APPENDIX TABLE OF CONTENTS[1]

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[1] In the state court proceedings, the Attorney Grievance Commission of Maryland is the "Petitioner" and Jason Edward Rheinstein is the "Respondent." As such, as they appear in documents within the Appendix, the term "Petitioner" refers to the Attorney Grievance Commission of Maryland, and the term "Respondent" refers to Jason Edward Rheinstein.

OPINION OF THE FOURTH CIRCUIT
(FEBRUARY 5, 2019)

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ATTORNEY GRIEVANCE
COMMISSION OF MARYLAND,

Plaintiff-Appellee,

v.

JASON EDWARD RHEINSTEIN,

Defendant-Appellant.

No. 17-2127

Appeal from the United States District Court for the District of Maryland, at Baltimore. Marvin J. Garbis, Senior District Judge. (1:17-cv-02550-MJG)

Before: WILKINSON and MOTZ, Circuit Judges, and TRAXLER, Senior Circuit Judge.

PER CURIAM:

Jason Edward Rheinstein appeals the district court's orders granting the Attorney Grievance Commission of Maryland's motion to remand for lack of federal jurisdiction and denying Rheinstein's emergency motion to stay remand pending appeal or for reconsideration or for appropriate relief. We dismiss in part and affirm in part the district court's orders

denying the notice of removal and remanding the case to state court and denying Rheinstein's emergency motion.

"An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to [28 U.S.C. §§ 1442 or 1443 (2012)] shall be reviewable by appeal or otherwise." 28 U.S.C. § 1447(d) (2012). Rheinstein removed the action pursuant to the federal officer removal statute, 28 U.S.C. § 1442, and, pursuant to 28 U.S.C. §§ 1331, 1441(a (2012), on the ground that it presented a federal question.

> A defendant seeking to remove a case under Section 1442 must establish (1) [he] is a federal officer or a person acting under that officer; (2) a colorable federal defense; and (3) the suit is for an act under color of office, which requires a causal nexus between the charged conduct and asserted official authority.

Northrup Grumman Tech. Servs., Inc. v. DynCorp Int'l LLC, 865 F.3d 181, 186 (4th Cir. 2017) (internal citations and quotation marks omitted). Because Rheinstein failed to meet his burden of establishing that he met these criteria, we affirm the portion of the district court's orders remanding for lack of subject matter jurisdiction under the federal officer removal statute and denying the emergency motion. The remainder of the appeal must be dismissed because this court lacks jurisdiction to review the district court's order. *See* 28 U.S.C. § 1447(d).

We therefore dismiss the appeal in part and affirm in part. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED IN PART, AFFIRMED IN PART

MEMORANDUM AND ORDER DENYING EMERGENCY MOTION (SEPTEMBER 22, 2017)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ATTORNEY GRIEVANCE
COMMISSION OF MARYLAND,

Plaintiff,

v.

JASON EDWARD RHEINSTEIN,

Defendant.

Civil Action No. MJG-17-2550

Before: Marvin J. GARBIS,
United States District Judge.

The Court has before it Defendant's Emergency Motion to Stay Remand Order Pending Filing of Notice of Appeal; or In The Alternative, Emergency Motion for Reconsideration; or In The Alternative; Motion for Appropriate Relief [ECF No. 89] and the materials submitted relating thereto. The Court has held a telephonic hearing and has had the benefit of the arguments of counsel.

In the Memorandum and Order Re: Remand [ECF No. 86], issued September 20, 2017, the Court granted Plaintiff's Motion to Remand [ECF No. 68]. The Court

entered an Order Remanding Case [ECF No. 87] to the state court on the same day.

Defendant alleges that the Court's Order Remanding Case was erroneously issued and that appellate review is not prohibited by 28 U.S.C. § 1447(d) because removal should have been permitted under 28 U.S.C. § 1442 (federal officer or federal agency jurisdiction). The Court, having considered Defendant's current contentions, confirms its decision that remand is appropriate as held in the Memorandum and Order Re: Remand and, again states that even if the Court had jurisdiction, it would abstain from proceeding with the case in federal court.

Defendant's asserted precedents do not support his entitlement to have his state court attorney grievance proceedings adjudicated by the federal, rather than state, court systems.

First, Defendant cites *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249 (4th Cir. 2017). *Sawyer* states that a government contractor could remove a state tort action to federal court based on the contractor's assertion that it had a colorable federal defense of government-contractor immunity. *Id.* at 256. However, Defendant's position as a relator in a previous *qui tam* action does not confer him federal jurisdiction in his current attorney removal proceeding case. Even though the federal officer removal statute under 28 U.S.C. § 1442 covers actions "for or relating to any act under color of such office," Defendant's participation in the *qui tam* proceedings was not done under color of office. And, as explained in this Court's first remand order, putting aside the question of whether a *qui tam* relator is analogous to a government contractor, Defendant has not shown a colorable federal defense.

Attorney Grievance Commission of Maryland v. Rheinstein, Civ. No. MJG-16-1591, ECF No. 30, at 5-7 (Mar. 17, 2017).

Defendant also cites *U.S. ex rel. Kelly v. Boeing Co.*, 9 F.3d 743 (9th Cir. 1993). *Boeing* considered the constitutionality of the *qui tam* provisions in the False Claim Act. It has nothing to do with subject matter jurisdiction or removal to federal court. Defendant picks a choice quote from the part of the opinion that discusses whether a *qui tam* plaintiff has standing to sue under the False Claims Act, which is not at issue here. Def.'s Emergency Mot. ¶ 2.

Next, Defendant cites *Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765 (2000). In *Vermont Agency of Nat. Res.*, a private relator attempted to bring suit in federal court on behalf of the United States against a State under the False Claims Act. The Supreme Court held that although a private individual has standing to bring suit in federal court on behalf of the United States under the False Claims Act, the Act does not subject a State to liability in such actions. *Id.* at 788. The jurisdictional question was whether a State was a "person" for purposes of *qui tam* liability. This is irrelevant to the analysis of the instant case presenting the question of whether Rheinstein committed attorney misconduct as a Maryland-barred lawyer.

Finally, Defendant cites *Northrop Grumman Tech. Servs., Inc. v. DynCorp Int'l LLC*, 2016 WL 3346349, at *1 (E.D. Va. June 16, 2016), a case in which the district court granted a plaintiff's emergency motion to stay the remand order until the appeal was resolved. On its own, the decision does not present a reason why, in this case, the Court should provide Defendant

his requested delay of the state attorney grievance proceeding.

Moreover, this Court may not reconsider its ruling. *See In re Lowe*, 102 F.3d 731, 736 (4th Cir. 1996) ("Accordingly, we hold that a federal court loses jurisdiction over a case as soon as its order to remand the case is entered. From that point on, it cannot reconsider its ruling . . . "). The case that Defendant cites to challenge this proposition addresses an attempt to secure a more favorable state forum by using a motion for voluntary dismissal. *Wingo v. State Farm Fire & Cas. Co.*, 2013 WL 4041477, at *1 (W.D. Mo. Aug. 8, 2013). It is entirely irrelevant.

Defendant has not explained why he has not—or at least not yet—filed an appeal from the Court's Order on the § 1442 claim of federal jurisdiction and sought promptly to have the appellate court to stay the instant case pending resolution of his appeal. Perhaps he will now do so. In any event, with the state court trial set to proceed in little over a week, this Court does not find it appropriate to grant Defendant the delay in facing the grievance proceedings pending against him.

[* * *]

Accordingly, Defendant's Emergency Motion to Stay Remand Order Pending Filing of Notice of Appeal; or In The Alternative, Emergency Motion for Reconsideration; or In The Alternative; Motion for Appropriate Relief [ECF No. 89] is DENIED.

SO ORDERED, this Wednesday, September 22, 2017.

/s/ Marvin J. Garbis
United States District Judge

MEMORANDUM AND ORDER RE: REMAND OF THE DISTRICT COURT OF MARYLAND (SEPTEMBER 20, 2017)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND,

Plaintiff,

v.

JASON EDWARD RHEINSTEIN,

Defendant.

Civil Action No. MJG-17-2550

Before: Marvin J. GARBIS, United States District Judge.

The Court has before it Plaintiff Attorney Grievance Commission of Maryland's Motion to Remand for Lack of Federal Jurisdiction [ECF No. 68] and the materials submitted relating thereto. The Court has held a telephonic hearing and has had the benefit of the arguments of counsel.

I. Background

This Court has previously granted a Motion to Remand in this case. *Attorney Grievance Commission of Maryland v. Rheinstein*, Civ. No. MJG-16-1591, ECF

No. 30 (Mar. 17, 2017) ("First Remand Order"). Defendant alleges that the existence of new facts warrant the filing of a successive Notice of Removal.

The underlying cause of action remains the same. On February 17, 2016 the Attorney Grievance Commission of Maryland ("AGC") filed, in the Maryland Court of Appeals, a Petition for Disciplinary of Remedial Actions against Jason Edward Rheinstein ("Rheinstein"). On February 19, 2016, the Court of Appeals of Maryland transmitted the Petition to the Circuit Court for Anne Arundel County to hold a judicial hearing pursuant to Maryland Rule 16-757.

On May 23, 2016, Rheinstein filed his first Notice of Removal, contending that this Court can exercise subject matter jurisdiction over the case under 28 U.S.C. § 1441 (federal question jurisdiction) and 28 U.S.C. § 1442 (federal officer jurisdiction). Civ. No. MJG-16-1591, ECF No. 1. AGC filed a Motion to Remand, which this court granted on March 17, 2017. In its First Remand Order, this Court found no federal jurisdiction based on a federal question, no jurisdiction based on federal officer standing, and that federal abstention principles favored a remand. Following the Order, trial was set in the Circuit Court for Anne Arundel County for September 5, 2017.

On Friday, September 1, 2017, Rheinstein filed a second Notice of Removal in this Court, contending that AGC's recent interrogatory responses and deposition testimony gave rise to new and different grounds for removal. Notice of Removal ¶ 4, ECF No. 1. The state court proceeding was stayed on September 5, 2017, the next business day.

In this instant motion, the AGC once again seeks remand for lack of federal jurisdiction.

II. Jurisdictional Principles

The party invoking federal jurisdiction has the burden of establishing that removal is proper and that the Court has subject matter jurisdiction. *Mulcahey v. Columbia Organic Chemicals Co.*, 29 F.3d 148, 151 (4th Cir. 1994). Removal statutes should be strictly construed, and if "federal jurisdiction is doubtful, a remand is necessary." *Id.* Indeed, a federal court is to "presume . . . that a case lies outside its limited jurisdiction unless and until jurisdiction has been shown to be proper." *United States v. Poole*, 531 F.3d 263, 274 (4th Cir. 2008) (emphasis in original).

"A successive removal petition is permitted only upon a 'relevant change of circumstances'—that is, 'when subsequent pleadings or events reveal a new and different ground for removal.'" *Reyes v. Dollar Tree Stores, Inc.*, 781 F.3d 1185, 1188 (9th Cir. 2015) (emphasis in original). The phrase "different grounds" can mean "a different set of facts that state a new ground for removal" or "new facts in support of the same theory of removal." *Cain v. CVS Pharmacy, Inc.*, 2009 WL 539975, at *2 (N.D.W. Va. Mar. 4, 2009).

Even if there is federal jurisdiction, federal courts must abstain from interfering in state proceedings "absent extraordinary circumstances." *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982). If an ongoing state proceeding exists, "'reinstituting the action in the federal courts' is impermissible; indeed to do so would involve a loss of time and duplication of effort." *Telco Commc'ns, Inc. v. Carbaugh*, 885 F.2d 1225, 1228 (4th Cir. 1989).

III. Discussion

Rheinstein has failed to establish a new and different basis for his second attempt at removal under either the federal officer or federal question doctrines. Moreover, even if the Court were to have jurisdiction, the Court would abstain and remand the case to state court so that the trial may proceed.

A. Federal Question Jurisdiction

Under 28 U.S.C. § 1331, to determine whether federal question jurisdiction exists, a court must look to the complaint to decide whether the cause of action is created by federal or state law. *Mulcahey*, 29 F.3d at 151. If the cause of action is created by state law, "federal question jurisdiction depends on whether the plaintiff's demand 'necessarily depends on resolution of a substantial question of federal law.'" *Id.* (emphasis in original).

This Court has already found that the instant suit presents claims arising under the Maryland Lawyer's Rules of Professional Conduct ("MLRPC"), and that the Maryland Court of Appeals is the "ultimate arbiter" of claims against attorney misconduct in the State of Maryland. First Remand Order at 3-4. The Maryland Court of Appeals "has original and complete jurisdiction over attorney discipline proceedings in Maryland." *Attorney Grievance Comm'n of Maryland v. O'Leary*, 433 Md. 2, 28 (2013). Thus, the cause of action is created by state law. The fact that some of Rheinstein's alleged unethical actions occurred in a number of federal cases "does not render the instant case one presenting claims based upon federal law." First Remand Order at 4.

However, Rheinstein argues that this second Notice of Removal "presents different grounds for removal" based on (1) AGC's responses to Defendant's interrogatories, and (2) AGC's corporate deposition testimony from August 7, 2017. Notice of Removal ¶¶ 4, 28, ECF No. 1.

First, Rheinstein argues that AGC's interrogatory responses show that AGC intends to litigate a federal *qui tam* case in state court. Specifically, AGC's response to Interrogatory No. 19 incorporates a document entitled "Petitioner's Schedule A," which provides a list of Averments stating details about when and how Rheinstein allegedly violated MLRPC rules. ECF No. 1-3 at 16, ECF No. 1-4. Rheinstein contends that seven of these Averments in Schedule A raise questions of federal law which render his case removable to federal court: Averment Nos. 32, 36, 54, 56, 57, 66, and 67. Def.'s Opp. to Mot. for Remand at 9, ECF No. 76.

These Averments list instances in which Rheinstein was alleged to have frivolously filed a suit in violation of MLRPC Rule 3.1.[2] For example, Averment No. 32 states that Rheinstein filed *United States of America Ex rei. Charles E. Moore v. Cardinal Financial Company, L.P. et al. ("Qui Tam I")*, in violation of MLRPC 1.1, 3.1, 8.4(a) and 8.4(d), and Averment No. 36 states that Rheinstein filed *United States of America ex rei. Charles E. Moore v. Robert S. Svehlak, et al. ("Qui Tam II")*, in violation of the same provisions. *Id.*

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[2] MLRPC Rule 3.1 states that "[a]n attorney shall not bring . . . a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous."

Rheinstein argues that these Averments do not provide any information about the bases for ACM's allegations regarding these qui tam cases. Rather, he concludes, these Averments can only "conclusively establish" that "Plaintiff is actually making claims about the merits of those [*qui tam*] cases." Notice of Removal ¶ 26, ECF No. 1. Under Rheinstein's reasoning, "[a] claim that an action is 'frivolous' or violates MLRPC 3.1 is inherently a claim about its merits." *Id.* at 17 n 21. Thus, he argues that Schedule A and the response to Interrogatory No. 19 necessarily show that ACG is inappropriately attempting to litigate a federal *qui tam* action in state court.[3] *Id.*¶ 26.

Second, Rheinstein offers corporate deposition testimony from AGC purporting to show that AGC intended to litigate the merits of a federal *qui tam* action in state court. Def.'s Opp. to Mot. for Remand at 12-13, ECF No. 76. Rheinstein quotes testimony in which AGC's corporate designee, when asked about the "facts" that rendered the filing of the attorney misconduct complaint, referred to the "facts as provided in the pleadings" of the *Qui Tam* I action. *Id.* at 13. Thus, Rheinstein reasons, AGC is "asserting [that] the filing of Qui Tam I violated MLRPC 3.1," and that AGC's testimony conclusively established that it is "seeking to litigate the merits of Qui Tam I because there is no way that Plaintiff can prove its claim . . . unless Qui Tam I was 'frivolous.'" *Id.* at 15.

Rheinstein's attempt to conflate his attorney misconduct proceeding with the underlying federal cases is improper. The Averments referenced in the

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[3] The same argument appears to apply for the remainder of the Averments at issue. ECF No. 1 at ¶ 34-42; ECF No. 76 at 9-11.

interrogatory responses and Schedule A simply allege that the filing of the *qui tam* actions is part of the conduct constituting a violation of several MLPRC Rules, including the rule regarding frivolous pleadings by attorneys.

Attorney misconduct proceedings do not litigate the merits of the underlying cases that gave rise to those proceedings. Indeed, courts are able to evaluate whether a filed claim is frivolous without making a ruling on the merits of the underlying case, and without providing a remedy to the parties in that case. *See, e.g.*, *Attorney Grievance Comm'n of Maryland v. Ucheomumu*, 450 Md. 675, 711 (2016) (finding a violation of MLRPC 3.1 without resolving the underlying defamation litigation); *Attorney Grievance Comm'n v. Worsham*, 441 Md. 105, 128 (2014) (finding a violation of MLRPC 3.1 without resolving the underlying tax litigation).

AGC argues that the Averments simply "correlate the factual allegations in the Petition with the Rules of Professional Responsibility and identify the cases[ ] in which violations are alleged to have occurred." Pl.'s Mem. Of Law at 6, ECF No. 681. Moreover, AGC argues, the Averments are presented to "establish a course of conduct by which the Respondent used the threat of lawsuits and the filing of [the] same as leverage to attempt to obtain settlement funds." Pl.'s Supp. Mem. Of Law at 5, ECF No. 70. *See also* Pl.'s Reply Mem. at 2-3, ECF No. 81. According to AGC, the Averments are part of a story, and allegedly show specific instances in which Rheinstein "exceeded the bounds of zealous advocacy" by "filing multiple meritless motions, filing multiple qui tam actions . . . , threatening to sue a law firm, threatening to file a

complaint with the Attorney Grievance Commission if an appeal was not dropped, repeatedly filing motions that did not comply with the Rules, accusing counsel of unethical conduct and then suing him and using coercive and offensive means in an attempt to effect a settlement."[4] Pl.'s Reply Mem. at 4, ECF No. 81.

The plain purpose of these Averments is to demonstrate the existence or pattern of attorney misconduct, not to litigate the merits of a federal *qui tam* action.[5] To follow Rheinstein's reasoning would mean that state courts would not be able to exercise jurisdiction over most, perhaps all, alleged attorney misconduct where the misconduct occurred in relation to proceedings in federal court.

Rheinstein also argues that his claims present a federal question because the interpretation and application of state ethical rules in federal court is a question of federal law, citing *In Re Snyder*, 472 U.S. 634, 645 (1985). But his reliance on this case is unavailing. *In Re Snyder* involved a federal court disciplining a lawyer under Rule 46 of the Federal Rules of Appellate Procedure—a federal court sanction. It did not involve a state attorney disciplinary agency petitioning a lawyer under the state's own professional

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[4] Rheinstein's argument that each of these Averments constitutes a distinct claim that should be evaluated for separate federal jurisdiction is irrelevant. ECF No. 76 at 2. The Court does not find federal jurisdiction in any of the seven Averments.

[5] Rheinstein also argues that because the Qui Tam I case is supposedly "pending," ACM's decision to bring a disciplinary proceeding prior to its conclusion is a "transgression from its own policy of abjuring involvement in on-going litigation." ECF No. 1 at ¶ 27. This argument is irrelevant to the analysis of whether a federal question exists in the instant case.

conduct rules. The case simply states that a federal court should look to federal standards for issuing federal sanctions. It does not remove a state court's ability to rely upon its own professional responsibility rules and interpretations for disciplining its own attorneys. *See Attorney Grievance Comm. v. Pak*, 400 Md. 567, 600 (2007); *see also* Md. Rule 19-308.5 ("[A]n attorney admitted by the Court of Appeals to practice in this State is subject to the disciplinary authority of this State, regardless of where the attorney's conduct occurs.").

Finally, Rheinstein argues that with regard to the Qui Tam I and Qui Tam II cases, he has federal defenses relating to "procedural due process, substantive due process, and equal protection." Notice of Removal ¶ 46, ECF No. 1. However, "'a case may not be removed to federal court on the basis of a federal defense' . . . even if the complaint begs the assertion of the defense" and even if "the defense is the only question truly at issue in the case." *Pinney v. Nokia, Inc.*, 402 F.3d 430, 446 (4th Cir. 2005), *citing Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S. California*, 463 U.S. 1, 13 (1983).

Accordingly, the Court does not have federal question jurisdiction over the instant case.

B. Federal Officer Removal

Under 28 U.S.C. § 1442(a), a "civil action or criminal prosecution" may be removed to federal court when filed against "any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office . . . ."

For reasons discussed more fully in the First Remand Order, this Court has found that it does not have federal officer jurisdiction over the instant case. First Remand Order at 5-6. In short, Rheinstein's role as a relator in the *qui tam* actions cannot be equated to that of a federal prosecutor or federal agent taking direction from a Government officer. *Id.* at 6. For the same reasons, his role in assisting a "Bankruptcy Trustee" in Bankruptcy Court is also insufficient to confer federal jurisdiction. Def.'s Opp. to Mot. for Remand at 23, ECF No. 76.

Rheinstein's attempt to revive this federal officer removal argument does not rest on a different basis for removal, nor does it contain new facts that would now support the prior theory of removal. *Cain*, 2009 WL 539975, at *2 (N.D.W. Va. Mar. 4, 2009).[6]

Accordingly, the Court does not have federal question jurisdiction over the instant case.

C. Federal Abstention Principles

For reasons discussed more fully in the First Remand Order, even if this Court were found to have the ability to exercise jurisdiction over the instant case, it would abstain to exercise that jurisdiction because of the State's "extremely important interest" in "maintaining and assuring the professional conduct

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[6] Rheinstein's reliance on *Kolibash* is unavailing. In *Kolibash*, the 4th Circuit held that removal to federal court in an attorney discipline proceeding was proper because it was brought against a U.S. Attorney and implicated a "colorable claim of [official] immunity." *Kolibash v. Comm. on Legal Ethics of W. Virginia Bar*, 872 F.2d 571, 575 (4th Cir. 1989). *Kolibash* does not stand for the proposition that all attorney discipline proceedings are removable to federal court.

of the attorneys it licenses." *Middlesex Cty. Ethics Comm.*, 457 U.S. at 433-34. So long as Rheinstein's claims can be determined in state proceedings, and "so long as there is no showing of bad faith, harassment, or some other extraordinary circumstance that would make abstention inappropriate," the federal courts should abstain.[7] *Id.* at 435.

No extraordinary circumstances exist in this case, and no new allegations have been raised to change the Court's prior conclusion that it should abstain and remand the case. *See* First Remand Order at 7-8.

Indeed, the case for abstention is stronger on this second Motion to Remand because exercising jurisdiction now would involve a severe "loss of time and duplication of effort." *Telco Commc'ns, Inc.*, 885 F.2d at 1228. Defendant's instant Notice of Removal was filed on 11:49 PM on Friday, September 1, 2017, before the Labor Day holiday. Trial was set to begin in state court the very next business day, Tuesday, September 5, 2017. To restart all proceedings in federal court on the eve of trial would result in a waste of judicial and party resources.

Accordingly, even if this Court has federal jurisdiction, this Court will apply federal abstention principles to abstain from exercising jurisdiction.

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[7] That AGC withdrew its abstention argument in the supplemental briefing does not bear on whether this Court can rely on abstention principles to decline to exercise jurisdiction in this case, even if jurisdiction exists. ECF No. 70 at 13.

IV. Conclusion

For the foregoing reasons:

1. Plaintiff Attorney Grievance Commission of Maryland's Motion to Remand for Lack of Federal Jurisdiction [ECF No. 68] is GRANTED.

2. By separate Order the Court shall remand the case to state court.

SO ORDERED, this Wednesday, September 20, 2017.

/s/ Marvin J. Garbis
United States District Judge

ORDER REMANDING CASE OF THE DISTRICT COURT OF MARYLAND (SEPTEMBER 20, 2017)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ATTORNEY GRIEVANCE
COMMISSION OF MARYLAND,

Plaintiff,

v.

JASON EDWARD RHEINSTEIN,

Defendant.

Civil Action No. MJG-17-2550

Before: Marvin J. GARBIS,
United States District Judge.

For reasons stated in the Memorandum and Order Re: Remand issued herewith:

1. This case, originally filed in the Circuit Court for Anne Arundel County, Maryland as *Attorney Grievance Commission v. Rheinstein*, Case No. C-02-CV-16-000597 and removed to this Court therefrom is hereby REMANDED.
2. The Clerk shall take all action necessary to effect the remand promptly.
3. The State Court may proceed with this case.

4. This Court does not award costs herein.

SO ORDERED, this Wednesday, September 20, 2017.

/s/ Marvin J. Garbis
United States District Judge

MEMORANDUM AND ORDER RE: REMAND OF THE DISTRICT COURT OF MARYLAND (MARCH 17, 2017)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ATTORNEY GRIEVANCE
COMMISSION OF MARYLAND,

Plaintiff,

v.

JASON EDWARD RHEINSTEIN,

Defendant.

Civil Action No. MJG-16-1591

Before: Marvin J. GARBIS,
United States District Judge.

The Court has before it Plaintiff Attorney Grievance Commission of Maryland's Motion for Remand for Lack of Federal Jurisdiction [ECF No. 12] and the materials submitted relating thereto. The Court finds a hearing unnecessary.

I. Background

On February 17, 2016, the Attorney Grievance Commission of Maryland ("AGC") filed, in the Maryland Court of Appeals, a Petition for Disciplinary or Remedial Actions [ECF No. 2] against Jason Edward

Rheinstein ("Rheinstein"). On February 19, 2016, the Court of Appeals of Maryland transmitted the Petition to the Circuit Court for Anne Arundel County to hold a judicial hearing pursuant to Maryland Rule 16-757. [ECF No. 3].

On May 23, 2016, Rheinstein filed a Notice of Removal [ECF No. 5] in this Court. Rheinstein contends that this Court can exercise jurisdiction over the case by virtue of 28 U.S.C. § 1441 (federal question jurisdiction) and 28 U.S.C. § 1442 (federal officer jurisdiction).

By the instant motion, the AGC seeks remand due to the absence of federal jurisdiction and, alternatively, contends that even if there were federal jurisdiction, this Court should abstain.

II. Jurisdictional Principles

Rheinstein, the party invoking federal jurisdiction, has the burden of establishing that removal is proper and that the Court has subject matter jurisdiction. *Mulcahey v. Columbia Organic Chemicals Co.*, 29 F.3d 148, 151 (4th Cir. 1994).

Removal statutes should be strictly construed, and if "federal jurisdiction is doubtful, a remand is necessary." *Id.*

Even there is federal jurisdiction; federal courts must abstain from interfering in state proceedings "absent extraordinary circumstances." *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982).

III. Discussion

As discussed herein, Rheinstein has failed to establish that the Court can exercise jurisdiction over the instant case. Moreover, even if the Court were to have jurisdiction, it would abstain and remand the case to proceed in state court.

A. Federal Question Jurisdiction

Federal question jurisdiction is provided by 28 U.S.C. § 1331 which states:

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

To determine whether federal question jurisdiction exists, a court must look to the complaint to decide whether the cause of action is created by federal or state law. *Mulcahey*, 29 F.3d at 151. If the cause of action is created by state law, "federal question jurisdiction depends on whether the plaintiff's demand 'necessarily depends on resolution of a substantial question of federal law.'" *Id.* Federal question jurisdiction over a state law claim will arise if the claim states a federal issue that is actually disputed and substantial, "which a federal forum may entertain without disturbing" the balance of federal and state judicial proceedings. *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308, 314 (2005).

The instant suit presents claims arising under the Maryland Attorneys' Rules of Professional Con-

duct. The fact that some—but by no means all[1]—of Rheinstein's alleged unethical actions related to cases in federal court[2] does not render the instant case one presenting claims based upon federal law.

The Maryland Court of Appeals is the "ultimate arbiter of any claims concerning attorney misconduct in the State of Maryland, and the rules and procedures governing an Attorney Grievance action are predicated upon the Court of Appeals having jurisdiction to hear such a case." *Attorney Grievance Comm. v. Pak*, 400 Md. 567, 600 (2007); *see also* Md. Rule 19-308.5 ("[A]n attorney admitted by the Court of Appeals to practice in this State is subject to the disciplinary authority of this State, regardless of where the attorney's conduct occurs.")

Accordingly, the Court does not have federal question jurisdiction over the instant case.

B. Federal Officer Removal

Federal officer jurisdiction is provided by 28 U.S.C. § 1442(a)(1) that permits the removal of "[a] civil action or criminal prosecution that is commenced in a State court and that is against . . . any officer (or

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[1] Moreover, even if all of Rheinstein's alleged unethical actions had occurred in federal cases, the instant case would, nevertheless, not necessarily be within the federal question jurisdiction of this Court.

[2] The AGC Complaint alleges that in certain related cases in federal and state court, Rheinstein filed frivolous complaints and motions, sent profane and threatening emails to opposing counsel, and in a hearing erroneously led a state court to believe that the opposing party and its officers were under an investigation by the Department of Justice, among other things.

any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office . . . ."[3]

Federal officer jurisdiction "must be predicated upon averment of a federal defense." *Mesa v. California*, 489 U.S. 121, 139 (1989). In *Kolibash v. Comm. on Legal Ethics of W. Va. Bar*, 872 F.2d 571, 574 (4th Cir. 1989), the Fourth Circuit allowed removal of a state disciplinary proceeding involving a United States Attorney by liberally construing the defendant United States Attorney's answer as "akin to pleading a defense of [prosecutorial] immunity."

Rheinstein contends that, as counsel for the relator[4] in a qui tam proceeding under the False Claims Act, 31 U.S.C. § 3729 *et seq.* ("FCA"), he acted as an agent of the United States and that claims predicated upon his acts as federal agent may be removed. *See Watson v. Philip Morris Companies, Inc.*, 551 U.S. 142, 151 (2007) ("Where a private person acts as an assistant to a federal official in helping that official to

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[3] Removal is appropriate where the proceeding is a civil action or a criminal prosecution, however a "disciplinary proceeding does not function as a civil action because it does not involve two parties, one seeking damages or equitable relief from another . . . Nor does a disciplinary proceeding function as a criminal prosecution since punishment of an attorney is not the goal of the disciplinary process." *Matter of Doe*, 801 F.Supp. 478, 483 (D.N.M. 1992). In the instant case, this disciplinary proceeding does not qualify as a civil action or criminal prosecution.

[4] *Qui tam* relators are not officers of the United States; rather a relator "is merely a representative agent of the Government, not an appointed 'officer.'" *Friedman v. Rite Aid Corp.*, 152 F.Supp.2d 766, 771 (E.D. Pa. 2001).

enforce federal law, some of these same considerations may apply." (emphasis added)).

Although counsel for a relator is an agent for the Government for standing purposes in an FCA case, counsel is not subject to the same type of control that a federal prosecutor is and does not take direction from a Government officer.[5] Moreover, Rheinstein has failed to show that he "was required by the government to take actions that subjected [him] to liability under state law." *Alsup v. 3-Day Blinds, Inc.*, 435 F.Supp.2d 838, 846 (S.D. Ill. 2006).

The U.S. District Court for the District of Maryland has adopted the Maryland Rules of Professional Conduct, thus there is no conflict between the ethical duties Rheinstein owed as counsel for a relator and that he owed as a member of the Maryland Bar. *See* Local Rule 704 (D.Md. 2016).

The ethical misconduct claims asserted by the AGC Complaint are not based on the fact that Rheinstein was counsel in federal *qui tam* litigation. In fact, Rheinstein is alleged to have engaged in a course of unethical conduct in regard to related state and federal cases.

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[5] *Compare Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 398 (5th Cir. 1998) (allowing removal under § 1442 in a case against the manufacturers of Agent Orange because the Government exercised control over the composition and production of Agent Orange and compelled the defendants to deliver it under threat of criminal sanctions).

Rheinstein has not presented any plausible federal law defense. Moreover, Rheinstein's attempted reliance upon 28 U.S.C. § 1442(a)(2) is unavailing.[6]

Accordingly, the Court does not have federal officer jurisdiction over the instant case.

C. Abstention Principles

Even if this Court were found to have the ability to exercise jurisdiction over the instant case, it would abstain to exercise that jurisdiction.

The Supreme Court recognizes "a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances." *Middlesex Cty. Ethics Comm.*, 457 U.S. at 431. Federal courts must abstain from interfering if the state court proceedings "constitute an ongoing state judicial proceeding," if the proceedings "implicate important state interests," and if there is "an adequate opportunity in the state proceedings to raise constitutional challenges." *Id.* at 432.

The attorney disciplinary action against Rheinstein is an ongoing state judicial proceeding involving important state interests in regard to the regulation of

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[6] 28 U.S.C. § 1442(a)(2) provides removal for "[a] property holder whose title is derived from any such officer, where such action or prosecution affects the validity of any law of the United States." Rheinstein contends—without presenting authority or persuasive reasoning—that a state court would not have access to records of the pertinent *qui tam* cases, as they are under seal and subject to the control of the federal court, and would not have the power to obtain testimony from key witnesses, such as government agents. Nor has Rheinstein presented any plausible basis for concluding that § 1442(a)(2) is at all pertinent to the instant motion.

attorney misconduct. The state courts provide adequate opportunity for Rheinstein to defend himself and to raise any available constitutional issues. The instant case presents no circumstances, much less extraordinary circumstances, warranting the exercise of federal jurisdiction over the instant case.

Accordingly, were the Court to have found federal jurisdiction, it would nevertheless have abstained and remanded the case to proceed in state court.

V. Conclusion

For the foregoing reasons:

1. Plaintiff Attorney Grievance Commission of Maryland's Motion for Remand for Lack of Federal Jurisdiction [ECF No. 12] is GRANTED.
2. By separate Order the Court shall remand the case to state court.

SO ORDERED, on Friday, March 17, 2017.

/s/ Marvin J. Garbis
United States District Judge

ORDER OF THE FOURTH CIRCUIT DENYING PETITION FOR REHEARING EN BANC (MARCH 11, 2019)

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ATTORNEY GRIEVANCE
COMMISSION OF MARYLAND,

Plaintiff-Appellee,

v.

JASON EDWARD RHEINSTEIN,

Defendant-Appellant.

No. 17-2127
(1:17-cv-02550-MJG)

Before: WILKINSON and MOTZ, Circuit Judges, and TRAXLER, Senior Circuit Judge.

The court denies the petition for rehearing and rehearing *en banc*. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing *en banc*.

Entered at the direction of the panel: Judge Wilkinson, Judge Motz, and Senior Judge Traxler.

For the Court

/s/ Patricia S. Connor
Clerk

NOTICE OF APPEAL
(SEPTEMBER 25, 2017)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

ATTORNEY GRIEVANCE
COMMISSION OF MARYLAND,

Plaintiff,

v.

JASON EDWARD RHEINSTEIN,

Defendant.

Civil Action No.: 1-cv-17-2550-MJG

NOTICE IS HEREBY GIVEN Defendant Jason Edward Rheinstein ("Defendant") hereby appeals to the United States Court of Appeals for the Fourth Circuit from the orders entered in this action on the 22nd day of September, 2017 [ECF No. 90; the "September 22nd Order"] and the 20th day of September 2017 [ECF No. 87; the "September 20th Order"].[1] The September 20th Order granted the *Emergency Motion for Remand for Lack of Federal Jurisdiction* [ECF No. 68] filed by Plaintiff Attorney Grievance Commission of Maryland ("Plaintiff") on

[1] The September 22nd Order was entered on even date herewith.

September 5, 2017.[2] The September 22nd Order denied the Defendant's Emergency Motion to Alter/Amend the September 20th Order [ECF No. 89] as well as the alternative motion to stay the effect of the September 20th Order pending the filing of this Notice of Appeal.[3]

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[2] Defendant maintains that the September 20th Order and the September 22nd Order were legally incorrect for a number of reasons, which will be fully articulated by the Defendant on appeal. *See also Defts. Memo. of Law in Supp. of Rem.* (ECF No. 82-1) (Articulating why this case was removable). The September 20th Order and the September 25th Order are reviewable on appeal, in accordance with 28 U.S.C. § 1447(d), because this case was removed, pursuant to, *inter alia*, 28 U.S.C. § 1442(a). *Ripley v. Foster Wheeler, LLC*, 841 F.3d 207, 209 (4th Cir. 2016) (citing Removal Clarification Act of 2011, Pub. L. No. 112-51, 125 Stat. 545, 546 (2011)) ("In 2011, Congress amended 28 U.S.C. § 1447(d) to allow appeals from remand orders pursuant to § 1442") (Emphasis added). *Decatur Hosp. Auth. v. Aetna Health, Inc.*, 854 F.3d 292, 296 (5th Cir. 2017) (citing *Lu Junhong v. Boeing Co.* 792 F.3d 805 (7th Cir. 2015)) ("[I]f appellate review of an 'order' has been authorized, that means review of the 'order.' Not particular reasons for an order, but the order itself"). The standard of review is *de novo*. *Ripley*, 841 F.3d at 209 ("We review de novo issues of subject matter jurisdiction, including removal").

[3] Among other things, the Court, relying on *In re Lowe*, 102 F.3d 731 (4th Cir. 1996), erroneously concluded that it did not have jurisdiction to reconsider or recall its remand order once that order had been entered. The Court's reliance on *Lowe* was misplaced. *Lowe* stands for the proposition that where 1447(d) precludes review of a remand order, a Court may not reconsider it once it has been entered. *Lowe* is inapposite in a case where 1447(d) expressly allows review of the remand order at issue. *See Barlow v. Colgate Palmolive Co.*, 772 F.3d 1001, 1012 (4th Cir. 2014) (*en banc*) (citing *Lowe*, 102 F.3d at 734) ("In *Lowe*, the district court remanded the case due to lack of complete diversity between the parties, and the defendants moved for "reconsideration"—not vacatur—of the remand order . . . This Court then determined that, indisputably, [the language `not

Respectfully submitted,

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Dated: September 25, 2017

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reviewable on appeal or] otherwise' in § 1447(d) includes reconsideration by the district court"); *Rodgers v. Gilbert*, 2012 U.S. Dist. LEXIS 13219 (W.D. Ky., Feb. 3, 2012) ("[T]he language of the statute [amended § 1447(d)] is clear and leaves little room for confusion. It appears to allow remands based upon § 1442 removals to be reviewed. Therefore, the Court is not barred from reviewing its remand order on reconsideration") (Emphasis added); *Wingo v. State Farm Fire & Cas. Co.*, 2013 U.S. Dist. LEXIS 104135 at *3-*5 (W.D. Mo., Jul. 25, 2013) (District court had jurisdiction to reconsider remand order where CAFA authorized appellate review); *Dalton v. Walgreen Co.*, 2013 U.S. Dist. LEXIS 75086 (E.D. Mo., May 29, 2013) (District court had jurisdiction to reopen case and stay remand order where CAFA authorized appellate review). *C.f.*, *Ruppel v. CBS Corp.*, 701 F.3d 1176, 1179 ("[I]t denied CBS's motion, noting 28 U.S.C. § 1447(d) stripped it of jurisdiction to reconsider the remand order. The district court did not address the exception in that subsection for cases, like this one, removed under section 1442") (Emphasis added).

PETITION FOR DISCIPLINARY OR REMEDIAL ACTION [AGC COMPLAINT] (FEBRUARY 17, 2016)

IN THE COURT OF APPEALS OF MARYLAND

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND,

Petitioners,

v.

JASON EDWARD RHEINSTEIN,

Respondent.

Misc. Docket AG No. 77, September Term, 2015

The Attorney Grievance Commission of Maryland, by Glenn M. Grossman, Bar Counsel, and Lydia E. Lawless, Assistant Bar Counsel, its attorneys, files this Petition for Disciplinary or Remedial Action against Jason Edward Rheinstein, Respondent, and represents to the Court as follows:

1. On December 8, 2015, Bar Counsel received direction from the Attorney Grievance Commission to file this petition pursuant to Maryland Rule 16-751(a).

2. The Respondent was admitted to the Maryland Bar on December 15, 2005. At all times relevant hereto, he maintained an office for the practice of law in Anne Arundel County.

Background

3. Imagine Capital, Inc. ("Imagine") is a private commercial lender which finances residential rehabilitation projects in Maryland. Imagine's two officers are Robert Svehlak and Neil Roseman.

4. In September 2008, Charles and Felicia Moore, husband and wife, entered into a construction loan agreement for $200,000 with Imagine. Mr. Moore pledged four Baltimore City properties as collateral for the loan. After $67,419.92 was disbursed to Mr. Moore, he defaulted on the monthly interest payments.

5. In June 2009, Imagine, through its then-attorney, James Holderness, Esquire, filed a complaint for confessed judgment. *Imagine Capital, Inc. v. Charles E. Moore, et al.* Case No. 24-C-09-003634 in the Circuit Court for Baltimore City (hereinafter "*Imagine v. Moore*"). On June 12, 2009, the Circuit Court entered judgments against the Moores in the amount of $113,683.76 (principal, interest, attorneys' fees and costs). The Moores did not retain counsel or otherwise take any action during the 30 days allotted by the Maryland Rules to vacate the confessed judgments.

6. In September 2009, Imagine and the Moores reached an agreement whereby Mr. Moore conveyed one of the collateral properties to Imagine at an agreed value of $65,000 and signed a promissory note for $20,000. When Mr. Moore defaulted on the agreement, the original note terms resumed and Imagine sought to collect the full amount due less the $65,000 value of the conveyed property.

7. In November 2010, Imagine began collection efforts. Subsequently, in November 2010 and April 2011, Mr. Moore, *pro se*, sent two letters to the court

that were treated as motions to vacate and revise the judgment, respectively. Both motions were denied and Imagine resumed collection efforts.

The Respondent Enters His Appearance

8. In October 2011, the Moores retained the Respondent to represent them in challenging the confessed judgments. The Respondent developed an elaborate conspiracy theory involving Imagine, its principals, attorneys, lenders and other associates. In October 2011, the Respondent embarked on a crusade to prove his theory. His conduct exceeded the bounds of zealous advocacy. As outlined below, he threatening those he believed to be co-conspirators, filed countless frivolous papers and general engaged in vexatious litigation.

9. On October 18, 2011, more than two years after the confessed judgments were entered, the Respondent entered his appearance on behalf of the Moores in *Imagine v. Moore*. He filed a motion to revise and vacate the judgments[1] and memorandum in support alleging the judgments were obtained by the perpetration of a fraud and, pursuant to Maryland Rule 2-535(b), should be vacated. On October 31, 2011, Imagine's then-counsel, Jeffrey Tapper, Esquire, filed an opposition. A hearing was scheduled for December 7, 2011.

10. In November 2011, the Respondent filed a complaint against Mr. Tapper with the Attorney

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[1] The Motion was styled "Motion to Open, Modify, or Vacate Confessed Judgments, or in the Alternative, Motion for Order of Satisfaction; and Motion to Open, Modify, or Vacate Orders of Garnishment; and Motion to Enjoin Further Debt Collection Proceedings"

Grievance Commission. Approximately one week before the hearing, Mr. Tapper withdrew his appearance citing a conflict due to the grievance.

The December 2011 Hearing

11. Imagine then retained Troy Swanson, Esquire as successor counsel and a hearing was held on December 7 and 8, 2011 before the Honorable Emanuel Brown.

12. During the hearing the Respondent interjected irrelevant and unsubstantiated accusations against Imagine and its members regarding an elaborate fraud scheme. The Respondent leered at Mr. Svehlak during the proceeding and led the court to believe that Imagine and its officers were under investigation by the Department of Justice.

13. Mr. Svehlak invoked his Fifth Amendment right to remain silent. At the conclusion of the hearing, the court vacated the confessed judgments.

Imagine Retains Bowie & Jensen

14. In December 2011, Imagine retained Bowie & Jensen and Matthew Hjortsberg, Esquire, to file an appeal and defend various threatened claims made against them by the Respondent. On January 3, 2012, Imagine filed a Notice of Appeal to the Court of Special Appeals.

15. On January 25, 2012, the Respondent began a series of increasingly erratic email correspondence with Bowie & Jensen in which he threaten to sue the firm and report Mr. Hjortsberg and his associate, Lisa D. Sparks, Esquire, to the Attorney Grievance

Commission if the appeal was not dropped.[2] Excerpts from the Respondent's emails include the following:

> We are going to proceed with the letter to the Maryland Attorney Grievance Commission at this time to simply advise of this case and our concerns over the ethical issues surrounding possible attempts to reinstate this debt based upon the testimony and the facts in this case.
>
> [* * *]
>
> Because I believe the transcript and an audit of your client's bank records would support this notion, I believe this is not only unethical, but that you are sufficiently aware of the background facts that you, Ms. Sparks and Bowie & Jensen can be sued for facilitation of fraud upon the first filing of your appeal documents. In the unlikely event the fraudulent judgments would be reinstated on a procedural technicality, I also believe you would be liable for the damages . . . My exchange with the FBI last Friday was a telephone call with the assigned agent not a meeting.
>
> [* * *]
>
> We are prepared to add your firm as a defendant when the document is filed. You won't be their first lawyer that is also a defendant. We're not going to add you on

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[2] The Respondent never filed a complaint against either attorney with the Attorney Grievance Commission.

> RICO, so no worries there. You'll be added to our fraud and aiding and abetting counts.
>
> [* * *]
>
> Your actions as a law firm are unethical and constitute facilitation of fraud . . . I will remind you that our suit is already at 28 Defendants (including several attorneys) and that there still may not be enough to pay a likely award by a Baltimore City jury in this case. Therefore, my client has a strong incentive to add any additional defendants against whom he has a good faith claim. Should you choose to proceed with this illicit strategy, please advise if you have counsel and whether they can accept service on your behalf.
>
> [* * *]
>
> You are assisting your client in an unlawful manner by attempting to cause the entry of a knowingly fraudulent confessed judgment against Mr. and Mrs. Moore in bad faith and without substantial justification. We also believe that your attempts to have a knowingly fraudulent confessed judgment entered against Mr. and Mrs. Moore constitute actionable conduct and have at this point created liability on the part of you, Ms. Sparks, and Bowie & Jensen, LLC.

16. Additionally, the Respondent launched an ad hominem attack on Mr. Svehlak's character.

Bowie & Jensen Retains Ward B. Coe, III, Esquire

17. As a result of the threats, Bowie & Jensen put its carrier on notice, retained Ward B. Coe, III, Esquire, as legal counsel, and counseled their clients about the perception that the Respondent was depriving them of their choice of counsel.

18. On February 14, 2012, Mr. Coe wrote to the Respondent and implored him to cease threating Bowie & Jensen. Mr. Coe summarized the Respondent's improper threats, outlined the research indicating that the appeal was not frivolous and provided citations to authorities standing for the proposition that threatening attorney grievance complaints to gain an advantage in litigation violates the Maryland Lawyers' Rules of Professional Conduct.

19. On March 21, 2012, Mr. Hjortsberg filed a complaint with the Attorney Grievance Commission.

Filings in the Appellate Courts

20. On April 16, 2012, the Respondent filed a frivolous Petition for Writ of Certiorari in the Court of Appeals. In support of his Petition, he argued that the case was an "extraordinary case of public policy" with an "almost unbelievable record . . . arguably the most shocking confessed judgment action to ever appear in Maryland's appellate courts." The Respondent, contrary to the Maryland Rules, included substantial documentation and information not contained in the record. In addition to being frivolous, the Petition violated Rules 8-112(c) and 8-303(b).

21. On April 20, 2012, the Respondent filed a frivolous motion to dismiss the appeal in the Court of

Special Appeals arguing that the appeal was based upon a non-final order.

22. On May 3, 2012, the Court of Special Appeals stayed the appeal pending resolution of the Petition for Writ of Certiorari.

23. On May 4, 2012, despite the stay and his pending Petition, the Respondent filed a second frivolous Motion to Dismiss Appeal in the Court of Special Appeals arguing that Imagine failed to order transcripts and failed to ensure the timely transmittal of the Record and, therefore, the appeal should be dismissed.

24. On or about May 9, 2012, the Respondent filed "Petitioner's Reply to Respondent's Answer to Petition for Writ of Certiorari" in the Court of Appeals. The filing was frivolous and again, contained information outside the record contrary to the Maryland Rules.

25. On May 17, 2012, despite the stay and no briefing scheduling having been issued, the Respondent filed a 49-page "Preliminary Brief of the Appellees and Memorandum in Support of Motion to Dismiss Appeal." The Respondent phrased the question to the Court as follows: "Whether the Due Process Clause of the U.S Const., amend. XIV, § 1 requires that the Appellant's failure to fund an escrow account that served as the fundamental consideration for the Appellees' execution of an agreement containing waivers of their due process rights, demonstrated a lack of *consensus ad item* resulting in a failed agreement and void waivers of due process rights." The Respondent cited to the 5th and 14th Amendments of the United States Constitution as well as 42 U.S.C. § 1983 and 42 U.S.C. § 1985. In addition to violating Maryland

Rule 8-503(d), the filing was frivolous. In support of his "Preliminary Brief" the Respondent filed an extract containing numerous documents that were not part of the Circuit Court record in violation of the Maryland Rules.

26. Also on May 17, 2012, the Respondent filed "Supplementary Exhibits to Petition for Writ of Certiorari" in the Court of Appeals. The filing was frivolous and contrary to the Maryland Rules.

27. On May 21, 2012, the Court of Appeals denied the Petition for Writ of Certiorari. The Respondent, on May 23, 2012, filed a frivolous "Motion to Resume Proceedings and Renewed Motion to Dismiss Appeal" in the Court of Special Appeals."

The Respondent's Continued Threats and Abusive Behavior

28. On May 28, 2012, the Respondent emailed Mr. Coe and stated, *inter alia*:

> It is my intention to sue Mr. Hjortsberg personally for defamatory statements he made against me in a March 21, 2012 letter in which he attempted to accuse me of knowingly false ethical violations for allegedly misrepresenting something about 'investigations' to a trial court during a December 2011 Motion Hearing . . . Mr. Hjortsberg, an unethical and incompetent attorney, straining to fabricate an issue for a meritless appeal to cover up a client's scam involving financial institutions, unapologetically stated five times in his 11-page letter that I misrepresented something about 'investigation(s)'

> during that hearing . . . I seek redress in the form of reasonable compensation, an apology letter, and an agreement that Mr. Hjortsberg will not intentionally defame me again . . . Please respond by COB on May 29, 2012 to advise whether discussions about this matter would be productive. If not, my suit will be filed in the Cir. Ct. for Balt. Co. against Mr. Hjortsberg personally.[3]

29. On May 29, 2012, the Respondent emailed a "settlement offer" to Mr. Hjortsberg purportedly on behalf of the Moore. In his offer, he stated, *inter alia*:

> best way to be rid of this for all is not to sue anyone . . . the way I look at it, there are two potential law firm insurance policies . . . swanson's and [Bowie & Jensen's] . . . if they are big enough . . . we can avoid a suit, but if not . . . we can't . . . better off filing because we lose a lot if we don't file . . . then again, my guy gets paid quicker and that's a benefit . . . I'm not an expert, but I can think of 10 reasons for malpractice claims by these guys against your firm and Swanson's firm too . . . I always thought doing this quietly might be best way for all . . . I said something about law firm malpractice insurance for your clients' past lawyers because it might be enough to get there. . . . That was before you made the same mistakes as those guys . . . Although everything we have is also with feds, I still think its better to settle

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[3] As of the date of filing this Petition, the Respondent has not filed suit against Mr. Hjortsberg.

(especially for Roseman) and get my guy out now.

The Respondent then relayed the offer from the Moores to settle the case for $5 million. (all *sic* in original).

30. On May 30, 2012, Mr. Coe wrote to the Respondent regarding his threat to sue Mr. Hjortsberg for defamation. The Respondent, by email later the same day, forwarded a copy of a complaint to be filed by close of business that same day.

The Respondent Files Suit in the Circuit Court

31. On May 30, 2012, the Respondent filed a frivolous complaint in the Circuit Court for Baltimore City on behalf of the Moores (*Moore v. Svehlak et al.* Case No. 24-C-12-335) (hereinafter "*Moore v. Svehlak*"). The complaint named twenty-eight (28) defendants and alleged that Imagine, acting in concert with other defendants, engaged in an elaborate fraud scheme. The 30-count complaint sought millions of dollars in compensatory and punitive damages for various causes of action including fraud, civil conspiracy, RICO, "deprivation of civil rights", aiding and abetting, intentional misrepresentation, negligent misrepresentation, breach of fiduciary duty, breach of contract, professional negligence, declaratory judgment, quiet title, "violation of Md. Comm. Law Code Ann. § 12-801 *et seq.*", constructive trust, unjust enrichment and abuse of process. Service was effectuated in the months that followed.

The Respondent Files Suit in the United States District Court for the District of Maryland

32. On June 20, 2012, the Respondent, on behalf of Mr. Moore, filed a Qui Tam action in the U.S. District Court for the District of Maryland (*United States of America Ex rel. Charles E. Moore v. Cardinal Financial Company, L.P et al.* Case No. 1:12-cv-01824) (hereinafter "Qui Tam I"). The complaint named 10 defendants including Mr. Svehlak and alleged mortgage fraud and violations of the false claims act.

The Respondent's Continued Threats and Abusive Behavior

33. On July 6, 2012, the Court of Special Appeals erroneously vacated the appeal. Imagine filed a Motion to Reconsider.

34. On July 13, 2012 at 9:22 a.m., the Respondent emailed Mr. Coe and stated, *inter alia*:

> Mr. Hjortsberg and Bowie & Jensen, LLC are now liable for the following potential counts: (1) civil conspiracy (2) 42 USC 1983, 42 USC 1985, (3) Malicious prosecution, (4) abuse of process, (5) RICO . . . Please advise if there is any interest in settling this matter. Also, please instruct your client to place a litigation hold on any and all documents in his possession concerning the Imagine Capital matter . . . Please advise if Bowie & Jensen, LLC would have any interest in settlement negotiations pertaining to their role in this matter.

35. On July 13, 2012 at 5:28 p.m., the Respondent emailed Mr. Coe and stated, *inter alia*:

> As a follow-up to my email this morning, please provide the following as soon as possible: (1) An indication as to whether your clients are interested in sitting down and discussing settlement possibilities for any liability they may have arising out of the Imagine Capital matter. Should you and your clients wish to sit down and discuss, we can review with you some of the compelling evidence with respect to Imagine Capital's Ponzi scheme and shell property mortgage fraud scam, and the fact that we believe Mr. Hjortsberg, Tina Gentile, and perhaps Lisa Sparks conspired with Imagine Capital, Svehlak and Roseman to cover it up . . . (3) Also, please state whether you can accept service of summonses and/or subpoenas for Bowie & Jensen, LLC, Matthew Hjortsberg, Tina Gentle, Lisa Sparks and any other parties associated with Bowie & Jensen, LLC. As I have stated previously, I am not inclined to sue Ms. Sparks or Ms. Gentle, but I have questions for Ms. Gentle specifically with regard to two specific matters that pertained to things Bowie & Jensen did during the appeal.

The Respondent Files a Second Suit in the United States District Court for the District of Maryland

36. Also on July 13, 2012, the Respondent filed a second Qui Tam action in the U.S. District Court naming 24 defendants including Mr. Svehlak, Mr. Roseman and Imagine Capital (*United States of America ex rel. Charles E. Moore v. Robert S. Svehlak,*

et al. Case No. 1:12-cv-02093) (hereinafter "Qui Tam II").

The Respondent's Continued Threats and Abusive Behavior

37. On July 18, 2012 at 3:28 pm., the Respondent emailed Mr. Hjortsberg and stated, *inter alia*:

> I am also going to politely ask you and Bowie & Jensen, LLC to resign from representation of Imagine Capital, Robert Svehlak and Neil Roseman, effective immediately, following the withdrawal of your Motion and dismissal of Imagine Capital's appeal. I think you will be conflicted from representing them in future matters pertaining to my clients or the subject mortgages.
>
> [* * *]
>
> So, what's the problem? Its your intent and attempt to conceal your client's criminal conduct in an extension of a wrongful civil proceeding that was initiated, at least in part, to obtain money to service debt on fraudulent mortgages and stave off potential exposure of the mortgages themselves. Hence, your 'defense' strategy was effectively to keep up the 'charade,' or 'stay the course' knowing your client's conduct was both criminal and wrongful. On Jan 5, you said yourself something to the effect of, 'I know everything . . . far more than any other attorney who represented them.' That is the part that, at least in theory, turns defense attorney to defendant . . . As you consider

> the rhetorical and perhaps debatable question that follows, please remember the old adage—ethics is doing the right thing when nobody is watching. Was your strategy an unethical attempted cover up or just a lawyer trying to do his job?

38. On July 20, 2012 at 11:13 a.m., the Respondent emailed Mr. Coe and stated, *inter alia*:

> Please pardon my French but I can't wait to see matt hjortsberg's balls shoved down his fucking threat . . . pardon me again, we could turn hjortsberg fucking upside down, chew him up and spit him out in so many pieces you cannot imagine . . . again excuse my French, he was 'sooo smart, a real fuckin genius . . . ' Although I do not mean to be disrespectful, and perhaps he's an excellent construction attorney—*e.g.* he definitely knows far more about procedural rules that I do, he was horrible in this case . . . Does he like managing that law firm? His partners are not going to be happy, especially after I sent several messages to their founding member about the case . . . Indeed Matt Hjortsberg should be disbarred, but I'm not the bar counsel and my duty runs to someone else—the Moores. Mr. Hjortsberg knows he is in trouble . . . he's known for awhile this was a mistake . . . I hope he's lost sleep about it . . . he should have . . . There are many potential causes of action . . . let's take rico for one . . . most civil rico cases are a bunch of crap, this one isn't . . . a jury will hang matt hjortsberg, no less than

they would his clients. The media, the public, and the bar will crucify him . . . think about the economy and type of fraud he attempted to conceal . . . the amount, etc. People are hurting out there and they would view hjortsberg's 'defense' strategy quite poorly.

There's an unserved lawsuit sitting in the cir ct for balt. city. Its case 24C12003357. There are 28 defts. RICO count is $17M ($5M trebled to $15. + $2M in punitive damages) . . . nothing about matt Hjortsberg is yet in any lawsuit. Some defts know about the unspoken subject and its briefly referenced in the complaint but its not fleshed out because that complaint was written primarily in dec and jan. We've been waiting months to kick off our lawsuit, it was delayed for this very conversation. Hjortsberg and his firm are far easier defts (except maybe for his clients) than anyone in that case (many more culpable for my clients' injuries and some pretty corrupt, but none nearly as easy). The claims against Hjortsberg and his firm are like out of a textbook . . . just like my prelim brief . . .

> By COB today, I want a response to take to my client . . . I am authorized to offer $5M for a global settlement of this case. I will take any reasonable offer to my clients. We haven't discussed a number for a partial settlement, but my clients are open to one . . . if it is within hjortsbergs policy limits, hed be damn smart to go for a global . . . With my proposal, Mr. Hjortsberg and his firm need admit no wrong or no liability. We can have complete confidentiality (we would still have to deal with his disingenuous bar complaint which I think may still be under review, but we can do it later). Not a cent of proposed settlement money may come from Mr. Hjortsberg's clients.

(all *sic* in original).

39. On July 24, 2012, Mr. Coe wrote to the Respondent and stated:

> Your email was laced with invective and profanity, and included expressions which could be interpreted as threatening physical violence. I am certain that you did not intend those expressions to be interpreted that way. Regardless of your intent, however, your conduct comprises misconduct that is prejudicial to the administration of justice under Rule 8.4 of the Rules of Professional Conduct, and must cease immediately. It also violates about half the rules of the MSBA Code of Civility, a copy of which I have enclosed.

40. The Respondent replied:

> I think you know that the profanity, while regrettable, was a figure of speech, and obviously not a threat of physical violence. Its a not threat at all, other than it is our position he will lose badly in a court of law. Once again, I apologize for the unprofessional tone. What this guy did was a violation of MRPC 8.4, among several others. It is very angering. Simple emails, although unprofessional in tone, are not prejudicial to the administration of justice . . . I promise to keep the tone civil from this point forward, and assure you that there were no threats of anything other than a possible lawsuit.

41. On July 26, 2012 at 7:43 p.m., the Respondent emailed Mr. Coe and stated, *inter alia*:

> I still have not heard from you about Mr. Hjortsberg conspiring with his clients to continue knowingly false civil proceedings against the Moores with the intent to conceal mortgage fraud, bank fraud and money laundering.
>
> Hjortsberg has been target [defendant] #1 for this case since January . . . We do not want to sue Bowie & Jensen, LLC and put Mr. Hjortsberg through all that misery. I know his wife has been sick. I know he just got promoted last year. He's well-respected. He doesn't need to be tied to a big mortgage fraud scam. His reputation will never recover. I feel bad that Hjortsberg is liable in this case . . . There are many other causes of action to hang this guy on too: 1983, civil conspiracy, abuse of process, and of course

> after he ultimately loses, malicious prosecution. I am sure there are others we can come up with. As I told him in January, his representation and intent was the equivalent of helping a client bury a murder weapon. In this case there is another word for it, racketeering. Hopefully, this metaphor is [a] bit easier for you to understand.

42. On July 31, 2012, Bar Counsel wrote to the Respondent and asked him to explain his July 20, 2012 email to Mr. Coe.

43. On August 1, 2012, the Respondent sent a series of emails to Bar Counsel in which he stated, *inter alia*:

> Things are not always what they appear. Although my emails have not always sounded professional, the message has always been the same . . . My emails simply asked if his firm wanted to settle his potential liability arising out of his intent to conceal this mortgage fraud scam. It's a reasonable question because he has liability for attempting to violate my clients' due process rights in a false civil proceeding to cover up a major mortgage fraud scheme. We would accept a nickel from his clients (it's all stolen money), we would from Mr. Hjortsberg.

Filings in the Appellate Courts

44. On July 27, 2012, the Court of Special Appeals granted Imagine's Motion for Reconsider and entered an order vacating the July 6, 2012 order dismissing the appeal.

45. On August 8, 2012, the Respondent filed a frivolous Motion to Reconsider the Order granting Imagine's Motion to Reconsider and reinstating the appeal in the Court of Special Appeals.

46. On August 10, 2012, Mr. Coe wrote to the Respondent and catalogued his numerous threats and inappropriate conduct and demanded he cease threatening Bowie & Jensen, its attorneys and employees.

47. On August 20, 2012, the Respondent wrote to Mr. Coe and stated, *inter alia*:

> As someone licensed to practice law in seven states and the District of Columbia, I would never accuse an attorney (especially one I have never met) of the type of wrongdoing that I believe to be implicated in this case, unless I firmly believed there was substantial basis to do so. Even if it turns out my beliefs are erroneous (which is highly unlikely), no ethical violations were presented by my emails because there is a good faith basis for the belief. My one regrettable email, which used figure of speech that were less than prudent, were expressions of MY opinion about the strength of the evidence in this case.

48. On August 22, 2012, the Respondent sent a 16-page letter to the Honorable Peter B. Krauser, Chief Judge of the Court of Special Appeals, in which he accused Mr. Hjortsberg, his associate and non-attorney members of his staff of misconduct including having "ex parte" communications with the clerk's office in an attempt to "manipulate the trial court record" and "manufacture arguments for appellate

review surrounding the void, erroneously-issued and unrecorded May 20, 2011 Order."

49. On September 14, 2012, the Court of Special Appeals denied the Respondent's Motion to Reconsider and the Respondent filed a second frivolous Petition for Writ of Certiorari in the Court of Appeals.

50. On October 2, 2012, Mr. Hjortsberg filed Appellants' brief asking the court to consider the following: "Did the Circuit Court err in finding clear and convincing evidence of extrinsic fraud sufficient to vacate the judgment under Maryland Rule 2-535(b)?"

51. On October 11, 2012, the Respondent filed a "Supplemental Petition for Writ of Certiorari" in the Court of Appeals and attached, in support, a copy of the record extract filed in the Court of Special Appeals that was the subject of his pending motion to strike. The filing was frivolous and not in compliance with the Maryland Rules. The Respondent filed, contemporaneously, a frivolous "Motion to Replace Defective and Non-Compliant Record Extract" in the Court of Special Appeals.

52. On November 19, 2012, the Court of Appeals denied the Second Petition for Certiorari.

53. On December 12, 2012, oral argument was heard in the Court of Special Appeals.

Circuit Court Suit Removed to U.S. District Court

54. On September 12, 2012, a number of the Defendants in the *Moore v. Svehlak* matter filed a Notice of Removal and the case was removed to the U.S. District Court. Subsequently, the Respondent filed a motion to remand and the defendants filed a

series of motions to dismiss and/or motions for summary judgment.

55. On December 12, 2012, while the Respondent and Mr. Hjortsberg were in the Court of Special Appeals waiting for the case to be called for argument, the Respondent sent Mr. Hjortsberg an email of his 68-page "Memorandum in Support of Plaintiffs' Emergency Motion to Disqualify the Imagine Defendants' Counsel, *et al.*" to be filed in *Moore v. Svehlak*. The Respondent also sent a copy of the motion to Mr. Coe and asked whether Mr. Hjortsberg "is leaving the federal case voluntarily."

56. The Respondent filed the frivolous Motion and Memorandum on December 14, 2012. He argued that Mr. Hjortsberg and Bowie & Jensen are potential co-conspirators and are, therefore, disqualified.

57. On December 17, 2012, the U.S. District Court, *sua sponte*, struck the Respondent's Motion and Memorandum as they were in violation of Local Rule 105.3 prohibiting the filing of Memorandum longer than 50-pages without leave of court.

The Respondent's Continued Threats and Abusive Behavior

58. On December 28, 2012, the Respondent sent Mr. Coe a 13-page letter outlining the "fallacies" of Mr. Hjortsberg legal strategy, reiterated that Mr. Hjortsberg was "complicit in the very same fraud as [his] clients", threatened to re-file the Motion to Disqualify and then asked if Mr. Hjortsberg would be interested in discussing settlement.

The Moores File for Bankruptcy

59. On February 20, 2013, before the Court of Special Appeals issued its ruling, the Moores filed a voluntary Chapter 7 bankruptcy petition and the Court of Special Appeals matter was stayed. Craig L. Holcomb, Esquire, represented the Moores in the bankruptcy court. Marc H. Baer was appointed trustee of the bankruptcy estate.

60. On February 25, 2013, the Respondent e-mailed Mr. Hjortsberg. The Respondent did not advice Mr. Hjortsberg that his clients had filed for bankruptcy and stated that he was "prepared to take the depositions of Robert S. Svehlak and Neil D. Roseman as soon as possible." With the February 20, 2013 bankruptcy filing, all Moore litigation was automatically stayed and became the property of the bankruptcy estate. The Respondent had no legal authority to take any action in any pending litigation after February 20, 2013.

61. On April 3, 2013, Mr. Baer filed an Application to Employ Whiteford, Taylor & Preston, LLP as Special Counsel to Trustee. The Application was granted and David Daneman, Esquire, entered his appearance in the *Imagine Capital v. Moore* and *Moore v. Svehlak* matters.

62. By Memorandum Opinion filed July 11, 2013, the U.S. District Court remanded *Moore v. Svehlak* to the Circuit Court for Baltimore City.

63. On December 11, 2013, the Trustee filed a motion for approval of the Settlement and Compromise that Mr. Daneman had reached with the defendants in the *Moore v. Svehlak* matter as well as the appellants in *Imagine v. Moore*. The settlement provided, *inter alia*, that in exchange for the Defendants' payments

in the aggregate amount of $137,500.00, the Trustee would dismiss *Moore v. Svehlak* the action. The agreement further provided that the stay would be lifted in the Court of Special Appeals to allow an opinion and mandate to be issued in *Imagine v. Moore*. On March 17, 2014, the Bankruptcy Court granted the Trustee's Motion for Approval of Settlement and Compromise.

The Court of Special Appeals Issues Its Opinion

64. On November 17, 2014, the Court of Special Appeals (J. Wright) filed an unreported opinion in *Imagine v. Moore*. The Court reversed the Circuit Court finding and remanding the case for further proceedings. Based upon the settlement agreement reached in the bankruptcy proceedings, the Circuit Court confessed judgment action was dismissed on December 19, 2014.

65. On December 18, 2014, the Respondent filed a frivolous Motion for Rehearing and Reconsideration; and Motion Requesting Reported Opinion Pursuant to Md. Rule 8-605.1 and a Motion for Leave to File Amicus Paper in the Court of Special Appeals. The Motions were denied by order dated January 14, 2015.

The Government Declines Intervention

66. In November 2014, the Government filed Notices of Election to Decline Intervention in both Qui Tam actions.

The Respondent Files Proofs of Claim in the Bankruptcy Court

67. During the pendency of the bankruptcy proceeding, the Respondent filed five proofs of claim against the Debtors' estate associated with his repre-

sentation of the Moores. The claims, including amendments, totaled $85,604.61. Both the Trustee and the Moores filed objections to the claims. On May 21, 2015, the Trustee filed Notice of Assignment of Bankruptcy Estate's Qui Tam Claims. The Trustee assigned the claims to the Respondent in exchange for withdrawal of his claims against the Estate. As of the date of this filing, the Respondent has not caused any of the Qui Tam defendants to be served.

68. Petitioner represents and charges that Respondent, by his acts and omissions as described herein, engaged in professional misconduct and violated the following Maryland Lawyers' Rules of Professional Conduct, as adopted by Maryland Rule 16-812:

Rule 1.1. Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 3.1. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes, for example, a good faith argument for an extension, modification or reversal of existing law. A lawyer may nevertheless so defend the proceeding as to require that every element of the moving party's case be established.

Rule 3.2. Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Rule 3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused;

Rule 4.4. Respect for Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that the lawyer knows violate the legal rights of such a person.

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Maryland Lawyers' Rules of Professional Conduct,

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

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

WHEREFORE, Petitioner requests that this Honorable Court:

A. Take such disciplinary action against the Respondent as it deems appropriate;

B. Assess against the Respondent, in the form of a money judgment, the reasonable costs of these proceedings, both arising subsequently to the filing of these charges and necessarily incurred in investigating the same prior to the fling hereof; and

C. Take such other and further action as this Court may deem appropriate under the circumstances.

Respectfully submitted,

/s/ Glenn M. Grossman
Bar Counsel

/s/ Lydia E. Lawless
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Attorneys for Petitioner

AGC ANSWERS TO RHEINSTEIN'S CORRECTED FIRST SET OF INTERROGATORIES —RELEVANT EXCERPTS (AUGUST 30, 2017)

IN THE CIRCUIT COURT FOR
ANNE ARUNDEL COUNTY, MARYLAND

ATTORNEY GRIEVANCE
COMMISSION OF MARYLAND,

Petitioner,

v.

JASON EDWARD RHEINSTEIN,

Respondent.

Case No. C-02-CV-16-000597

Court of Appeals Case No. Misc. Docket AG No. 77,
September Term, 2015

The Attorney Grievance Commission of Maryland, Petitioner, by Lydia E. Lawless, Bar Counsel, its attorney, hereby responds pursuant to Maryland Rule 2-421(b) to Respondent's Corrected First Set of Interrogatories to Petitioner.

[. . .]

Interrogatory No. 17:

As to any Maryland Lawyers [sic] Rule of Professional Conduct alleged to have been violated in the Operative PDRA, identify each and every specific "Fact," which is alleged in the Operative PDRA, which you contend renders the Respondent's "actions or omission" a violation of the given rule.

ANSWER: Petitioner objects to this interrogatory to the extent that it is ambiguous, and it appears to call for a legal conclusion. To the best Petitioner is able to decipher the request as one seeking information about which of the averments in the PDRA support the allegation that the Respondent violated the Rules of Professional Conduct, such information is contained on Schedule A attached hereto and incorporated by reference herein.

[. . .]

Interrogatory No. 19:

As to any Maryland Lawyers [sic] Rule of Professional Conduct alleged to have been violated in the Operative PDRA, identify the number of distinct or separate occasions you contend the Respondent violated such Rule.

ANSWER: See Schedule A attached hereto.

[. . .]

/s/ Lydia E. Lawless
Bar Counsel
Attorney Grievance
Commission of Maryland
200 Harry S. Truman Parkway,

Suite 300
Annapolis, MD 21401
lydia.lawless@agc.maryland.gov
Phone: (410) 514-7051
Attorney for Petitioner

I, Marc O. Fiedler, am the Lead Investigator for the Office of Bar Counsel of the Attorney Grievance Commission of Maryland. The information contained in the foregoing Petitioner's Answers to Interrogatories is derived from the records maintained in the ordinary course of business of the Attorney Grievance Commission, and from information provided by officials, employees and/or agents of the Office of Bar Counsel. I do not have personal knowledge of the information contained therein, although I am authorized to execute these Answers on behalf of the Petitioner.

With these conditions, I DO HEREBY DECLARE AND AFFIRM, under the penalties of perjury, that the content of the foregoing Answers to Interrogatories are true and correct to the best of my knowledge, information and belief

/s/ Marc O. Fiedler
Lead Investigator

AGC SCHEDULE A: ANSWERS TO INTERROGATORIES AND RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS—RELEVANT EXCERPTS (AUGUST 21, 2017)

IN THE CIRCUIT COURT FOR
ANNE ARUNDEL COUNTY, MARYLAND

ATTORNEY GRIEVANCE
COMMISSION OF MARYLAND,

Petitioner,

v.

JASON EDWARD RHEINSTEIN,

Respondent.

Case No. C-02-CV-16-000597

Court of Appeals Case No. Misc. Docket AG No. 77,
September Term, 2015

AVERMENT # 8

In October 2011, the Moores retained the Respondent to represent them in challenging the confessed judgments. The Respondent developed an elaborate conspiracy theory involving Imagine, its principals, attorneys, lenders and other associates. In October 2011, the Respondent embarked on a crusade to prove his theory. His conduct

exceeded the bounds of zealous advocacy. As outlined below, he threatening those he believed to be co-conspirators, filed countless frivolous papers and general engaged in vexatious litigation.

MLRPC

1.1, 3.1, 3.4, 4.4, 8.4(a),(d)

EVIDENCE

Imagine v. Moore, et al.
Circuit Court Baltimore City
Case No. 24-C-09-003634

Imagine v. Moore, et al.
Court of Special Appeals No. 2445
Sept. Term 2011

Moore v. Imagine
Court of Appeals No. 104
Sept. Term 2012

Moore v. Imagine
Court of Appeals No. 409
Sept. Term 2012

Moore et al. v. Svehlak et al.
Circuit Court Baltimore City
Case No. 12-C-12-003357

Moore et al v. Svehlak et al.
US District Court
Case No. 12-cv-2727

USA ex rel. v. Cardinal Financial
US District Court
Case No. 12-v-1824

USA ex rel. v. Cardinal Financial
US District Court

Case No. 12-v-2093

In re Charles E. Moore
Bankruptcy Court
Case No. 13-12841

AVERMENT # 32

On June 20, 2012, the Respondent, on behalf of Mr. Moore, filed a Qui Tam action in the U.S. District Court for the District of Maryland (*United States of America Ex rel. Charles E. Moore v. Cardinal Financial Company, LP et al.* Case No. 1:12-cv-01824) (hereinafter "Qui Tam I"). The complaint named 10 defendants including Mr. Svehlak and alleged mortgage fraud and violations of the false claims act.

MLRPC

1.1, 3.1, 8.4(a),(d)

EVIDENCE

United States of America Ex rel. Charles E. Moore v. Cardinal Financial Company, LP et al.
United States District Court
Case No. 1:12-cv-01824

AVERMENT

Also on July 13, 2012, the Respondent filed a second Qui Tam action in the U.S. District Court naming 24 defendants including Mr. Svehlak, Mr. Roseman and Imagine Capital (*United States of America ex rel. Charles E. Moore v. Robert S. Svehlak, et al.* Case No. 1:12-cv-02093) (hereinafter "Qui Tam II").

MLRPC

1.1, 3.1, 8.4(a),(d)

EVIDENCE

United States of America ex rel. Charles E. Moore v. Robert S. Svehlak, et al.
US District Court
Case No. 12-cv-2727

AVERMENT # 66

In November 2014, the Government filed Notices of Election to Decline Intervention in both Qui Tam actions.

MLRPC

1.1, 3.1, 8.4(a),(d)

EVIDENCE

USA ex rel. v. Cardinal Financial
US District Court
Case No. 12-v-1824

USA ex rel. v. Cardinal Financial
US District Court
Case No. 12-v-2093

AVERMENT # 67

During the pendency of the bankruptcy proceeding, the Respondent filed five proofs of claim against the Debtors' estate associated with his representation of the Moores. The claims, including amendments, totaled $85,604.61. Both the Trustee and the Moores filed objections to the claims. On May 21, 2015, the Trustee filed Notice of Assignment of Bankruptcy Estate's Qui Tam Claims. The Trustee assigned the claims to the Respondent in exchange for withdrawal of his claims against

the Estate. As of the date of this filing, the Respondent has not caused any of the Qui Tam defendants to be served.

MLRPC

1.1, 3.1, 4.4, 8.4(a),(d)

EVIDENCE

USA ex rel. v. Cardinal Financial
US District Court
Case No. 12-v-1824

USA ex rel. v. Cardinal Financial
US District Court
Case No. 12-v-2093

In re Charles E. Moore
Bankruptcy Court
Case No. 13-12841

DEPOSITION OF AGC DESIGNEE
MARIANNE J. LEE
TRANSCRIPT—RELEVANT EXCERPT
(AUGUST 7, 2017)

IN THE CIRCUIT COURT FOR
ANNE ARUNDEL COUNTY, MARYLAND

ATTORNEY GRIEVANCE
COMMISSION OF MARYLAND,

Petitioner,

v.

JASON EDWARD RHEINSTEIN,

Respondent.

Case No. C-02-CV-16-000597

Court of Appeals Case No. Misc. Docket AG No. 77,
September Term, 2015

[August 7, 2017 Transcript, p. 415]

Q Okay. All right. Let's move to paragraph 32. Does paragraph 32 allege a violation of the disciplinary rule? What rules are implicated?

A Okay. So the answer to your first question is yes. And the Maryland Lawyers' Rule of Professional Conduct are 1.1 competence; 3.1 meritorious claims and contentions; and 8.4(a) and (d) misconduct.

Q Now, it doesn't say here frivolous in this paragraph, but you're suggesting that this case was frivolous?

A Well, 3.1 is captioned meritorious claims and contentions. And you're asking me what question? I'm sorry.

Q I'm asking you whether 32, whether qui tam I was—is alleged to have been frivolous?

MS. LAWLESS: Objection. The witness has testified as to the rules that are associated with that paragraph.

MR. RHEINSTEIN: Okay.

Q What facts about qui tam I do you have to—that its filing, under seal, on June 20th, 2012, constituted a violation of four disciplinary rules?

MS. LAWLESS: Objection. You may answer.

A Can you repeat the question?

Q What facts about qui tam I rendered its filing in violation of four disciplinary rules?

MS. LAWLESS: Objection. You may answer.

A The facts as provided in the pleadings captioned United States of America, Charles E. Moore versus Cardinal Finance Company, L.P. et al. United States District Court case number 1:12-cv-01824.

Q Now—

A Short of that, I don't know—

Q Does the—

A —more.

Q Does the petitioner dispute that Mr. Svehlak sold a property to a straw buyer at 2138 Hollins Street, Baltimore, Maryland 21223?

MS. LAWLESS: Objection.

Mr. Rheinstein, we did not designate any designee at the Attorney Grievance Commission to testify on this topic. This is outside of Ms. Lee's designation.

MR. RHEINSTEIN: Well, it isn't. It is not, because she's also designated for number 1. And you've just alleged that it was a violation of Rule 3.1 to assert that Robert Svehlak, you know, was involved in mortgage fraud and violated the False Claims Act. Ms. Lee has just testified to that.

Q So I'm asking Ms. Lee, does petitioner dispute that Robert Svehlak sold a property in 2138 Hollins Street, Baltimore, Maryland 21223, to a straw buyer named Stephanie O. Mballa, on April 29th, 2010?

MS. LAWLESS: Objection. You may answer, if you can.

A I don't know.

Q Okay. Does petitioner dispute that Robert Svehlak had potential liability under the False Claims Act for this involvement in that transaction?

MS. LAWLESS: Objection.

Mr. Rheinstein, your question as to whether or not someone has potential liability calls for a legal analysis and opinion.

MR. RHEINSTEIN: But—

MS. LAWLESS: Ms. Lee has not been designated on that topic.

MR. RHEINSTEIN: She—

MS. LAWLESS: That is an articulated topic in your 86 topics for today. She has not been designated—

MR. RHEINSTEIN: But she's been designated on the factual basis. I'm trying to understand the factual basis surrounding number 32.

THE WITNESS: And I said the factual—

MS. LAWLESS: So—so, Mr. Rheinstein, ask a question about the facts.

Q What—

MS. LAWLESS: You're asking—

Q —facts—

MS. LAWLESS: Please don't—

Q —that you're aware—

MS. LAWLESS:—interrupt me.

MR. RHEINSTEIN: Okay.

MS. LAWLESS: Please don't interrupt me.

Q What facts, that you know of, Ms. Lee, rendered the filing of this complaint, that you know of, as the representative today of the petitioner, rendered the filing of this qui tam action a violation of four disciplinary rules?

MS. LAWLESS: Objection. It's been asked and answered. You may answer again.

A So, as I stated previously, that the facts are as provided in the pleadings of the case captioned

United States of America, Charles E. Moore v. Cardinal Finance Company, L.P., et al., United States District Court matter.

Short of that, I do not know. I have not—

Q Okay.

A —reviewed the entire files of corporate designee. I have not had the opportunity to review all of the documents that are here today that, frankly, you know, you're asking me to pick out the specific facts. And short of me reviewing the entire file, I'm unable to do that.

[. . .]

Q Okay. But these-okay. Next. Let's go to paragraph 32—excuse me. 36.

A Paragraph 36? All right. And that's paragraph 36 of the PDRA?

Q Yes.

A All right. I'm at paragraph 36.

Q Yes.

A There's a question?

Q Yes. Does that implicate any violations?

A It implicates Maryland Lawyer Rule of Professional Conduct 1.1 competence; 3.1; 8.4(a) and (d).

Q What facts about that case implicate those rules?

A The facts as provided in the documents in case captioned United States of America, Charles E. Moore, versus Robert S. Svehlak, et al. in the U.S. District Court, case number 12-cv-2727.

Q What facts that you know of specifically?

A I don't know the specific facts. As I stated before, short of me having to review the court record or the documents in that case, I don't know the specific dates.

[. . .]