknowledged the inappropriateness of her actions in sending the emotionally charged e-mails, which resulted in Judge Castillo's Order and sanctions. Since the January 2018 Order by Judge Castillo, Respondent has provided a sincere apology to both Judge Finnegan and the U.S. District Court for the Northern District of Illinois, and she has also taken proactive steps, including seeking assistance through the

Illinois Lawyers Assistance Program to effectively deal with her anger management issues and to ensure that a similar situation not happen again. In Respondent's submissions to the ARDC she had included the attached letter from Mr. Tony Pacione from the Illinois Lawyers Assistance Program ("LAP"). This letter affirms and verifies that Respondent was diagnosed with acute stress disorder, panic disorder, and general anxiety disorder, and that she continued to be treated for all of these issues with Mr. Pacione on a regular basis up until December 2018, but kept checking in with him regularly to-date, and she still occasionally meets with him. (Letter attached as Exhibit A). Respondent has also been on medication in compliance with Mr. Pacione's recommendations to date. Mr. Pacione's letter referred to an additional misconduct by the client to wit: "this client behaved inappropriately towards her" which until now Respondent did not want to elaborate on. Respondent was under further extreme pressure by attempting to kindly reject Epstein's constant advances and invitations to accompany him to weddings and to travel with him for six days to Pittsburgh in April 2016, midst of his own divorce trial. Responded attempted to "kindly" reject him without jeopardize her firm's outstanding legal fees. Only per Mr. Pacione's recent insistence to bring this client's additional improper conduct to the ARDC's attention, is Respondent making a mention of this at this time.

In addition, Respondent has also publicly apologized for her conduct in a Law 360 article dated June 30, 2018. In that article Respondent discusses how the Epstein divorce and federal litigation had been very difficult and emotionally draining, and publicly stated "I take full responsibility for my conduct. I violated the Judge's order asking me not to send emotionally charged e-mails, and I shouldn't have . . . " (Article attached as Exhibit B).

Since sending these emotionally charged e-mails in 2017, Respondent has completed in excess of 30 Continuing Legal Education credits, which included subjects on professionalism, civility and legal ethics. Respondent has also now had time to reflect on her conduct and, in her

June 7, 2019 Sworn Statement to the ARDC, Respondent testified at great length regarding the intense pressure and emotional upheaval she had gone through during the combined five-year Epstein divorce/federal litigation – which affected her health and physical well-being, culminating in 2016 with the development of type-2 diabetes, an ER visit for a panic attack, and treatment for anxiety, frequent panic attacks and an inability to sleep. At the time of her alleged misconduct, while dealing with this all-consuming litigation, severe stress, and anxiety; in addition to her health issues, Respondent was faced with Epstein's inappropriate conduct and advances who was also an extremely demanding and critical client, who demanded Respondent protract/intensify her litigation activities and repeatedly refused Respondent's advice to reasonably settle the matter. At the time of the actions described in the Complaint, Respondent was also faced with formidable adversaries who were constantly peppering her with motions, practicing hard-ball litigation tactics, as well as a protracted/expensive divorce trial and an impending complex federal trial (after a successful appeal to the Seventh Circuit, and then Petitions for Certiorari to the U.S. Supreme Court). Respondent testified that because her client was no longer funding her efforts at these critical phases of this litigation, she was also having severe problems paying her staff, experts, and litigation costs, which also in turn affected her ability to work the complex divorce and federal litigation, and caused even more pressure, anxiety and stress.

At the time of Respondent's emotional outburst and e-mails, the ruling by Judge Finnegan in denying her the opportunity to depose Jay Frank (which her client was demanding she accomplish) was the breaking point for her, and caused her to lose control of her emotions and engage in the conduct described in this Complaint. This culminated in the April 17, 2017 e-mails to Judge Finnegan's Proposed Orders e-mail account, as well as the June 26, 2017 e-mail sent to Judge Finnegan's law clerk, Allison Engel. As Respondent stated in her Sworn Statement, in hindsight, she should have withdrawn from this litigation, but she felt not only duty-bound to

weather the storm and see this case through to resolution but was unable to withdraw. Respondent expressed her desire to Epstein in wanting to withdraw from Epstein's Federal case, but the client wouldn't allow her. In addition, because this case was immediately set for a jury trial on June 5, 2017, it was impossible to withdraw because no attorney would be able to take over to a fast tracked trial without being granted adequate time to prepare and Judge Durkin made clear there would be no extension to this trial date. [DE55].

Respondent has repeatedly acknowledged that she made a mistake in sending these e-mails, and that she is reticent and apologetic for her actions.

Since, Respondent has not only had time to reflect, but also to account for her actions. Respondent has complied with all of Judge Castillo's recommendations and has since been re-admitted to the General and Trial Bars for the Northern District of Illinois. She still continues to reduce her stress levels in her practice by severely reducing her caseload and her overhead and attempting to now confine her practice to criminal defense and immigration law.

Since the 2017 actions described in this Complaint, Respondent has not had any other emotional outbursts or been cited for any other inappropriate conduct. Respondent avers that this conduct will not be repeated. Respondent has taken full responsibility for her actions and has paid dearly for her isolated misconduct through the Federal Court sanctions and public humiliation, and she has taken proactive steps with the LAP program to ensure that this not happen again.

Recently, Respondent not only continued to see Mr. Pacione, but has also started psychological therapy with Dr. Michael L. Fields, who has and will attest to the Respondent's emotional pain and open admittance of errors. Dr. Fields will further attest that Respondent is suffering from acute stress disorder, and that Respondent is a very honorable and hard-working individual who, in his opinion, is not deserving of any further sanctioning by the ARDC. (Letter from Dr. Fields attached as Exhibit C).

In conclusion, Respondent is remorseful and apologetic for the actions as described in this Complaint and believes she deserves second chance.

Respectfully submitted,

/s/ Joseph A Bosco
Joseph A. Bosco
Attorney for Respondent
Nejla K. Lane

Joseph A. Bosco
LaRose & Bosco, Ltd.
Attorney No. 37346
200 North LaSalle Street
Suite 2810
Chicago, Illinois 60601
(312) 642-4414
jbosco@laroseboscolaw.com

Exh. D, Diversion Prog. Eligible

MARK A. LAROSE *
JOSEPH A. BOSCO *
DAVID KOPPELMAN
DAVID ROSEMEYER
DAVID J. ARON
COSTA DIAMOND
MARISSA R. ALASKA
NATALIE MARTELLO

OF COUNSEL
HON. ANTHONY J. BOSCO (1928-2008)
JOSEPH G. ALIOTO **
ALBERTO QUIROS JAEN***

* ADMITTED IN MICHIGAN ALSO
** ADMITTED IN WISCONSIN ONLY
*** ADMITTED IN PANAMA ONLY

LAROSE & BOSCO, LTD.
ATTORNEYS AT LAW

200 N. LASALLE STREET
SUITE 2810
CHICAGO, IL 60601
P: (312) 642-4414
F: (312) 642-0434

135 S. WHITTAKER
NEW BUFFALO, MI 49117
P: (269) 469-8440
F: (269) 469-8442

June 28, 2019

Via Email and U.S. Mail
Christopher Heredia
Litigation Counsel
Attorney Registration and Disciplinary Commission
Of the Supreme Court of Illinois
One Prudential Plaza, Suite 1500
Chicago, IL 60601-8625

CHeredia@iardc.org

RE: Nejla K. Lane in Relation to Thomas Bruton No. 2018 IN 00638
Request for Rule 56 Diversion Program

Dear Mr. Heredia:

On behalf of Nejla K. Lane, I respectfully submit this request to the Administrator to consider a Rule 56 Diversion Program which would afford Ms. Lane the opportunity to address any remaining concerns the Administrator may have as it related to the above captioned ARDC investigation. Pursuant to Rule 56 (a)(1), (2), and (3) Ms. Lane is eligible for a Diversion Program as the conduct in question does not involve misappropriation of funds, a criminal act, actual loss to a client or other person, or dishonesty, fraud, deceit, or misrepresentation.

As you know from Ms. Lane's Sworn Statement taken on June 7, 2019, Ms. Lane has repeatedly acknowledged the inappropriateness of her actions in sending emotionally charged emails which resulted in the Citation being issued to Ms. Lane by Chief Judge Ruben Castillo (Order No. 18 MC 40). Since the January 22, 2018 Order by Judge Castillo, Ms. Lane has set forth a sincere apology to both Judge Finnegan and the U.S. District Court for the Northern District of Illinois, and she has also taken proactive steps, including seeking professional assistance through the Illinois Lawyers Assistance Program, to effectively deal with her anger management issues to assure that a similar situation not happen again.

In our previous submissions regarding this ARDC investigation we had attached a letter from Mr. Tony Pacione from the Illinois Lawyers' Assistance Program ("LAPS") affirming and verifying that Ms. Lane has been diagnosed with acute distress order, panic disorder, generalized anxiety order, and she has continued and treated with all of Mr. Pacione on a regular basis up

until December 2018. Ms. Lane has also been on medication and has been compliant with Mr. Pacione's recommendations to date. Ms. Lane has also recently completed in excess of 30 continuing legal education credits which included subjects on Professionalism, Civility, and Legal Ethics. (See Attached.)

In addition, Ms. Lane has also publicly apologized for her conduct in a Law 360 article dated June 30, 2018, which we have previously provided to you. In that article Ms. Lane discusses how the Epstein divorce and federal litigation had been very difficult and emotionally draining, and publicly stated "I take full responsibility for my conduct. I violated the Judge's order asking me not to send emotionally charged e-mails, and I shouldn't have . . . "

Since sending these emotionally charged e-mails Ms. Lane has also now had time to reflect on her conduct and, while I do not have the benefit of her recent June 7, 2019 Sworn Statement to quote verbatim, I was present and I do recall that Ms. Lane testified at great length regarding the intense pressure and emotional upheaval she had gone through during the combined five-year Epstein divorce/federal litigation – which affected her health and physical well-being, culminating in 2016 with the development of type-2 diabetes, an ER visit for a panic attack, and treatment for anxiety, frequent panic attacks and an inability to sleep. At the time of her misconduct, in dealing with this all-consuming litigation severe stress and anxiety, in addition to her health issues, Ms. Lane was faced with an extremely demanding and critical client, Barry Epstein, who demanded Ms. Lane protract/intensify her litigation activities and repeatedly refused Ms. Lane's advice to reasonably settle the matter. She was also faced with formidable, adversaries who were constantly peppering her with motions and practicing hard-ball litigation tactics, and a protracted/expensive divorce trial and an impending complex federal trial (after a successful appeal to the 7th Circuit, and then Petitions for Certiorari to the U.S. Supreme Court). Because her client was no longer funding her efforts at these critical phases of this litigation, Ms. Lane was also having severe problems paying her staff, experts, and litigation costs, which also in turn affected her ability to work the complex divorce and federal litigations, and caused even more pressure, anxiety and stress. At the time of Ms. Lane's emotional outburst and improper e-mails, the ruling by Judge Finnegan in denying her the opportunity to depose defense attorney Jay Frank (which her client was demanding she accomplish) was the emotional breaking point for her, which basically caused her to lose control and engage in the unprofessional conduct. This culminated in the April 17, 2017 e-mails to Judge Finnegan's orders e-mail account as well as the June 26, 2017 e-mail sent to Judge Finnegan's law clerk Allison Engel, again complaining about the ruling which Ms. Lane has readily admitted was unprofessional and inappropriate. As she stated in her Sworn Statement, she should have timely withdrawn from this litigation, but she felt duty-bound to weather the perfect storm and see this case through to resolution. Moreover, the reason Ms. Lane remained on this case was also because the District Judge, Thomas M Durkin, set this matter immediately for trial granting only less than five months for discovery, making it impossible for her to withdraw from the case. There was just not enough time for any new attorney take over this matter and prepare it for trial, which led to Ms. Lane's crisis.

While paraphrasing, during Ms. Lane's Sworn Statement, in response to questions as to whether she thought her e-mails were improper, inappropriate and whether she made a mistake in sending them, Ms. Lane readily acknowledged that they were wrong, that they were a mistake, and she was reticent and apologetic. Also, at this time, upon further reflection she now believes that the ruling that she so vehemently complained of was not inappropriate.

Since her unfortunate conduct, Ms. Lane has not only had time to reflect, but also to account for her actions. She has complied with all of Judge Castillo's recommendations and has since been re-admitted to the General and Trial Bars for the Northern District of Illinois. She still continues to reduce her stress levels in her practice by severely reducing her caseload and her overhead, and attempting to now confine her practice to criminal defense and immigration law.

As Ms. Lane has stated in her Sworn Statement, her actions were wrong, and she regrets them. Ms. Lane has not been subject to any other emotional outbursts or cited for any other inappropriate conduct since then. The ARDC can be assured that this conduct will not be repeated. Ms. Lane has taken full responsibility for her actions and has paid dearly for her isolated misconduct through the Federal Court sanctions and public humiliation, and she has taken proactive steps with the LAPS program to assure that this not happen again. At this point, no one can regret her actions or punish her more for these inappropriate actions than Ms. Lane herself.

In this regard, Ms. Lane respectfully requests that the Administrator consider and agree to a Diversion Program .A Diversion Program would benefit, and not harm the public, profession and the courts. Ms. Lane welcomes the opportunity to continue to learn and benefit from continuing CLE courses on ethics, professional responsibility, and civility. We would welcome the opportunity to discuss requirements a Diversion Program may entail.

In any event, we appreciate your consideration, and look forward to discussing this with you further.

Very truly yours,

Joseph A. Bosco
jbosco@larosboscolaw.com

JAB/th
enclosures
Cc: Nejla K. Lane

Exh. E, the 3 Emails etc.

Re: Epstein v. Epstein, 14-cv-8431

1 message

Nejla Lane <nejlane@gmail.com> Wed, Apr 19, 2017 at 8:05 AM
To: Proposed_Order_Finnegan@ilnd.uscourts.gov
Cc: Scott_White@ilnd.uscourts.gov, "Scott A. Schaefers" <sschaefers@brotschulpotts.com>
Bcc: nejla@lanekeyfli.com

My apology.

Yours very truly,

~

Nejla K. Lane, Esq.
Dedicated Attorneys
Lane Keyfli Law, Ltd. Team

5901 North Cicero Avenue, Suite 200
Chicago, Illinois 60646-5701
Phone: (773) 777-4440
Direct Ofc.: 312-709-0766
Fax: (866) 444-4024
Website: **www.LaneKeyLaw.com**
Office E-mail: **Nejla@LaneKeyLaw.com**

"We are not interested in the possibilities of defeat. They do not exist." Queen Victoria

"What you are is what you have been, and what you will be is what you do now." Buddha

by telephone or forward the original message back to us. Unauthorized interception of this email is a violation of federal criminal law.

CIRCULAR 230 NOTICE: In accordance with current Treasury Regulations, please note that any tax advice given in this message (and in any attachments) is not intended or written to be used, and cannot be used by any person, for the purpose of (i) avoiding tax penalties or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this message.

On Wed, Apr 19, 2017 at 6:53 AM, <Proposed_Order_Finnegan@ilnd.uscourts.gov> wrote:

> Counsel,
>
> 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.
>
> Sheila Finnegan
> U.S. Magistrate Judge

From: Nejla Lane <nejlane@gmail.com>
To: Proposed_Order_Finnegan@ilnd.uscourts.gov
Cc: "Scott A. Schaefers" <sschaefers@brotschulpotts.com>, Scott_White@ilnd.uscourts.gov, nejla@lanekeyfli.com
Date: 04/18/2017 09:03 PM
Subject: Re: Epstein v. Epstein, 14-cv-8431

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. I have now attached the Order from 4/13 for your review regarding the case I mentioned this morning in court: The Estate of Stanback/Marion Gray, Case No. 12 L 13678, Trial date 8/9/2017, currently before J. Gillespie. All party deposition to be completed by June 9 or they are waived, and **yes I did find out about this after I appeared before you on Thursday 4/12 and 4/13** - that these deposition had to be completed quickly. I am providing to you this information for cross reference, to

make your inquiry on me easier. I consider myself honorable and honest person.
I was and always will be honest to this court as I am honest in my entire life, at least I try my best every day.

Today, you heard Scott's representation in court, he corrected his statements before, which I really appreciate, and you have also seen my email responses to Scott's Supplemental Response(?) not agreeing to but asking for extra time, 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 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.

It is really unfortunate what happened or is still happening between the couple, real bad, because these people are not in their 20-30s anymore, if they were in their 20-30s nobody would care or protect either one of them. But they are older couple who have age related health issues, my client had a "heart attack" already and everybody involved, including all the judges and attorneys, who seemed to be emotionally charged and allowing their own emotions to rule instead of being objective. It appears that "Paula" as you stated during the settlement conference was the "nicest" lady you ever met or this "little old lady" can't do no wrong, but she did violate the law evidenced with those emails. This is not about "catching a cheater or infidelity" and Posner's dicta is not the law, there is no such Posner Defense! This case is not filed for moral rights/wrongs nor is there any "bounty hunter" who has escaped breaking the law or exempt from breaking the law or violating this act! And I do not get the RESPECT I deserve either for doing my job.

Well this is a human institution after all.

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 - 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.

I apologize for this message, Judge Finnegan, but I am under a lot of pressure, too, and it's "I" who is being punished here because it's "I" who has to spend endless hours in the office, but ... Again, my sincere apology and I will adhere to your instructions.

I will remain silent now. Good night everyone.

~

Nejla K. Lane, Esq.
Dedicated Attorneys
Lane Keyfli Law, Ltd. Team

5901 North Cicero Avenue, Suite 200
Chicago, Illinois 60646-5701
Phone: **(773) 777-4440**
Direct Ofc.: **312-709-0766**
Fax: **(866) 444-4024**
Website: www.LaneKeyLaw.com
Office E-mail: Nejla@LaneKeyLaw.com

"We are not interested in the possibilities of defeat. They do not exist." Queen Victoria

"What you are is what you have been, and what you will be is what you do now." Buddha

On Tue, Apr 18, 2017 at 7:31 PM, <Proposed_Order_Finnegan@ilnd.uscourts.gov> wrote:
Counsel,

I reviewed the supplement. My order remains that the deposition is to proceed in the agreed date that I then ordered.

Sheila Finnegan

Sent from my iPhone

On Apr 18, 2017, at 6:38 PM, Nejla Lane <nejlane@gmail.com> wrote:

Dear Judge Finnegan,

After receiving the email regarding the clarification, I did ask Scott for an agree, off the record 14 day postponement of Ms. Epstein's deposition.

All I want at this point is 14 days, to avoid having to re-depose her for the second time.

If you are willing, in the light of Scott's Suppl Motion, grant me 14 days to depose Ms Epstein, and allow me Response to Scott's Suppl Motion, I am willing to do so, but if you outright will deny the extension then, I do not want to wast any more of your or my time with motions/responses.

Please let me know how to proceed at this juncture. Thank you in advance, and again I apologize taking your time for this matter.

Attached is my plea to Scott for 14 days.

Yours very truly,

~

Nejla K. Lane, Esq.
Dedicated Attorneys
Lane Keyfli Law, Ltd. Team

LANE KEYFLI

5901 North Cicero Avenue, Suite 200
Chicago, Illinois 60646-5701
Phone: (773) 777-4440
Direct Ofc.: 312-709-0766
Fax: (866) 444-4024
Website: www.LaneKeyLaw.com
Office E-mail: Nejla@LaneKeyLaw.com

"What you are is what you have been, and what you will be is what you do now." Buddha

On Tue, Apr 18, 2017 at 5:34 PM, Scott A. Schaefers <sschaefers@brotschulpotts.com> wrote:

Judge Finnegan,

A few minutes ago I filed the attached supplemental response to plaintiff's motion to continue defendant's deposition. It does not change your ruling, in my opinion, but I submitted it to clarify and correct my in-court statements today. I believe Ms. Lane still intends to conduct Ms. Epstein's deposition on 4/20.

Scott A. Schaefers

Brotschul Potts LLC

30 N. LaSalle St., Ste. 1402

Chicago, IL 60602

Direct: (312) 268-6795

Office: (312) 551-9003

Cell: (773) 816-4747

Fax: (312) 277-3278

Email: sschaefers@brotschulpotts.com

Website: http://www.brotschulpotts.com

From: Proposed_Order_Finnegan@ilnd.uscourts.gov
[mailto:Proposed_Order_Finnegan@ilnd.uscourts.gov]
Sent: Tuesday, April 18, 2017 4:58 AM
To: Nejla Lane <nejlane@gmail.com>
Cc: Scott A. Schaefers <sschaefers@brotschulpotts.com>; Nejla Lane <Nejla@lanekeylaw.com>; Scott_White@ilnd.uscourts.gov
Subject: Re: Epstein v. Epstein, 14-cv-8431

Counsel,

If you filed the motion, there is no need to bring a courtesy copy to chambers.

Sheila Finnegan

U.S. Magistrate Judge

Sent from my iPad

On Apr 18, 2017, at 2:05 AM, Nejla Lane <nejlane@gmail.com> wrote:
Thank you Judge Finnegan.

How about the courtesy copy of our Motion, can I bring it when I come in at 11:30am? Or email it to your proposed order email-box?

Nejla K. Lane, Esq.

Lane Keyfli Law, Ltd.

5901 North Cicero Avenue, Suite 200

Chicago, Illinois 60646-5701

Phone: (773) 777-4440

Direct Ofc.: (312) 709-0766

Cell: (773) 621-1389

Fax: (866) 444-4024

Website: www.LaneKeyfli.com

Office E-mail: Nejla@LaneKeyfli.com

On Apr 17, 2017, at 10:04 PM, Proposed_Order_Finnegan@ilnd.uscourts.gov wrote:
Counsel,

I will set the motion for hearing at 11:30 am since the settlement conference at 11:00 will actually be a telephone conference that won't last more than 15 minutes. This later time will also allow me time to review the briefs and avoid a conflict with a criminal matter at 9:15 that is likely to take at least 30 minutes.

U.S. Magistrate Judge

Sent from my iPhone

On Apr 17, 2017, at 9:49 PM, Scott A. Schaefers <sschaefers@brotschulpotts.com> wrote:

Judge Finnegan,

We are attorneys for defendant Paula Epstein. Plaintiff's attorney is copied on this email. Attached is a copy of her opposition to plaintiff's emergency motion to extend defendant's 4/20/17 deposition and its exhibits 1-4. I will have a paper copy delivered to you first thing tomorrow morning.

I request that you reset the time of the motion to 10:30 or 10:45, as I have a 9:00 am hearing in DuPage County that only I in my office can cover. I see on your calendar for tomorrow that you have two 9:15s, a 10:15, and settlement conferences at 11 am and 1:30 pm. I should be able to make it to your courtroom by 10:30 or 10:45. I could not have scheduled around plaintiff's motion, as I first received plaintiff's motion at 7:13 pm this evening.

Alternatively, I can likely call in to your courtroom from the road between 9:30 and 10:00 am. If that is acceptable, I can call your dial-in number if you have it circulated. Thank you very much.

Scott A. Schaefers

Brotschul Potts LLC

30 N. LaSalle St., Ste. 1402

Chicago, IL 60602

Direct: (312) 268-6795

Main: (312) 551-9002

Cell: (773) 816-4747

Email: sschaefers@brotschulpotts.com

My Profile

<20170417 - Defs Opposition to Ps Emergency Motion.pdf>

<20170418- NKL request 14 days Gmail - RE_ Please update my email addresses.pdf>

[attachment "20170413-Order Estate of Stanback.pdf" deleted by Sheila Finnegan/ILND/07/USCOURTS]

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-LAW DIVISION

Rev. 1/17

State of Illinois
Plaintiffs

-v- Franciscan,
Defendants

NO: 13 L 13678

Motion Call: "B" Time: 10:15 Line #: 37

2005 Trial Date: 8/9/17

FOCUSED CASE MANAGEMENT ORDER

(Please check off all pertinent paragraphs and circle proper party name)

(4231) ____ 1. Written, 213(f)(1), (f)(2) and 214 discovery to be **issued** by _____ *or deemed waived;*

(4296) ____ 2. Written, 213(f)(1), (f)(2) and 214 discovery to be **answered** by _____;

(4218) X 3. Party depositions, fact, 213(f)(1) and/or (2) depositions to be **completed** by June 9 or waived;

(4297) ____ 4. Plaintiff to send list & addresses of treaters to Defendant by _____;

(4288) ____ 5. Subpoenas for treating physicians' records/deps to be **issued** by _____ *or deemed waived;*

(4218) ____ 6. Treating physicians depositions to be completed by _____;

(4231) ____ 7. All dispositive motions shall be filed **no later than** _____;

(4296) ____ 8. All SCR 215 & 216 discovery **completed** by _____;

(4206) ____ 9. (Plaintiff) - (Defendant) - (Add. Party) shall **answer** 213 (f)(3) Interrogatories by _____;

(4218) ____ 10. **Plaintiff's 213(f)(3)** witnesses' depositions to be **completed** by _____;

(4218) ____ 11. **Defendant's 213(f)(3)** witnesses' depositions to be completed by _____;

(4218) ____ 12. **Add. party's 213(f)(3)** witnesses' depositions to be **completed** by _____;

(4295) ____ 13. **All fact discovery, SCR 213(f)(1) and/or SCR 213(f)(2) discovery is closed.** *(Circle all applicable)*

(4328) X 14. The matter is continued for subsequent Focused Case Management Conference on May 22 2017 at 9:15 AM/PM in Room 2202 for:

(A)____Proper Service (B)____Appearance of Defendants (C)____Case Value
(D)____Pleadings Status (E)____Discovery Status (F)____Pre-Trial/Settlement
(G)____Mediation Status (H)____Trial Certification (I)____Other

Plaintiffs disclose experts June 9
Defendants disclose experts July 9
Defs mtn for sanctions entered and continued.

(4005) ____ 14. Case is DWP'd. (4040) ____ The case is voluntarily dismissed pursuant to 735 ILCS 5/2-1009.

(4331) ____ 15. Case stricken from CMC Call (4284) ____ Motion Stricken or Withdrawn from Call (4330) ____ Case stricken from Motion Call.

NAME: Camp Keyfli
ADDRESS: 5901 N Cicero
PHONE: 773 777 4420
ATTY ID#: 60362
ATTY FOR PARTY: Plaintiff
NOTICE:

★ *COPIES OF ALL PRIOR CMC ORDERS MUST BE BROUGHT TO ALL CMC COURT DATES.*

★ *FAILURE OF ANY PARTY TO COMPLY WITH THIS CMC ORDER WILL BE A BASIS FOR SCR 219(C) SANCTIONS. FAILURE OF ANY PARTY TO ENFORCE THIS CMC ORDER WILL CONSTITUTE A WAIVER OF SUCH DISCOVERY BY THAT PARTY.*

ENTER:

JUDGE NO.

Associate Judge
Daniel T. Gillespie
APR 13 2017
Circuit Court – 1507

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF LIVE, Ver 6.1.1
Eastern Division

Barry Epstein

Plaintiff,

v.

Case No.: 1:14−cv−08431
Honorable Thomas M. Durkin

Paula Epstein, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, April 18, 2017:

MINUTE entry before the Honorable Sheila M. Finnegan: Emergency motion hearing held on 4/18/2017 as to emergency motion to extend the deposition of Paula Epstein [143]. For reasons stated on the record, the motion is denied. Mailed notice(sxw,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at ***www.ilnd.uscourts.gov***.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BARRY EPSTEIN, Plaintiff, vs. PAULA EPSTEIN, Defendant.	No. 14 C 8431 Chicago, Illinois April 18, 2017 11:34 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HON. SHEILA M. FINNEGAN, MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: MS. NEJLA K. LANE
Lane Keyfli Law, Ltd.,
5901 North Cicero Avenue, Suite 200,
Chicago, Illinois 60646

For the Defendant: MR. SCOTT A. SCHAEFERS
Brotschul Potts LLC,
30 North LaSalle Street, Suite 1402,
Chicago, Illinois 60602

PATRICK J. MULLEN
Official Court Reporter
United States District Court
219 South Dearborn Street, Room 1412
Chicago, Illinois 60604
(312) 435-5565

09:19:47

THE CLERK: 14 C 8431, Epstein versus Epstein, et al., here on motion hearing.

MS. LANE: Good morning, Your Honor. Nejla Lane on behalf of Barry Epstein.

02:06:08 MR. SCHAEFERS: Good morning, Scott Schaefers, S-c-h-a-e-f-e-r-s, on behalf of the defendant.

THE COURT: Good morning. All right. I've reviewed the plaintiff's emergency motion to extend the deposition of Paula Epstein, and I have reviewed the defendant's opposition

02:06:38 to that. I had a couple questions. This deposition was set on March 21st, 2017. The parties agreed on it, and then I said the deposition shall take place on that date. On April 17th, 2017, at 12:29 p.m., plaintiff's counsel sent an e-mail to defense counsel asking to reschedule it and said:

02:07:16 "Since the trial date in this matter is moved to July 2017, I'd like to reschedule to mid-May or mid to late May, if possible, or thereafter" -- and then noted -- "I have other pressing trial preparation, and I would greatly appreciate the postponement."

02:07:53 So a question to plaintiff's counsel: What was the other pressing trial preparation? You know, when did you know that you had it to deal with?

MS. LANE: They've been on the record, Your Honor, that we know for sure that it's going to go to trial, but

02:08:40 they're almost all at the same time as this trial. But other

than that, we didn't really finish the entire discovery yet. We still --

THE COURT: All right. But that's a different question.

02:08:55 MS. LANE: Yes, that's different, yes.

THE COURT: So let me just first focus on this.

MS. LANE: I knew of them, and I was kind of relieved when we got extra six, seven weeks on this case so I could just balance, you know, the discovery on both.

02:10:19 THE COURT: Can you be more specific about what the pressing trial preparation is that you're saying was why you needed to yesterday at the lunch hour ask to move the deposition?

MS. LANE: The case is in the law division. It's a

02:10:54 wrongful death action.

THE COURT: Can you give me a name?

MS. LANE: Yes, the Estate of Stan Back.

THE COURT: Can you spell that?

MS. LANE: S-t-a-n and B-a-c-k versus San Franciscan.

02:11:35 I don't know the exact spelling of it. We were the second attorney, and when we got on the case, right when we were preparing for trial we found out that the expert who wrote the report has since died.

THE COURT: In that case?

02:11:51 MS. LANE: In that case. So when we took it over, we

thought we had an expert report and we can just proceed with the discovery. When he died, that put us in a zero. Then we went before Judge, I think, Flanagan, and he gave us only like extension of -- it's supposed to be in May -- three months. He
02:12:23 gave us extension to August, early August on.

So we had to find a doctor. One doctor, he took the cases, the boxes, and he didn't get back to us in two month, and then we got another expert who took the box and he shredded the box. So we had to go get the new box, so the first expert
02:12:55 is on there.

THE COURT: Is there a document? Is there something that I can verify this in the docket?

MS. LANE: Yes, we have it also written. We have written motions to the judge, Judge Gillespie, on this case.

02:13:25 THE COURT: I thought it was Judge Flanagan, no?

MS. LANE: Flanagan was the trial coordinating judge who you have to go before.

THE COURT: The motions judge?

MS. LANE: The motions judge. Then they set you. We
02:14:10 don't know who the trial judge is going to be. So they put us so we have to update our 213(f)'s.

THE COURT: I mean, what do you have scheduled on April 20th that prevents you from being at her deposition?

MS. LANE: We just provided the 213s, and we have all
02:15:33 these nurses to depose and at least two experts to depose.

It's a different procedure, and I felt I can balance it better if I have just a little bit of time to go through, you know, the questions for the nurses, for the doctors, and communicate with our co-counsel just to get a ruling, because there's no way --

02:16:06

THE COURT: I mean, Judge Durkin only moved this trial -- you know, it's not moved much.

MS. LANE: Yeah.

THE COURT: I counted. You've got 33 business days extra for this case.

02:16:21

MS. LANE: I just --

THE COURT: Let me ask this question. How many documents were produced to you that were new on the 17th?

MR. SCHAEFERS: I can answer that, Your Honor, if that's all right. None of them were new. What happened was I had produced Paula's Yahoo e-mails that were responsive back either on August -- April 4th or April 6th. My expert prepared a PST of those e-mails, and I produced the PST yesterday as well as additional printouts of those same e-mails.

02:16:39

02:17:22

MS. LANE: I have counted. Like I have one binder that I have received over 2,000 e-mails.

THE COURT: But I'm asking you because you got a production on April 4th and April 6th and you didn't file a motion. You didn't come in and say: I can't do the deposition.

02:17:51

So the only thing that happened recently is yesterday you got 48 pages, and I'm hearing from defense counsel that those are all documents you already had anyway.

MS. LANE: No, I didn't. First of all, he is picking through the 23,000 e-mails which ones to use and additional e-mails from her own possession that I didn't have. I didn't have them. Only e-mails that I had were from Columbia College where she had Outlook. The other --

THE COURT: Are you telling me on the 17th you got new documents that you had never seen before?

MS. LANE: Correct.

Is that when you sent me some of the --

MR. SCHAEFERS: No.

MS. LANE: Because he's adding new ones. Like before depositions, I'm getting new ones, and I just discussed with counsel that I don't believe that I have received all of the e-mails from Paula because I know with certainty, let's put it that way, there are other e-mails she has not disclosed yet. We also discussed a little while ago if she would consent to the content of some e-mails that we are seeking from Google, which we agreed there may be nothing on it but at least we tried to get them.

I know I don't have all her e-mails, and as it was with various imaging of computers that you see e-mails, with hers I don't -- I have questions, for example, if she --

THE COURT: Well, here's the problem. I mean, you agreed to this date, I ordered it, and two days before the deposition or three days before the deposition you're saying: I've got other pressing trial preparation in other cases. I want to move it.

02:20:57

You know, you agreed. I ordered it. I get that you have other cases. This is a pressing case, too, given that the trial date is in July, very close, and there's a lot to be done. If you're right when you depose her and it turns out that she didn't turn over documents and you have new documents, you're going to get to redepose her, probably. I mean, she's pressing to go ahead.

02:21:22

MR. SCHAEFERS: Yeah.

THE COURT: So I can't.

MS. LANE: But I don't have everything.

02:21:39

THE COURT: At this juncture, you know, I don't see the basis. Unless you were to tell me that yesterday he dumped a bunch of new documents on you, that would be a good cause, but I don't hear that. I hear you got 48 pages and they're all documents that you had before. So you have not given me -- and that wasn't frankly what you put in the e-mail. You didn't say in your e-mail: Hey, you just gave me a document dump of new things. I don't have time to prepare for her deposition. They're late. You know, they're new. I've never seen them before, and you gave them to me three days before the

02:22:04

02:22:40

deposition.

That would be good cause, but that's not what I have here.

MS. LANE: They were overlapping e-mails. It's the same date that I'm writing this for this motion that I received new ones. I didn't think it was going to be an issue if I'm granted a week or two because I haven't even received everything from Google yet. I know that I don't have the complete records from her. I had a communications failure with the IT expert to find out certain, you know, information. We're not finished yet. Even if it's just a week or two to, you know, look over all these documents, I would greatly appreciate that, and that's --

THE COURT: Unfortunately, you know, it was a date you agreed to. It was ordered. So obviously you can always talk and hope if you ask for more time and you want to push it back that you get an agreement to do it. But if you don't, you know, this is not -- this is a case that's on a very tight time frame. Obviously, this has been very contentious litigation. So, you know, you should have assumed when you agreed to that date and it was ordered that it was going to go forward unless, you know, as I said, there was some good cause in this case where you got a document dump, you know, three days before the deposition of new materials.

I don't have that. The motion does not tell me that.

Your e-mail to Mr. Schaefers just said you had other pressing trial preparation and so you wanted to postpone it. You know, he has given me the dates, you know, the numbers of what documents were produced and when. He's standing here telling me there were only 48 pages produced on April 17th and they were all ones you had before.

02:25:20

So, you know, if you want, if you think you have the ability to show me that he produced on the 17th documents that you didn't get before and how many pages, did you get more than 48 pages on the 17th?

02:25:40

MS. LANE: Yes, yes.

MR. SCHAEFERS: I produced 48 PDF pages and a PST file --

MS. LANE: Not the recent one.

MR. SCHAEFERS: -- of those e-mails.

02:26:14

MS. LANE: The one even in February and in April, he was supposed to have me the discovery at the end of March, and I didn't get it until April.

THE COURT: I'm asking on April 17th. What did you get on April 17th that was new?

02:26:43

MS. LANE: The last batch that he is stating here right now. But we have -- since agreeing to that order, you stated that we need to come with new proposed dates if we agreed to it.

THE COURT: I didn't require that.

02:27:11

MS. LANE: And this is --

THE COURT: The parties told me you wanted to talk about revising some dates. I said that's great if you want to. If you have an agreement, I am not going to have a problem with it. So I didn't ask you to reset dates. I think you all wanted to discuss that. I didn't change any deposition dates that were ordered. So absent your asking me to reset it, which I guess you're doing by this emergency room but it's not an agreed motion --

02:27:47

02:28:08

MS. LANE: But I'm not asking for too much. We do have the change in circumstance that the trial date has given us extra days. So even if it's a week or two, I don't have everything yet.

THE COURT: So, Mr. Schaefers, is there -- again, I have your representation with the 48 pages, that there were 48 pages produced on the 17th, or is there more, and was any of it new, just to be clear?

02:28:44

MR. SCHAEFERS: To the best of my knowledge, Your Honor, there was nothing new. Okay? We searched Paula's Yahoo account at the end of March or early April. Right away, I produced PDFs of the printout of those e-mails. Then the expert took some time to create a PST of all the e-mails in her account that had various e-mail addresses in it, and he submitted that PST to me. I prepared PDFs of each PST folder and provided those.

02:29:10

02:29:40

THE COURT: Okay.

MR. SCHAEFERS: So to my knowledge there is nothing new in that production that I didn't produce already on April 4th or April 6th.

02:30:08 THE COURT: Now when you say it was 48 pages produced on April 17th, is it more than 48 pages? I mean, when I hear, you know, PST --

MR. SCHAEFERS: No. I'm sorry. No, it's not more than 48 pages. Okay?

02:30:36 THE COURT: Okay. So we are talking about 48 pages.

MR. SCHAEFERS: That's right.

THE COURT: Whether it's -- we can debate whether, you know, you think it's all stuff counsel saw before or she might argue it isn't, but we're talking about 48 pages.

02:31:31 MS. LANE: But if you look at it, Your Honor, on the 30th I'm supposed to be getting it, not on the 31st, on the 4th, on the 6th, and then the 17th. He's supposed to have given me the completed by the 30th or 31st. So even the act of giving it to me in piecemeal, piecemeal, it's not completely

02:32:04 provided. So there are little changes in circumstances, and I'm not asking for too much. As a matter of fact, you know, first of all --

THE COURT: I think, you know, I think it is because you agreed to this date. I ordered it. This case is on a fast

02:32:33 track. You're really trying to squeeze everything in, and your

e-mail asking to continue it says nothing about late disclosure or needing more time to review the e-mails. It says: I have other pressing trial preparation.

So for that reason, this case is pressing, too. I understand you'd like to push it back. There's an opposition to that, you know, so I'm going to deny the motion and require the deposition to go forward as scheduled.

MS. LANE: Then I will need to make the record that I will need additional deposition of her when I receive the entire discovery which I don't have yet. I know for sure I don't have it yet.

THE COURT: I think it's better to make the record once you have the information.

MS. LANE: But I already know what I don't have. I don't have the Google. I don't have the Yahoo.

THE COURT: All right. File a motion. If you need to depose her again, you can file a motion. You'll state all the reasons why you need to depose her again, and then I'll have that before me. But I don't want to speculate now about a new deposition. This deposition is going forward. If you decide you need to redepose her, you'll file a motion and give me all the reasons, and then I'll rule on that, on that motion --

MR. SCHAEFERS: Thank you, Judge.

THE COURT: -- if you file it.

MS. LANE: And another thing while I'm here, I

discussed with counsel also to amend the complaint, withdraw certain counts and change certain facts that were revealed during the discovery period.

THE COURT: I don't rule on that. That motion has to be before the district Judge. I cannot give you leave to amend a complaint.

02:35:22

MS. LANE: Okay.

THE COURT: That has to go before Judge Durkin. I can only oversee discovery.

02:35:34

MR. SCHAEFERS: We'll talk.

MS. LANE: Okay. Then we can just stipulate that I can file it?

THE COURT: You can file an agreed motion with Judge Durkin if that's what you're -- you know, not objected to, but I can't even rule on it. So I think you just need to file it.

02:36:08

MS. LANE: Okay. Then I'll do that as joint.

MR. SCHAEFERS: We'll talk before she files it.

MS. LANE: Okay.

THE COURT: Thank you.

02:36:38

MR. SCHAEFERS: Thank you.

MS. LANE: And, Your Honor, I also want to state one more thing. Thanks for staying up like me. I thought I'm the only one that goes at night and goes through work. I know this is contentious case, and I know it's difficult. I know at times it's emotional, and we made peace outside a little while

02:37:17

ago. I don't want it to reflect on me, that I am hated for the kind of the case that it is. I just wanted to tell you I am not the evil person here. It's just a bad case, and we're trying to do professionally the best we can. That's why we made peace, not calling each other names or being unprofessional. So I appreciate your time and you staying up and writing at 4:57, responding. I admire that.

02:37:44

THE COURT: All right. Have a good afternoon.

MS. LANE: Thank you.

02:38:35 MR. SCHAEFERS: You too. Thanks.

(Proceedings concluded.)

C E R T I F I C A T E

I, Patrick J. Mullen, do hereby certify that the foregoing is an accurate transcript produced from an audio recording of the proceedings had in the above-entitled case before the Honorable SHEILA M. FINNEGAN, one of the magistrate judges of said Court, at Chicago, Illinois, on April 18, 2017

.

/s/ Patrick J. Mullen
Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BARRY EPSTEIN, Plaintiff,	)	
	)	Case No. 1:14-cv-8431
v.	)	
	)	Judge Thomas M. Durkin
PAULA EPSTEIN, Defendant.	)	Magistrate Judge Sheila Finnegan

DEFENDANT'S SUPPLEMENTAL RESPONSE TO PLAINTIFF'S EMERGENCY MOTION TO EXTEND THE DEPOSITION OF PAULA EPSTEIN

Defendant's attorney seeks to clarify and correct certain of his statements in court earlier today. This clarification and correction, however, does not warrant extending defendant's 4/20/15 deposition. Defendant submits this supplement merely out of an abundance of candor.

After further analysis of defendant's 4/17/17 production, it appears that five of the emails produced yesterday had not been produced before. Those emails are highlighted in yellow in the chart attached as exhibit 1 to this supplemental memorandum. They are:

1. PAULA 002458: Paula's 5/8/03 e-mail to herself, attaching an email from Columbia College re: the work that plaintiff had done for the college;

2. PAULA 002471: Barry's 6/6/11 e-mail to Paula re: an article he found about a woman indicted for embezzlement, for Paula's information only (see attached, exhibit 2);

3. PAULA 002500, 2513: Paula's 2/12/16 e-mail to Barry re: their mutual friend who had passed away; and

4. PAULA 002501, 2514: Paula's 1/12/14 e-mail to Barry re: their mutual friend's wife and the work that Barry did for her.

Further, the Columbia College photocopier transmittal emails labeled PAULA 002463 and 2469 (copy attached as exhibit 3) had not been produced before, though their attachments (Barry's emails with others) had been previously produced as indicated in the chart.

Further, highlighted in green in the attached chart are e-mails in which attachments were embedded, thus effectively increasing the number of pages that were produced yesterday from 48

to 400. As shown, around 300 of those additional pages were several copies of the parties' joint 2012 federal and state tax returns, which Paula emailed to herself only for tax and financial purposes, and which plaintiff certainly has possession of. (*See, e.g.*, PAULA 002465, 9/13/15 email, exhibit 4 here). Twelve of the additional pages contained privileged communications between Paula and her divorce attorney (PAULA 002464 and 2467), as indicated by their prior inclusion on Paula's 2/13/17 privilege log (namely, PAULA PRIV 000042-47). Twelve other pages were Barry's emails with others that had already been produced, as indicated in the chart. (*See* ex. 3). The remaining additional pages are clearly irrelevant.

Defendant's attorney sent the chart to plaintiff's attorney at 4:43 pm today, indicating that he intended to file a supplemental memorandum. (4/18/17 transmittal email, exhibit 5). In her 5:00 pm reply (omitted due to its containing extraneous content), plaintiff's attorney suggested that she did not intend to re-raise the continuance of defendant's deposition.

Thus, the Court's order today regarding defendant's deposition should stand. Nevertheless, defendant's attorney apologizes to plaintiff's attorney and the Court for any confusion.

DATE: April 18, 2017

Respectfully submitted,

PAULA EPSTEIN, defendant.

By: /s/ *Scott A. Schaefers*
One of her attorneys

Scott A. Schaefers
BROTSCHUL POTTS LLC
30 N. LaSalle St., Ste. 1402
Chicago, IL 60602
Phone: (312) 268-6795
Email: sschaefers@brotschulpotts.com

CERTIFICATE OF SERVICE

Scott A. Schaefers, attorney for defendant Paula Epstein, certifies that on **April 18, 2017,** he caused a true and correct copy of her **Supplemental Response to Plaintiff's Emergency Motion to Extend the Deposition of Paula Epstein** to be served on counsel of record via the Court's ECF system.

/s/ *Scott A. Schaefers*
Scott A. Schaefers

Re: Epstein v. Epstein, 14 C 8431

1 message

Nejla Lane <nejla@lanekeyfli.com> Fri, Jun 23, 2017 at 8:56 PM
To: "Scott A. Schaefers" <sschaefers@brotschulpotts.com>, Proposed_Order_Finnegan@ilnd.uscourts.gov
Cc: "Allison_Engel@ilnd.uscourts.gov" <Allison_Engel@ilnd.uscourts.gov>

Dear Allison,

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 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 !!!

Yours very truly,

~ Nejla K. Lane, Esq.

Lane Keyfli Law, Ltd.
5901 North Cicero Avenue, Suite 200
Chicago, Illinois 60646-5701
Phone: (773) 777-4440
Direct Ofc.: (312) 709-0766
Cell: (773) 621-1389
Fax: (866) 444-4024
Website: www.LaneKeyfli.com
Office E-mail: Nejla@LaneKeyfli.com

CONFIDENTIALITY NOTICE -

On Jun 23, 2017, at 6:42 PM, Scott A. Schaefers <sschaefers@brotschulpotts.com> wrote:

> Thank you, Ms. Engel.
>
> **Scott A. Schaefers**
>
> BROTSCHUL POTTS LLC
>
> 30 N. LaSalle St., Ste. 1402
>
> Chicago, IL 60602
>
> Direct: (312) 268-6795
>
> Main: (312) 551-9003
>
> Cell: (773) 816-4747
>
> Email: sschaefers@brotschulpotts.com
>
> My Profile
>
> **From:** Allison_Engel@ilnd.uscourts.gov [mailto:Allison_Engel@ilnd.uscourts.gov]
> **Sent:** Friday, June 23, 2017 6:37 PM
> **To:** nejla@lanekeyfli.com; Scott A. Schaefers <sschaefers@brotschulpotts.com>
> **Subject:** Epstein v. Epstein, 14 C 8431
>
> Counsel,
>
> Attached is the Order denying Plaintiff's Motion for Extension of Time to Complete Discovery and Leave to Depose Jay Frank [207]. It will be uploaded to the docket on Monday.

Allison M. Engel
Career Law Clerk to the Honorable Sheila Finnegan
United States District Court
Northern District of Illinois
219 S. Dearborn St., Suite 2206
Chicago, IL 60604
312.408.5056
allison_engel@ilnd.uscourts.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BARRY EPSTEIN,	)	
	)	
Plaintiff,	)	
	)	**No. 14 C 8431**
v.	)	
	)	**Magistrate Judge Finnegan**
PAULA EPSTEIN,	)	
	)	
Defendant.	)	

ORDER

Plaintiff Barry Epstein ("Plaintiff") is suing his ex-wife Paula Epstein ("Defendant") for accessing his emails without his authorization. He asserts her conduct was in violation of the Electronic Communications Privacy Act of 1968, 18 U.S.C. § 2510 *et seq*., the Stored Communications Act, 18 U.S.C. § 2701 *et seq*., the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq*., and Illinois common law. Though fact discovery closed more than six weeks ago and the case is set for trial next month, Plaintiff has filed a motion seeking to reopen discovery in order to depose Defendant's divorce attorney, Jay Frank ("Attorney Frank"). For the reasons set forth here, the motion is denied.

BACKGROUND

Plaintiff originally named Attorney Frank as a co-defendant in this action, charging him with unlawfully disclosing and using the contents of email messages that Defendant gave him and he then produced to Plaintiff during discovery in the divorce case. Plaintiff alleges that Defendant engaged in this conduct to gain a financial advantage in the divorce proceedings. (Doc. 22, at 5, 9). The district judge dismissed the claims against Attorney Frank on April 20, 2015, *Epstein v. Epstein*, No. 14 C 8431, 2015 WL 1840650

(N.D. Ill. Apr. 20, 2015), and the Seventh Circuit upheld that decision on December 14, 2016. *Epstein v. Epstein*, 843 F.3d 1147 (7th Cir. 2016). After Plaintiff's request for rehearing was denied on January 3, 2017, he filed a Petition for Writ of Certiorari with the United States Supreme Court on March 3, 2017.

In the meantime, the case against Defendant proceeded. On January 6, 2017, the district judge set a trial date of June 5, 2017 (later extended to July 24, 2017). After an unsuccessful settlement conference, the parties conferred and on February 15, 2017, they submitted a proposed schedule for completing fact and expert discovery consistent with the trial date. This Court (to whom discovery supervision was referred) ordered fact discovery to close on April 14, 2017 (Doc. 98), but later granted Plaintiff's oral motion to extend the deadline to April 28, 2017 (Doc. 114). On February 28, 2017, Plaintiff identified Attorney Frank as a potential witness in his Rule 26(a)(1) disclosures. The parties deposed each other and Defendant also deposed three third parties. They also engaged in other discovery. Expert discovery will be completed on June 30, 2017.

Despite the looming trial, Plaintiff made no effort to depose Attorney Frank before fact discovery closed on April 28, 2017. Instead, on June 15, 2017 (just 5 weeks before trial), Plaintiff filed the pending motion seeking to reopen discovery to depose Frank, whom he attempted to serve with a subpoena that same day. Defendant filed an opposition to the motion the same day, arguing discovery was closed, Attorney Frank's communications with Defendant were privileged, and Frank's testimony was unnecessary in any event.

DISCUSSION

The decision whether to grant a motion to reopen discovery rests within the sound discretion of the district court. *APC Filtration, Inc. v. Becker*, No. 07 C 1462, 2009 WL 187912, at *1 (N.D. Ill. Jan. 26, 2009). "Where a party can offer no reasonable explanation for the failure to take discovery, a request to reopen discovery should be denied." *Ty, Inc. v. Publications Int'l, Ltd.*, No. 99 C 5565, 2003 WL 21294667, at *6 (N.D. Ill. June 4, 2003). In addition, it is well-established that "district courts may deny motions as untimely due to unexplained or undue delay or when the late motion will require an extension of the discovery period." *Medicines Co. v. Mylan Inc.*, No. 11 C 1285, 2013 WL 120245, at *2 (N.D. Ill. Jan. 9, 2013). *See also In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 331, 332 (N.D. Ill. 2005) ("[M]otions to compel filed after the close of discovery are almost always deemed untimely.").

There is no question that Plaintiff's motion for leave to depose Frank is untimely since he filed it on June 15, 2017, some six weeks after fact discovery closed on April 28, 2017.[1] Plaintiff attempts to justify the delay by explaining that he was waiting for a decision on his petition for cert that was filed on March 3, 2017, two months after the denial of his petition for rehearing. He argues that he "could not properly depose Frank" without it. (Doc. 212, at 2). According to Plaintiff, "Frank could have been reinstated as a defendant, in which case, the questions at his deposition would be substantially different from the deposition of a witness." (*Id*. at 3). The problem for Plaintiff (among others) is

[1] Plaintiff disingenuously claims this Court "ordered that there could be an extension of time for depositions until June 26, 2017. (Doc. 207, at 1) (citing Tr. of 5/2/17 hearing, Doc. 207-2). The Minute Order entered that day makes clear, however, that the extension related exclusively to expert as opposed to fact depositions. (Doc. 156) ("By agreement of the parties, expert disclosures are due by 5/31/2017 and expert depositions are to be completed by 6/26/2017.").

that he let the discovery deadline pass without even filing a motion to share his rationale with the Court and seek permission to defer the deposition until after the Supreme Court's ruling on the cert petition. This Court would not have granted such a motion since (1) there was no way of knowing when the Supreme Court would rule and trial was imminent, (2) the prospects of cert being granted were remote at best, and (3) Frank would not be automatically reinstated even if cert were granted. Rather, the Supreme Court would have issued a schedule for further briefing and argument. It is also worth noting that Plaintiff *already* had requested Judge Durkin to stay *all* proceedings pending a ruling on the cert petition, and that motion was denied on March 13, 2017. (Doc. 113). This made it abundantly clear that the trial was moving ahead as planned and Plaintiff could *not* postpone discovery to see what happened with the cert petition.

Remarkably, Plaintiff not only disregarded the April 28th discovery deadline but then waited until three weeks after the Supreme Court's May 22, 2017 ruling before he filed this motion to reopen discovery on June 15, 2017. The only explanation offered is that he "was first notified of this decision . . . by e-mail from opposing counsel." (Doc. 212, at 2). Conspicuously missing is the exact date of the email in question. Moreover, since the Clerk of the Supreme Court addressed the May 22nd notice of the decision directly to Plaintiff's counsel, the Court questions how he and his attorney did not see it within a few days of May 22, 2017. (Doc. 212-3, at 1). If, as Plaintiff claims, the only thing stopping him from pursuing Frank's deposition was the Supreme Court notice, then certainly his attorney would have been keeping an eye out for it.[2]

[2] The Supreme Court's May 22nd "Order List" reflecting the denial of Plaintiff's cert petition was also posted to the internet so could be found from a simple Google search which is how this Court found it. *See* https://www.supremecourt.gov/orders/courtorders/052217zor_4gd5.pdf (last visited 6/22/2017).

In opposition to the motion, Defendant observes that Attorney Frank's testimony would "largely if not exclusively involve non-discoverable privileged and work product material regarding the divorce case." (Doc. 208, at 1). In addition, Defendant questions the need for the testimony in light of the specific legal claims that Plaintiff brought and the existing evidence -- both of which she discussed in detail. To better assess these issues, this Court directed Plaintiff to file a reply brief addressing the specific information Frank was expected to provide at a deposition, how it was relevant to the disputed issues in the case, and why the information was not protected by the attorney-client privilege. (Doc. 210).[3]

Unfortunately, Plaintiff provided a cursory and unhelpful discussion of the relevance of Attorney Frank's anticipated testimony, stating in totality:

> As Barry indicated in his Rule 26 disclosure, he intends to question Frank about the very relevant topic of his communications with Paula regarding Barry's e-mails, including their use in the parties' divorce. (See Exhibit A)[4]. Although these questions may be similar to those asked of Paula, Barry is entitled to ask these questions of Frank to compare their testimony for potential inconsistencies. This is no different from Paula's asking Barry and each of the three women [three third parties who were deposed by Defendant] the exact same questions regarding their respective communications and alleged relationships in each of their depositions, and it would be extremely inequitable do [sic] deny Barry the opportunity to probe the truth of Paula's testimony in this fashion.

(Doc. 212, at 4). This explanation does not persuade the Court that Attorney Frank's testimony is probative of any specific and disputed issue in the case. Since fact discovery

---

[3] The Court also directed Plaintiff to provide information regarding whether (and when) he sought to serve Attorney Frank with a subpoena. While Plaintiff's reply brief (filed on 6/19/2017) indicated that Plaintiff had first attempted service on 6/15/2017 without success (suggesting Frank evaded service when his receptionist declined to accept the subpoena), Plaintiff later filed an affidavit on 6/22/2017 stating that Frank was served on 6/20/2017. It is unknown what deposition date was reflected on the subpoena and whether the witness or opposing counsel are available on such short notice.

[4] Exhibit A is a copy of the Rule 26 disclosure.

closed long ago, and the trial is a mere four weeks away, the Court finds that the potential probative value of Attorney Frank's testimony (possible inconsistencies on unidentified topics) is insufficient to justify reopening discovery. *Hespe v. City of Chicago*, No. 13 C 7998, 2016 WL 7240754, at *3 (N.D. Ill. Dec. 15, 2016) (Rule 26(b) allows a court to limit discovery requests that are "cumulative, late, or out of proportion to the needs of the case.").

Further weighing against Plaintiff's motion is the fact that any deposition of Attorney Frank would inevitably involve complex privilege issues. Defendant has made clear that she will invoke the attorney-client privilege as to questions seeking testimony concerning her communications with Attorney Frank regarding the divorce case in which Frank represented her. Plaintiff inexplicably argues that the communications between Defendant and her lawyer concerning Plaintiff's "private e-mails" are not privileged "because they do not involve the rendering of any legal advice or client confidences." (Doc. 212, at 5). But of course Defendant provided the emails to Attorney Frank (and presumably discussed them with him) precisely because they were deemed relevant in the pending divorce case. Indeed, Plaintiff learned of the emails when Attorney Frank produced them during discovery in that case. To the extent that Defendant had discussions with her attorney concerning evidence (the emails) that she provided to him for use in the divorce case, it would appear that such discussions would be privileged.

Plaintiff also argues that Defendant's communications with Attorney Frank are not privileged because the crime-fraud exception applies. He asserts, for example, that "Paula's use and disclosure of Barry's private e-mails in the divorce *potentially* violates the Wiretap Act and/or amounts to extortion, both of which are crimes." (Doc. 212, at 5)

(emphasis added). As Plaintiff seems to recognize, this is putting the cart before the horse. While he is seeking to prove in this lawsuit that Defendant engaged in illegal conduct in relation to his emails, this will be determined during the trial. Moreover, the application of the crime-fraud exception is quite complex and numerous issues would need to be addressed (and evidence presented) before the Court could begin to assess whether the exception applies. *See Diemer v. Fraternal Order of Police, Chicago Lodge 7*, 242 F.R.D. 452, 460 n.11 (N.D. Ill. 2007) ("The analysis required under the [crime-fraud] exception is more complicated than the plaintiff's laconic discussion in her brief suggests."). Plaintiff's long delay in seeking this deposition leaves no time to brief and consider these difficult issues before trial. Moreover, it would be prejudicial to Defendant to divert her attorney's time from trial preparation in the four weeks before trial.

CONCLUSION

For the reasons stated above, Plaintiff's Motion for Extension of Time to Complete Discovery and Leave to Depose Jay Frank [207] is denied.

ENTER:

Dated: June 23, 2017

SHEILA FINNEGAN
United States Magistrate Judge

Re: Epstein v. Epstein, 14 C 8431

1 message

Nejla Lane <nejla@lanekeyfli.com> Mon, Jun 26, 2017 at 6:05 PM
To: Allison_Engel@ilnd.uscourts.gov, Proposed_Order_Finnegan@ilnd.uscourts.gov
Cc: "Scott A. Schaefers" <sschaefers@brotschulpotts.com>
Bcc: Nejla Lane <nejla@lanekeyfli.com>

Dear Allison,

After having read your/Judge Finnegan's order dated June 23 - I found errors and misstatement of facts that needs to be corrected, which I am attempting to correct with this email.

1. Page 2, you stated: "After Plaintiff's request for rehearing was denied ...." this is incorrect !!! It was Defendant, Paula Epstein, who requested the hearing which was denied.
2. Page 3, second paragraph - same misstatement of fact, Plaintiff did not file pet for cert two month after denial of his pet for rehearing.

3. This court accuses Plaintiff's counsel of being "disingenuous" because of mixing up the deposition deadline for witness with expert witness ... How about Defendant's counsels flat out lie to this court on April 18? and filing a "Defendant's Supplemental Response to Plaintiff's Emergency Motion to Extend the Deposition of Paula Epstein DE147? Then lying to J. Finn by saying that his misstatement/lies in court should not warrant an extension to depose Paula after all. So this court should be mindful when accusing Lane of any sort of "disingenuousness" as I have provided this court with everything in my possession to with regards to my statements in open court. I do not lie, especially not purposefully as did Scott.
4. Plaintiff's motion is not late just because this court decided not to extend the 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 your account when drafting this flawed order.

5. I knew of the Supreme Court docket and waited for their response impatiently, the docket entry was attached to my motion. 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 the SC docket regularly. I was the person telling Scott that he needs to file a waiver or file an objection as the SC was delayed for his lack of knowledge what to do next - so refrain from accusing me of such ugly conducts, publicly. Order page 4. 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! This court has always treated my client and myself with disrespect!!!! You may not like my client, but he has a cause of action against the "little old lady" you can't do no wrong by YOU!

I will stop going through with all of the mischaracterization in this order!!!

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!

On Fri, Jun 23, 2017 at 6:37 PM, <Allison_Engel@ilnd.uscourts.gov> wrote:

> Counsel,
>
> Attached is the Order denying Plaintiff's Motion for Extension of Time to Complete Discovery and Leave to Depose Jay Frank [207]. It will be uploaded to the docket on Monday.
>
> Allison M. Engel
> Career Law Clerk to the Honorable Sheila Finnegan
> United States District Court
> Northern District of Illinois
> 219 S. Dearborn St., Suite 2206
> Chicago, IL 60604
> 312.408.5056
> allison_engel@ilnd.uscourts.gov

--

Yours very truly,

~
Dedicated Attorneys

LANE KEYFLI LAW, LTD.

Av. Nejla K. Lane, Esq. - President
Brian Douglas Moore Goodrich, Esq.
Alexandra Olkowski, Esq.
Rocio Marquez, Paralegal
5901 North Cicero Avenue, Ste. 200
Chicago, IL 60646-5701
Phone: 773.777.4440

Fax: 866.444.4024
Website: www.LaneKeyfli.com
Office E-mail: Info@LaneKeyfli.com

No. 15-2076

In the United States Court of Appeals for the Seventh Circuit

BARRY EPSTEIN,

Plaintiff-Appellant,

vs.

PAULA EPSTEIN,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division, No. 1:14-cv-8431
The Honorable **Thomas M. Durkin**, District Judge.

DEFENDANT-APPELLEE PAULA EPSTEIN'S
FED. R. APP. PROC. RULE 40 PETITION FOR PANEL REHEARING

Scott A. Schaefers
BROTSCHUL POTTS LLC
30 N. LaSalle St., Ste. 1402
Chicago, IL 60602
Phone: (312) 551-9003
Email: sschaefers@brotschulpotts.com

Attorney for Defendant-Appellee
Paula Epstein

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

January 3, 2017

Before

RICHARD A. POSNER, *Circuit Judge*

DANIEL A. MANION, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

No. 15-2076

BARRY EPSTEIN,
Plaintiff-Appellant,

v.

PAULA EPSTEIN and JAY FRANK,
Defendants-Appellees.

Appeal from the
United States District Court for the
Northern District of Illinois,
Eastern Division.

No. 14 C 8431

Thomas M. Durkin,
Judge.

O R D E R

On consideration of the petition for rehearing, all of the judges have voted to deny rehearing. It is therefore ordered that the petition for rehearing is DENIED.

General Docket
Seventh Circuit Court of Appeals

Court of Appeals Docket #: 15-2076 Docketed: 05/18/2015
Nature of Suit: 3890 Other Statutory Actions Termed: 12/14/2016
Barry Epstein v. Paula Epstein, et al
Appeal From: Northern District of Illinois, Eastern Division
Fee Status: Paid

Case Type Information:
1) civil
2) private
3) -

Originating Court Information:
District: 0752-1 : 1:14-cv-08431
Court Reporter: Laura Renke, Court Reporter
Trial Judge: Thomas M. Durkin, District Court Judge
Date Filed: 10/27/2014
Date Order/Judgment: 04/20/2015
Date NOA Filed: 05/18/2015

12/14/2016	34	ORDER: Final judgment filed per opinion. Costs to plaintiff. [34] [6804617] [15-2076] (CD)
12/22/2016	35	Submitted petition for rehearing by Scott A. Schaefers for Appellee Paula Epstein. [35] [6806568] [15-2076] (Schaefers, Scott)
12/22/2016	36	Filed Petition for Rehearing by Appellee Paula Epstein. Paper copies due on 12/27/2016 [36] [6806788] [15-2076] (SP)
12/22/2016	37	Filed Appendix by Appellee Paula Epstein. [37] [6806789] Paper copies due on 12/29/2016 [15-2076] (SP)
01/03/2017	38	ORDER: Appellee Paula Epstein Petition for Rehearing is DENIED. [38] [6808588] [15-2076] (CR)
01/11/2017	39	Mandate issued. No record to be returned. [39] [6810608] [15-2076] (VG)
01/11/2017		FOR COURT USE ONLY: Certified copies of 12/14/2016 Opinion and Judgment, 1/3/17 Rehearing Denial Order and 1/11/17 Mandate sent to the District Court Clerk. [6810613-2] [6810613] [15-2076] (VG)
03/27/2017	40	Notice received regarding Supreme Court Case Number (16M104): The motion for leave to file a petition for a writ of certiorari under seal with redacted copies for the public record is granted. [6828947] [15-2076] (MM)
03/28/2017	41	Filed notice from the Supreme Court of the filing of a Petition for Writ of Certiorari. 16-1162. [41] [6829338] [15-2076] (CR)
05/23/2017	42	Filed order from the Supreme Court DENYING the Petition for Writ of Certiorari. 16-1162. [42] [6842989] [15-2076] (VG)

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Transaction Receipt

7th Circuit Court of Appeals - 09/27/2017 11:52:03

PACER Login:	LaneKass64:3319598:0	Client Code:	
Description:	Case Summary	Search Criteria:	15-2076
Billable Pages:	1	Cost:	0.10

Illinois Divorce Advice, Illinois Divorce Law

< previous page

FAQs

Note that information given in this section cannot take the place of a divorce lawyer. For legal divorce advice about your specific situation, you must consult a qualified lawyer. See our disclaimer.

"My spouse has had several affairs; it's one of the reasons we split up. Can I use this against him in the divorce proceedings?"

Under Illinois divorce law, and in a strict legal sense, you cannot use your husband's affairs against him for a divorce settlement more favorable to you. This may seem unfair to you, because it was your husband's affairs which caused all the trouble and eventually the divorce. Since he was at fault and ruined the marriage, he should pay. However, this is not the law.

The divorce laws divide the case into two parts. The first part is the grounds for divorce. Evidence of your husband's affairs would be heard in this part of the case. If you have enough evidence to satisfy the judge, then the marriage would be dissolved based on adultery.

The case would then move on to the second part, which deals with financial and other issues. This part of the case is entirely separate from the first part. Here, the court will divide property and make financial decisions based on economics and other similar considerations. The grounds for divorce and the fault of a party are not considered in this part of the case. You don't get any more because your husband is guilty of adultery.

Your husband's affairs might, however, have some practical effect on the case. He might be more willing to agree to a good financial settlement with you to avoid the embarrassment of a trial exposing his affairs. His girlfriend might also pressure him to give you a favorable settlement, so that she does not become involved in the case. Also, your husband's affairs might come up during custody and visitation issues. Exposing the children to the affair or the girlfriend might work against your husband when these issues are considered.

Jay A. Frank is a matrimonial practitioner in Chicago with over 35 years of experience. He has been selected as one of the top family-law attorneys in Illinois. He can be reached at (312) 828-9600. View his Divorce Magazine profile.

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- Indiana Divorce
- Iowa Divorce
- Kansas Divorce
- Kentucky Divorce
- Louisiana Divorce
- Maine Divorce
- Maryland Divorce
- Massachusetts Divorce
- Michigan Divorce
- Minnesota Divorce
- Mississippi Divorce
- Missouri Divorce
- Montana Divorce
- Nebraska Divorce
- New Hampshire Divorce
- New Jersey Divorce
- New Mexico Divorce
- New York Divorce
- Nevada Divorce

Illinois Divorce Lawyers, Chicago
Aronberg Goldgehn Davis & Garmisa

When everything that matters is at stake — We Take it Personally.®

We take the time to get to know you personally and to understand all the issues affecting you. We care about the details, and we're available on your schedule. Our experienced attorneys will work with you closely — from beginning to end. We do whatever it takes, the big things and the small ones, to get the job done..

Jay Frank and Elizabeth Lazzara head the Aronberg Goldgehn family law team, and both have been selected by their peers as Leading Lawyers and Super Lawyers, a distinction afforded only 5 % of Illinois lawyers.

Jay Frank
jfrank@agdglaw.com

JAY FRANK understands that divorce makes your life complicated. The financial and legal issues only add to the stress, so it is important to find a lawyer to look out for your best interests. "Everything that means anything is on the table - the children, the possessions, the house, the retirement plan, and sometimes the family pet," he says. He is prepared to devote himself 110% to your case, doing whatever is necessary to achieve the best possible resolution.

This kind of expertise has been cultivated for over 30 years of experience, focusing largely on representing women. Mr. Frank has earned a reputation as an expert on family law, and frequently writes articles, speaks at seminars, and appears on TV and radio. Mr. Frank's clients say that they end up in a better position than when they first walked into his office.

Professional Services

Attorneys
Cook County
Jay Frank
Jeffrey W. Brend
Badesch•Abramovitch
Karen Covy
Boyle & Feinberg, P.C.
LeVine, Wittenberg, Shugan, & Schatz
Paul L. Feinstein
Dupage County
Schiffman Family Law LLC
Add your listing

Business Valuators / CPAs
Brandi Ruffalo
Linda Forman
Jeffrey W. Brend
Bruce Richman
Katherine Puffer
Add your listing

Financial Advisors
Cathleen Belmonte Newman, CDFA™, MBA

FINNEGAN,REOPEN,TERMED

United States District Court
Northern District of Illinois - CM/ECF LIVE, Ver 6.2.2 (Chicago)
CIVIL DOCKET FOR CASE #: 1:14-cv-08431

Epstein v. Epstein et al
Assigned to: Honorable Thomas M. Durkin
Demand: $100,000
Case in other court: 15-02076
Cause: 18:2518 Interception of Wire/Oral/Electronic Communication

Date Filed: 10/27/2014
Date Terminated: 08/02/2017
Jury Demand: Defendant
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

Plaintiff

Barry Epstein represented by **Nejla Kassandra Lane**
Lane Keyfli Law, Ltd.
5901 North Cicero Avenue
Suite 200
Chicago, IL 60646
773-777-4440
Email: Info@LaneKeyfli.com
ATTORNEY TO BE NOTICED

V.

Defendant

Paula Epstein represented by **Scott A. Schaefers**
Brotschul Potts LLC
30 N. LaSalle St.,
Ste. 1402
Chicago, IL 60602
(312) 551-9003
Email: sschaefers@brotschulpotts.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Jay Frank represented by **Norman John Barry , Jr.**
TERMINATED: 05/17/2017
Donohue, Brown, Mathewson & Smyth LLC
140 South Dearborn Street
Suite 800
Chicago, IL 60603
(312) 422-0900
Email: norman.barry@dbmslaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Respondent

Rose Vivian Harayo represented by **Ryan J Levitt**
Law Offices Of Damon M. Cheronis
140 S. Dearborn Street
Suite 411
Chicago, IL 60603
312-663-4644
Email: ryan@cheronislaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Movant

Janice Sandala represented by **Ryan J Levitt**
(See above for address)

Ex. F, federal court suspension

Nejla Lane <nejla@lanekeyfli.com>

FW: CDRR Comment: I have been suspended from federal bar for six month

1 message

Seana Willing <Seana.Willing@texasbar.com> Wed, Jul 29, 2020 at 2:27 PM
To: "nejla@lanekeyfli.com" <nejla@lanekeyfli.com>

Ms. Lane,

Would you clarify if you are trying to report discipline from the Illinois State Bar or the suspension from federal court to the State Bar of Texas Chief Disciplinary Counsel's Office? Under current rules (TDRPC 8.03), we would only require you to report discipline from a state regulatory agency (such as the Illinois State Bar) not discipline from a federal court or agency. There is a proposed rule that is subject to public comments through the website you left your comment on; it is not the current rule and does not impact you in connection with the federal suspension.

Thank you!

Seana Willing

Chief Disciplinary Counsel

State Bar of Texas

(512) 427-1350

From: nejla@lanekeyfli.com <nejla@lanekeyfli.com>
Sent: Wednesday, July 29, 2020 1:07 PM
To: cdrr <cdrr@TEXASBAR.COM>
Subject: CDRR Comment: I have been suspended from federal bar for six month

Contact

First Name	Nejla
Last Name	Lane
Email	nejla@lanekeyfli.com
Member	Yes
Barcard	24095557

Feedback

Subject	I have been suspended from federal bar for six month

Comments

To Whom It May Concern: First of all I like to apologize for not writing to you sooner. I am a non local attorney since 2015. In June of 2017, during a bitter divorce and federal wiretap litigation. I the attorney for the Plaintiff lost my temper and complaint to the presiding judge (not exparte) about her ruling. She told me not send her anymore email regarding the merits of the order. I sent her another email asking them to correct an order before publishing it in the efiling terminal for everyone to see. This conduct was cited and I was suspended as a result of sending said emails to the judge. I was told to take anger management course prior to being reinstated. I have done this and have been reinstated at the Federal level but this is currently being handled in the state bar of Illinois. ARDC. I need to send this citations and reinstatement to Texas State Bar but I don't know how - can somebody please call me or email me? Nejla Lane 512-216-7500

Nejla Lane <nejla@lanekeyfli.com>

Atty Nejla Lane atty#24095557 order to suspend her 6 months

1 message

Nejla Lane <nejla@lanekeyfli.com> Fri, Feb 3, 2023 at 1:39 PM
To: cdcinfo@texasbar.com, Seana Willing <Seana.Willing@texasbar.com>

Dear Sir/Madam:
Please see attached Order from the Illinois Supreme Court to suspend me effective 2/7/2023.

Illinois Supreme Court Denied the Petition for Leave to File Exception.

I believe the suspension is unconstitutional. I have defenses.

I have attached the Petition for Leave to File Exceptions to the recommendation to be suspended, but it was DENIED.

See attached, the Mandate for 6 months suspension, the proposed, sought relief and the efiled exception.

Please let me know the next step.

Regards,

~Nejla K. Lane, Esq.

LANE KEYFLI LAW, LTD.

Av. Nejla K. Lane, Esq. - Founding President
6041 N. Cicero Ave. Ste. 1/2(half) Chicago, IL 60646

☎ (773) 777 4440 | F: (866) 444 4024 | cell: (773) 621-1389

✉ Nejla@LaneKeyfli.com | www.KeyfliLaw.com

CIVIL | CRIMINAL | IMMIGRATION
ILLINOIS | TEXAS | ALL FEDERAL COURT &
THE SUPREME COURT OF THE UNITED STATES OF AMERICA

4 attachments

- **20230117- Suspension NKL MR Mandate.pdf**
  177K
- **Petitioner's efiled copy of proposed exception for filing.pdf**
  241K
- **20221027 - 1- PLFE - Volume 1 for Printing job.pdf**
  1478K
- **20221017 - 2- PLFE - Volume 2 for printing.pdf**
  6158K

 Exh. G

Summary of Proposed Disciplinary Rules
For Tentative 2021 Rules Vote
(*Updated 8.5.20*)

In 2017, the Texas Legislature amended Chapter 81 of the Government Code to create the Committee on Disciplinary Rules and Referenda (CDRR) and to overhaul the disciplinary rule proposal process. In order to be adopted under the new process, a proposed rule must be approved by the CDRR, the State Bar Board of Directors, State Bar membership, and the Supreme Court of Texas. The following is a summary of proposed rules or rule changes that may be included in a tentative February 2021 Rules Vote. Each proposal relates to the Texas Disciplinary Rules of Professional Conduct (TDRPC) and/or the Texas Rules of Disciplinary Procedure (TRDP).

Recommended by CDRR and Approved by Board

Confidentiality of Information – Exception to Permit Disclosure to Secure Legal Ethics Advice
Adds Rule 1.05(c)(9), TDRPC, which permits a lawyer to disclose confidential information to secure legal advice about the lawyer's compliance with TDRPC.

Scope and Objectives of Representation; Clients with Diminished Capacity
Amends Rule 1.02, TDRPC, by deleting paragraph (g) and revising an internal reference, and adds Rule 1.16, TDRPC, which is intended to provide improved guidance to lawyers when representing a client with diminished capacity.

Conflict of Interest Exceptions for Nonprofit and Limited Pro Bono Legal Services
Adds Rule 6.05, TDRPC, which provides very narrow exceptions to certain conflict of interest rules when a lawyer provides limited pro bono legal services through a pro bono or assisted pro se program sponsored by a court, bar association, accredited law school, or nonprofit legal services program.

Assignment of Judges in Disciplinary Complaints and Related Provisions
Amends Rules 3.01 to 3.03, TRDP, by transferring assignment duties from the Supreme Court to the Presiding Judges of the Administrative Judicial Regions when a respondent in a disciplinary complaint elects to proceed in district court, relaxing geographic restrictions on assignments, and clarifying procedures involved.

Information About Legal Services (Lawyer Advertising and Solicitation)
Amends Part VII, TDRPC, by simplifying and modernizing lawyer solicitation and advertising rules. Among other changes, the proposal simplifies disclaimer and filing requirements, while maintaining the prohibition on false or misleading communications about a lawyer's qualifications or services. The proposal permits a lawyer to practice law under a trade name that is not false or misleading.

Voluntary Appointment of Custodian Attorney for Cessation of Practice
Adds Rule 13.04, TRDP, which authorizes a lawyer to voluntarily designate a custodian attorney to assist with the designating attorney's cessation of practice and provides limited liability protection for the custodian attorney.

Approved by CDRR and Board Vote Expected in September 2020

Confidentiality of Information – Exception to Permit Disclosure to Prevent Client Death by Suicide
Adds Rule 1.05(c)(10), TDRPC, which permits a lawyer to disclose confidential information when the lawyer has reason to believe it is necessary to do so in order to prevent a client from dying by suicide.

Reporting Professional Misconduct and Reciprocal Discipline for Federal Court or Federal Agency Discipline
Amends Rule 8.03, TDRPC, and Rules 1.06 and 9.01, TRDP, by extending self-reporting and reciprocal-discipline provisions to cover certain discipline by a federal court or federal agency.

For more information about the proposals or about the CDRR, go to texasbar.com/CDRR.

July 22, 2020

Mr. John Charles "Charlie" Ginn, Chair
State Bar of Texas Board of Directors
McCraw Law Group
[redacted]

RE: Submission of Proposed Rule Recommendation – Rule 1.05(c)(10), Texas Disciplinary Rules of Professional Conduct

Dear Mr. Ginn:

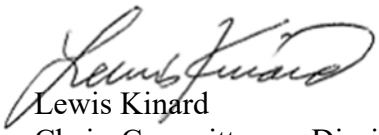
Pursuant to section 81.0875 of the Texas Government Code, the Committee on Disciplinary Rules and Referenda initiated the rule proposal process for proposed amendments to Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, relating to confidentiality of information and clients contemplating suicide. The Committee published the proposed rule changes in the *Texas Bar Journal* and the *Texas Register*. The Committee solicited and considered public comments and held a public hearing on the proposed rule changes. At its July 2020 meeting, the Committee voted to recommend proposed Rule 1.05(c)(10) to the Board of Directors.

Included in this submission packet, you will find the proposed rule recommended by the Committee, as well as other supporting materials. Section 81.0877 of the Government Code provides that the Board is to vote on each proposed disciplinary rule recommended by the Committee not later than the 120th day after the date the rule is received from the Committee. The Board can vote for or against a proposed rule or return a proposed rule to the Committee for additional consideration.

As a reminder, if a majority of the Board approves a proposed rule, the Board shall petition the Supreme Court of Texas to order a referendum on the proposed rule as provided by section 81.0878 of the Government Code.

Thank you for your attention to this matter and for your service to the State Bar. Should the Board require any other information, please do not hesitate to contact me.

Sincerely,



Lewis Kinard
Chair, Committee on Disciplinary Rules and Referenda

cc: Larry P. McDougal Sr.
Sylvia Borunda Firth
Randall O. Sorrels
Trey Apffel
John Sirman
Ray Cantu
KaLyn Laney
Seana Willing
Ross Fischer

Committee on Disciplinary Rules and Referenda
Overview of Proposed Rule

Rule 1.05(c)(10), Texas Disciplinary Rules of Professional Conduct
Confidentiality – Clients Contemplating Suicide

Provided here is a summary of the actions and rationale of the Committee on Disciplinary Rules and Referenda (Committee) related to proposed Rule 1.05(c)(10) of the Texas Disciplinary Rules of Professional Conduct (TDRPC), pertaining to the permissive disclosure of confidential information to prevent a client from dying by suicide.

Actions by the Committee

- **Initiation** – The Committee voted to initiate the rule proposal process at its January 16, 2020, meeting.
- **Publication** – The proposed rule was published in the April 2020 issue of the *Texas Bar Journal* and the March 27, 2020, issue of the *Texas Register*. The proposed rule was concurrently posted on the Committee's website. Information about the public hearing and the submission of public comments was included in the publications and on the Committee's website.
- **Additional Outreach** – Email notifications regarding the proposed rule were sent to all Texas lawyers (other than those who have voluntarily opted out of receiving email notices), Committee email subscribers, and other potentially interested parties on April 1, June 1, and June 10, 2020. Additional email notifications were sent to Committee email subscribers on May 1 and June 15, 2020.
- **Public Comments** – The Committee accepted public comments through June 20, 2020, as well as any written public comments received before its July 8, 2020, meeting. The Committee received a total of 11 written public comments from 10 individuals.
- **Public Hearing** – On June 18, 2020, the Committee held a public hearing by Zoom teleconference. No members of the public addressed the Committee at the public hearing.
- **Recommendation** – The Committee voted at its July 8, 2020, meeting to recommend the proposed rule to the Board of Directors (Board) with certain amendments.

Overview

By a letter dated December 18, 2019, Noelle Reed, Chair of the Commission for Lawyer Discipline (Commission), submitted a formal request on behalf of the Commission for the Committee to initiate the rule proposal process and consider certain amendments related to Rule 1.05, TDRPC, with regard to clients contemplating suicide.[1] As described in Commission Chair Reed's letter, "[s]uicide and threats of suicide are not unusual in legal matters - particularly in emotionally charged, high-conflict cases involving divorce, child custody, and domestic

[1] *See* Letter from Commission Chair Noelle Reed to Committee Chair Lewis Kinard (Dec. 18, 2019) at page 8 of this packet.

violence."[2] The letter further described that "[a]ccording to calls to the Office of the Chief Disciplinary Counsel (CDC) ethics helpline, lawyers involved in these types of cases frequently encounter clients who are contemplating suicide, causing the lawyer to wrestle with his/her moral obligation to try to stop the client from committing the act and his/her ethical obligations to maintain client confidentiality under Rule 1.05."[3]

Currently, the TDRPC do not include a provision expressly addressing or authorizing the disclosure of confidential information[4] with regard to a client contemplating suicide.

Rule 1.05(c)(7) includes an exception permitting the disclosure of confidential information "[w]hen the lawyer has reason to believe it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act." Additionally, Rule 1.05(e) includes a mandatory disclosure requirement related to the prevention of "a criminal or fraudulent act that is likely to result in death or substantial bodily harm to a person" under certain circumstances. However, attempted suicide is not a criminal act under Texas law or the laws of the vast majority of other states.[5] Attempted suicide is also not a fraudulent act.

The Commission request letter offered suggested amendments to Rule 1.05(c)(7) and Rule 1.05(e).[6]

At its January 16, 2020, meeting, the Committee voted to initiate the rule proposal process as requested by the Commission. After careful deliberation, the Committee voted to publish proposed changes to Rule 1.05(c)(7), which would permit a lawyer to reveal confidential information based on a reasonable belief that such disclosure is necessary to prevent a client from dying by suicide.[7] The Committee decided not to propose changes to Rule 1.05(e).[8]

In response to a public comment and to meet the recommendations of the mental health community, the Committee subsequently amended the proposal by changing the phrase "committing suicide" to "dying by suicide."[9] Further, the Committee voted to move the proposed

---

[2] *Id.*

[3] *Id.*

[4] Rule 1.05 broadly defines "confidential information" to include information protected by the lawyer-client privilege, as well as unprivileged information "relating to a client or furnished by the client… acquired by the lawyer during the course of or by reason of the representation of the client." Rule 1.05 generally prohibits a lawyer from revealing confidential information without an applicable exception, and also restricts the use of confidential information to the disadvantage of a client or former client.

[5] As noted in Commission Chair Reed's letter, "although some may argue that a client threatening suicide may be likely to utilize criminally prohibited methods to carry out such an act (thereby potentially authorizing disclosure), a lawyer's ability to act should not turn on this fact-specific and unsettled analysis, particularly in a situation in which time may be of the essence." *See* Commission Chair Reed's Letter at page 8 of this packet.

[6] *See id.*

[7] The version originally published by the Committee, which is available at page 11 of this packet, used the phrase "committing suicide," but subsequent amendments, described herein and available at page 12 of this packet, changed that language to "dying by suicide."

[8] The Committee had concerns that, due to the mandatory language of Rule 1.05(e), an amendment to that provision could lead to potential increased disciplinary liability in situations where the lawyer may be unsure about the likelihood of attempted suicide by a client. The proposed permissive exception, on the other hand, merely *protects* a lawyer who acts on a reasonable belief that such disclosure is necessary to prevent the client from dying by suicide.

[9] *See* the final recommended version of the proposed rule at page 7 of this packet.

new provision regarding clients contemplating suicide to a new subparagraph (c)(10),[10] thereby leaving current subparagraph (c)(7) unchanged.[11] As amended and recommended by the Committee, proposed Rule 1.05(c)(10) provides:

> (c) A lawyer may reveal confidential information:
>
> ***
>
> (10) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from dying by suicide.

Public Comments

The Committee received public comments supporting and opposing the proposed changes.

One lawyer, who is on the board of the American Association of Suicidology, expressed strong support for the proposal, but suggested the Committee amend the proposal to use the phrase "dying by suicide" (an amendment which the Committee subsequently adopted).[12] That lawyer, who frequently speaks to lawyers about suicide prevention, stated, "[t]he subject of confidentiality was always in the mix. For Texas, at least, the problem will be fixed."[13]

Other lawyers expressed concerns that adoption of the proposed changes would require a lawyer to make a mental health determination and, at least one, questioned whether the proposed changes would expose a lawyer to increased liability.[14] However, the proposed rule only gives the lawyer the *permissive option* of disclosing confidential information when the lawyer has a *reasonable belief* it is necessary to prevent the client from dying by suicide, thereby *protecting* the lawyer from professional discipline under such circumstances. A lawyer is not required to disclose confidential information under the proposed rule, nor is the lawyer required to make a medical determination. Further, under the current TDRPC, even if a lawyer knows with certainty that a client intends to attempt suicide imminently, there is no exception that expressly permits a lawyer to reveal confidential information to prevent the client from dying by suicide. The proposed rule will add clarity to the TDRPC, as many lawyers are uncertain how current Rule 1.05 applies to the prevention of client death by suicide.

Another lawyer expressed concerns that the proposed changes do not go far enough and advocated that the disclosure of confidential information should be mandatory when a lawyer reasonably believes it is necessary to prevent a client from dying by suicide.[15] While appreciative

[10] Rule 1.05(c) currently includes eight subparagraphs, and the Board has already approved a separate proposal, which is numbered as proposed Rule 1.05(c)(9).
[11] *See id.*
[12] *See* Public Comment from Searcy Simpson at page 17 of this packet.
[13] *See id.*
[14] *See, e.g.*, Public Comments from Richard Wilson (page 22 of this packet), Clint Blackman III (page 25 of this packet), and Kevin Owens (page 26 of this packet).
[15] *See* Public comment from John Kiraly at page 24 of this packet.

of the lawyer's feedback, the Committee felt the proposed rule strikes an appropriate balance by allowing, but not requiring, the disclosure of confidential information under such circumstances.[16]

Additional Documents

Included on the pages that follow are the final recommended version of proposed Rule 1.05(c)(10), the published proposal that appeared in the April 2020 issue of the *Texas Bar Journal*, amendments to the published proposal, and public comments received.

[16] Subparagraphs (e) and (f) of Rule 1.05 address the mandatory disclosure of confidential information.

Committee on Disciplinary Rules and Referenda Proposed Rule Changes

Texas Disciplinary Rules of Professional Conduct
Rule 1.05. Confidentiality of Information

Proposed Rule 1.05(c)(10) – July 2020 Recommended Version

Proposed Rule (Redline Version)

Rule 1.05. Confidentiality of Information

***

(c) A lawyer may reveal confidential information:

***

> <u>(10) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from dying by suicide.</u>

***

Proposed Rule (Clean Version)

Rule 1.05. Confidentiality of Information

***

(c) A lawyer may reveal confidential information:

***

> (10) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from dying by suicide.

***

STATE BAR OF TEXAS

Noelle Reed
Chair, Commission for Lawyer Discipline

December 18, 2019

Mr. Lewis Kinard, Chair
Committee on Disciplinary Rules and Referenda
P.O. Box 12487
Austin, TX 78711

Dear Chairman Kinard:

Pursuant to Sec. 87.0875(c)(3) of the Texas Government Code, the Commission for Lawyer Discipline (CFLD) respectfully requests that the Committee on Disciplinary Rules and Referenda (CDRR) initiate the rule proposal process and consider certain amendments to (1) Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct (TDRPC); and (2) TDRPC Rule 8.03(f), along with Rule 1.06 and/or Rule 9.01 of the Texas Rules of Disciplinary Procedure (TRDP).

I. TDRPC Rule 1.05 and the Suicidal Client

Suicide and threats of suicide are not unusual in legal matters - particularly in emotionally charged, high-conflict cases involving divorce, child custody, and domestic violence. According to calls to the Office of the Chief Disciplinary Counsel (CDC) ethics helpline, lawyers involved in these types of cases frequently encounter clients who are contemplating suicide, causing the lawyer to wrestle with his/her moral obligation to try to stop the client from committing the act and his/her ethical obligations to maintain client confidentiality under Rule 1.05. Although Rule 1.05 includes exceptions permitting and/or requiring the disclosure of confidential information to prevent a client from committing a criminal or fraudulent act under certain circumstances, under Texas law, suicide is neither a crime nor a fraudulent act. Therefore, under Rule 1.05 as it is currently drafted, an attorney risks violating Rule 1.05 by disclosing confidential information he/she believes is necessary to prevent a client from committing suicide.

Many lawyers who have encountered this situation have told CDC ethics attorneys that they would be willing to risk discipline in order to attempt to prevent a client from committing suicide. Others have indicated that revealing a client's confidential information in an effort to prevent the client from committing suicide would not be worth the risk. All agree that bringing clarity and certainty to the rule would be helpful.

Additionally, although some may argue that a client threatening suicide may be likely to utilize criminally prohibited methods to carry out such an act (thereby potentially authorizing disclosure), a lawyer's ability to act should not turn on this fact-specific and unsettled analysis, particularly in a situation in which time may be of the essence.

Rule 1.05(c)(7) governs the permissive disclosure of confidential information to prevent a criminal or fraudulent act by a client, while Rule 1.05(e) governs mandatory disclosure of information necessary to prevent a criminal or fraudulent act by a client. The following suggested amendments to Rule 1.05 would address the current gap regarding a client contemplating suicide.

1.05(c) A lawyer may reveal confidential information:

…

(7) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act**, or any other act that is likely to result in death or substantial bodily harm to a person, including the client, regardless of whether it constitutes a criminal act**.

…

1.05(e) When a lawyer has confidential information clearly establishing that a client is likely to commit ~~a criminal or fraudulent~~ **an** act that is likely to result in death or substantial bodily harm to a person, **including the client,** the lawyer shall reveal confidential information to the extent revelation reasonably appears necessary to prevent the client from committing the ~~criminal or fraudulent~~ act.

II. Reciprocal Discipline for Federal Court or Federal Agency Discipline.

Currently, the CDC does not have express authority to issue reciprocal discipline against an attorney who has been sanctioned, suspended, or disbarred from practicing in federal court, including a bankruptcy or immigration court. Under TDRP Rule 1.06(CC)(2), reciprocal discipline may be pursued for attorney misconduct that results in discipline issued in another state or in the District of Columbia. Though federal judges and federal agencies, such as the Executive Office for Immigration Review (EOIR), do not sanction attorneys with great frequency, attorneys licensed in Texas should not be able to avoid reporting federal court discipline to the CDC under TDRPC Rule 8.03(f), nor should they be able to avoid reciprocal discipline in Texas, when such discipline is warranted to protect the public.

TDRPC Rule 8.03(f) reads as follows:

A lawyer who has been disciplined by the attorney-regulatory agency of another jurisdiction must notify the chief disciplinary counsel within 30 days of the date of the order or judgment. The notice must include a copy of the order or judgment.

TRDP Rule 1.06(CC)(2) reads as follows:

"Professional Misconduct" includes:

Attorney conduct that occurs in another state or in the District of Columbia and results in the disciplining of an attorney in that other jurisdiction, if the conduct is Professional Misconduct under the Texas Disciplinary Rules of Professional Conduct.

TRDP Rule 9.01 reads as follows:

Orders From Other Jurisdictions: Upon receipt of information indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction, the Chief Disciplinary Counsel shall diligently seek to obtain a certified copy of the order or judgment of discipline from the other jurisdiction, and file it with the Board of Disciplinary Appeals along with a petition requesting that the attorney be disciplined in Texas. A certified copy of the order or judgment is prima facie evidence of the matters contained therein, and a final adjudication in another jurisdiction that an attorney licensed to practice law in Texas has committed Professional Misconduct is conclusive for the purposes of a Disciplinary Action under this Part, subject to the defenses set forth in Rule 9.04 below.

Addressing this gap could be accomplished in several ways: (1) amend TDRP Rule 9.01 to include the following language - "…an attorney licensed to practice law in Texas has been disciplined in another ~~jurisdiction~~ **state, by a federal court, or by a federal agency**…"; (2) amend TDRP Rule 1.06(CC)(2) to include the following language – "Attorney conduct that occurs in another state**, a federal court, before a federal agency,** or in the District of Columbia…"; (3) amend TDRPC Rule 8.03(f) to add the following language – "…the attorney-regulatory agency of another jurisdiction**, including a federal court or federal agency,** …"; or (4) add a separate definition under TDRP Rule 1.06 for "other jurisdiction" that would include federal courts and federal agencies. This change would enable the CDC to rely on orders or judgments of discipline issued by federal courts and agencies to more effectively address attorney misconduct without having to separately prove the underlying allegations and without the risk that the statute of limitations bars a new action for the underlying misconduct.

On behalf of the Commission and the Chief Disciplinary Counsel, we thank you in advance for your consideration of these proposed changes.

Please contact us if you need additional information or have any questions or concerns.

Respectfully yours,

Noelle Reed, Chair
Commission for Lawyer Discipline

Committee on Disciplinary Rules and Referenda Proposed Rule Changes

Texas Disciplinary Rules of Professional Conduct
Rule 1.05. Confidentiality of Information

The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the Committee publishes the following proposed rule. The Committee will accept comments concerning the proposed rule through June 20, 2020. Comments can be submitted at texasbar.com/CDRR or by email to CDRR@texasbar.com. A public hearing on the proposed rule will be held at 10:30 a.m. on June 18, 2020, in Room 101 of the Texas Law Center (1414 Colorado St., Austin, Texas, 78701).

Proposed Rule (Redline Version)

1.05. Confidentiality of Information

***

(c) A lawyer may reveal confidential information:

***

(7) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act, or from committing suicide.

***

Proposed Rule (Clean Version)

1.05. Confidentiality of Information

***

(c) A lawyer may reveal confidential information:

***

(7) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act, or from committing suicide.

*** TBJ

To: Committee on Disciplinary Rules and Referenda (CDRR)

From: CDRR Subcommittee on Proposed Changes to Rule 1.05, Texas Disciplinary Rules of Professional Conduct (Timothy Belton, Amy Bresnen, Claude Ducloux)

Date: July 1, 2020

Re: Proposed Amendments – Proposed Changes to Rule 1.05 with Regard to Clients Contemplating Suicide

CDRR recently published proposed changes to Rule 1.05, Texas Disciplinary Rules of Professional Conduct, to address the disclosure of confidential information as related to clients contemplating suicide.

To meet the recommendations of the mental health community, the Subcommittee previously recommended amending the proposal to change proposed new language from "committing suicide" to "dying by suicide."

Additionally, the Subcommittee now recommends moving the proposed new provision regarding clients contemplating suicide to a new subparagraph (c)(10). This amendment would leave current subparagraph (c)(7) unchanged, and would instead create a new subparagraph that focuses exclusively on the disclosure of confidential information when the lawyer has reason to believe it is necessary to prevent the client from dying by suicide.

As recommended by the Subcommittee, the amended proposal would read as follows (proposed new language underlined):

Proposed Rule
1.05. Confidentiality of Information

***

(c) A lawyer may reveal confidential information:

***

(10) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from dying by suicide.

***

Committee on Disciplinary Rules and Referenda
Proposed Rule Changes

Texas Disciplinary Rules of Professional Conduct
Rule 1.05. Confidentiality of Information
(Confidentiality and Clients Contemplating Suicide)

Public Comments Received
Through July 8, 2020

From: Ken Horwitz
To: cdrr
Subject: RE: New Proposed Rule Changes Published and Public Hearing Update
Date: Wednesday, April 1, 2020 9:21:56 AM

The country is shut down and you are holding a public hearig?

Kenneth M. Horwitz
Glast, Phillips & Murray, P.C.
14801 Quorum Drive, Suite 500
Dallas, Texas 75254
(972) 419-8383 (phone)
(469) 206-5031 (fax)

From: State Bar of Texas - CDRR [mailto:cdrr@texasbar.com]
Sent: Wednesday, April 01, 2020 9:08 AM
To: Ken Horwitz
Subject: New Proposed Rule Changes Published and Public Hearing Update

State Bar of Texas

Proposed Rule Changes

New Proposed Rule Changes Published
April 7, 2020, Public Hearing Update

New Proposed Rule Changes Published for Public Comment

The Committee on Disciplinary Rules and Referenda has published proposed changes to Rule 1.05,

STATE BAR OF TEXAS
BOARD OF DIRECTORS
RESOLUTION

Whereas *TEX. GOV'T. CODE CHAPTER 81, SUBCHAPTER E-1 establishes the Disciplinary Rule Proposal Process relating to the Texas Disciplinary Rules of Professional Conduct (TDRPC) and the Texas Rules of Disciplinary Procedure (TRDP); and*

Whereas *The Committee on Disciplinary Rules and Referenda (CDRR) has submitted proposed amendments to the TDRPC and the TRDP as described below to the State Bar Board of Directors for action in accordance with TEX. GOV'T CODE* Sec. 81.0876; *and*

Whereas *At its regularly scheduled meeting on April 26, 2019, the Board approved two proposals relating to the TDRPC as follows: 1. Adding Rule 1.05(c)(9), which permits a lawyer to disclose confidential information to secure legal advice about the lawyer's compliance with the TDRPC; and 2. Amending Rule 1.02 and adding Rule 1.16, which addresses the representation of clients with diminished capacity; and*

Whereas *At its regularly scheduled meeting on January 24, 2020, the Board approved the addition of Rule 6.05 to the TDRPC, which provides narrow exceptions to certain conflicts of interest rules when a lawyer provides limited pro bono legal services through certain pro bono or assisted pro se programs; and*

Whereas *At its regularly scheduled meeting on April 17, 2020, the Board approved amendments to Rule 3.01, 3.02, and 3.03 of the TRDP, which transfer judicial assignment duties from the Supreme Court of Texas to the Presiding Judges of the Administrative Judicial Regions when a respondent in a disciplinary complaint elects to proceed in district court, and which also revise associated provisions, including geographic restrictions on assignments; and*

Whereas *At its regularly scheduled meeting on June 24, 2020, the Board approved two proposals as follows: 1. Amending Part VII of the TDRPC to update and simplify the lawyer advertising and solicitation rules; and 2. Adding Rule 13.04 to the TRDP, which authorizes a lawyer to voluntarily designate a custodian attorney to assist with the cessation of the designating lawyer's practice and provides limited liability protection for the custodian attorney; and*

Whereas *At its regularly scheduled meeting on September 25, 2020, the Board approved two proposals relating to the TDRPC as follows: 1. Adding Rule 1.05(c)(10), which permits a lawyer to disclose confidential information when the lawyer has reason to believe it is necessary to do so in order to prevent a client from dying by suicide; and 2. Amending Rule 8.03 of the TDRPC, and Rules 1.06 and 9.01 of the TRDP, by extending self-reporting and reciprocal-discipline provisions to cover discipline by a federal court or federal agency.*

BE IT THEREFORE RESOLVED *that the Board of Directors of the State Bar of Texas at its regularly called meeting on the 25th day of September 2020 meeting, considered all proposed amendments to the TDRPC and the TRDP which the board has approved. On motion made, the Board voted to:*

1. *Petition the Supreme Court of Texas, pursuant to TEX. GOV'T CODE Section 81.0877, to order a referendum on the proposed amendments by the eligible members of the State Bar;*

2. *Approve the proposed ballot form for a referendum, as included in* ***Appendix A*** *of this resolution, to be distributed to eligible members of the State Bar of Texas in paper ballot format, and electronic ballot format pursuant to TEX. GOV'T CODE Section 81.0241; and*

3. *Approve the schedule for a referendum vote to begin on February 2, 2021 and end on March 4, 2021 at 5pm CT.*

Resolution adopted *this 25th day of September, 2020 by the State Bar Board of Directors.*

_____
Larry P. McDougal, President
State Bar of Texas

_____
Sylvia Borunda Firth, President-Elect
State Bar of Texas

_____
John Charles Ginn
Chair of the Board
State Bar of Texas

witnessed by

_____
Trey Apffel, Executive Director
State Bar of Texas

Exh. H, Petition

No. 22-

IN THE

Supreme Court of the United States

NEJLA K. LANE,

Petitioner,

v.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

NEJLA K. LANE
Pro Se Petitioner
LANE KEYFLI LAW INTERNATIONAL, LTD.
6041 N. Cicero Avenue, Suite 1/2
Chicago, Illinois 60646
(773) 777-4440
nejla@lanekeyfli.com

June 16, 2023

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(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. In an attorney disciplinary matter in which charges against an attorney must be proven by clear and convincing evidence, and without any substantive evidence of misconduct presented, whether the Hearing Board's and the Review Board's Recommendation and Report (collectively "the Board" and "the Report") violated Petitioner's rights as set forth in the Due Process Clauses of the Fourteenth Amendment to the U. S. Constitution and Article 1§2 of the Illinois Constitution. The Fourteenth Amendment Due Process Clause states: "nor shall any State deprive any person of life, liberty, or due process of law."

   (a) Whether the Administrator's enhancement of a new Rule 8.2(a) violation—when one did not exist in the initial federal district court's citation or suspension order—in the one-count complaint against the Petitioner violated Petitioner's Fourteenth Amendment due process rights.

   (b) Whether the Board's denial of Petitioner's request for a four-day hearing to present Petitioner's evidence, and instead only allowing for two-day hearing, violated Petitioner's Fourteenth Amendment due process rights.

   (c) Whether the Board's exclusion of Petitioner's exhibits during the hearing, including but not limited to the federal

court reporter's *certified* transcripts of court proceedings, violated Petitioner's Fourteenth Amendment due process rights.

(d) Whether the Board's denial of Petitioner's March 14, 2021 Motion for Leave to Add Character Witness, Officer of Consulate General of Turkey pursuant to ARDC Rule 253(c), for mitigation at her hearing, as well as exclusion of the disclosed expert witness, Dr. Michael Fields, from testifying in his capacity as an expert, and instead allowing him to testify only as a character witness, violated Petitioner's Fourteenth Amendment due process rights.

2. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution provides protection to every individual, *including attorneys*, and prohibits states from treating individuals differently based on certain characteristics without a valid justification. The Equal Protection Clause states: "No State shall deny to any person within its jurisdiction the equal protection of the laws." This clause has been interpreted by courts to ensure that individuals are treated equally by the government and that laws do not discriminate against people based on characteristics such as race, gender, religion, or national origin. Whether the Boards' Report violated Petitioner's rights under Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Article 1§2 of the Illinois Constitution when it imposed suspension rather than censure or reprimand, per Rule 108(a) and/or did not allow an ARDC Rule 56 diversion program, for the eligible Petitioner.

3. The First Amendment to the United States Constitution protects the freedom of speech, religion, and the press, as well as the right to assemble and petition the government for redress of grievances. These protections apply to individuals, *including attorneys*, and prohibits the government from abridging their freedom of speech or other constitutional rights. Whether the Boards' Report (affirmed by the Illinois Supreme Court) violated Petitioner's rights under the First Amendment to the U.S. Constitution and of Article 1§4 (Freedom of Speech) and Article 1§5 of the Illinois Constitution (Right to Petition and to Apply for Redress of Grievances).

Illinois Rules of Professional Conduct 8.2(a), 3.5(d) and 8.4(d), as applied, are unconstitutional, restricting attorney speech and in so doing imposing a chilling effect.

LIST OF PARTIES

The Petitioner is Nejla K. Lane, who was the Respondent in the Illinois Attorney Registration and Disciplinary Commission action and Petitioner in the Illinois Supreme Court for leave to file exceptions to the Report and Recommendation of the Review Board. The Respondent is the Illinois Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois ("ARDC").

CORPORATION DISCLOSURE STATEMENT

Petitioner Nejla K. Lane is an individual, not a public company and thus has no parent company, and no public company owns 10% or more of stock.

RELATED CASES

In re: Nejla K. Lane, 2019PR00074. Report and Recommendation of the Hearing Board of the Illinois Attorney Registration and Disciplinary Commission, decided on November 4, 2021.

In re: Nejla K. Lane, 2019PR00074. Report and Recommendation of the Review Board of the Illinois Attorney Registration and Disciplinary Commission, decided on July 12, 2022.

In re: Nejla K. Lane, M.R.031402. The Supreme Court of Illinois, denying Petitioner's Petition for Leave to File Exceptions to the Report and Recommendation of the Review Board, upholding the Review Board's Report and Recommendation, mandate issued on January 17, 2023.

TABLE OF CONTENTS

Table of Contents

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

Cases

Page

Page

Page

Statutes and Other Authorities

Cited Authorities

Page

PETITION FOR A WRIT OF CERTIORARI

Petitioner Nejla K. Lane respectfully petitions this Court for a *Writ of Certiorari* to review the Illinois Supreme Court's decision denying her Petition for Leave to File Exceptions and upholding the Attorney Registration and Disciplinary Commission's disciplinary actions against her, which conflict not only with her rights under the Constitution of the United States of America and the Constitution of the State of Illinois, but also with decisions of this Court in similar disciplinary cases.

CITATIONS TO OFFICIAL AND UNOFFICIAL REPORTS AND ORDERS ENTERED IN THE CASE BY THE LOWER COURTS

The Illinois Supreme Court's Order is published at https://www.iardc.org/DisciplinarySearch under Illinois Supreme Court Miscellaneous Record on 01-17-23, M.R. 031402, www.illinoiscourt.gov and reproduced at Pet. App. 1a-4a.

The Reports and Recommendations of the Review Board and Hearing Board of the Illinois Attorney Registration and Disciplinary Commission are at www.iardc.org, https://www.iardc.org/DisciplinarySearch and reported on July 12, 2022 and on November 4, 2021, are respectively reported at www.Iardc.org and Iardc.org and reproduced at Pet. App. 5a-41a and 42a-65a.

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant 28 U.S.C. §1257(a).

(i) The Judgment or Order sought to be reviewed was entered on January 17, 2023. On April 6, 2023, this Court submitted Petitioner's application (22A883) to extend the time to file the Petition from April 17, 2023 to June 16, 2023 to Justice Barrett. On April 11, 2023, Justice Barrett extended the time to file the Petition to June 16, 2023.

(ii) The Illinois Supreme Court denied Petitioner's Petition for Leave to File Exceptions to the Report and Recommendation of the Review Board of the Attorney Registration and Disciplinary Commission and upheld the Report and Recommendation of the Review Board and issued its Mandate on January 17, 2023.

(iii) The Statutory provision conferring jurisdiction on this Court to review a Writ of Certiorari contesting the Order in question is: (A) U.S. Const. Art. III, §2, Clause 2 ["In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make"]; (B) the authority of the United States Supreme Court to hear cases is set out in 28 U.S.C. §1257(a); and (C) Rule 10(a) of the Rules of the United States Supreme Court ["Review on a writ of *certiorari* is not a matter of right, but of judicial discretion. A petition for a writ of *certiorari* will be granted only for compelling reasons"]. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers: "(a) a *** court *** has entered a decision *** ["that] has so far departed from the accepted and usual course of

judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power."

(iv) This petition does raise the constitutionality of the Illinois Supreme Court's denial of Petitioner's Petition for Leave to File Exceptions to the Report and Recommendation of the Review Board, upholding the Attorney Registration and Disciplinary Commission's disciplinary actions against Petitioner, which has a chilling effect in violation of the constitutional rights of every attorney similarly situated.

CONSTITUTION PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV § 1.

Article 1§2 of the Illinois Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws." Ill. Const. Art. 1§ 2.

The First Amendment of the U.S. Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. Amend. I.

Article 1§4 of the Illinois Constitution provides that "All persons may speak, write and publish freely, being responsible for the abuse of that liberty. In trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense." Ill. Const. Art. 1§4.

Article 1§5 of the Illinois Constitution provides that "[t]he people have the right to assemble in a peaceable manner, to consult for the common good, to make known their opinions to their representatives and to apply for redress of grievances." Ill. Const. Art. 1§5.

STATEMENT OF THE CASE

I. Procedural Background:

On October 31, 2017, Magistrate Judge Sheila Finnegan ("Judge Finnegan") for the Northern District Illinois Eastern Division, filed a formal complaint against the Petitioner with the Executive Committee ("federal district court") for sending one email containing unprofessional and inappropriate language to Judge Finnegan and two emails to Judge Finnegan's law clerk, Allison Engel, while Petitioner was representing the plaintiff, Mr. Barry Epstein, in *Barry Epstein v. Paula Epstein and Jay Frank*, No. 2014-cv-8431, pursuant to 18 U.S.C. §2520, for alleged multiple violations of the Federal Wiretap Act ("Wiretap Act"). Petitioner's three emails were allegedly in violation of the American Bar Association Model Rules of Professional Conduct ("Rule") Rule 3.5(d), which provides that "a lawyer shall not engage in conduct intended to disrupt a tribunal"; and Rule 8.4(d), which provides that "it is professional misconduct

for a lawyer to engage in conduct that is prejudicial to the administration of justice." On November 14, 2017, Petitioner was issued a "citation" *In re: Nejla K. Lane*, No. 17D43 before the Executive Committee. R-Ex. 10, # 123-124; Adm Ex. 5, Citation, pp. 1-2.

On January 22, 2018, the United States District Court for the Northern District of Illinois (federal district court) issued an Order *In re: Nejla Kassandra Lane*, No. 18MC40, suspending Petitioner from the general bar for six (6) months, and the trial Bar for twelve (12) months, *inter alia*, for the "*use of unprofessional and inappropriate language*" and for sending these three emails. Adm Ex. 7, p. 2; (R22, R427, R450). Petitioner was reinstated to both bars, on August 7, 2018, and on June 11, 2019, respectively.

Neither Judge Finnegan nor the federal district court accused, alleged or charged Petitioner with violation of Illinois Rule of Professional Conduct *8.2(a)*, which states: "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, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office*." (Emphasis added). (Adm Ex. 5, ¶6-7, R92-95) (Ex.2, Review Bd, pp. 7-9).

Thereafter, the federal district court forwarded said Attorney Disciplinary record *In re: Nejla K. Lane*, No. 18MC40, to the Illinois Attorney Registration and Disciplinary Committee ("ARDC").

On August 28, 2019, the Illinois Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (hereinafter "ARDC" or "Administrator") brought a one-count complaint (2019PR00074) against the Petitioner, not only charging her for violating Illinois Rules of Professional Conduct 3.5(d) and 8.4(d), but also enhanced the complaint with the charge of a *violation of Rule 8.2(a)*, "*making a false or reckless statement impugning the integrity of a judge,*" a charge which did not exist in the previous federal district court citation or order. (C#11-19). (Emphasis added).

The Illinois State disciplinary matter was set for a hearing to start on March 16, 2021, before the ARDC Hearing Board.

After denying the Petitioner's requested four-day hearing, this matter proceeded to a two-day hearing on March 16 and 17 2021. Thereafter, the first Report and Recommendation of the Hearing Board ("Report") was issued on November 4, 2021, in favor of suspending Petitioner from the practice of law for nine months, with the suspension stayed after six months, followed by six months' probation. Petitioner appealed the Hearing Board's Report and Recommendation to the Review Board, and after a hearing, on July 12, 2022, the Review Board issued its Report and Recommendation affirming the Hearing Board and in favor of suspending Petitioner. On October 25, 2022, Petitioner filed in the Supreme Court of Illinois her Verified Petition for Leave to File Exceptions to the Reports and Recommendation of the Boards. On January 17, 2023, the Supreme Court denied Petitioner's petition and upheld the Boards' Recommendations (M.R.031402), suspending Petitioner

from practice of law, effective February 7, 2023, for nine months, with the suspension stayed after six months, by six months' probation.

II. Factual Background:

The ARDC disciplinary matter arose from an email-incident that transpired while Petitioner was representing Mr. Barry Epstein, in *Barry Epstein v. Paula Epstein et. al.*, No. 14-cv-8431, in the Northern District of Illinois ("NDIL"). R-Ex. #5, #776-801.

Mr. Epstein's federal complaint in the NDIL against his then-wife Ms. Epstein and his wife's then-divorce attorney, Mr. Frank, alleged multiple violations of the Federal Wiretap Act ("Wiretap Act") pursuant to 18 U.S.C. §2520. The complaint, *inter alia*, alleged that Ms. Epstein unlawfully intercepted, disclosed, and used Mr. Epstein's emails (as leverage to gain more in settlement in their divorce litigation pending at the time) in violation of the Wiretap Act.

Initially, Judge Thomas Durkin ("Judge Durkin") dismissed this suit on the pleadings on April 20, 2015; however, plaintiff filed an appeal in the United States Court of Appeals for the Seventh Circuit, titled *Epstein v. Epstein at. al.*, Case No. 15-2076. The Seventh Circuit reversed the dismissal of the federal action against plaintiff's wife, Ms. Epstein, but affirmed the dismissal of the wife's divorce attorney, Mr. Frank, and remanded the case back to Judge Durkin. *See Epstein v. Epstein et. al.*, 843 F.3d 1147 (7th Cir. 2016)[1]. R-Ex.# 1.2 EM, #33-

1. Mr. Epstein appealed the Seventh Circuit ruling dismissing Mr. Frank from the federal action by filing two, one redacted and one

39. (R166, 299). However, Seventh Circuit Judge Richard Posner wrote a separate concurring opinion—*dicta*—to address an issue not raised on appeal, namely "whether the Wiretap Act should be thought applicable" to invasions of privacy as it relates to marital infidelity. Ms. Epstein's federal matter attorney, Mr. Scott Schaefers, adopted Judge Posner's *dicta* and referred to it as the "Posner Defense" thus creating a new "affirmative defense." (*See* R-Ex. 5, #5, actual DE62 at p. 11-12, *See* also R-Ex. 5, # 119 of 1626). (R133) (*See* R-Ex. 5.15, #751-762[2], 5.16 # 426-27 of 1626) (270-272).

On remand, on January 6, 2017, over the objection of Mr. Epstein's counsel (Petitioner), Judge Durkin put the case on an aggressive schedule, stating, among other things: "Well, let's set a trial date and work backwards …. If you're going to talk reasonably and settle about this case - - settle this case, you'll do it under the threat of a trial date." And this matter was set for trial on June 5, 2017. R-Ex.14, pp.1-7, *see* Transcript of Jan. 6, 2017. (R68-69). This truncated discovery schedule was unreasonably short for a colossal Wiretap Act violation case like this one.

Judge Durkin subsequently assigned Judge Finnegan as magistrate judge for an expedited settlement

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unredacted, Petitions for Writ of Certiorari in the Supreme Court of the United States, *Barry Epstein v. Paula Epstein, et.al.*, Case Nos. 16 M 104 (cert. denied) (under seal) and 16-1162 (cert. denied) (hereinafter collectively referred to as "Federal Action").

2. Seventh Circuit Case no. 12-2076 "Posner Defense" (*See* DE158 Defendant). (Resp. Ex.#5, #734, Pltf's Rule 12(f) mtn to Strike, #724, Pltf's Reply-Rule 12(f) mtn., *see* also attached as Ex. 1 Tr. Bate#747 L:20-24).

conference, but after a failed settlement conference and her having probed the parties, this case was again referred to her for discovery supervision, and she then controlled the direction of the discovery, purposefully steering the case consistent with Judge Posner's *dicta*. Judge Posner's *dicta* was treated as binding law and was now referred to as the "Posner Defense". R-Exs. Transcripts Ex. 14; certified federal court pp. 1-434. R-511-523.

Although a judge is presumed to be impartial, Petitioner's perception was that after the settlement conference, Judge Finnegan demonstrated bias because she was making statements favoring Ms. Epstein and referencing Judge Posner's *dicta.* Petitioner's first email, on April 18, 2017, to Judge Finnegan stated the following, *inter alia*: "[t]his is not about 'catching a cheater or infidelity' and Posner's dicta is not the law, there is no such Posner Defense! This case is not filed for moral rights/ wrongs …". R-Ex. 1-3 #1-3 (pp. 28-29).

With respect to the 2nd and 3rd email incidents, on June 23, 2017, June 26, 2017, respectively, Petitioner's emails were in response to a seven-page order received from Judge Finnegan's law clerk, Ms. Allison Engel stating: "Counsel, [a]ttached is the Order denying Plaintiff's Motion for Extension of Time to Complete Discovery and Leave to Depose Jay Frank [207]. *It will be uploaded to the docket on Monday.*" (Emphasis added).

Notably on June 22, 2017, Judge Finnegan had already entered an Order [Docket 213] denying the motion. Yet, this seven-page order appeared not only unnecessary and redundant, but it also mischaracterized facts and impugned Petitioner's character, professionalism, and

competency as a counsel. The Petitioner perceived this not only as a personal attack but also as evidence of judicial bias. The content of these three private emails cannot be construed as false because, arguably, an opinion cannot be false; hence, any finding of the emails expressing opinions to be false inherently violates Petitioner's First Amendment rights to Freedom of Speech and right to Redress of Grievances.

Thereafter, on July 6, 2017, prior to filing a "Motion for Recusal of Judges Thomas M. Durkin and Sheila Finnegan" ("recusal motion"), Petitioner expressed her concerns about apparent judicial bias in open court directly to Judge Durkin. (*See* R-Ex. 14, TR. July 6, 2017, pp. 9-10). Subsequently, the recusal motion emphasized concerns about extreme judicial bias. This right to redress grievances is a fundamental aspect of our democratic society, allowing individuals to seek justice, accountability, and resolution for their concerns or grievances, which is closely connected to the principles of free speech, petition, and access to justice. (U.S. Const., First Amendment & Article I§5 of the Illinois Const.). Judge Durkin denied the recusal motion; however, due to Petitioner's reported incidents of judicial bias and partiality, he set the case to be tried by a jury. (*See* R-Ex. 14, TR of July 24, 2017).

After the recusal motion was denied and a jury trial commenced, the case was settled after the opening statements concluded. On October 31, 2017, Judge Finnegan reported Petitioner to the Executive Committee stating, *inter alia*: "I informed Ms. Lane in writing that ***the communication was improper*** and *instructed* her not to do this again. Despite this, on June 23, 2017, and again on June 26, 2017, Ms. Lane sent lengthy emails criticizing

another ruling. Not only did Ms. Lane violate my April 17 order but the language that she used in the emails was ***wholly unprofessional*** and ***extremely inappropriate***." (Emphasis added). R-Ex. 10, # 125-127. However, Petitioner believes that Judge Finnegan's complaint against her was for expressing her strong opinion about and visceral reaction to the demonstrated bias, and a personal vendetta for calling her out on following *dicta* rather than the law. (*See* ADM Ex. #6, Attorney Response pp. 1-29, at p.16).

On November 14, 2017, the federal district court issued Citation no. 17D43, and on January 22, 2018, issued Order no. 18MC40, suspending Petitioner for violating Rules 3.5(d) and 8.4(a).

On August 28, 2019, the Administrator filed a one-count complaint against Petitioner, not only charging her with Illinois Rules of Professional Conduct (IRCP) 3.5(d) and 8.4(a) violations, but also with a Rule 8.2(a) violation, "*making a false or reckless statement impugning the integrity of federal Magistrate Judge Finnegan.*" (See R000021).

This matter proceeded to a hearing on March 16 and March 17, 2021. Prior to and during the hearing, Petitioner requested, but was denied, the following: (1) Petitioner's "Motion Requesting In-Person Hearing, to Strike Past Remote WebEx Video Deposition Transcripts, and Allow the Use of Audio-Visual Recording Device," as well as the Motion to Reconsider same (C186-238); (2) a four-day hearing to present her evidence (C183-91, C194-98, C205-209, C304); (3) her Motion for Leave to Add the Character Witness,

Officer of the Consulate General of Turkey (C240-252); (4) admission of Petitioner's exhibits, including but not limited to public records such as docket entries, certified court reporters' transcripts of federal court proceedings, email communications which were part of electronic docket entries/filings, reports by Lawyers' Assistance Program (LAP) Counselor's and Dr. Michael Fields's expert medical reports from his treatment of Petitioner (C302-309, C314-346, C347); and (5) the Board also denied Petitioner's disclosed expert witness (Dr. Fields) the opportunity to testify in his capacity as an expert, instead designating him only as a character witness (R337-345). The Board denied Petitioner's otherwise admissible evidence, stating:

> "It's not that you have gone beyond the scope of my cross, the point is, this is not going to come into evidence***. It's a transcript***. That is a transcript of a deposition, right?" "No, no. It's actually - - **it doesn't matter**. ***It's a court proceeding, and it's not coming into evidence***." (Emphasis added) (*See* R316, R246-251).

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari in this case because there is a conflict between the lower court and agency's rulings and the U. S. Constitution as well as decisions of this Court in similar disciplinary cases.

ARGUMENT

The Board's Report and Recommendation to suspend the Petitioner must be immediately stayed and ultimately reversed. The Due Process Clause of the Fourteenth Amendment imposes binding obligations on governmental entities to ensure that individuals are afforded fair treatment and procedural protections. Due process is a fundamental constitutional principle that guarantees certain rights and safeguards in legal proceedings. The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law." In the context of disciplinary hearings or other legal proceedings, due process requires that individuals are afforded a fair and impartial hearing, including the opportunity to present relevant evidence and arguments, challenge evidence presented against them, and call witnesses in their defense. A hearing should be conducted in accordance with these established rules and procedures.

A. DUE PROCESS CLAUSE VIOLATION

The Administrator's enhancement of the one count-complaint to add an uncharged Rule 8.2(a) violation, which did not exist in the federal district court's order to suspend Petitioner, coupled with Administrator's lack of witnesses or evidence to support this violation, deprived Petitioner of the opportunity to redress this violation and thus violated Petitioner's due process rights.

Prior to the hearing, *supra*, Petitioner requested, but was denied, the following: (1) Petitioner's "Motion Requesting In-Person Hearing, to Strike Past Remote

WebEx Video Deposition Transcripts, and Allow the Use of Audio-Visual Recording Device," as well as the Motion to Reconsider same (C186-238); (2) a four-day hearing to present her evidence. (C183-91, C194-98, C205-209, C304); (3) Motion for Leave to Add the Officer of the Consulate General of Turkey to testify as a character witness (C240-252); and (4) admission of Petitioner's exhibits, including but not limited to public records such as docket entries, certified court reporters' transcripts of federal court proceedings, email communications which were part of electronic docket entries/filings, reports by Lawyers' Assistance Program (LAP) Counselors and Dr. Michael Fields's expert medical reports from his treatment of Petitioner (C302-309, C314-346, C347). Similarly, the Board also denied Petitioner's disclosed expert witness (Fields) the opportunity to testify in his capacity of expertise, instead designating him only as a character witness (R337-345). These denials violated Petitioner's Fourteenth Amendment due process rights (R481-536) (R13, R371-72) by depriving her of a meaningful opportunity to respond to the charges against her. The Board denied Petitioner's exculpatory and otherwise admissible evidence, stating:

> "It's not that you have gone beyond the scope of my cross, the point is, this is not going to come into evidence***. It's a transcript***. That is a transcript of a deposition, right?" "No, no. It's actually - - **it doesn't matter**. ***It's a court proceeding, and it's not coming into evidence***." (Emphasis added) (*See* R316, R246-251).

The Board's unreasonable exclusion of admissible evidence constitutes a violation of due process, which

impacted the fundamental fairness of the proceedings. "The fundamental requisite of due process of law is the opportunity to be heard." *Greene v. Lindsay*, 456 U.S. 444, 455 (1982). Procedural due process, guaranteed to all persons by the Fourteenth Amendment to the U.S. Constitution, is triggered where, as here, the government has deprived a person of life, liberty, or property. Also, the Board's exclusion of Petitioner's evidence is contrary to §120.560 of Illinois Administrative Procedures Act. *See also In re Silvern*, 92 Ill. 2d 188, 196 (1982). At an administrative hearing, such transcripts should have been admitted under the relaxed evidentiary standards of Section 120.560 of the Illinois Administrative Procedures Act ("technical rules of evidence, including the hearsay rule, need not be mechanically followed in attorney discipline cases").

"Since a disciplinary action's primary purpose is to protect the public from unqualified or unethical practitioners (*In re Nesselson* (1966), 35 Ill. 2d 454), technicalities will not be invoked either to shield an attorney from discipline (*In re Czachorski* (1969), 41 Ill. 2d 549) or to prevent him from establishing a legitimate defense (*In re Ashbach* (1958), 13 Ill. 2d 411). Therefore, we find that the hearing panel did not err in weighing all of respondent's testimony (including his Ebert testimony) to help determine the true facts." *In re Yamaguchi*, 118 Ill. 2d 417, 424 (1987).

B. THE ILLINOIS SUPREME COURT'S ORDER VIOLATED THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION

The Equal Protection Clause requires the government to have a valid and legitimate reason, known as a compelling state interest, or at a minimum a rational basis, to treat people differently for legal purposes. Laws or government actions that discriminate against certain individuals or groups without a compelling justification may be found unconstitutional. The Equal Protection Clause plays a crucial role in promoting fairness, equality, and non-discrimination in the United States, and it applies to all individuals*, including attorneys*, ensuring that they are entitled to equal protection under the law. Petitioner asserts that there is substantial disparity between the discipline recommended and imposed on worse misconduct by other lawyers, which violates the Equal Protection Clause violations. As the Supreme Court has consistently held, "arbitrary and irrational discrimination violates the Equal Protection Clause under even [the] most deferential standard of review." *Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71, 83, 100 L. Ed. 2d 62, 108 S. Ct. 1645 (1988). Thus, a law will fail under rational basis review if "'the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that [the court] can only conclude that the [legislature's] actions were irrational.'" *Gregory v. Ashcroft*, 501 U.S. 452, 471, 115 L. Ed. 2d 410, 111 S. Ct. 2395 (1991) (quoting *Vance v. Bradley*, 440 U.S. 93, 97, 59 L. Ed. 2d 171, 99 S. Ct. 939 (1979)); accord *City of Cleburne, Tex. v. Cleburne Living Center, Inc.*, 473 U.S. 432, 446, 87 L. Ed. 2d 313, 105 S. Ct. 3249 (1985) [**78]

(finding that a government "may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational"). *Allen v. Leis*, 154 F. Supp. 2d 1240, 1269.

Attorneys with conducts remotely similar to Petitioner were either not disciplined at all or were only *censured*, were eligible for Rule 108(a) deferral, reprimanded, or granted a Rule 56 diversion progra*m*[3]. (R456, Ex. A, Respondent's Appeal Brief p. 31). According to the ARDC Rule 56 Diversion Eligibility[4]Petitioner was otherwise eligible for the diversion because the conduct in question did not involve misappropriation of funds; criminal acts; actual loss to a client or other persons; or dishonesty, fraud, deceit, or misrepresentation. Congruently, "[t]he Hearing Board also found that Respondent's misconduct *did not arise from a dishonest or improper motive*." Ex. 2, Review Bd. Report p. 9. (Emphasis added). The Administrator's refusal to allow Petitioner the Rule 56 diversion program violated Petitioner's equal protection under the Fourteenth Amendment.

It is true that equal protection does not require equal or proportional penalties for dissimilar conduct. (*Bradley,*

3. https://www.iardc.org/Files/Rules_of_the_ARDC.pdf

4. Rule 56 Diversion Eligibility. The Administrator and respondent may agree to a diversion of the respondent (a) to a program designed to afford the respondent an opportunity to address concerns identified in the investigation if the Administrator concludes that diversion would benefit and not harm the public, profession and the courts, and the conduct under investigation does not involve any "misappropriation of funds; criminal acts; actual loss to a client or other persons; or dishonesty, fraud, deceit, or misrepresentation."

79 Ill. 2d at 416, citing *McGowan v. Maryland* (1961), 366 U.S. 420, 427, 6 L. Ed. 2d 393, 400, 81 S. Ct. 1101, 1105-06.) Neither does it deny the State the power to draw lines that treat different classes of people in different ways. (See, *e.g., Esposito,*121 Ill. 2d at 502 (drivers whose blood-alcohol content is 0.10% or more and those whose blood-alcohol content falls below that mark are not so similarly situated as to require identical treatment)). These observations, however, do not answer the question of whether a classification or distinction such as was made in Petitioner's case is valid. If the power to classify has been exercised arbitrarily, the State cannot justify the legislation simply by labeling it a "classification." (*People v. McCabe* (1971), 49 Ill. 2d 338, 341, 275 N.E.2d 407.) There must be a rational basis for distinguishing the class to which the law applies from that to which it does not. (*People v. Coleman* (1986), 111 Ill. 2d 87, 95, 94 Ill. Dec. 762, 488 N.E.2d 1009). To determine whether a statutory classification is justified by a rational basis, we must examine its purpose. *People v. Reed*, 148 Ill. 2d 1, 9 (1992).

The discipline recommended and imposed is contrary to Article 1§2 of the Illinois Constitution, which further shows its violation of due process under the Fourteenth Amendment, as well as being an equal protection violation, as the amendment states: "No person shall be deprived of life, liberty or property without *due process of law nor be denied the equal protection of the laws*." (Emphasis added).

Petitioner's expression of her opinion is factually dissimilar from cases such as *In re Kelly,* 808 F.2d 549, 549 (7th Cir. 1986), in which an attorney filed a motion to recuse a judge from participating in the appeal of a sex-

discrimination suit brought against a Catholic-affiliated university. In *Kelly*, the attorney filed an affidavit, which stated that the judge, a graduate of the university and its law school, was personally opposed to abortion, an issue allegedly raised by the university. The attorney was ordered to substantiate his allegations about the judge. He referenced the judge's membership in a Catholic legal society and his alleged participation in its presentations about the issue of abortion. *Id.* at 551. Thereafter, the attorney was ordered to show cause why he should not be disciplined for violating Fed. R. Civ. P. 11. The court discharged the rule to show cause. Under Fed. R. App. P. 46(c), a lawyer was subject to discipline for unbecoming conduct and Rule 11, although not a part of the appellate rules, helped to define such conduct. Furthermore, lawyers were obligated to be scrupulous about the accuracy of their sworn statements about fellow lawyers and judges. However, the court concluded that discipline was not warranted because of the possibility that the affidavit was the *result of clumsy, rather than dishonest*, drafting. *Kelly*, 808 F.2d at 552. (Emphasis added).

When comparing the *Kelly* case with Petitioner's, it is obvious that Mr. Kelly made factual and false statements, but Petitioner in said emails was venting, when she expressed her opinion. Mr. Kelly's statements were false, but the veracity of Petitioner's statements are "debatable" because she was expressing an opinion. Mr. Kelly's false statement of fact was under oath about a judge in a motion that is available to the public, but Petitioner's emails were neither under oath nor in a motion available to the public view, rather, they were in a small private group email. (R49, R112, R456, R518, R286). *See* also R-Ex. 11, Petitioner's Response to the Citation, #498 of 532, Adm.

Ex. #6, #1-17. However, in *In re Kelly*, the court held that *discipline was not warranted*, the attorney was not even investigated by the state bar; yet, in Petitioner's matter she was being investigated for almost five years, and is being treated differently than Mr. Kelly. In *Kelly*, the court held, "to punish an attorney for a single violation of Rule 11 of the Federal Rules of Civil Procedure *would violate the speech and petition clauses of the First Amendment*." *Kelly*, 808 F.2d at 550. (Emphasis added).

Although Petitioner was already punished by the federal district court, by being suspended, the ARDC disciplinary matter continued to-date. Petitioner was denied equal protection under law because other attorneys were differently treated for worse conduct.

In re Benjamin Edward Harrison, July 12, 2007, Commission No. 06CH36. Though, "it was proven that Respondent made ***false statements in two motions*** and ***acted inappropriately in court***," the Hearing Board stated that they believed that the Respondent had learned his lesson and believed that Respondent is unlikely to engage in similar misconduct in the future and recommended Respondent be censured." (*Id.* p. 8-9).

The recommended discipline for Petitioner is far more drastic, because there is not only a six-month suspension, but also an additional six months' probation, contrary to *In re Kelly* and *In re Barringer.* Ex. 1, Review Bd. at 14.

C. THE REPORTS FAILED TO MAKE A FINDING THAT PETITIONER KNEW THAT ANY CLAIMS IN HER EMAIL WERE FALSE, WHICH IS WHY RULE 8.2 IS UNCONSTITUTIONAL AS APPLIED TO PETITIONER

RULE 8.2(a) states:

> 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, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

The Report failed to make any finding at all as to whether Petitioner knew that any of the claims that she made in her emails were false, much less that she knew that they were false by clear and convincing evidence. The Administrator did not identify any evidence in the record showing that Petitioner made any of these statements with reckless disregard as to their truth or falsity. The Report does not allege intent to make false statements, nor can intent or reckless disregard be inferred from any of the Boards' findings. There is not even an allegation of awareness on the part of Petitioner that she knew that there was insufficient evidence to support her claims. *See Cranwill v. Donahue*, 99 Ill.App.3d 968, 426 N.E.2d 337, 55 Ill. Dec. 362 (Ill. App. 1981). Reckless disregard, in regard to derogatory statements, requires proof that the defendant had a "high degree of awareness of their probable falsity." *Garrison v. Louisiana* (1964), 379 U.S. 64, 74, 85 S. Ct. 209, 215, 13 L.Ed.2d 125. *Accord Kuwik v.*

Starmark Star Marketing and Admin., Inc., 619 N.E.2d 129, 156 Ill.2d 16, 188 Ill. Dec. 765 (Ill. 1993). The Reports provided none.

Instead, the Reports conclude that Petitioner "had no objective, factual basis for her comments". (Pet. App.at 22a). However, neither Report establishes that she knew that her comments were false nor that she had a high degree of awareness of their probable falsity. It is well established that an individual may hold a belief regardless of whether it is objectively reasonable. *See, e.g. Ford v. McGinnis*, 352 F.3d 582, 590 (2d Cir. 2003) ("We refused to evaluate the objective reasonableness of the prisoner's belief"). The Reports point to nothing in the record which shows that Petitioner believed her assertions against the Judge were untrue (at the time she made them), much less had a high awareness of their probable falsity.

The Administrator failed to identify any evidence in the record which shows Petitioner's intent. *See Holder v. Caselton*, 657 N.E.2d 680, 275 Ill.App.3d 950 (Ill. App. 1995) ("Defendants assert that plaintiff raises this issue for the first time on appeal, and plaintiff appears to concede that point in her reply brief by failing to respond or point out where the record contains any objection she made at the trial level.") Instead, the Administrator invited the Review Board to ignore the plain language of the Rule and the decisions of the U.S. and Illinois Supreme Courts, and substitute in their place another rule altogether: "[a] lawyer who attacks a judge's honesty or integrity must have an objectively reasonable basis for doing so in order to escape liability under Rule 8.2(a)." Administrator's Brief at p. 18, relying upon Review Board decisions. The Administrator, however, does not even claim that these

decisions are binding upon this Board. But those of the U.S. and Illinois Supreme Court are.

Again, in each instance, the Administrator bore the burden of proving by clear and convincing evidence that Petitioner knew or had a high probability of awareness that these statements were untrue, regardless of whether the Report found that they were in fact untrue. Accordingly, the Report is bereft of any basis for concluding that Petitioner has violated rule 8.2(a).

Inasmuch as the Administrator has failed to identify any evidence in the record showing that Petitioner had a high degree of, or any, awareness of the probable falsity of her statements, thus the Report's finding that Petitioner violated Rule 8.2(a) was against the manifest weight of the evidence, and as such, violated Petitioner's First and Fourteenth Amendment (due process) rights.

D. RULE 8.2(a) AS APPLIED HERE, IS UNCONSTITUTIONAL

The First Amendment to the United States Constitution protects the freedom of speech, religion, and the press, as well as the right to assemble and petition the government for redress of grievances. These protections apply to individuals, *including attorneys*, and prohibit the government from abridging their freedom of speech or other constitutional rights.

Attorneys have the right to criticize the government and its officials, including judges, as part of their practice of law. Attorneys, as did Petitioner, may file motions to recuse judges who have shown bias, and such motions

may include criticism of the judge's conduct or decisions. These actions are protected under the First Amendment free speech and freedom of expression. Attorneys have the same constitutional protections as any individual, including the right to criticize the government and its officials. Citizens have a right under the United States' constitutional system to criticize government officials and agencies. "The courts are not, and should not be, immune to such criticism. Government censorship can no more be reconciled with the national constitutional standard of freedom of speech and press when done in the guise of determining 'moral character,' than if it should be attempted directly." *Konigsberg v. State Bar of Cal.*, 353 U.S. 252, 253 (1957).

Rule 8.2(a) is a government restriction on speech in that it is aimed directly, and solely, at a "statement". This Court has set forth the following guidelines for determining the constitutionality of governmental restrictions on speech:

> *First*, the regulation ... in question must further an important or substantial governmental interest unrelated to the suppression of expression... *Second*, the limitation of First Amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interest involved.

Procunier v. Martinez, 416 U.S. 396, 413, 94 S. Ct. 1800, 40 L. Ed. 2d 224 (1974), *Accord, Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1054, 111 S. Ct. 2720, 2734 (1991), expressly applying the *Martinez* test to state bar sanctioning of attorney speech. The Administrator fails to identify any

governmental interest unrelated to the suppression of expression furthered by Rule 8.2(a), and does not even claim the limitation on First Amendment freedoms are no greater than is necessary or essential to the protection of the particular governmental interest involved. Therefore, the Rule as applied is unconstitutional. *Holder, supra.*

Here, in his discussion of reckless disregard, the Administrator ignores the applicable judicial precedent in favor of non-binding Board decisions which appear to not even be aware of this Court's precedent on this point. The one U.S. Supreme Court decision he cites, *Cantwell v. Connecticut,* 310 U.S. 296, 309-10 (1940), is distinguishable because in Cantwell there was a government interest unrelated to the suppression of expression, inasmuch as one could be convicted under the statute the petitioner was accused of violating "if he commits acts or make statements likely to provoke violence and disturbance of good order." *Cantwell,* 310 U.S. at 309. Again, the Administrator failed to identify any similar purpose forwarded by Rule 8.2(a), and the only purpose asserted by the comments to the Rule itself is completely unrelated to the actions complained of here.

Ultimately, by failing to dispute that the sanctioning of Petitioner under Rule 8.2(a) contravenes both steps of the *Martinez* (and *Gentile*) test, the Administrator has conceded that enforcement of Rule 8.2(a) in this situation is in violation of Petitioner's First Amendment rights.

It is apparent from the comments to this Rule that it was never intended to apply to private or semi-private communications such as this to begin with. Rather, the comments show that the Rule is aimed at preventing public

attacks upon judges running for office. Therefore, the Rule is bereft of any important or substantial governmental interest unrelated to the suppression of expression which applies to the facts of this matter.

Reviewing the particular facts found here shows that Rule 8.2(a) was applied without regard to any purpose other than suppression of expression. It is only the Petitioner's statements that are criticized in connection with this Rule. In contrast to the allegations pertaining to Rule 3.5(d), which refers to "disruption of the tribunal" or Rule 8.4(d) which is aimed at preventing "prejudice to the administration of justice", to prove a violation of Rule 8.2(a) the government need only establish that the Petitioner made the relevant statements with the requisite intent and, again, the Comments show clearly that the Rule was intended to protect the integrity of judicial elections, which could not conceivably be prejudiced here.

In addition, here, the limitations on Petitioner's First Amendment freedoms are greater than is necessary or essential to the protection of the particular governmental interest involved. In fact, the sanctions sought here demonstrate that the rule is being used to kill a fly with a surface-to-air-missile. The proposed sanction of six months' suspension is likely to leave the Petitioner bereft of income.

These disciplinary proceedings not only involve penalties that are vastly greater than is necessary or essential to the protection of whatever particular governmental interest is involved, but they are in fact entirely redundant and unnecessary. Accordingly, Rule 8.2(a), as applied to private communications between

judges and attorneys, or ones shared with an extremely small email group of individuals who are highly unlikely to disseminate it further to the public is unconstitutional. Public officials, including judges, should be open to criticism as part of their public role. They should be willing to engage in dialogue, address concerns, and provide justifications for their decisions when necessary. This fosters accountability and helps to maintain public trust in the government and the judiciary.

E. RULE 3.5(d), AS APPLIED HERE, IS UNCONSTITUTIONAL

Rule 3.5(d) provides that "[a] lawyer shall not engage in conduct intended to disrupt a tribunal." The Reports found that Petitioner violated this rule because the fact that she "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." (Pet. App. at 54a). The Report found that Petitioner's "emails were inappropriate and unprofessional under any circumstances (and that) her conduct was improper". *Id.*

Nowhere, however, did the Reports explain how or why exactly Petitioner's sending of inappropriate emails, even if unprofessional or improper, were intended to "disrupt the tribunal." Quite the contrary, all the evidence suggests that the only thing the Petitioner intended to do was to vent her frustration about personal attacks on her person and competency in said June 23, 2017 Order. Because the Report entirely fails to even suggest how Petitioner intended to disrupt the tribunal, much less how she actually did it, the Report fails to show how the

Administrator established a violation of Rule 3.5(d) by clear and convincing or, in fact, any, evidence.

Inasmuch as the Administrator has failed to identify any evidence in the record showing that Petitioner intended to disrupt the Court with her emails, it must be concluded that the Report's finding that Petitioner violated Rule 3.5(d) was against the manifest weight of the evidence, and so the Report should be reversed.

Petitioner asserts that Rule 3.5(d) was applied as punishment of her speech through disciplinary proceedings in a manner vastly beyond what is necessary to protect the government's interests in its tribunals not being disrupted, and in fact is entirely superfluous, since the judge can easily and far more effectively punish such disruptions as they occur with her contempt powers. The Administrator did not, however, cite the pages of the record relied on because nothing in the record shows any evidence of what is necessary to protect the government's interests in its tribunals not being disrupted, or whether those interests could be adequately served by some purpose other than the Board's overbroad use of its disciplinary powers to destroy Petitioner's career. Accordingly, the Rule is also unconstitutional as applied here.

F. RULE 8.4(d), AS APPLIED HERE, IS UNCONSTITUTIONAL

Rule 8.4(d) provides that "[i]t is professional misconduct for a lawyer to: … (d) engage in conduct that is prejudicial to the administration of justice."

Illinois Courts have relied upon Black's Law Dictionary to define prejudice as "more than a mere inconvenience but a '[d]amage or detriment to one's legal rights.' Black's Law Dictionary (10th ed. 2014)." *Direct Auto Ins. Co. v. Reed*, 2017 IL App (1st) 162263, 76 N.E.3d 85 (Ill. App. 2017). The Report fails to identify any damage to the administration of justice by Petitioner's emails. Even the purported prejudice to the Judge by being required to do her job is mere inconvenience. Among several hundreds of emails, Judge Finnegan appears to be inconvenienced by one single email, which was clearly everything that was held on the April 18, 2017 court proceeding transcript record and Petitioner's responsive email. (R262, R324-3370. (*See* Petitioner's Appeal Brief).

A definition of "prejudicial to the administration of justice" which allows virtually any attorney who appears before any tribunal to be sanctioned cannot be correct. Such a definition would give the Administrator an easy pretext to discipline any attorney at any time at his whim. *See Grayned v. City of Rockford*, 408 U.S. 104, 108-09, 92 S. Ct. 2294, 2299 (1972) ("A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application."). Rule 8.4(a) is not necessarily vague on its face, but the Administrator's proposed definition would make it so.

The Professional Rules 8.2(a) 3.5(d), and 8.4(d), the punishment of speech, even if prejudicial to justice, through disciplinary proceedings, is vastly beyond what is necessary to protect the government's interests in justice not being prejudiced, and in fact is entirely superfluous,

since Judges can (and normally do) protect justice from prejudice by errant attorneys through their contempt powers." Petitioner's Brief at 46.

The Administrator's response is premised entirely upon the claim that Petitioner's argument is "devoid of any citations to authority." Administrator's Brief at 25. Petitioner's private emails are considered her *opinion*; she was emphatic and zealous, and she was not making her official statement for the record, accordingly this course of action is in fact permitted under the Article 1§5 of the Illinois Constitution, "[t]he people have the right … to make known their *opinions* to their representatives and to apply for *redress of grievances*." *Id.* (Emphasis added). Though the Hearing Board Report and Recommendation ("the Report") determined that the Administrator proved that the Petitioner had violated Rules 3.5(d), 8.2(a) and 8.4(d) of the Illinois Rules of Professional Conduct, the charged misconduct, by clear and convincing evidence, it failed to show how the Administrator proved any violations by any legal standard at all, much less clear and convincing evidence. The Report is against the manifest weight of the evidence. These rules as applied here are unconstitutional, specifically, Rule 8.2(a), as applied to private communications between Judges and attorneys, or ones shared with an extremely small group of individuals who are highly unlikely to disseminate it further. The use of these Rules to punish Petitioner for the three emails, to Magistrate Judge Sheila Finnegan and/or her law clerk, violates Petitioner's First Amendment right to freedom of speech. (R68, R291, R323).

It appears that the reason for imposing six- months' suspension followed by six-month probation, is because it

is aimed to silence her speech, potentially having a chilling effect on all attorneys' freedom of speech. Its effect is to sanction attorney speech, in violation of the First Amendment, which requires that the Government's chosen restriction on the speech at issue be "actually necessary" to achieve its interest. There must be a direct causal link between the restriction imposed and the injury to be prevented. *United States v. Alvarez*, 567 U.S. 709, 725 (2012). Here, neither the suspension nor the probation do bear such a link. Ergo, the disciplinary action imposed on Petitioner is not necessary or proportionate to the alleged violation or harm caused and it should be "reversed".

CONCLUSION

Petitioner respectfully requests that this Court grant certiorari**,** as this case presents a "manifest injustice" in the form of suspending the Petitioner 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 recommended conditions ***including supervision of her law practice***. (Emphasis added). The suspension and probation for innocent and opinion-based ***speech-related conduct*** should not include the suspension or supervision of Petitioner's law practice, which does negatively affect Petitioner's professional reputation. This kind of discipline has a long-lasting effect on Petitioner's ability to practice law, earn a living, attract future clients and maintain a thriving practice.

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Nejla K. Lane
Pro Se Petitioner
Lane Keyfli Law
International, Ltd.
6041 N. Cicero Avenue,
Suite 1/2
Chicago, Illinois 60646
(773) 777-4440
nejla@lanekeyfli.com