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RECORD: Doc. 29, Pet. HE

AUTHORIZATION TO REPRESENT

The undersigned hereby authorize Kern Law, Ltd., its employees and agents, including but not limited to Robert Kern, Esq., to represent the undersigned in all matters related to the issues listed below.

Any information that may be deemed privileged may be disclosed to Kern Law, Ltd. in the course of Kern Law's representation on the undersigned's behalf. Kern Law's contact information is: 2421 Tech Center Ct., Suite 104, Las Vegas, Nevada 89128; Telephone (702) 518-4529; Facsimile (702) 825-5872; Email Robert@KernLawOffices.com.

Client Name: the Harkey Operating Trust, as successor by transfer from Michael E. Harkey, of refunds of all attorney's fees paid prior to the registration of the Harkey Operating Trust with the Secretary of State for the State of Minnesota on May 2, 2016.

Scope of Representation: Representation of the Harkey Operating Trust in the recovery of up to $45,000.00 in attorney's fees paid to Dubin Law Offices of Hawaii and California for services to be rendered on behalf of Michael E. Harkey: $20,000.00 paid in December, 2015 or January, 2016 for representation of Michael E. Harkey in Adv. No. 15-01355 in the United States Bankruptcy Court for the Western District of Washington and $25,000.00 acknowledged to have been received by Attorney Gary Dubin on April 1, 2016 for representation of Michael E. Harkey in *Harkey v. U.S. Bank, N.A. as Trustee for the CSMC Mortgage-Backed Trust 2007-6, et al.*, Case No. 2:14-cv-00177-RFB-GWF.

IMAGED COPIES OF THE SIGNATURES BELOW
SHALL HAVE THE SAME FORCE AND EFFECT AS THE ORIGINALS

Date: May 28, 2016 Client Signature: Wendy Alison Nora

Date: May 28 2016 Client Signature: Michael E Harkey

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RECORD: 11/28/17 Transcript

DBF 46

DISCIPLINARY BOARD
OF THE
HAWAII SUPREME COURT
RECEIVED
30 November 2017
DAY MONTH YEAR
TIME: 4:10 pm BY

Before the

DISCIPLINARY BOARD

of the

HAWAI'I SUPREME COURT

OFFICE OF DISCIPLINARY COUNSEL, Petitioner, vs. GARY V. DUBIN, Respondent.	ODC No. 16-0-213 16-0-151 16-0-147 16-0-326

H E A R I N G (Volume III)

Taken at the Office of Disciplinary Counsel, 201 Merchant Street, Suite 1600, Honolulu, Hawaii 96813, commencing at 9:09 a.m., on November 20, 2017.

BEFORE: HEARING OFFICER ROY HUGHES, ESQ.

Reported by: Mary Anne Young, CSR 369, RPR

For the Office of Disciplinary Counsel:

BRUCE B. KIM, ESQ.
Chief Disciplinary Counsel
Office of Disciplinary Counsel
201 Merchant Street
Suite 1600
Honolulu, Hawaii 96813

For the Respondent:

JOHN D. WAIHEE, III, ESQ.
Dubin Law Offices
55 Merchant Street
Suite 3100
Honolulu, Hawaii 96813

I N D E X

HEARING OFFICER HUGHES: Thank you for the clarification.

MR. KIM: Thank you. Okay, George, you can take a break.

HEARING OFFICER HUGHES: We'll be in recess for ten minutes.

(A short break was taken)

HEARING OFFICER HUGHES: Are you ready?

MR. DUBIN: Yes.

CROSS-EXAMINATION

BY MR. DUBIN:

Q Mr. Elerick, may I call you George?

A Please.

Q You testified that your role at the ODC was terminated November 2016?

A That's correct.

Q During this -- how many years did you say you had been with the ODC?

A Approximately eight years.

Q Eight years.

During that time, did you receive many complaints about foreclosure defense lawyers?

A I'm sorry?

Q During that period of time you were with the

ODC --

A Yeah.

Q -- did you receive -- do you recall receiving many complaints about foreclosure defense attorneys?

MR. KIM: Beyond the scope of direct.

THE WITNESS: Yes.

BY MR. DUBIN:

Q You did?

In your experience, was that amount more than what you received from -- regarding other attorneys who may not have been practicing in foreclosure defense?

MR. KIM: I'm going to object. The question calls for him to assume facts that are not in evidence and speculate.

HEARING OFFICER HUGHES: He's only asking about the witness' experience, as I understand.

THE WITNESS: Yeah, it would be speculation on my part. I handled a number of complaints from -- about a number of attorneys within the state of Hawaii.

BY MR. DUBIN:

Q Do you recall that there were complaints, other than the one you're being asked to testify about regarding me?

A Yes there is.

Q Yes. And on those complaints, did I fully

cooperate with you?

MR. KIM: I'm going to object to this line of questioning. Mr. Elerick, nor is any other employee of the Office of Disciplinary Counsel allowed to comment upon existing or past investigations because, by Supreme Court rule, those investigations are strictly confidential, so I'm going to object to this and ask, you know, that -- for a ruling that he not be allowed to testify with respect to other complaints. He's only here to testify about the complaints that he investigated with respect to the Kern matter, and, again, any other complaints are strictly confidential by Supreme Court rule and George can't talk about them.

HEARING OFFICER HUGHES: Okay. With that in mind, I want to know if, with respect to the Kern complaints, Mr. Dubin cooperated with you.

THE WITNESS: In most of the past cases, yes. The one --

HEARING OFFICER HUGHES: Just the Kern case.

MR. DUBIN: Your Honor?

THE WITNESS: Just the current ones we're looking at?

MR. KIM: Kern.

HEARING OFFICER HUGHES: Kern.

MR. KIM: Kern.

HEARING OFFICER HUGHES: In the Kern matter, did Mr. Dubin cooperate with you?

THE WITNESS: No. As a matter of fact, the one we had just studied here regarding Mr. Kern, I never did receive a final explanation regarding what I had asked for in a previous letter.

HEARING OFFICER HUGHES: Okay. So we're just doing to confine ourselves to the Kern action.

MR. DUBIN: I have been accused of not cooperating. I have a right to ask this witness whether in the past I cooperated. I have not asked this witness for any details regarding any other complaint in the history of the world. I am trying to establish that my pattern has always been to cooperate with this particular witness who is testifying today. I have an absolute right to establish that.

HEARING OFFICER HUGHES: Well, I understand from ODC counsel that there is -- well, with respect to any matter pending in the ODC, cooperation, I believe, according to counsel is protected. I wanted to know what the cooperation level from Mr. Dubin was with respect to the Kern matter. That's what we are concerned with here, not whether there was cooperation in other matters.

MR. DUBIN: My pattern of fully cooperating

with George on past matters is relevant to the issue whether I cooperated because he left before I was fully cooperating, and, in addition to that, I asked for the people who handled my -- the complaint by Mr. Kern after him to be available to testify, and there was an in limine motion that I could not call them.

So the ODC can call whoever they want to call from the ODC and I'm not allowed to call other people from the ODC and I'm not allowed to establish apparently the fact that I have always cooperated with George. And how can that not be relevant?

HEARING OFFICER HUGHES: Well, we are here on a specific claim, the Kern claim, not on past -- other past claims, and we're not going to be hearing evidence on other past claims.

MR. DUBIN: I have not asked --

HEARING OFFICER HUGHES: That would be prejudicial and irrelevant, so we are going to confine ourselves to the Kern matter, and if you have other witnesses or you made these efforts, Mr. Dubin, I am willing to hear all of that evidence, okay, with respect to the Kern matter only.

MR. DUBIN: I have been restricted. Your in limine my motion -- the in limine motions were granted that I cannot call the people who were handling the

matter after George left, so how can you conclude that I didn't cooperate when I'm restricted from calling those people that took over after he left?

HEARING OFFICER HUGHES: You can call those people.

MR. DUBIN: There's an in limine order that I cannot by your -- by you.

HEARING OFFICER HUGHES: Mr. Kim, what was the basis for that in limine motion?

MR. KIM: Again, they can't comment on existing or past investigations involving the Respondent or anyone by Supreme Court rule; and number two, the only evidence with respect to the Kern matter is set forth in paragraphs 80 through 82 in terms of the failure to cooperate. There is no other evidence. These are the only communications that ODC received from Mr. Dubin, and the essential heart of the Kern complaint is that Mr. Dubin failed to account for his -- to his client for retainers that were paid to Mr. Dubin's office in the sum of $45,000. That's the heart of the Kern complaint.

Mr. Elerick asked Mr. Dubin to produce the accounting that was requested by Mr. Kern, and Mr. Dubin never did. If Mr. Dubin has evidence that he did produce the accounting to ODC, okay, then he can put it

on. That's the issue: Did he cooperate with Mr. Elerick or anyone else? If he wants to put that evidence in, you know, to do it, but we're not going to allow attorneys -- former staff attorneys and/or investigators to be put on the stand to talk about what might have happened in another case, as you've already pointed out, and they literally cannot do that by Supreme Court rule.

HEARING OFFICER HUGHES: I understand. Mr. Dubin seems to be indicating to me today that he has other persons associated with the ODC investigation of the Kern matter, which is at issue, that he believes should be testifying specific to the Kern matter, correct?

MR. DUBIN: Correct. And maybe --

HEARING OFFICER HUGHES: And so I want to have an offer of proof from you, Mr. Dubin --

MR. DUBIN: Okay.

HEARING OFFICER HUGHES: -- on who those witnesses are and what they are purporting to say. And I would like to have that not verbally, I want to have it in the form of an affidavit or declaration. If you could work on that over the lunch break, I would appreciate it.

MR. DUBIN: It would be impossible to do that

during the lunch break. Again, I'm being prejudiced by the piling up of work on my part and nothing is being requested of the ODC counsel. What I want to do is I want to go on with the cross-examination of Mr. Elerick, which will lay the foundation for some of the things we're talking about, and I will prepare that declaration as soon as possible. I'm a full-time attorney with cases, deadlines, et cetera, and I can only do the best I can in the time that I have, but I will certainly prepare that as soon as I can.

HEARING OFFICER HUGHES: Well, Mr. Dubin, this is a very serious matter that is before you in this ODC proceeding, and I strongly suggest that if you have a witness or documents that contradict what ODC counsel has said and what Mr. Elerick has testified to and what has been produced to date through Exhibit E-3, that you provide it to me at your earliest convenience.

MR. DUBIN: Yes, and my objection is that ODC can produce whoever they want to produce without an affidavit and I have to go under the barbed wire, spending my time to try to show why I should be able to -- have somebody from the ODC produced when Mr. Kim can freely question anybody he wants to put on for the ODC. It's just simply not fair. I'd like to go on with my questioning which will lay the foundation for what I

will provide.

HEARING OFFICER HUGHES: Subject to objection, proceed.

BY MR. DUBIN:

Q Mister -- I feel more comfortable calling you George.

A Yes.

Q Let me just say that in previous relations with you, George, I found you to be an outstanding investigator for the ODC, fair, respectful and thorough, and I thank you for that.

Do you remember the day in November that you were no longer with the ODC?

A Yes. It was -- my last day was November 30th.

Q November 30th. Now, is it true you don't know what happened regarding the Kern complaint after November 30th?

A No, no contact to -- no, no other information came to me after that.

Q Are you aware of the fact -- oh, strike that.

When you were communicating with me, were you also having discussions with Assistant Disciplinary Counsel Ms. Shinamura?

MR. KIM: I'm going to object to that on attorney work product and the matters that were raised

in our motions in limine.

HEARING OFFICER HUGHES: You may ask this foundational question.

MR. DUBIN: I have not asked for the content of those discussions.

HEARING OFFICER HUGHES: I understand.

BY MR. DUBIN:

Q Was Ms. Shinamura --

HEARING OFFICER HUGHES: He hasn't answered.

MR. DUBIN: Okay.

THE WITNESS: I had one meeting with Ms. Shinamura regarding this particular case.

BY MR. DUBIN:

Q Was she giving you questions to ask me?

MR. KIM: Objection. This is work product, and he's even within the scope of the attorney/client privilege.

HEARING OFFICER HUGHES: Understanding the objection, you may answer.

THE WITNESS: Would you repeat that please, exactly what --

BY MR. DUBIN:

Q As you've testified in your one discussion with Ms. Shinamura, did she provide you with the questions to ask me that were in the letter that you

testified to --

MR. KIM: Same objection.

BY MR. DUBIN:

Q -- to me?

MR. KIM: Same objections.

HEARING OFFICER HUGHES: You may answer.

THE WITNESS: Okay.

HEARING OFFICER HUGHES: I'll reserve on that objection.

THE WITNESS: Yeah, the best that I can remember what -- I was in here on September the 16th, I believe it was, and I had a short meeting with Ms. Shinamura regarding your particular cases that were before -- that was before the ODC, and that was it. It wasn't very -- it wasn't thorough. It was just to say these would be -- these cases would be coming up before the ODC.

BY MR. DUBIN:

Q Are you aware of the fact that a complaint -- the Kern complaint was submitted to a board member for approval about the same time as I was asked to provide a response?

MR. KIM: No foundation. It just assumes facts not in evidence.

HEARING OFFICER HUGHES: Sustained.

BY MR. DUBIN:

Q Do you have any personal knowledge as to when the Kern matter was submitted to a member of the board for the filing of a disciplinary complaint?

A I don't have that information right now.

Q Can you look at E-3?

HEARING OFFICER HUGHES: Before we proceed further with this, E-3 is a compilation of documents, so do you have -- I want you to specifically refer to the document you're about to ask the witness a question on before we proceed to the question, just so I'm on the same page, and if there is an objection I have it in front of me.

BY MR. DUBIN:

Q Do you have E-3 in front of you?

A Yes, I do.

Q Did I respond to that complaint? Can you --

HEARING OFFICER HUGHES: I'm going to -- okay. You're referring to the letter of September 8, 2016?

MR. DUBIN: Yes.

BY MR. DUBIN:

Q The question was whether I responded.

HEARING OFFICER HUGHES: We have a question pending. If you need to have it read back, we can have it read back.

MR. DUBIN: Okay. If the witness wants it read back, I was just trying to be helpful.

HEARING OFFICER HUGHES: Then you're going to reframe the question. We're going to just deal with the question posed.

After you're done looking at the material, Mr. Elerick, I will ask the reporter to reask the question.

THE WITNESS: I'm sorry?

HEARING OFFICER HUGHES: When you're done, I'm going to have the reporter reask the question that Mr. Dubin posed so you can answer it, okay?

THE WITNESS: Okay.

(The following question was read back:

Did I respond to that complaint?)

HEARING OFFICER HUGHES: Did Mr. Dubin respond to the complaint?

THE WITNESS: No, to my knowledge, it was not responded to.

HEARING OFFICER HUGHES: Okay. Thank you.

MR. DUBIN: Thank you.

BY MR. DUBIN:

Q George, I apologize, we have a lot of books here and I was not informed that you were going to testify today, but I'd like to provide you with part 1

of the Respondent's hearing exhibits regarding Complainant Kern.

And I'm going to -- if I may approach the witness. I'd like to --

HEARING OFFICER HUGHES: I'd like to see what you're showing the witness first.

MR. DUBIN: This is the book that everybody has.

MR. KIM: What exhibit?

MR. DUBIN: Well, I'm going to ask him a number of exhibits. I'm just going to put the book in front of him.

HEARING OFFICER HUGHES: Well --

MR. KIM: Just one.

HEARING OFFICER HUGHES: -- you're not going to put a book in front of him. I want to know what the exhibit is.

MR. DUBIN: Okay.

HEARING OFFICER HUGHES: And I want to have it precisely identified.

MR. DUBIN: Okay. We're going to start out. This is Exhibit 2 in the book part 1.

HEARING OFFICER HUGHES: Identify the exhibit.

MR. DUBIN: I'm going to. This is part of the identification. I've got to give you the location.

This is a letter to Mr. George Elerick, Investigator, sent -- the legend says sent by facsimile to 808-545-2719 dated September 23rd, 2016. It looks like about a dozen pages and I'd like to ask the witness if he recalls having received this letter.

(Respondent's Exhibit 2 was marked for identification.)

HEARING OFFICER HUGHES: I want to take a look at it first.

MR. DUBIN: Okay. And you do have a --

HEARING OFFICER HUGHES: I understand.

MR. DUBIN: The complexity of finding it.

MR. KIM: Can I get my volume 1 of Kern?

HEARING OFFICER HUGHES: Yes, please do.

MR. KIM: Okay.

HEARING OFFICER HUGHES: For the record, Mr. Dubin is producing a September 23, 2016 letter directed to Mr. Elerick.

Just so we have everything, we are looking at which volume and which exhibit? This is volume --

MR. DUBIN: This is called Part 1, which is Volume 1 of Respondent's hearing exhibits regarding ODC 16-0-326.

HEARING OFFICER HUGHES: And this is an exhibit identified in your binder as 2, correct?

MR. DUBIN: Correct, yes.

HEARING OFFICER HUGHES: And it is the September 23, 2016 letter?

MR. DUBIN: Yes.

HEARING OFFICER HUGHES: Mr. Elerick, please take a look at that letter and then we will talk about it.

THE WITNESS: Okay.

HEARING OFFICER HUGHES: While he's doing that, give me the binder number again.

MR. DUBIN: It's called Part 1, ODC 16-0-326.

HEARING OFFICER HUGHES: Let me know when you're done, Mr. Elerick.

Are you done?

THE WITNESS: I really didn't --

HEARING OFFICER HUGHES: Are you done reading it?

THE WITNESS: I'm done reading it.

HEARING OFFICER HUGHES: Okay. I'm going to ask a few questions before the exhibit is received.

First of all, Mr. Elerick, you have read and reviewed what Mr. Dubin provided to you, which is a September 23, 2016 facsimile letter directed to you, correct?

THE WITNESS: Yes.

HEARING OFFICER HUGHES: And it contains approximately 12 pages of material?

THE WITNESS: I'm sorry. Say that again.

HEARING OFFICER HUGHES: It's about 12 pages worth of material?

THE WITNESS: Yeah.

HEARING OFFICER HUGHES: Approximately?

THE WITNESS: Okay.

HEARING OFFICER HUGHES: Having reviewed Exhibit 2 that has been provided to you by Mr. Dubin, do you have a recollection of having received that?

THE WITNESS: No, I don't. I don't remember it.

HEARING OFFICER HUGHES: Mr. Dubin?

BY MR. DUBIN:

Q You haven't stated that you don't recall this letter. Does that change your testimony that I didn't cooperate -- didn't respond to your earlier letter?

MR. KIM: Compound.

BY MR. DUBIN:

Q Is my question clear?

A We're still talking about Mr. Kern, right?

Q Yes.

HEARING OFFICER HUGHES: Yes.

THE WITNESS: And as far as I remember, I did

not get the response from you. I don't remember this particular item right here. I don't remember getting, you know, 20 -- 20 some pages of deposits and whatever that is in here. I don't remember it.

HEARING OFFICER HUGHES: Okay. Let me ask you this, Mr. Elerick.

THE WITNESS: Yeah.

HEARING OFFICER HUGHES: This was supposedly transmitted by fax, correct?

MR. KIM: That's what it says, yes.

HEARING OFFICER HUGHES: Okay. Do you recognize the fax number on that?

THE WITNESS: I don't recognize the fax number, no. I don't -- to add a little bit to that, there were very few times we actually used the fax in our office and I may have seen it, may not. I just don't -- I just don't remember getting a fax in during this time period.

HEARING OFFICER HUGHES: Okay. The more common route would be through e-mail?

THE WITNESS: E-mail, yes, on a more regular basis.

HEARING OFFICER HUGHES: Or some other electronic transmittal?

THE WITNESS: Yeah.

HEARING OFFICER HUGHES: Okay. Mr. Dubin, thank you.

Let me ask you this, Mr. Dubin, in your binder there, with reference to this Exhibit 2, do you have anything evidencing the transmittal by fax?

MR. DUBIN: My office has records of every fax transmittal and I will accordingly search for that, and Mr. Kim can easily inform us whether 545-2719 is the ODC fax or not.

HEARING OFFICER HUGHES: I don't know that he would have that information.

Do you have that information?

MR. KIM: Not off the top of my head.

MR. DUBIN: No, but he could find it out in five minutes or less, so may I leave that for him? I will check on the fax --

MR. KIM: I'm not a witness in this matter.

HEARING OFFICER HUGHES: Yeah. I will ask him to find out what the fax number is and provide it to everyone here, but I'm also asking you to locate the transmittal of the fax because this is an important document in your defense, September 23, 2016. I'm assuming it would have been faxed on that date.

Let me just ask another question of the witness. Do you recall having any conversation with

Mr. Dubin about this fax of September 23, 2016?

THE WITNESS: No, I don't recall it.

HEARING OFFICER HUGHES: Okay. You do recall that you -- it's your current recollection as you testified here today that you never received a call or other communication from Mr. Dubin on your initial letter?

MR. KIM: I'm sorry?

HEARING OFFICER HUGHES: Would you read that back?

(The following question was read back:

It's your current recollection as you testified here today that you never received a call or other communication from Mr. Dubin on your initial letter?)

THE WITNESS: That's what I'm saying. I do not recall.

HEARING OFFICER HUGHES: Okay. You may proceed, Mr. Dubin.

BY MR. DUBIN:

Q George, can you look at the bottom of --

By the way, I'd ask this be admitted into evidence.

HEARING OFFICER HUGHES: I will conditionally receive your Exhibit 2 to Binder Part 1, 16-0-326 being

a reference; however, I want Mr. Dubin and Mr. Waihee, as well as Mr. Kim to note that I am looking for confirmation of the receipt of this document by ODC.

(Respondent's Exhibit 2 was conditionally received into evidence.)

MR. DUBIN: Absolutely.

HEARING OFFICER HUGHES: Okay.

BY MR. DUBIN:

Q George, can you look at the last paragraph of this letter?

Could you do me a favor and read it into the record?

MR. KIM: It's in evidence.

HEARING OFFICER HUGHES: It's in evidence --

MR. DUBIN: Well --

HEARING OFFICER HUGHES: -- conditionally. We're not going to have him read it into the record.

MR. DUBIN: Mr. Kim was allowed to have witnesses read things into the record.

MR. KIM: Because you weren't responding to my question. Strike that. I withdraw that.

MR. DUBIN: That's just another example of the unprofessional way things are being conducted by the ODC. I've simply asked it be read into the record.

HEARING OFFICER HUGHES: I understand your

request and the request is denied. The document speaks for itself. We have the document conditionally admitted.

MR. DUBIN: All right.

HEARING OFFICER HUGHES: So let's not -- I want to keep moving this thing along.

MR. DUBIN: Well, I can address it in my question, certainly.

HEARING OFFICER HUGHES: Mr. Dubin, please move along.

MR. DUBIN: All right.

BY MR. DUBIN:

Q Do you see a reference to who actually retained Mr. Kern?

A I --

Q Do you see a reference at the bottom of this letter as to who actually retained Mr. Kern, who filed the complaint?

A I see.

Q Do you see that?

Do you have any -- did you, while you were with the ODC -- and obviously all my questions are limited to that. Did you, while you were with the ODC, have any evidence who Mr. Kern represented in filing this complaint?

MR. KIM: Again, there is a motion in limine on this and it's work product and it's beyond the scope of direct. Mr. Elerick is only here to testify as to Mr. Dubin's non-response to a specific letter dated October 3rd, 2016.

HEARING OFFICER HUGHES: Okay. Sustained. And we have Mr. --

MR. DUBIN: Could I put my --

HEARING OFFICER HUGHES: -- Dubin's letter?

MR. DUBIN: Could I put my objection on the record?

HEARING OFFICER HUGHES: Yes, you may.

MR. DUBIN: The ODC brought a complaint against me by Mr. Kern. I've simply asked what evidence they have that Mr. Kern had the authority to file a complaint on behalf of a client of mine. That was my question.

With that objection in mind, does the Hearing Officer still sustain the objection?

HEARING OFFICER HUGHES: He does.

BY MR. DUBIN:

Q In this letter September 23rd, 2016, admitted conditionally, is there information concerning my client trust log attached to this letter?

A I see that here.

Q And is there information regarding money wires, credit confirmation receipts from First Hawaiian Bank?

A Yes, I see that.

Q And you see the handwritten word "Harkey" and "from Harkey" on those two credit confirmations?

MR. KIM: What page are you referring to?

HEARING OFFICER HUGHES: They're not numbered.

MR. DUBIN: First Hawaiian Bank, bank credit confirmation.

MR. KIM: What date? Do you have a date?

MR. DUBIN: That's the heading. Yes, I can give you the full information if you want it. The first one is in amount of $20,000 dated January 16 -- excuse me, January 25th, 2016 made payable to the Gary V. Dubin Client Trust Account.

HEARING OFFICER HUGHES: Okay. Mr. Dubin, this is a conditionally admitted document. I understand the significance of this document and all of the contents to the claims being asserted against you by ODC. We can move on now. I am looking for the confirmation because if it comes in, it has -- it is strong evidence, okay?

MR. DUBIN: Okay.

HEARING OFFICER HUGHES: So let's move along.

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RECORD: 11/22/17 Transcipt

DISCIPLINARY BOARD

of the

HAWAI'I SUPREME COURT

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,	)	ODC No. 16-0-213
	)	16-0-151
	)	16-0-147
vs.	)	16-0-326
GARY V. DUBIN, Respondent.	)	
	)	

H E A R I N G (Volume V)

Taken at the Office of Disciplinary Counsel, 201 Merchant Street, Suite 1600, Honolulu, Hawaii 96813, commencing at 8:36 a.m., on November 22, 2017.

BEFORE: HEARING OFFICER ROY HUGHES, ESQ.

Reported by: Mary Anne Young, CSR 369, RPR

For the Office of Disciplinary Counsel:

Correct.

Q Thank you.

Did Mr. Harkey tell you when he retained you in May of 2016 that he had attempted to get this information from Mr. Dubin?

MR DUBIN: Objection.

THE WITNESS: He indicated --

MR DUBIN: Excuse me. Objection. It's a leading question. Mr. Kim is testifying again.

HEARING OFFICER HUGHES: I'll allow the question.

THE WITNESS: He indicated that he had asked for the accounting of his retainer, and at that time I believe Mr. Dubin had said that it wasn't ready yet. He indicated after that he had had his assistants or whoever --

MR DUBIN: Excuse me. This is all material hearsay. There's been no explanation why Mr. Harkey is not testifying in this proceeding. He has a surrogate who is testifying as to him, and I think that's a valid objection.

HEARING OFFICER HUGHES: Mr. Dubin, my understanding is that the complaint at issue has been made by Mr. Kern, not by Mr. Harkey, so I'm going to receive the testimony.

HEARING OFFICER HUGHES: Then let's go and do it.

MR DUBIN: -- based on his testimony. Well, I'm trying to. Despite all the interruptions, that's what I'm trying to do.

BY MR DUBIN:

Q Mr. Kern?

A Yes? Yes?

Q You have no actual -- you have no personal knowledge regarding what I actually did concerning Washington state cases?

A Again, at least here in Nevada, we define personal knowledge as including that gained by review of admissible business records.

Q But you --

A So by that standard, I do have personal knowledge.

Q But you have -- you don't have personal knowledge what Mr. Harkey asked me to do in Washington state, right?

A Again, I reviewed significant interactions in writing between you and Mr. Harkey discussing that.

HEARING OFFICER HUGHES: And so the answer, Mr. Kern, would be yes?

THE WITNESS: Yes, I do.

BY MR DUBIN:

Q You know that Mr. Harkey at that time communicated with me mostly on the telephone, he wasn't using e-mail, so can you identify what communications you're referring to?

A I am referring to the written communications and I would dispute looking at your billing records that you proposed to indicate mostly written communication with him.

Q All right. Are you aware that he instructed me to work through somebody in Washington who I would send materials to after talking to --

A No, he never indicated that.

Q Pardon?

A He never indicated anything of that sort to me.

Q Okay. And what about in Nevada, do you know anything about the communications I had with Mr. Harkey regarding what he wanted me to do regarding Nevada?

A Yes, because I worked on that case and reviewed the records.

Q And when did you -- when did you become involved in that case, approximately?

A The end of May 2016.

Q And all the work that's billed for in the

Before the

DISCIPLINARY BOARD

of the

HAWAI'I SUPREME COURT

OFFICE OF DISCIPLINARY	)	ODC No. 16-0-213
COUNSEL,	)	16-0-151
Petitioner,	)	16-0-147
vs.	)	16-0-326
GARY V. DUBIN,	)	
Respondent.	)	
	)	

H E A R I N G (Volume III)

Taken at the Office of Disciplinary Counsel, 201 Merchant Street, Suite 1600, Honolulu, Hawaii 96813, commencing at 9:09 a.m., on November 20, 2017.

BEFORE: HEARING OFFICER ROY HUGHES, ESQ.

Reported by: Mary Anne Young, CSR 369, RPR

MR. KIM: Again, there is a motion in limine on this and it's work product and it's beyond the scope of direct. Mr. Elerick is only here to testify as to Mr. Dubin's non-response to a specific letter dated October 3rd, 2016.

HEARING OFFICER HUGHES: Okay. Sustained. And we have Mr. --

MR. DUBIN: Could I put my --

HEARING OFFICER HUGHES: -- Dubin's letter?

MR. DUBIN: Could I put my objection on the record?

HEARING OFFICER HUGHES: Yes, you may.

MR. DUBIN: The ODC brought a complaint against me by Mr. Kern. I've simply asked what evidence they have that Mr. Kern had the authority to file a complaint on behalf of a client of mine. That was my question.

With that objection in mind, does the Hearing Officer still sustain the objection?

HEARING OFFICER HUGHES: He does.

BY MR. DUBIN:

Q In this letter September 23rd, 2016, admitted conditionally, is there information concerning my client trust log attached to this letter?

A I see that here.

23

RECORD: Doc. 29

Dubin Law Offices

Gary Victor Dubin <gdubin@dubinlaw.net>

Michael E. Harkey -CONFIDENTIAL: FOR THE EYES OF GARY DUBIN AND MICHAEL HARKEY ONLY

Wendy Alison Nora <accesslegalservices@gmail.com> Mon, Apr 25, 2016 at 12:06 PM

To: Gary Victor Dubin <gdubin@dubinlaw.net>
Cc: Michael Harkey <mhrctfysto@gmail.com>, +19146895251@tmomail.net

Dear Gary,

I have attached the Power of Attorney executed by Michael Harkey today, so that I can work with you on the retainer agreement for Mr. Harkey's representation in Harkey v. US Bank, N.A. as Trustee for the CSMC Mortgage-Backed Trust 2007-6, now pending in the United States District Court for the District of Nevada in which a member of your firm, Frederick John Arensmeyer, has applied to appear pro hac vice.

Michael Harkey has asked me to continue act as research assistant, legal assistant and investigator in his case against US Bank, N.A., Trustee for the CSMS Mortgage-Backed Trust 2007-6, et al. in the United States District Court for the District of Nevada in Case No. 14-cv-177, a capacity in which I could not continue to act on his behalf until new counsel was retained, because I am not licensed to practice law in Nevada and, due to circumstances involving my dispute with the Wisconsin Office of Lawyer Regulation, I will not seek pro hac vice admission in Mr. Harkey's case. I have sought pro hac vice admission in the United States Bankruptcy Court for the Southern District of New York during the pendency of the OLR action, but both Mr. Harkey's previous attorney and I (as his mere legal assistant, research assistant and investigator) were subjected to an attack on our integrity due to previous disciplinary matters for each of us (mine is over 25 years old) by the attorneys for Fidelity National Financial, Inc. because we exposed the fact that they had used Mr. Posin's electronic signature without his consent and in violation of the Local Rules of the United States District Court for the District of Nevada, which require that the filer of a document with an electronic signature must have possession of the signature of all signatories. Fidelity National Financial is the parent company of Lender Processing Services, Inc., now known as Black Knight Financial, LLC, a document forgery operation. The irony of the situation was not lost on Attorney Posin and me. Recriminations were flying between Attorney Posin (largely directed against me) and the lawyers who produced a false document displaying Attorney Posin's unauthorized electronic signature. Judge Boulware would have none of it and told all concerned (there were other acrimonous disputes) that before any more accusations could be aired in public, the matter would have to be directed to him in confidence first, (if I am characterizing his position correctly, which was stated in open court and was not otherwise put into a written order.)

Mr. Harkey and I are in the process of finalizing the Harkey Operating Trust for filing with the Minnesota Secretary of State, of which I will be the initial Trustee, and, as the name indicates, Michael E. Harkey will be the Trustor. Among the assets of the Harkey Operating Trust will be the current action in Harkey v. US Bank, N.A. as Trustee for the CSMC Mortgage-Backed Trust 2007-6, now pending in the United States District Court for the District of Nevada. The Harkey Operating Trust may be substituted as Plaintiff in the action as soon as the Harkey Operating Trust is registered with the Minnesota Secretary of State. As Trustee of the Harkey Operating Trust (the Trust), I will be responsible for retaining attorneys and other professionals for services to the Trust and the income to and assets of the Trust will be responsible for making payments for professional services. In the interim,

Mr. Harkey has appointed me as his Attorney-in-Fact, so that the retainer agreement for your firm's services may be negotiated, approved and executed by me. Mr. Harkey needs to direct his attention to other important business matters and it is not in his interests or the interests of the case to spend time working on necessary modifications to your firm's proposed retainer agreement.

I understand that Mr. Harkey has paid a total of $45,000.00 to Dubin Law Offices. It is also my understanding that $20,000.00 was paid to your firm in December, 2015 or January, 2016 for services to be rendered in the United States Bankruptcy Court for the Western District of Washington, which have not been provided. I understand that $25,000.00 was paid to your firm in April, 2016 for representation of Mr. Harkey in Harkey v. US Bank, N.A. as Trustee for the CSMC Mortgage-Backed Trust 2007-6 (the Nevada federal district court case). Mr. Harkey has some questions and concerns about the allocation of funds already paid and, as Trustee of the Harkey Operating Trust, I will work with you to resolve those issues. Mr. Harkey is very emotionally involved with all of the properties which were taken from him, but the Camino Island, Washington property is especially important to him. In order of priority for recovery of the real estate, it is my understanding that the Camino Island, Washington property is the most important, Unit 3211 at 2220 Village Walk in Henderson is the next most important and Unit 3315 is the third. He lost other properties during the engineered "Foreclosure Crisis" as well, at a time when even a single missed payment was used to create a default, and the availability of TARP funds created incentives to foreclose. The scheme often worked like this (as I am sure that you know), a single missed payment would lead to the creation of an escrow account and forced place insurance, creating a default situation often unknown to the property owner. Often the missed payment would be refused as "late" and the next payment would be demanded at the same time. Once the engineered default led to 90 days in arrears, the monoline insurance policies would be triggered into effect. Credit default swaps, CDOs, etc. were accessed by Trustee's of REMIC Trusts.

I am willing act as research assistant, legal assistant and investigator, at your direction, in the Nevada federal district court case on the same or similar terms as those under which I acted under the supervision of Mr. Harkey's previous attorney, Attorney Mitchell Posin, subject to Mr. Harkey's written waiver of conflict of interest as to my dual roles as Trustee of the Operating Trust and acting at your direction. I prepared documents for Attorney Posin's review and approval and filed the documents electronically. It appears that your firm is not yet filing documents electronically in the case. If I am going to function in my previous capacity as a research assistant and legal assistant, I will need to have login and password information associated with you firm's ECF registration so that I may file approved motions, briefs and other documents at the direction of counsel appearing for Mr. Harkey. One single authorized attorney should be assigned to approve the documents which I will be directed to prepare for review and filing. I will be available to answer questions from any and all counsel approved to represent Mr. Harkey, but you will find that in this case (at least at the pace Attorney Posin encountered initially), that a committee of lawyers is too cumbersome, let alone too expensive, to approve routine filings. The value of having more than one lawyer representing Mr. Harkey will be increased availability of counsel in the event of scheduling conflicts and the financial benefit of having an attorney charging lower hourly rates than lead counsel being utilized in more routine matters. But I am, by nature and experience, opposed to unnecessary conferences between attorneys in any client's case.

As Trustee of the Operating Trust, I will be responsible for payments for professional services. I will not approve duplicative services such charges being made for conferences between lead counsel, subordinate counsel and paraprofessional staff. Services will be approved at the highest hourly rate among the participants in a two, three or more person conferences only. I strongly disapprove of the business model in which lawyers and staff confer on a matter, each being billed at his or her respective hourly rate, e.g. $500.00/hr for a senior partner, $300.00/hr for junior partner, $200.00/hr for an associate and $100.00/hr

for a legal assistant=$1,100.00/hr. Few clients can afford such a grandiose billing model and it has been my observation that such a billing model quickly exhausts any reasonable litigation budget. I have also seen firms with such models withdraw from representing clients before the case is completed when the client can no longer afford to pay. Respectfully, there is money to be made in the current Harkey case in the Nevada federal district court and it will be made upon successful completion of the case by a mixed hourly rate/contingency fee arrangement to be negotiated. The federal and Nevada RICO counts provide for reasonable attorneys fees and costs, so the hourly billing should be maintained for eventual court approval of attorneys' fees and costs. I would like to see a retainer agreement that rewards successful completion of the matter and not the number of hours expended by multiple attorneys.

Fidelity National Financial, Inc., as the parent company of LPS and LPS subsidiary DOCX, is responsible for over one million false documents being filed in public land records and in courts throughout the nation. See Harkey Exhibit 30. Please be advised that Fidelity National Financial, Inc. may be liable for damages valued in the trillions of dollars if what you have heard characterized as the last, best hope for exposing the RICO Enterprise is indeed exposed. It is believed that a young woman was "suicided" before she could assist the Attorney for the State of Nevada in exposing the LPS operation in Nevada and throughout the nation. LPS' CEO, Jeffrey S. Carbinier, resigned due to "illness" soon after the April 13, 2011 Consent Decree with the was executed (Harkey Exhibit 23). In my opinion, your firm needs all the help that I can provide to you based on my years of research into the operations of Fidelity National Financial and its subsidiaries to save duplicative efforts. With my assistance, the attorneys' time involved in the Harkey case can be substantially reduced, making the expenses of litigation far more manageable and affordable.

It would take you and your firm considerable time to reconstruct what I already know, if such knowledge could ever be reconstructed. It would be a serious waste of Mr. Harkey's resources and the legal and investigative talent already expended for your firm to not avail yourself of my assistance in this matter, at your direction as lead counsel (when you appear in that capacity). Many Exhibits have not already been filed in Mr. Harkey's case are accessible from my research in the Harkey case and others involving the operations of and bankruptcy of New Century Mortgage Corporation and the operations of LPS. The information and research at my disposal was developed other in cases dating back to 2003, intensified in and after 2009. Some of the Exhibits attached to the Harkey Second (and Third) Amended Complaints are from my previous research.

The Harkey Second Amended Complaint and attached Exhibits filed by and at the direction and with the approval of Attorney Posin and the draft of the Third Amended Complaint (and Exhibits), which I am informed that Mr. Harkey filed, pro se, were notice pleadings under Fed. R. Civ. P. 8 and alleged causes of action based on fraud. The allegations of fact were pleaded with sufficient detail to support fraud allegations which must be specifically pleaded under Fed. R. Civ. P. 9 to survive Fed. R. Civ. P. 12(b)(6) motions, which evidently succeeded as to most counts despite Mr. Harkey's pro se status. The Exhibits attached to the Second Amended Complaint (and apparently to the Third Amended Complaint) were provided to the Court to demonstrate the plausibility of the fraud allegations, to avoid a judicial determination that the factual allegations were implausible because the Exhibits support the essential factual allegations.

But there are numerous other Exhibits which can be authenticated and facts which can be provided by Declarations upon personal knowledge for partial motions for summary judgment and in defense of any motion for summary judgment which the surviving defendants may seek to pursue, which are in my records, are known to identifiable witnesses and are not Exhibits attached to the Second and Third Amended Complaints. The documents and information in my possession is based not just on my research for Mr. Harkey but dates back years before he consulted me.

It is not in Mr. Harkey's interest or the interest of the case for me to seek pro hac vice admission as long as the bizarre Wisconsin disciplinary case remains unresolved. For me to seek pro hac vice admission would be a distraction from the meritorious proceedings now pending in the federal district court. My application to appear pro hac vice would require Judge Boulware to spend time deciding my pro hac vice application which will almost certainly be litigated because the attorneys for Fidelity National Financial, Inc. already tried to preempt my participation as co-counsel with Attorney Posin, even though I was only then acting as Attorney Posin's legal assistant and preparing documents for his review. An attorney claiming to represent Fidelity National Financial, Inc. is one of the two grievants in the Wisconsin disciplinary case. It is that grievant who procured the fraudulent allonge to my the mortgage note in my own foreclosure case, which was created by Lender Processing Services, Inc. (a/k/a LPS, now known as Black Knight Financial, LLC), a subsidiary of Fidelity National Financial, Inc. He and his co-counsel in my mortgage foreclosure case pretended to be representing Residential Funding Company, LLC (RFC, the named Plaintiff) and it was discovered on April 5 and 6, **2016** when each of them testified at the "hearing" that their firms were not retained by RFC but represented, variously, "GMAC RESCAP" (an entity which does not exist), "GMAC Mortgage" (GMAC Mortgage, LLC is a subsidiary of Residential Capital, LLC a/k/a RESCAP) and "GMAC" (which could be GMAC Bank, now Ally Bank, or GMAC, Inc., now Ally Financial, Inc.) In other words, the attorneys who are grievants against me were not retained by or employed by the plaintiff in whose name the foreclosure action was initiated and pursued.

My Wisconsin disciplinary status is not a factor in how I might continue to serve Mr. Harkey in a lawful capacity in an arrangement acceptable to Mr. Harkey. I am presently authorized by Mr. Harkey to discuss your firm's retainer agreement, which requires some modifications. My involvement in the federal district court case will require a waiver of conflict of interest from Mr. Harkey.

I am putting this response to your email in electronic letter format and have signed it electronically.

All my best,
Wendy

2 attachments

4.25.2016.Dubin.Letter.Confidential.pdf
233K

4.25.2016.FullyExecuted.LimitedPOA.pdf
279K

ACCESS LEGAL SERVICES
Wisconsin Offices VOICE (608) 833-7377
Minnesota Offices VOICE (612) 333-4144
All Offices FAX (612) 206-3170
accesslegalservices@gmail.com

Wendy Alison Nora*
Attorney at Law
**admitted to practice law in Minnesota and Wisconsin*

Minnesota Office and mailing address
310 Fourth Avenue South, Suite 5010
Minneapolis, Minnesota 55413

Wisconsin Office (no mail to this address)
6320 Monona Drive
Monona, Wisconsin 53716

April 25, 2016

Attorney Gary Dubin
DUBIN LAW OFFICES
Honolulu, Hawaii ***VIA E-MAIL***

NOT TO BE RE-DISCLOSED
CONFIDENTIAL; FOR YOUR EYES AND MICHAEL E. HARKEY ONLY

RE: Harkey v. US Bank, N.A. as Trustee for the CSMC Mortgage-Backed Trust 2007-6; Limited Power of Attorney; Inquiry Regarding Status of Attorney Wendy Alison Nora
PLEASE READ THIS LETTER IN ITS ENTIRETY

Dear Gary:

In response to your email of April 23, 2016, I am providing this letter which contains the content of my email response, for your records.

I have attached the Power of Attorney executed by Michael Harkey today, so that I can work with you on the retainer agreement for Mr. Harkey's representation in Harkey v. US Bank, N.A. as Trustee for the CSMC Mortgage-Backed Trust 2007-6, now pending in the United States District Court for the District of Nevada in which a member of your firm, Frederick John Arensmeyer, has applied to appear pro hac vice.

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I am putting this response to your email in electronic letter format and have signed it electronically.

All my best,

/s/ Wendy Alison Nora
Wendy Alison Nora

cc: Michael E. Harkey

NEVADA LIMITED POWER OF ATTORNEY FORM

I. NOTICE - This legal document grants you (Hereinafter referred to as the "Principal") the right to transfer limited financial powers to someone else (Hereinafter referred to as the "Attorney-in-Fact"), limited financial powers are described as: **any specific financial act legal under law.** The Principal's transfer of limited financial powers to the Attorney-in-Fact are granted upon authorization of this agreement, and ONLY remains in effect until the later of the completion of said act, or the date of registration of the Harkey Operating Trust with the Secretary of State for the State of Minnesota, unless the Principal becomes incapacitated (incapacitation is described in Paragraph II). This agreement does not authorize the Attorney-in-Fact to make medical decisions for the Principal. The Principal continues to retain every right to all their financial decision making power and may revoke this Limited Power of Attorney Form at anytime. The Principal may include restrictions or requests pertaining to the financial decision making power of the Attorney-in-Fact. It is the intent of the Attorney-in-Fact to act in the Principal's wishes put forth, or, to make financial decisions that fit the Principal's best interest. All parties authorizing this agreement are at least 18 years of age and acting under no false pressures or outside influences. Upon authorization of this Limited Power of Attorney Form, it will revoke any previously valid Limited Power of Attorney Form.

II. INCAPACITATION – The powers granted to the Attorney-in-Fact by the Principal in this Limited Power of Attorney Form DO NOT stay in effect upon incapacitation by the Principal, incapacitation is describes as: **A medical physician stating verbally or in writing that the Principal can no longer make decisions for them self.**

III. REVOCATION - The Principal has the right to revoke this Limited Power of Attorney Form at anytime. Any revocation will be effective if the Principal:
A. Authorizes a new Limited Power of Attorney Form.
B. Authorizes a Power of Attorney Revocation Form.

IV. WITNESS & NOTARY - This document is not valid as a Limited Power of Attorney unless it is acknowledged before a notary public or is signed by at least two adult witnesses who are present when the Principal signs or acknowledges the Principal's signature.

V. PRINCIPAL - I, Michael E. Harkey, residing in Las Vegas, Clark County, Nevada with a mailing address of 9101 West Sahara, Suite 105, Las Vegas, Nevada 89117 appoint the following as my Attorney-in-Fact, whom I trust with a specific financial act or acts immediately upon the authorization of this form, and I grant the power to act as if I were personally present to my Attorney-in-Fact.

VI. ATTORNEY-IN-FACT Wendy Alison Nora, whose business address is 310 Fourth Ave., S., Suite 5010, Minneapolis, Minnesota 55415, is granted the legal authority to perform the specific financial act on my behalf under law in the State of Nevada set forth in Section VII., below.

VII. POWER AND AUTHORITY GRANTED. The specific financial act I grant to my Attorney-in-Fact is:
The power and authority to negotiate, approve and execute any and all retainer agreements with Dubin Law Offices of Honolulu, Hawaii on my behalf.

VII. TERMS & CONDITIONS – Upon authorization by all parties, the Attorney-in-Fact accepts their designation to act in the Principal's best interests for the specific financial decisions for which she is appointed hereunder.

VIII. THIRD PARTIES – I, the Principal, agree that any third party receiving a copy via: physical copy, email, or fax that I, the Principal, will indemnify and hold harmless any and all claims that may be put forth in reference to this Limited Power of Attorney Form.

IX. COMPENSATION – The Attorney-in-Fact agrees not to be compensated for exercising the Power and Authority granted herein prior to the registration of the Harkey Operating Trust with the Secretary of State for the State of Minnesota.

X. PRINCIPAL'S SIGNATURE - I, Michael E. Harkey, the Principal, sign my name to this Power of Attorney this 24th day of April, 2016 and, being first duly sworn on oath, solemnly affirm and declare that I sign and execute this instrument as my Power of Attorney and that I sign it willingly, that I execute it as my free and voluntary act for the purposes expressed in the Power of Attorney and that I am eighteen years of age or older, of sound mind and under no constraint or undue influence.

Michael E. Harkey
Signature of Principal

State of Nevada)
ss
County of Clark)

On April 25, 2016, Michael E. Harkey, being first duly sworn on oath, appeared before me, identified himself as the Principal and signed and executed this instrument himself, and that to the best of my knowledge the Principal is eighteen years of age or older, of sound mind and under no constraint or undue influence.

Notary Public. My commission expires: 04/22/2017.

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
JAMES TOLSON
No: 13-10543-1
My Appointment Expires April 22, 2017

XI. ATTORNEY-IN-FACT'S SIGNATURE - I, Wendy Alison Nora, have read the foregoing Power of Attorney and am the person identified as the Attorney-in-Fact for the Principal. I hereby acknowledge and accept my appointment as Attorney-in-Fact and that when I act as agent I shall

exercise the powers for the benefit of the Pri cipal; I shall keep the assets of the Principal separate from my assets; I shall exercise reasonable caution and prudence; and I shall keep a full and accurate record of all actions, receipts and disbursements on behalf of the Pri cipal.

Wendy Alison Nora

Wendy Alison Nora
Signature of Attorney-in-Fact

Dubin Law Offices

Gary Victor Dubin <gdubin@dubinlaw.net>

Michael E. Harkey -CONFIDENTIAL: FOR THE EYES OF GARY DUBIN AND MICHAEL HARKEY ONLY

Gary Victor Dubin <gdubin@dubinlaw.net> Mon, Apr 25, 2016 at 1:31 PM
To: Wendy Alison Nora <accesslegalservices@gmail.com>
Cc: Michael Harkey <mhrctfysto@gmail.com>, +19146895251@tmomail.net, Fred Arensmeyer <farensmeyer@dubinlaw.net>, Richard Forrester <rforrester@dubinlaw.net>
Bcc: gdubin@dubinlaw.net

Wendy:

As you should know, no attorney can accept the relationship you propose.

You are forcing my law firm to withdraw our petitions for pro hac vice appearances.

I had hoped in recently emailing you that you could work with us on the Nevada case, not that you would control our representation and not that we would be stand-ins for you.

Your proposal is unethical and would be contrary to the rules governing pro hac vice representation in the State of Nevada.

Gary

Gary Victor Dubin
Dubin Law Offices
Harbor Court, Suite 3100
55 Merchant Street
Honolulu, Hawaii 96813

gdubin@dubinlaw.net
(808) 537-2300 (office)
(808) 392-9191 (cellular)
(808) 523-7733 (facsimile)

Licensed in California and Hawaii
[Quoted text hidden]

<4.25.2016.Dubin.Letter.Confidential.pdf>

<4.25.2016.FullyExecuted.LimitedPOA.pdf>

Dubin Law Offices

Gary Victor Dubin <gdubin@dubinlaw.net>

Power of Attorney of Michael E. Harkey dated April 25, 2016

Wendy Alison Nora <accesslegalservices@gmail.com> Tue, Apr 26, 2016 at 11:27 AM

To: Gary Victor Dubin <gdubin@dubinlaw.net>

Dear Gary:

By no means does my email or letter attempt to control or direct your firm's representation of Michael Harkey or the soon to be established Harkey Operating Trust in the Nevada federal district court case entitled Harkey v. US Bank, N.A. as Trustee for the CSMC Mortgage-Backed Trust 2007-6, et al.

First of all, I simply offered to be a legal assistant/research assistant, at Mr. Harkey's request and in response to your email. I would have worked entirely at the direction of your firm, if you wanted to have me participate in that manner.

If your concern is that I am responsible for negotiating and approving the retainer agreement with your firm, that is indeed what Mr. Harkey intended and he has every right to have a third party who he trusts perform that role.

I do not care whether or not I perform any further legal/research assistant work on the Nevada federal district court case. My involvement was proposed by Mr. Harkey to save him the cost of redundant services, duplicating efforts which have already been performed and to provide you with access to the body of research which I have accumulated over more than a decade. Mr. Harkey believed that your firm's services could be performed at a substantially lower cost with my assistance. I could not and would not control and direct your representation of Mr. Harkey or the Operating Trust in the federal district court case and had no desire to do so. I far have more than enough work to do on my own existing cases.

I am concerned, however, that Mr. Harkey, who has been a client of mine since 2012, be able obtain legal services at the lowest possible cost. I disagree with you that "no attorney can accept the relationship" I proposed and you wrote to Mr. Harkey stating that no lawyer in America would accept the services I offered to your firm, at Mr. Harkey's request and in response to your email inquiry. You are saying that no lawyer would want to have a legal assistant, research assistant and investigator who has already performed substantial services in a matter perform subordinate and supervised research and legal assistant services at your direction. Attorney Posin availed himself of just such a relationship for the benefit of his representation of Mr. Harkey and I would do so under similar circumstances, so that makes at least 2 lawyers in America who would avail themselves of such proposal. It matters naught to me whether or not you accept the proposal for me to act in a subordinate capacity under your supervision and I am frankly relieved not to be required to do so.

There is nothing ***unethical*** about the proposal I made at Mr. Harkey's request and in response to your email as to my potential availability to act in a subordinate capacity and at your direction. I proposed an arrangement which was exclusively within your direction and control, just as I was completely under the control and direction of Attorney Posin. The proposal I made, at Mr. Harkey's request and in response to your email of April 23, 2016, does not violate the Local Rules of the United States District Court for the District of Nevada. You were free to accept or reject the proffered subordinate services, which were made in response to Mr. Harkey's request.

There was no need to threaten Mr. Harkey with the withdrawal of the pro hac vice application. You had the absolute authority to reject my proffered services as a legal/research assistant, but unless Mr.

Harkey revokes the Power of Attorney he executed and delivered yesterday, which I accepted, you would have had to negotiate the terms of your retainer agreement with me as Mr. Harkey's Attorney in Fact. This is what I believe is your real concern: that as Attorney in Fact for Mr. Harkey, I informed you that I would not approve duplicative billing for multiple attorneys to confer about issues. In other cases, when I have been co-counsel with other attorneys, we have limited our billing for services provided jointly and cumulatively to the amount of the hourly rate of a single attorney for the benefit of the clients.

There is nothing unethical about *NOT* billing a client for the services of all attorneys and staff in multiple attorney conferences. In fact, it is reasonable and prudent *NOT* to do so.

There is nothing unethical about allowing a legal assistant to file documents, when approved by counsel, by CM/ECF. It is done all the time and is very helpful. Many lawyers have their paraprofessional staff perform electronic filing for them. I have authorized paraprofessional staff to file documents by CM/ECF when I have not been able to do so myself.

There is nothing unethical about an attorney licensed in other jurisdictions acting as an Attorney in Fact to negotiate, approve and execute a retainer agreement with your law firm. A competent adult (any mentally capable person having reached the age of 18 years) could be authorized to do so do so under Nevada law.

There is nothing unethical about a licensed attorney creating a Trust for a client and acting as the Trustee of that Trust. The Trustee of the Harkey Operating Trust, which is in the process of being registered in Minnesota. The litigation for which your firm was proposed to be retained (and in which one member of your firm applied to appear pro hac vice) will be an asset of that Trust. It will be the Trustee's responsibility to pursue that action, including retaining professionals.

You have published defamatory statements to Mr. Harkey and members of your firm by your email below in violation of my right to be free from libel. You declared the proposal for my subordinate services under your supervision to be unethical in your email to me, copied to Mr. Harkey, Fred Arensmeyer and Richard Forester. By email to Mr. Harkey, you labelled me unethical and unprofessional and stated that my proposal would be a *FRAUD UPON THE COURT*. That is defamation per se. Please be advised that you have until the close of business at 5:00 p.m. Hawaii Time to withdraw the defamatory remarks by email to the recipients of the defamatory material and apologize to me and Mr. Harkey.

I think that it goes without saying that, as Attorney in Fact for Mr. Harkey, it will be very difficult for me to approve any contract with your law firm unless or until you withdraw the defamatory remarks directed against me and Mr. Harkey's legitimate interests in his contractual and financial relationship with your firm.

In the meantime, because you have twice threatened to withdraw as counsel for Mr. Harkey within less than the past 24 hours, Mr. Harkey is revising his Power of Attorney to make it possible for me to be his Attorney in Fact to make alternative arrangements for his representation and the representation of the Harkey Operating Trust in the Nevada federal district court case. Mr. Harkey would prefer to avoid the eventuality of having your firm withdraw the pro hac vice application of Fred Arensmeyer.

From what I see of the record in the Adversary Proceeding in the Western District of Washington, Adv. No. 15-01355, depending on the timing of your promise to represent Mr. Harkey in that matter (regardless of the date upon which you received the advance retainer of $20,000.00, which you directed him to send to a mistaken bank account number), you should be able to understand Mr. Harkey's concern about your commitment to his interests

and your firm's present ability to respond quickly to the demands of out-of-state litigation on short deadlines. Short deadlines are always the case in bankruptcy matters and were ubiquitous in the Nevada federal district court case until the end of 2014, including electronic filing requirements. Finally, your firm's proposed retainer agreement is generic and does not sufficiently address the attorneys' fees and costs to which Mr. Harkey would be committed in the specific matter of the Nevada federal district court action.

Wendy Alison Nora

On Mon, Apr 25, 2016 at 6:31 PM, Gary Victor Dubin <gdubin@dubinlaw.net> wrote:

Wendy:

As you should know, no attorney can accept the relationship you propose.

You are forcing my law firm to withdraw our petitions for pro hac vice appearances.

I had hoped in recently emailing you that you could work with us on the Nevada case, not that you would control our representation and not that we would be stand-ins for you.

Your proposal is unethical and would be contrary to the rules governing pro hac vice representation in the State of Nevada.

Gary

Gary Victor Dubin
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(808) 392-9191 (cellular)
(808) 523-7733 (facsimile)

Licensed in California and Hawaii

On Apr 25, 2016, at 12:06 PM, Wendy Alison Nora <accesslegalservices@gmail.com> wrote:

> Dear Gary,
>
> I have attached the Power of Attorney executed by Michael Harkey today, so that I can work with you on the retainer agreement for Mr. Harkey's representation in Harkey v. US Bank, N.A. as Trustee for the CSMC Mortgage-Backed Trust 2007-6, now pending in the United States District Court for the District of Nevada in which a member of your firm, Frederick John Arensmeyer, has applied to appear pro hac vice.
>
> Michael Harkey has asked me to continue act as research assistant, legal assistant and investigator in his case against US Bank, N.A., Trustee for the CSMS Mortgage-Backed Trust 2007-6, et al. in the United States District Court for the District of Nevada in Case No. 14-cv-177, a capacity in which I could not continue to act on his behalf until new counsel was retained, because I am not licensed to practice law in Nevada and, due to circumstances involving my

dispute with the Wisconsin Office of Lawyer Regulation, I will not seek pro hac vice admission in Mr. Harkey's case. I have sought pro hac vice admission in the United States Bankruptcy Court for the Southern District of New York during the pendency of the OLR action, but both Mr. Harkey's previous attorney and I (as his mere legal assistant, research assistant and investigator) were subjected to an attack on our integrity due to previous disciplinary matters for each of us (mine is over 25 years old) by the attorneys for Fidelity National Financial, Inc. because we exposed the fact that they had used Mr. Posin's electronic signature without his consent and in violation of the Local Rules of the United States District Court for the District of Nevada, which require that the filer of a document with an electronic signature must have possession of the signature of all signatories. Fidelity National Financial is the parent company of Lender Processing Services, Inc., now known as Black Knight Financial, LLC, a document forgery operation. The irony of the situation was not lost on Attorney Posin and me. Recriminations were flying between Attorney Posin (largely directed against me) and the lawyers who produced a false document displaying Attorney Posin's unauthorized electronic signature. Judge Boulware would have none of it and told all concerned (there were other acrimonous disputes) that before any more accusations could be aired in public, the matter would have to be directed to him in confidence first, (if I am characterizing his position correctly, which was stated in open court and was not otherwise put into a written order.)

Mr. Harkey and I are in the process of finalizing the Harkey Operating Trust for filing with the Minnesota Secretary of State, of which I will be the initial Trustee, and, as the name indicates, Michael E. Harkey will be the Trustor. Among the assets of the Harkey Operating Trust will be the current action in Harkey v. US Bank, N.A. as Trustee for the CSMC Mortgage-Backed Trust 2007-6, now pending in the United States District Court for the District of Nevada. The Harkey Operating Trust may be substituted as Plaintiff in the action as soon as the Harkey Operating Trust is registered with the Minnesota Secretary of State. As Trustee of the Harkey Operating Trust (the Trust), I will be responsible for retaining attorneys and other professionals for services to the Trust and the income to and assets of the Trust will be responsible for making payments for professional services. In the interim, Mr. Harkey has appointed me as his Attorney-in-Fact, so that the retainer agreement for your firm's services may be negotiated, approved and executed by me. Mr. Harkey needs to direct his attention to other important business matters and it is not in his interests or the interests of the case to spend time working on necessary modifications to your firm's proposed retainer agreement.

I understand that Mr. Harkey has paid a total of $45,000.00 to Dubin Law Offices. It is also my understanding that $20,000.00 was paid to your firm in December, 2015 or January, 2016 for services to be rendered in the United States Bankruptcy Court for the Western District of Washington, which have not been provided. I understand that $25,000.00 was paid to your firm in April, 2016 for representation of Mr. Harkey in Harkey v. US Bank, N.A. as Trustee for the CSMC Mortgage-Backed Trust 2007-6 (the Nevada federal district court case). Mr. Harkey has some questions and concerns about the allocation of funds already paid and, as Trustee of the Harkey Operating Trust, I will work with you to resolve those issues. Mr. Harkey is very emotionally involved with all of the properties which were taken from him, but the Camino Island, Washington property is especially important to him. In order of priority for recovery of the real estate, it is my understanding that the Camino Island, Washington property is the most important, Unit 3211 at 2220 Village Walk in Henderson is the next most important and Unit 3315 is the third. He lost other

properties during the engineered "Foreclosure Crisis" as well, at a time when even a single missed payment was used to create a default, and the availability of TARP funds created incentives to foreclose. The scheme often worked like this (as I am sure that you know), a single missed payment would lead to the creation of an escrow account and forced place insurance, creating a default situation often unknown to the property owner. Often the missed payment would be refused as "late" and the next payment would be demanded at the same time. Once the engineered default led to 90 days in arrears, the monoline insurance policies would be triggered into effect. Credit default swaps, CDOs, etc. were accessed by Trustee's of REMIC Trusts.

I am willing act as research assistant, legal assistant and investigator, at your direction, in the Nevada federal district court case on the same or similar terms as those under which I acted under the supervision of Mr. Harkey's previous attorney, Attorney Mitchell Posin, subject to Mr. Harkey's written waiver of conflict of interest as to my dual roles as Trustee of the Operating Trust and acting at your direction. I prepared documents for Attorney Posin's review and approval and filed the documents electronically. It appears that your firm is not yet filing documents electronically in the case. If I am going to function in my previous capacity as a research assistant and legal assistant, I will need to have login and password information associated with you firm's ECF registration so that I may file approved motions, briefs and other documents at the direction of counsel appearing for Mr. Harkey. One single authorized attorney should be assigned to approve the documents which I will be directed to prepare for review and filing. I will be available to answer questions from any and all counsel approved to represent Mr. Harkey, but you will find that in this case (at least at the pace Attorney Posin encountered initially), that a committee of lawyers is too cumbersome, let alone too expensive, to approve routine filings. The value of having more than one lawyer representing Mr. Harkey will be increased availability of counsel in the event of scheduling conflicts and the financial benefit of having an attorney charging lower hourly rates than lead counsel being utilized in more routine matters. But I am, by nature and experience, opposed to unnecessary conferences between attorneys in any client's case.

As Trustee of the Operating Trust, I will be responsible for payments for professional services. I will not approve duplicative services such charges being made for conferences between lead counsel, subordinate counsel and paraprofessional staff. Services will be approved at the highest hourly rate among the participants in a two, three or more person conferences only. I strongly disapprove of the business model in which lawyers and staff confer on a matter, each being billed at his or her respective hourly rate, e.g. $500.00/hr for a senior partner, $300.00/hr for junior partner, $200.00/hr for an associate and $100.00/hr for a legal assistant=$1,100.00/hr. Few clients can afford such a grandiose billing model and it has been my observation that such a billing model quickly exhausts any reasonable litigation budget. I have also seen firms with such models withdraw from representing clients before the case is completed when the client can no longer afford to pay. Respectfully, there is money to be made in the current Harkey case in the Nevada federal district court and it will be made upon successful completion of the case by a mixed hourly rate/contingency fee arrangement to be negotiated. The federal and Nevada RICO counts provide for reasonable attorneys fees and costs, so the hourly billing should be maintained for eventual court approval of attorneys' fees and costs. I would like to see a retainer agreement that rewards successful completion of the matter and not the number of hours expended by multiple attorneys.

Fidelity National Financial, Inc., as the parent company of LPS and LPS subsidiary DOCX, is responsible for over one million false documents being filed in public land records and in courts throughout the nation. See Harkey Exhibit 30. Please be advised that Fidelity National Financial, Inc. may be liable for damages valued in the trillions of dollars if what you have heard characterized as the last, best hope for exposing the RICO Enterprise is indeed exposed. It is believed that a young woman was "suicided" before she could assist the Attorney for the State of Nevada in exposing the LPS operation in Nevada and throughout the nation. LPS' CEO, Jeffrey S. Carbinier, resigned due to "illness" soon after the April 13, 2011 Consent Decree with the was executed (Harkey Exhibit 23). In my opinion, your firm needs all the help that I can provide to you based on my years of research into the operations of Fidelity National Financial and its subsidiaries to save duplicative efforts. With my assistance, the attorneys' time involved in the Harkey case can be substantially reduced, making the expenses of litigation far more manageable and affordable.

It would take you and your firm considerable time to reconstruct what I already know, if such knowledge could ever be reconstructed. It would be a serious waste of Mr. Harkey's resources and the legal and investigative talent already expended for your firm to not avail yourself of my assistance in this matter, at your direction as lead counsel (when you appear in that capacity). Many Exhibits have not already been filed in Mr. Harkey's case are accessible from my research in the Harkey case and others involving the operations of and bankruptcy of New Century Mortgage Corporation and the operations of LPS. The information and research at my disposal was developed other in cases dating back to 2003, intensified in and after 2009. Some of the Exhibits attached to the Harkey Second (and Third) Amended Complaints are from my previous research.

The Harkey Second Amended Complaint and attached Exhibits filed by and at the direction and with the approval of Attorney Posin and the draft of the Third Amended Complaint (and Exhibits), which I am informed that Mr. Harkey filed, pro se, were notice pleadings under Fed. R. Civ. P. 8 and alleged causes of action based on fraud. The allegations of fact were pleaded with sufficient detail to support fraud allegations which must be specifically pleaded under Fed. R. Civ. P. 9 to survive Fed. R. Civ. P. 12(b)(6) motions, which evidently succeeded as to most counts despite Mr. Harkey's pro se status. The Exhibits attached to the Second Amended Complaint (and apparently to the Third Amended Complaint) were provided to the Court to demonstrate the plausibility of the fraud allegations, to avoid a judicial determination that the factual allegations were implausible because the Exhibits support the essential factual allegations.

But there are numerous other Exhibits which can be authenticated and facts which can be provided by Declarations upon personal knowledge for partial motions for summary judgment and in defense of any motion for summary judgment which the surviving defendants may seek to pursue, which are in my records, are known to identifiable witnesses and are not Exhibits attached to the Second and Third Amended Complaints. The documents and information in my possession is based not just on my research for Mr. Harkey but dates back years before he consulted me.

It is not in Mr. Harkey's interest or the interest of the case for me to seek pro hac vice admission as long as the bizarre Wisconsin disciplinary case remains unresolved. For me to seek pro hac vice admission would be a distraction from

the meritorious proceedings now pending in the federal district court. My application to appear pro hac vice would require Judge Boulware to spend time deciding my pro hac vice application which will almost certainly be litigated because the attorneys for Fidelity National Financial, Inc. already tried to preempt my participation as co-counsel with Attorney Posin, even though I was only then acting as Attorney Posin's legal assistant and preparing documents for his review. An attorney claiming to represent Fidelity National Financial, Inc. is one of the two grievants in the Wisconsin disciplinary case. It is that grievant who procured the fraudulent allonge to my the mortgage note in my own foreclosure case, which was created by Lender Processing Services, Inc. (a/k/a LPS, now known as Black Knight Financial, LLC), a subsidiary of Fidelity National Financial, Inc. He and his co-counsel in my mortgage foreclosure case pretended to be representing Residential Funding Company, LLC (RFC, the named Plaintiff) and it was discovered on April 5 and 6, **2016** when each of them testified at the "hearing" that their firms were not retained by RFC but represented, variously, "GMAC RESCAP" (an entity which does not exist), "GMAC Mortgage" (GMAC Mortgage, LLC is a subsidiary of Residential Capital, LLC a/k/a RESCAP) and "GMAC" (which could be GMAC Bank, now Ally Bank, or GMAC, Inc., now Ally Financial, Inc.) In other words, the attorneys who are grievants against me were not retained by or employed by the plaintiff in whose name the foreclosure action was initiated and pursued.

My Wisconsin disciplinary status is not a factor in how I might continue to serve Mr. Harkey in a lawful capacity in an arrangement acceptable to Mr. Harkey. I am presently authorized by Mr. Harkey to discuss your firm's retainer agreement, which requires some modifications. My involvement in the federal district court case will require a waiver of conflict of interest from Mr. Harkey.

I am putting this response to your email in electronic letter format and have signed it electronically.

All my best,
Wendy

<4.25.2016.Dubin.Letter.Confidential.pdf>

<4.25.2016.FullyExecuted.LimitedPOA.pdf>

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Attorney Wendy Alison Nora
ACCESS LEGAL SERVICES
310 Fourth Ave. S., Suite 5010
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OFFICE HOURS BY APPOINTMENT ONLY

necessarily implied consent of the client solely for purposes of legal representation. **WARNING:** This communication may be unlawfully collected and stored by the National Security Agency (NSA) in secret. The parties to this email do not consent to the retrieving or storing of this communication and any related metadata, or the printing, copying, re-transmitting, disseminating, or otherwise using it outside the scope of legal services provided to clients of this firm. If you believe you have received this communication in error, please delete it immediately.

Dubin Law Offices

Gary Victor Dubin <gdubin@dubinlaw.net>

Power of Attorney of Michael E. Harkey dated April 25, 2016

Gary Victor Dubin <gdubin@dubinlaw.net> Tue, Apr 26, 2016 at 11:34 AM
To: Wendy Alison Nora <accesslegalservices@gmail.com>
Cc: Michael Harkey <mhrctfysto@gmail.com>, Fred Arensmeyer <farensmeyer@dubinlaw.net>, Richard Forrester <rforrester@dubinlaw.net>
Bcc: gdubin@dubinlaw.net

Wendy:

Your interference with my representation and relationship with my client is very unfortunate and forces me to withdraw from the case.

I reject your new threats. Your attempt was to take over the case. Well you now have it.

Gary Dubin

Gary Victor Dubin
Dubin Law Offices
Suite 3100, Harbor Court
55 Merchant Street
Honolulu, Hawaii 96813

Office: (808) 537-2300
Cellular: (808) 392-9191
Facsimile: (808) 523-7733
Email: gdubin@dubinlaw.net

Licensed in California and Hawaii
[Quoted text hidden]

Dubin Law Offices

Gary Victor Dubin <gdubin@dubinlaw.net>

Harkey v. US Bank, N.A. as Trustee for the CSMC Mortgage-Backed Trust 2007-6, et al. (NVD Case No. 14-cv-177) and Harkey v. US Bank, NA et al. (WAWB Adv. No. 15-01355)

Gary Victor Dubin <gdubin@dubinlaw.net> Tue, Apr 26, 2016 at 11:44 PM
To: Wendy Alison Nora <accesslegalservices@gmail.com>

If you will read my prior recent text messages and emails you will find that I already covered that issue and will be providing a full accounting when time allows. I do not need professional responsibility training from you.

Everything, everything was done at Michael's instructions, despite your prior erroneous statements to the contrary, and if you want a court battle, you can expect me to sue you for unethical interference with contractual relations.

Since you like to threaten others, I suspect that the Wisconsin disciplinary authorities might like to know of your unethical activities in Nevada. I need to research that as well, which I will do at no charge to Michael, for after all I at least owe him that before you destroy his case.

Gary Dubin

GARY VICTOR DUBIN
Dubin Law Offices
Suite 3100, Harbor Court
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Honolulu, Hawaii 96813
Office: (808) 537-2300
Cellular: (808) 392-9191
Facsimile: (808) 523-7733
Email: gdubin@dubinlaw.net
[Quoted text hidden]

Dubin Law Offices

Gary Victor Dubin <gdubin@dubinlaw.net>

Harkey v. US Bank, N.A. as Trustee for the CSMC Mortgage-Backed Trust 2007-6, et al. (NVD Case No. 14-cv-177) and Harkey v. US Bank, NA et al. (WAWB Adv. No. 15-01355)

Gary Victor Dubin <gdubin@dubinlaw.net> Tue, Apr 26, 2016 at 11:52 PM
To: Wendy Alison Nora <accesslegalservices@gmail.com>

PS: Only to protect Michael am I informing Judge Boulware only that an unexpected conflict arose as the reason for withdrawing our PHV petitions, but if Judge Boulware should require an explanation, I will be ethically forced to explain why.

I am therefore being most generous to you only because I have an obligation to protect Michael.

It is therefore odd that you should continue to threaten me when it is you that should be grateful that I am not complaining to the Nevada Court.

I have shown you first missile to other attorneys who unanimously agree that your sudden instructions were highly unethical.

If you want to exchange threats, just let me know. My generosity does have limits.

And Michael was my client, not you. My accounting will go to Michael and not to you. I do not recognize your power of attorney, and I do not have to, for to do so I would be participating in unethical conduct.

Gary Dubin

GARY VICTOR DUBIN
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Suite 3100, Harbor Court
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Honolulu, Hawaii 96813
Office: (808) 537-2300
Cellular: (808) 392-9191
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Email: gdubin@dubinlaw.net

On Tue, Apr 26, 2016 at 11:13 PM, Wendy Alison Nora <accesslegalservices@gmail.com> wrote:
[Quoted text hidden]

Dubin Law Offices

Gary Victor Dubin <gdubin@dubinlaw.net>

Cease and Desist

Wendy Alison Nora <accesslegalservices@gmail.com> Tue, Apr 26, 2016 at 12:25 PM
To: Gary Victor Dubin <gdubin@dubinlaw.net>
Cc: Michael Harkey <mhrctfysto@gmail.com>, +19146895251@tmomail.net

Dear Attorney Dubin:

I hereby demand that you cease and desist your defamation of me.

Wendy Alison Nora

--
Attorney Wendy Alison Nora
ACCESS LEGAL SERVICES
310 Fourth Ave. S., Suite 5010
Minneapolis, Minnesota 55415
VOICE: (612) 333-4144
FAX: (612) 206-3170
accesslegalservices@gmail.com
OFFICE HOURS BY APPOINTMENT ONLY

Dubin Law Offices

Gary Victor Dubin <gdubin@dubinlaw.net>

Cease and Desist

Gary Victor Dubin <gdubin@dubinlaw.net> Tue, Apr 26, 2016 at 12:40 PM
To: Wendy Alison Nora <accesslegalservices@gmail.com>
Cc: Michael Harkey <mhrctfysto@gmail.com>, +19146895251@tmomail.net
Bcc: gdubin@dubinlaw.net

Wendy:

There is only truth in my emails and text messages.

You have in contrast stated a string of mistruths in your emails to me and sought to interfere with my legal representation of Mr. Harkey under the guise of being a trustee, freely admittedly being unable yourself to openly enter the case due to your ethical problem that I have no information on except to disbelieve your adversaries who have their own documented ethical problems whether recognized or not by the courts.

I am the one who emailed you earlier inviting you to assist in the case, but not as my client!

You are not my client, and I do not have to accept you as my client.

Mr. Harkey unfortunately will eventually find out how mistaken he was putting you in your current role.

His case needed respectability.

Please hire other counsel for him as soon as you can.

We wish you and him the very best of luck.

But again, you will not find any competent litigator willing to take orders from you.

I know you would like your emails to me to be read differently.

I have shared them with the members of my law firm who all agree with me, reacting with ethical disbelief.

That opinion stays here as we do not want to add to your ongoing ethical problems, which is why we are in the process of gracefully exiting the case without court comment.

Gary Dubin

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Licensed in California and Hawaii
[Quoted text hidden]

In Re Disciplinary Action Against Nora

450 N.W.2d 328 (1990)

In re Petition for Disciplinary Action against Wendy Alison NORA, an Attorney at Law of the State of Minnesota.

No. C0-88-2283.

Supreme Court of Minnesota.

January 19, 1990.

Wendy Willson Legge, Asst. Director of the Office of Lawyers Professional Responsibility, St. Paul, for appellant.

George R. Ramier, Minneapolis, Minn., for respondent.

Heard, considered and decided by the court en banc.

PER CURIAM.

The Director of the Office of Lawyers Professional Responsibility (Director) filed a petition for discipline alleging respondent Wendy Alison Nora violated professional responsibility standards in three separate client matters. We rejected a stipulation by the parties providing for public reprimand and two years unsupervised probation. We remanded for a hearing and appointed a referee, who subsequently filed findings of facts, conclusions and recommended discipline of a public reprimand and two years supervised probation. Nora's initial order for a hearing transcript pursuant to Rule 14(e) of the Minnesota Rules of Lawyers Professional Responsibility was cancelled when she and the Director submitted a post-hearing stipulation adopting the referee's recommended discipline. In this stipulation the Director and Nora agreed the referee's findings and conclusions "are conclusive." In our order rejecting the post-hearing stipulation, we noted the referee findings "are deemed to have been admitted." We then ordered briefing and heard oral arguments in the matter.

Nora graduated from the University of Wisconsin Law School in 1975 and has been an attorney at law admitted to practice in Wisconsin since June 9, 1975. She was admitted to the Minnesota bar on September 20, 1985, without examination based on her prior years of practice. This disciplinary action arises out of Nora's professional misconduct in three client matters.

I. 1. State Bank of Boyd Matter.

On October 23, 1984, the Commissioner of Commerce (Commissioner) closed the State Bank of Boyd (Bank), appointed the FDIC to act as receiver and approved the sale of the Bank's assets and transfer of its liabilities. On behalf of her clients, owners of Lac Qui Parle Bancorporation, the Bank's holding company, Nora petitioned a district court for an alternative writ of mandamus requesting recovery of the Bank's property and certificate. The petition was denied. A Minnesota Court of Appeals panel affirmed, in part because Nora's clients lacked standing. State Bank of Boyd v. Hatch, 384 N.W.2d 550, 555 (Minn.App.1986). In an attempt to reopen the Bank without authorization by the Commissioner, Nora and her clients became involved with Jonathan May, who claimed to be the trustee of a multibillion dollar trust that could be used to provide capital to the Bank. The referee found Nora inadequately investigated May, his claims and his references.

*329 Nora was named purported chairman of the board of the Bank's holding company and May was named as the Bank's purported president. Without having received any legal tender as capitalization for the Bank, Nora authorized distribution of cashier's checks signed in blank by May under an alias to individuals Nora had not adequately investigated, whom May represented were to become authorized agents of Lac Qui Parle Bancorporation. No usage restrictions accompanied the checks, instead Nora assumed, but did not verify, that May had conveyed her oral instructions to the recipients. May cashed several of the checks and left the state with an undisclosed number of others. An individual in Florida used some of the checks to purchase personal goods, which were subsequently returned. Nora also authorized the issuance of cashier's checks to individuals facing either the expiration of redemption period on their farm or the sale of personal property, and others to test the validity of cashier's checks as final payment, even if drawn on an insolvent and closed bank. At that time, Nora was aware the Bank did not comply with the requirement that Minnesota banks have segregated cash on deposit for the payment of cashier's checks.

The referee found Nora's public announcement of the Bank's reopening and capitalization was "without basis in fact or law." Nora then knew a Minnesota bank must display its certificate and that the Commissioner had possession of the Bank's certificate. Upon an investigation of the cashier's checks by the Minnesota Department of Commerce, Nora and

her clients stipulated to a temporary restraining order enjoining them from engaging in the banking business. Nora now characterizes the attempted reopening as "flakey."

Because of Nora's inadequate investigation of May and improper authorization of cashier's checks, the referee concluded Nora violated Rule 1.1 of the Minnesota Rules of Professional Conduct (MRPC) (competence). Her misrepresentations regarding the Boyd Bank reopening and capitalization were deemed to constitute a violation of MRPC 8.4(c). The referee further concluded Nora "engage[d] in conduct prejudicial to the administration of justice" in violation of MRPC 8.4(d), by pursuing the reopening after the court of appeals panel determined her clients had no standing. In mitigation, Nora had no dishonest or selfish motive in this matter and did not personally gain from the cashier's checks. She also fully cooperated in the Boyd Bank investigation, which the referee found "likely averted further harm to her clients or others."

2. Gennrich Matter.

On behalf of the Gennrichs, Nora brought a third-party claim against the State Bank of Cologne's attorneys (Attorneys) and a bank officer, alleging they obtained an ex parte replevin order against the Gennrichs in bad faith. In an order, a district court specifically found the Cologne Bank's ex parte replevin application had not been made in bad faith. The Attorneys requested Nora dismiss with prejudice the third-party claims on the basis of the order, but she refused to do so. Upon a motion by the Attorneys, all claims against them were dismissed with prejudice, and Nora and her law firm, Hopewell, Nora and Schmidt, were assessed Rule 11 fees of $5,378.28.

Nora formed Hopewell, Nora and Schmidt, P.A., and transferred the Minnesota assets of Hopewell, Nora and Schmidt to a bank account in the name of the professional association in, as the referee found, an "attempt to insulate law firm assets and to impede collection efforts, particularly as to the judgment of the [Cologne] Bank Attorneys." The Carver County District Court then granted an order directing the bank to release monies then held in the professional association's account, and assessed fees of $1,025.00 against Nora and her firm. Further, on three occasions a court of appeals panel assessed Nora and her firm fees for attempts to appeal from nonappealable partial determinations regarding the Gennrich matter. Part of the attorney fees assessments and all of the $5,378.28 Rule 11 costs have been paid.

*330 The referee concluded Nora's conduct in the Gennrich matter violated MRPC 3.1 (frivolous claim) and 8.4(d) (conduct prejudicial to administration of justice). While Nora

believed refusing to dismiss the third-party claim was necessary to protect her clients' interests, her motives in shielding her firm's assets are more questionable.

3. Ruud Matter.

By mortgaging their farm to the Federal Land Bank of St. Paul (Federal Bank), the Ruuds received $335,000.00 in the form of bank drafts or checks that they used to satisfy obligations to various creditors. On behalf of the Ruuds, Nora brought suit against the Federal Bank on various grounds based on Nora's "money theory," whereby she argued the Federal Bank did not loan money, but merely extended credit. In granting summary judgment in favor of the Federal Bank, a Kandiyohi District Court noted Nora's money argument "goes well beyond the imaginative into the depths of absurdity." The court assessed fees of $1,000.00 against Nora personally because all but one count of the Complaint was frivolous, the litigation was undertaken to buy time and to delay efforts to recover certain farm land, and success on the merits was never anticipated. Nora paid the Federal Bank $800.00 in settlement of the attorney fees assessment.

Because the referee found Nora brought the Ruud litigation primarily as a delay tactic and her money theory was not asserted in good faith, he concluded she violated MRPC 3.1 (frivolous claim) and 8.4(d) (conduct prejudicial to administration of justice). Although Nora acted upon her subjective beliefs and her personally held theories as to what the law should be, she stated at oral argument she now can distinguish political arguments that are improperly made from legal theories that are appropriately brought.

II.

Other mitigating factors exist. Nora has no prior disciplinary record, she has paid most of the sanctions imposed against her, and she has made full and free disclosure in this action. Because one purpose of attorney discipline is to protect the public, In re Weyhrich, 339 N.W.2d 274, 279 (Minn.1983), an attorney's remorse or lack of it is an important factor. See In re Carey, 380 N.W.2d 806, 809 (Minn.1986) (disbarment appropriate when continuing pattern of misconduct constitutes immediate danger to public). At the referee hearing, Nora maintained she would reassert her positions in the Gennrich and Ruud matters if the law were the same. In response to a question at oral argument, however, she explained her understanding of the law now is different.

While an attorney is properly a zealous advocate for his or her client, see Preamble to Minnesota Rules of Professional Conduct, the perspective of an objective and detached judgment nevertheless must remain. This important objectivity is lost when an attorney becomes too personally involved in client matters and oversteps the bounds of ardent

representation, as Nora admits she did. As we said in In re Getty: "Lawyers must be encouraged to represent their clients vigorously and we are hesitant in anyway to interfere with an attorney's ability to do so; yet, there is a line that should not be crossed and respondent has crossed it." 401 N.W.2d 668, 671 (Minn. 1987).

III.

We concur with the referee's findings and conclusions in this disciplinary action, and after having examined the complete record in this case, we NOW ORDER:

1. Respondent Wendy Alison Nora is hereby reprimanded and shall be indefinitely suspended from the practice of law. She shall not be eligible to apply for reinstatement until 30 days from the filing of this opinion.

2. To be eligible to apply for reinstatement, Nora shall successfully complete the portion of the Minnesota bar examination on the subject of professional responsibility.

*331 3. Nora shall pay, within 60 days from the filing of this opinion, to the Director $750 in costs and disbursements.

IT IS SO ORDERED.

Supreme Court of Wisconsin.

173 Wis.2d 660 (Wis. 1993)

⊞ DISCIPLINARY PROC. AGAINST NORA

KEY PASSAGES FROM THIS CASE (2)

I "(2) Upon the filing of a certified copy of a judgment or order of another jurisdiction imposing discipline or suspending for medical incapacity of an attorney admitted to practice in this state, the administrator shall file a complaint with the clerk of the supreme court containing: . . ." **Quoted 1 time**

II "(5) Upon the expiration of 20 days from service of the complaint issued under sub. (2), the referee shall file a report with the court recommending the imposition of the identical discipline or medical suspension unless: (a) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; (b) There was such an infirmity of proof establishing the misconduct or medical incapacity that the referee could not accept as final, the conclusion on that subject; or (c) The misconduct established justifies substantially different discipline in this state." **Quoted 1 time**

PER CURIAM.

Attorney disciplinary proceeding; attorney's license suspended.

We review the recommendation of the referee that the license of Wendy A. Nora to practice law in Wisconsin be suspended for a period of 30 days as discipline reciprocal to that imposed on her in Minnesota for professional misconduct. That misconduct consisted of making misrepresentations concerning the reopening *661 and capitalization of a bank, failing to adequately investigate the person who was to provide capital to the bank, improperly authorizing the issuance of cashier checks by the bank, bringing a frivolous claim against a bank alleging it had obtained an *ex parte* replevin order against her clients in bad faith, transferring assets of her law partnership in Minnesota to a bank account in the name of the partnership in an attempt to insulate those assets from collection efforts on behalf of the bank that had obtained an award of costs in the frivolous action matter and bringing litigation primarily as a delay tactic and asserting in it a theory that was not justified by existing law.

As discipline for that misconduct, the Minnesota Supreme Court suspended Attorney Nora's license for a minimum of 30 days, commencing January 19, 1990, following which she would be permitted to petition for reinstatement, provided she successfully completed the professional responsibility portion of the Minnesota bar examination. Attorney Nora's petition for license reinstatement was denied on July 11, 1991, in part because she disclosed that, while her license was suspended, she advised a client about a potential federal lawsuit and drafted a petition for the client to file pro se in the federal district court.

We accept the referee's recommendation that Attorney Nora's license be suspended for 30 days as discipline reciprocal to that imposed by Minnesota Supreme Court. Although the Minnesota suspension continued beyond the specified 30-day period, that continued suspension was not in response to Attorney Nora's misconduct for which the suspension was initially imposed but, rather, the result of her conduct following the imposition of that suspension. The case before us concerns only the *662 professional misconduct that led to her initial license suspension.

Attorney Nora was admitted to practice law in Wisconsin in 1975 and licensed to practice law in Minnesota in 1985. She currently practices in Madison and has not previously been the subject of an attorney disciplinary proceeding in this state.

Based on the decision of the Minnesota Supreme Court, the referee, Attorney Rudolph P. Regez, made findings of fact consistent with that court's findings in respect to Attorney Nora's professional misconduct in Minnesota. The referee concluded that Attorney Nora's misconduct in Minnesota would constitute professional misconduct under the Wisconsin Rules of Professional Conduct for Attorneys and, consequently, warranted imposition of identical discipline, pursuant to SCR 22.25.[1] (/case/disciplinary-proc-against-nora#idm140606749891760-fn1) Accordingly, the referee recommended that *663 Attorney Nora's license to practice law in Wisconsin be suspended for 30 days. The referee did not recommend that Attorney Nora be required to successfully complete the professional responsibility portion of the Wisconsin bar examination, as she had been required to do in respect to the Minnesota bar exam, as a condition of license reinstatement.

SCR 22.25 provides:

> **Reciprocal discipline.** (1) An attorney admitted to practice law in this state, upon being subjected to public discipline or suspended for medical incapacity in another jurisdiction, shall promptly inform the administrator of the action. Failure to furnish the notice within 20 days of the effective date of the order or judgment constitutes misconduct.
>
> (2) (/case/disciplinary-proc-against-nora?passage=n68JVpjh3HQFSxPtLwApAA) Upon the filing of a certified copy of a judgment or order of another jurisdiction imposing discipline or suspending for medical incapacity of an attorney admitted to practice in this state, the administrator shall file a complaint with the clerk of the supreme court containing: . . . (/case/disciplinary-proc-against-nora?passage=n68JVpjh3HQFSxPtLwApAA)
>
> (5) (/case/disciplinary-proc-against-nora?passage=VoCNexewbyvTBHU6v2E9Qg) Upon the expiration of 20 days from service of the complaint issued under sub. (2), the referee shall file a report with the court recommending the imposition of the identical discipline or medical suspension unless: (/case/disciplinary-proc-against-nora?passage=VoCNexewbyvTBHU6v2E9Qg)
>
> (a) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; (/case/disciplinary-proc-against-nora?passage=VoCNexewbyvTBHU6v2E9Qg)

(b) There was such an infirmity of proof establishing the misconduct or medical incapacity that the referee could not accept as final, the conclusion on that subject; or (/case/disciplinary-proc-against-nora?passage=VoCNexewbyvTBHU6v2E9Qg)

(c) The misconduct established justifies substantially different discipline in this state. (/case/disciplinary-proc-against-nora?passage=VoCNexewbyvTBHU6v2E9Qg)

The referee recommended that the court require Attorney Nora to pay the full costs of this proceeding, even if they exceed the $750 costs assessed against her in the Minnesota disciplinary proceeding. In making that recommendation, the referee rejected Attorney Nora's contention that, as costs were a part of the discipline imposed in Minnesota, the identical amount of costs must be assessed against her in this proceeding in order for the discipline imposed here to be reciprocal. Attorney Nora reiterated that contention in an objection to costs filed in this proceeding. We reject that argument for the same reason set forth by the referee: imposition of costs is not a part of discipline imposed on an attorney for professional misconduct.

In her objection to costs, Attorney Nora requested, in the alternative, that she be permitted to pay the costs of this proceeding at the rate of $100 per month, on the basis of her unspecified financial condition. In its response, the Board asked that the court require Attorney Nora to pay the costs within six months of the date of the order suspending her license. We accept the Board's recommendation; in the event Attorney Nora is unable to pay the costs within that time, she may make a showing to this court of her inability to do so. *664

IT IS ORDERED that the license of Wendy A. Nora to practice law in Wisconsin is suspended for a period of 30 days, effective April 1, 1993.

IT IS FURTHER ORDERED that within six months of the date of this order Wendy A. Nora pay to the Board of Attorneys Professional Responsibility the costs of this disciplinary proceeding, provided that if the costs are not paid within the time specified and absent a showing to this court of her inability to pay the costs within that time, the license of Wendy A. Nora to practice law in Wisconsin shall remain suspended until further order of the court.

IT IS FURTHER ORDERED that Wendy A. Nora comply with the provisions of SCR 22.26 con-

cerning the duties of a person whose license to practice law in Wisconsin has been suspended.

United States Court of Appeals, Seventh Circuit.

417 Fed.Appx. 573 (7th Cir. 2011)

IN RE NORA

KEY PASSAGES FROM THIS CASE (1)

1 ""Once a party invokes the judicial system by filing a lawsuit, it must abide by the rules of the court; a party can not decide for itself when it feels like pressing its action and when it feels like taking a break because `[t]rial judges have a responsibility to litigants to keep their court calendars as current as humanly possible.'"" **Quoted 2 times**

ORDER

Wendy Nora petitioned for relief from her creditors under Chapter 13 of the bankruptcy code. One creditor, Residential Funding Company, asked the bankruptcy court to lift the automatic stay on collecting debts so that it could move for-ward with a state-court action to foreclose a mortgage on Nora's condominium. The bankruptcy court lifted the stay, and Nora appealed that decision to the district court. Her appeal, however, never got off the ground; five months passed without an opening brief because, she claimed, her medical condition "totally disabled" her from any litigation. Yet, despite her claim, in that same period she actively litigated in both the bankruptcy court and the district court on almost every topic except the merits of her appeal. With no merits

brief in sight, and with the excuse she proffered for her delay refuted by her own litigation activity, the district court dismissed the matter for failure to prosecute. Finding no abuse of discretion, we affirm.

Nora requested her first briefing extension in the district court within a day of filing the notice of appeal. She asked for more than the allotted two-week period to file her opening brief, explaining in a string of submissions that her symptoms of fibromyalgia, a chronic condition with no cure, disabled her from filing a brief on the merits. She claimed, for example, that she was "totally disabled," "lacking basic functionality," and "in urgent need of immediate disability accommodations." A magistrate judge granted a 62-day extension. When that deadline was two days away, Nora requested an additional 45 days, explaining (in 25 single-spaced paragraphs) that a "pinched nerve" and post-traumatic stress disorder had complicated her recovery and would prevent any merits filing indefinitely. The magistrate judge granted the second extension, but for only 15 days.

At the same time that she told the district judge that she was "totally disabled" from litigating, Nora was actively litigating in the bankruptcy court. The bankruptcy docket shows weekly filings during the relevant period, most concerning her medical condition but also several pertaining to the merits of her bankruptcy petition, including amended schedules and income records, an amended bankruptcy petition, and a motion to reconvert the case from Chapter 11 to Chapter 13. Moreover, the district judge learned that in addition to her personal litigation, Nora, an attorney, was simultaneously handling a bankruptcy case on behalf of a client. She kept her client's case active during the period in question. Coincidentally, the record of that case shows that, on behalf of her client, Nora opposed a creditor's motion to lift the automatic stay; she filed roughly a half dozen submissions of varying length and complexity on the issue — the same issue that she disclaimed an ability to litigate in her own appeal.

Despite her evident capacity to litigate extensively before the bankruptcy court, Nora asked the magistrate judge to reconsider the decision to give her only 15 additional days to file her merits brief beyond the initial two-month extension, contending again that her medical incapacity necessitated another two months' extension. The magistrate judge denied the motion, suggesting that anyone in the condition that she was describing needs to retain counsel. Declining to retain counsel or file her merits brief, she filed another motion seeking more time with the district judge,

who also denied the request. Once five months passed without a merits brief, and having before it a record showing that Nora could litigate prodigiously in the bankruptcy court despite her claimed incapacity, the district judge dismissed the bankruptcy appeal for failure to prosecute.

Nora filed a post-judgment motion within 28 days of judgment, asking the district court to vacate the dismissal in light of "new evidence" that her medical condition may have been more serious; that motion too was denied.

Because her post-judgment motion came within 28 days of judgment, her appeal to us brings up both the post-judgment order and the underlying dismissal. *See York Group, Inc. v. Wuxi Taihu Tractor Co.*, 632 F.3d 399, 401 (/case/york-group-v-wuxi-taihu-tractor-co#p401) (7th Cir. 2011). Nora argues on appeal that the dismissal of her bankruptcy appeal for failure to prosecute was unconstitutional and an abuse of discretion. She ticks off a list of constitutional and statutory rights which she maintains were violated by the dismissal. Most of her arguments, including her argument that the district court violated the Americans with Disabilities Act, merit no discussion except insofar as we construe them as contending that the district court abused its discretion under Federal Rule of Civil Procedure 41(b) in dismissing for want of piosecution.

A party's willful failure to prosecute an action can be an appropriate basis for dismissal. *See, e.g., Bolt v. hoy*, 227 F.3d 854, 856 (/case/bolt-v-loy#p856) (7th Cir. 2000); *Fed, Election Comm'n v. Al Salvi for Senate Comm.*, 205 F.3d 1015, 1018 (/case/federal-election-comn-v-al-salvi-for-senate#p1018) (7th. Cir. 2000); *Williams v. Chi Bd. of Educ*, 155 F.3d 853, 857 (/case/williams-v-chicago-board-of-education#p857) (7th Cir. 1998).

2 (/case/in-re-nora?passage=I4_n70-sb8CHUe7vAqjyew)

(/case/in-re-nora?passage=I4_n70-sb8CHUe7vAqjyew)

"Once a party invokes the judicial system by filing a lawsuit, it must abide by the rules of the court; a party can not decide for itself when it feels like pressing its action and when it feels like taking a break because `[t]rial judges have a responsibility to litigants to keep their court calendars as current as humanly possible.'" (/case/in-re-nora?passage=I4_n70-sb8CHUe7vAqjyew) *GCIU Employer Ret, Fund v. Chi. Tribune Co.*, 8 F.3d 1195, 1198-99 (/case/gciu-employer-retirement-fd-v-chicago-tribune#p1198) (7th Cir. 1993) (quoting *Kagan v. Caterpillar Tractor Co.*, 795 F.2d 601, 608 (/case/kagan-v-caterpillar-tractor-co#p608) (7th Cir. 1986)). Factors relevant to a court's de-

cision to dismiss for failure to prosecute include the seriousness of the misconduct, the potential for prejudice to the defendant, and the possible merit of the suit. *Bolt*, 227 F.3d at 856 (/case/bolt-v-loy#p856); *Kovilic Constr. Co. v. Missbrenner*, 106 F.3d 768, 769-70 (/case/kovilic-construction-co-inc-v-missbrenner#p769) (7th Cir. 1997). Because a district court must have wide latitude in managing litigation, our review of a dismissal for failure to prosecute under Rule 41(b) is deferential, and we will uphold a dismissal unless it strikes us as fundamentally wrong. *Gabriel v. Hamlin*, 514 F.3d 734, 736 (/case/gabriel-v-hamlin-4#p736) (7th Cir. 2008); *Aura Lamp Lighting, Inc. v. Int'l Trading Corp.*, 325 F.3d 903, 908-09 (/case/aura-lamp-lighting-v-international-trading#p908) (7th Cir. 2003).

Faced with the contradiction between Nora's claimed incapacity to litigate her appeal and her active litigation of both her and her client's bankruptcy case, the district court was within its discretion in dismissing the bankruptcy appeal after two extended deadlines and five months passed without a substantive filing. We underscore that Nora did not contend, in asking for more time, that she was overburdened by the combination of her deteriorating health, her personal bankruptcy, and the demands of her law practice; she claimed, instead, that she needed prolonged relief from deadlines because she was "totally disabled" from any litigation. But Nora's submissions in the bankruptcy and district courts belie that claim, suggesting that she was capable of briefing the merits of her appeal within the two granted extensions of time.

The dismissal might have been improper had Nora given the district court a credible reason to believe briefing would eventually begin in due course. But, to the contrary, Nora actually gave the district reason to believe that merits briefing would continue to be delayed indefinitely. *576 Nora never estimated when her health would permit her to begin briefing. Instead, she warned that she would proceed only if she received extensions in all of her cases, both personal and representative, and even then, only after an additional 45 days. This was hardly reassuring. Nor did she ever explain why her medical condition disabled her from briefing the merits but allowed her to file numerous substantive motions in the bankruptcy court. Under these circumstances, two extensions totaling 77 days of extra time sufficiently accommodated Nora's asserted health condition.

We recognize that the district court did not explain in detail the reasons for its discretionary decision to dismiss and never explicitly weighed the factors that should inform a decision under Rule 41. But while parsimony of words may not assist our review, it does not preclude it either, and we may affirm on any basis in the record. *See Crichton v. Golden Rule Ins. Co.*, 576 F.3d 392, 399 (/case/crichton-v-golden-rule-ins#p399) n. 2 (7th Cir. 2009). And this record contains ample evidence of a prolonged, unjustified delay and lacks any plausible contention that the stay was wrongly lifted. We are also mindful that a district court should issue a formal warning before resorting to the sanction of dismissal for failure to prosecute, but such a warning is not always required, *Fischer v. Cingular Wireless*, 446 F.3d 663, 665 (/case/fischer-v-cingular-wireless-llc#p665) (7th Cir. 2006). Given Nora's own assurance to the court that her professed inability to file a brief was not going to abate any time soon, a warning would have served no purpose except to facilitate further delay. *See id.*

Finally, Nora argues that the district court should have reconsidered the dismissal in light of new evidence she referenced (but did not submit) in her post-judgment motion that her medical condition may have been more serious than she originally represented. But this argument misses the point: the court was entitled to dismiss the action because her litigation activity contradicted her claims of incapacity, not because the court did not have adequate evidence of Nora's medical condition.

AFFIRMED.

*488

STATE OF WISCONSIN IN SUPREME COURT

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST WENDY ALISON NORA, ATTORNEY AT LAW.

CASE CODE 30912

OFFICE OF LAWYER REGULATION,
Complainant;

CASE NO. 2013AP653-D

WENDY ALISON NORA,
Respondent.

AMENDED COMPLAINT

NOW COMES the Wisconsin Supreme Court - Office of Lawyer Regulation (OLR), by Assistant Litigation Counsel Sheryl St. Ores, and alleges as follows:

1. OLR was established by the Wisconsin Supreme Court and operates pursuant to Supreme Court rules. This Amended Complaint is filed pursuant to SCR 22.11.

2. Respondent, Attorney Wendy Alison Nora (Nora), is a Wisconsin attorney (State Bar No. 1017043) admitted to practice law in 1975 whose office address is currently listed with the State Bar of Wisconsin as Access Legal Services, 210 Second Street NE, Minneapolis, MN 55413-2218. Nora also provided the following via an August 7, 2013 email to the referee, "For mail delivery and personal

service in this matter, the following temporary residence address should be used: Wendy Alison Nora, 4 Bahr Circle, Madison, Wisconsin 53719."

3. Nora's disciplinary history is as follows:

> On February 17, 1993, Nora's Wisconsin law license was suspended for 30 days as reciprocal discipline to that imposed by the Minnesota Supreme Court for misrepresentations, for failing to adequately investigate, for bringing frivolous claim against a bank, inappropriate transfer of assets, and bringing litigation as a delay tactic while asserting a theory that was not justified by existing law. *Disciplinary Proceedings Against Nora,* 173 Wis. 2d 660, 495 N.W.2d 99 (1993).

Regarding Judge Colas

4. On March 3, 2009, Residential Funding Company, LLC, (RFC) filed a foreclosure action (foreclosure action) in Dane County Circuit Court naming Nora as the defendant, the subject property being Nora's condominium/residence. *Residential Funding Company LLC vs. Wendy Alison Nora et al,* Dane County Circuit Court Case Number 2009CV001096.

5. The Honorable Juan B. Colas (Judge Colas) presided over the foreclosure action.

6. On February 22, 2010, Nora filed a motion for reasonable ADA accommodations. The District Court Administrator is responsible for an ADA accommodation request.

7. On March 26, 2010, Nora submitted a written request to Judge Colas asking for appointment of a guardian ad litem (GAL) on her behalf in the foreclosure action. On March 29, 2010, Judge Colas denied Nora's request.

8. On April 19, 2010, Nora filed a motion asking Judge Colas to recuse himself in the state foreclosure action. On June 9, 2010, the motion was denied. On June 25, 2010, Nora filed a motion for reconsideration renewing her request that Judge Colas recuse himself. On July 15, 2010, the motion was denied.

9. On November 15, 2010, Nora filed a federal lawsuit (federal lawsuit) against Judge Colas alleging disability discrimination and seeking compensatory and punitive damages. *Nora v. Colas, et al.*, No. 10-CV-709 (E.D. Wis. filed November 15, 2010).

10. On November 22, 2010, Nora filed a motion to disqualify Judge Colas. On November 24, 2010, the motion was denied.

11. On December 10, 2010, Nora filed a Motion for Reconsideration to Disqualify Judge Colas. On December 13, 2010, the motion was denied.

12. On January 11, 2011, RFC moved Judge Colas for confirmation of the sheriff's sale of the subject property.

13. On February 1, 2011, Nora sought and received an extension in federal court to respond to Judge Colas' motion to dismiss Nora's action against him.

14. On February 14, 2011, Nora moved to vacate the summary judgment order in the foreclosure action.

15. On March 1, 2011, Judge Colas, at the confirmation of sale hearing, denied Nora's February 14, 2011 motion to vacate the order granting summary judgment in the foreclosure action and issued an order confirming sale.

16. On March 7, 2011, Nora requested relief from judgment and renewed her motion to vacate the foreclosure judgment in the foreclosure action. On March 18, 2011, the motion was denied.

17. On March 21, 2011, Nora obtained an extension in the federal court for her response to Judge Colas' motion to dismiss Nora's action against him.

18. On March 24, 2011, Judge Colas denied Nora's March 7, 2011 renewed motion to vacate the foreclosure judgment.

19. On March 26, 2011, Nora voluntarily dismissed her federal action against Judge Colas without filing opposition to his motion to dismiss.

COUNT ONE

20. By bringing a lawsuit against the judge who was hearing a foreclosure action in which she was the defendant on the basis that the judge ruled against her petition for an accommodation, in an attempt to force the judge to recuse himself from the foreclosure action, and thereafter dropping such lawsuit immediately after the judge had ruled in the foreclosure action, **Nora violated SCR 20:3.1(a)[1].**

Regarding False Statement to Tribunal

21. On August 23, 2009, Nora executed a Foreclosure Repayment Agreement in which Nora had changed a material term of the agreement by writing in a reservation of her claims against the lender.

22. On August 25, 2009, Attorney David Potteiger (Potteiger), as RFC's representative, informed Nora in

[1] **SCR 20:3.1(a) provides:** "In representing a client, a lawyer shall not: (1) knowingly advance a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification or reversal of existing law; (2) knowingly advance a factual position unless there is a basis for doing so that is not frivolous; or (3) file a suit, assert a position, conduct a defense, delay a trial or take other action on behalf of the client when the lawyer knows or when it is obvious that such an action would serve merely to harass or maliciously injure another."

writing that the reservation of her counterclaims found in Nora's Foreclosure Repayment Agreement counteroffer was rejected; no settlement offer existed.

23. On August 26, 2009, Nora wrote to the court in the foreclosure action informing the court an agreement was imminent or had been reached such that the foreclosure action should be stayed.

24. On August 26, 2009, Potteiger reasserted in writing to Nora the same rejection of the counteroffer as set forth in his August 25, 2009 letter, confirming no settlement offer existed.

25. The Foreclosure Repayment Agreement was never signed by RFC nor enforced as a settlement in the foreclosure action nor was it signed by RFC.

COUNT TWO

26. By representing to the court in a foreclosure action that a settlement in the form of a Foreclosure Repayment Agreement was imminent or had been reached such that the foreclosure action should be stayed, when there was no basis for such a statement, **Nora violated SCR 20:3.3(a)(1)**[2].

[2] SCR 20:3.3(a)(1) provides: "A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."

Regarding Nora's November 29, 2010 Federal Lawsuit
Case No. 10-CV-748 (W.D.WI)

27. GMAC Mortgage Group, LLC and its related entity, RFC, hired Gray & Associates to pursue foreclosure proceedings against a residential property owned by Attorney Wendy Alison Nora. *Residential Funding Company LLC vs. Wendy Alison Nora, et al.*, Dane County Case No. 09-CV-1096.

28. William N. Foshag (Foshag) is an attorney with Gray & Associates, L.L.P.

29. RFC was later represented by Potteiger of the law firm of Bass & Moglowsky, S.C.

30. On March 4, 2010, the court entered a judgment of foreclosure followed by a sheriff's sale held in early 2011.

31. Nora brought appeals and other related litigation in several forums, some of which are pending.

32. On November 29, 2010, Nora threatened in writing to sue Potteiger, attorney of record in the foreclosure action, for tortious interference with contract after Potteiger counseled his client to reject Nora's settlement offer in the foreclosure action.

33. When Potteiger refused to cancel a scheduled sheriff's sale of the subject condominium in the foreclosure action, Nora commenced a federal lawsuit on November 29, 2010 in U.S. District Court for the Western District of Wisconsin (District Court action) against GMAC Mortgage Corp. and various related entities, Potteiger and his law firm, Foshag and his law firm, and numerous other entities and individuals totaling 24 defendants related to the foreclosure action. *Nora vs. Residential Funding Company, LLC, et al.*, No. 10-cv-748-wmc (7th Circuit Court of Appeals, November 26, 2013, unpublished).

34. In the District Court action, Nora alleged violations of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §§ 1961-1968) and the Fair Debt Collections Practices Act (15 U.S.C. § 1962, et seq.), and she sought title to her home free and clear of all interest and damages against the defendants in excess of $10,000,000,000.

35. On September 30, 2012, U.S. District Court Judge William Conley dismissed Nora's complaint on the

basis that the *Rooker-Feldman*[3] doctrine deprived the federal trial court from reviewing a state court decision.

36. In its September 30, 2012 decision, Judge Conely noted the policy behind the doctrine is that "no matter how erroneous or unconstitutional the state court judgment may be, only the Supreme Court of the United States has jurisdiction to review it. *Brown v. Bowman*, 668 F.3d 437, 442 (7th Cir. 2012)."

37. The U.S. District Court found (a) that Nora's federal complaint was an attempt to re-litigate the foreclosure case, which she had lost at the state level when the judgment of foreclosure was entered against her, a final judgment under Wisconsin law, and, (b) the time to appeal the foreclosure judgment had run by the time Nora filed the federal action on November 30, 2010.

38. The U.S. District Court dismissed the complaint because the *Rooker-Feldman* doctrine barred the court from addressing the issues decided by the state court and, therefore, the federal court lacked subject matter jurisdiction.

39. In his Opinion and Order dismissing Nora's complaint, Judge Conley noted:

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[3] *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

Here, Nora's amended complaint focuses on the foreclosure proceeding generally, and specifically upon alleged misrepresentations made by the defendants during the course of the proceedings in furtherance of the alleged conspiracy…

Nora also seeks an order awarding her "title to her home free and clear of the fraudulent claim of the GMAC Racketeering Enterprise."… The Seventh Circuit has previously described such a request as "tantamount to a request to vacate the court's judgment of foreclosure," in affirming the district court's dismissal of a federal claim asserted by a foreclosed mortgagor against her creditors. See Taylor v. Fed. Nat'l Mortgage Ass'n, 374 F.3d 529, 533 (7th Cir. 2004) ("The district court correctly determined that requesting the recovery of her home is tantamount to a request to vacate the court's judgment of foreclosure.").

The fact that Nora brings RICO and FDCPA claims – as opposed to a declaratory judgment action seeking an order vacating the state court's judgment – is of no import. The Seventh Circuit has repeatedly rejected plaintiffs' attempts to recast claims to circumvent the Rooker-Feldman doctrine. See, e.g., Louis-Kenney-Reed: El v. Makowiecki, No. 11-1799, 2011 WL 5149469, at *1 (7th Cir. Nov. 1, 2011) (rejecting plaintiff's reference to § 1983 as an attempt to circumvent the Rooker-Feldman doctrine); Wallis v. Fifth Third Bank, No. 11-1181, 2011 WL 4396973, at *2 (7th Cir. Sept. 21, 2011) ("Wallis cannot circumvent the Rooker-Feldman doctrine by recasting a request for the district court to review state court rulings as a complaint about civil rights, due process, conspiracy or RICO violations.")…

Since Nora is unquestionably attempting to challenge the 2010 state foreclosure judgment against her by pursuing these federal claims, her complaint is barred by the Rooker-Feldman doctrine. In the end, this result is hardly

> surprising. Indeed, cases in which courts - including this court and the Seventh Circuit - have dismissed actions challenging a state court foreclosure judgment are legion...
> Lacking subject matter jurisdiction, the court need not - and indeed cannot - reach other likely grounds for dismissal.

40. On November 26, 2013 the Seventh Circuit Court of Appeals affirmed the District Court's dismissal. *Nora vs. Residential Funding, LLC, et al. Id.*

COUNT THREE

41. By bringing a lawsuit with no meritorious basis, seeking $10,000,000,000 in compensatory and punitive damages against Potteiger and his law firm who were representing the plaintiffs in a real estate foreclosure action against Nora, as well as against Foshag, his law firm, and numerous other parties involved in the foreclosure matter, **Nora violated SCR 20:3.1(a).**

Regarding Nora's March 18, 2013 New York Bankruptcy Court Filing Case No. 13-01208 (U.S. Bankr. Court S.D.N.Y.)

42. On May 14, 2012, Residential Capital, LLC, which is owned by GMAC Mortgage Group, LLC and to which RFC is a related entity, filed for Chapter 11 Bankruptcy protection in the U.S. Bankruptcy Court for the Southern District of New York. *In re: Residential Capital, LLC, et*

al, Debtors. Case No. 12-12020(MG) (Bankr. S.D. N.Y. July 10, 2012).

43. On March 18, 2013, Nora filed a First Amended Complaint and Jury Trial Demand against Foshag, his two partners and his law firm, Potteiger, and most of the same group of defendants as the District Court action in the U.S. Bankruptcy Court for the Southern District of New York, an adversarial case associated with Case No. 12-12020. *Wendy Alison Nora, Plaintiff v. Residential Funding Company, LLC. et al.*, Adversary No. 13-01208 (Bankr. S.D.N.Y. July 10, 2012). Nora's complaint is nearly identical to that dismissed by Judge Conley in the District Court action.

44. Though the matter had been adjudicated in Wisconsin state courts, and a federal court had dismissed her claims in the District Court action on the basis that it had no subject matter jurisdiction to re-visit the issues adjudicated in the Wisconsin courts, Nora brought a bankruptcy court action in a new venue and jurisdiction on identical grounds against Foshag, Potteiger, and numerous other defendants.

45. Nora knows the *Rooker-Feldman* doctrine prohibits parties from attempting to re-litigate state

court issues, including foreclosure judgments, in the U.S. Bankruptcy Court.

46. In the Chapter 13 Bankruptcy case of *In re Roger P. Rinaldi and Desa L. Rinaldi*, U.S Bankruptcy Court (E.D. Wis.), Case No. 11-35689-svk (Rinaldi), Nora represented the debtors and brought an adversarial complaint on their behalf against certain mortgage lenders and their attorneys, again including Foshag and his firm, Adversary No. 12-2412.

47. In the Rinaldi case, the defendants to the adversarial action brought a motion to dismiss, which was granted by the Bankruptcy Court on February 22, 2013, just over three weeks before Nora filed the Bankruptcy Court action against Foshag, Pottieger, and the other defendants.

48. In her Findings of Fact and Conclusions of Law and Memorandum Decision on Defendant's Motion to Dismiss Complaint and Amended Complaint in the Rinaldi case, U.S. Bankruptcy Judge Susan V. Kelley noted that though the case was dismissed on other grounds, the *Rooker-Feldman* doctrine applies in bankruptcy proceedings.

49. Foshag and his firm and Potteiger and his firm represent 4 of the 24 defendants Nora named in the

District Court action and 4 of the 31 defendants Nora named in the Bankruptcy Court action.

COUNT FOUR

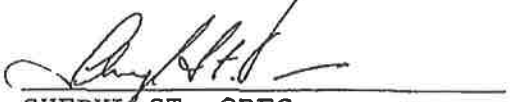
51. By filing an adversarial complaint in the U.S. Bankruptcy Court for the Southern District of New York against Attorney William Foshag, his two partners, his law firm of Gray & Associates, L.L.P., as well as Potteiger and his law firm, and 25 other defendants, seeking in excess of $10,000,000,000 in damages and challenging the foreclosure on her property, which foreclosure had already been adjudicated in Wisconsin Circuit Court, and which foreclosure she had already challenged by filing a nearly identical complaint in the U.S. District Court for the Western District of Wisconsin, a complaint that was dismissed on the basis of the *Rooker-Feldman* doctrine, which also applies to bankruptcy courts, Nora violated SCR 20:3.1(a).

WHEREFORE, the Office of Lawyer Regulation asks that Attorney Wendy Alison Nora be found in violation of the Supreme Court rules as alleged in Counts One through Four of this *Amended Complaint*, that the Court suspend Attorney Wendy Alison Nora's Wisconsin law license for a period of

one year, and for such other and further relief as may be just and equitable, including an award of costs.

Dated this 23rd day of December, 2013.

OFFICE OF LAWYER REGULATION



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In the

United States Court of Appeals

For the Seventh Circuit

No. 13-2676

IN RE:
WENDY A. NORA,

Appeal from the United States District Court for the
Western District of Wisconsin.
No. 3:13-cv-00021-bbc — **Barbara B. Crabb**, *Judge.*

SHOW CAUSE HEARING OCTOBER 28, 2014 — DECIDED
FEBRUARY 11, 2015

Before BAUER, POSNER, and TINDER, *Circuit Judges.*

TINDER, *Circuit Judge.* On August 13, 2014, we ordered attorney Wendy Nora to show cause why she should not be sanctioned for pursuing a frivolous appeal, *see* Fed. R. App. P. 38, and why she should not be disciplined for conduct unbecoming a member of the bar, *see id.* 46(c). *PNC Bank, N.A. v. Spencer*, 763 F.3d 650, 655 (7th Cir. 2014). For the reasons that follow, we now impose a sanction of $2,500 but suspend the sanction until such time, if ever, that Nora submits additional frivolous or needlessly antagonistic filings.

I. Background

As discussed in our earlier opinion, this case arose from a Wisconsin foreclosure action in which Nora, retained by Sheila Spencer, raised numerous objections focused on alleging that PNC Bank was fraudulently attempting to foreclose. Nearly four years after the suit had been filed, Nora then removed the case to federal court on the basis that she had just discovered through internet research that Freddie Mac was the "real party in interest." The district court remanded the case to state court and awarded fees and costs to PNC, concluding that Nora failed to explain how federal jurisdiction could exist when Freddie Mac was not a party to the case. Nora moved for reconsideration, and the court denied the motion as "frivolous," noting that Nora "ignored the voluminous law stating that district courts lack jurisdiction to reconsider remand orders, made no good faith argument for changing existing law and offered no meritorious arguments for reconsidering the decision to award fees." The court added that Nora had attempted "repeated procedural feints to delay the foreclosure that was properly before the state court."

Nora then appealed on behalf of both Spencer and herself, and we concluded that the appeal was sanctionably frivolous. We explained that Nora had "never presented any colorable basis for federal jurisdiction over this years-old state-court foreclosure case," leading us to "suspect that the removal was part of a strategy designed to gum up the progress of the case." *Spencer*, 763 F.3d at 655. We also observed that we lacked jurisdiction over Nora's appeal on her own behalf because liability for the award of fees and costs rested

solely with Spencer; although Nora asserted that Judge Crabb had "engaged in a campaign of libel against [her]," this alleged criticism did not permit Nora to appeal. *Id.* at 653–54. Nora suggested at oral argument that she would withdraw her name as co-appellant but never did so. *Id.* at 654.

Further, we noted that Nora's conduct appeared to be part of a pattern of troubling litigation tactics. We observed that Nora had been suspended indefinitely from practicing law in Minnesota (though later reinstated) for conduct similar to her actions in this case: making frivolous arguments, with no prospect of success, in an effort to delay foreclosure of her clients' farm land. *See In re Nora*, 450 N.W.2d 328, 330 (Minn. 1990). Additionally, we observed that Nora's responses to her opponents and the courts during this litigation were "unnecessarily accusatory and antagonistic," noting that Nora had accused "the state court judge and court reporter of fraudulently manipulating transcripts, the district judge of pursuing 'a campaign of libel against [her],' and opposing counsel of engaging in 'actionable civil fraud and racketeering [that] may constitute state and federal criminal misconduct.'" *Spencer*, 763 F.3d at 655 (alterations in original). We gave Nora 30 days to show cause why she should not be sanctioned.

Two days after we issued our opinion, Nora filed a 14-page "initial response" alleging that the opinion did not provide her with reasonable notice of the charges against her. She requested an evidentiary hearing and appointment of "an attorney to represent the proponent of the Order to Show Cause and a referee or special master to preside at the hearing." We denied Nora's request for appointment of a

special master and a full evidentiary hearing but agreed to hold a hearing on the show-cause order as allowed under Rule 46(c). We warned Nora that we would not accept additional filings beyond "one proper response to the show-cause order" and directed her to address the following four issues in her response: (1) whether the removal of this case, motion to reconsider, and appeal of the fee order were frivolous; (2) whether her appeal on her own behalf was frivolous; (3) whether the removal and appeal were litigated for the improper purposes of delay or increasing litigation costs; and (4) whether her attacks on her opponents and the district judge were appropriate advocacy.

Nora did not limit herself to one proper response. On September 2, 2014, she submitted a petition for rehearing en banc on behalf of herself and Spencer, rehashing her frivolous appellate arguments. On September 19, she filed both a "partial response to order to show cause (all rights reserved)" and a separate motion to stay further proceedings pending a petition for writ of certiorari. On October 3, after the court denied her request for a stay of proceedings, she filed a citation of additional authority under Circuit Rule 28(e) to bring to our attention a Sixth Circuit decision that purportedly supports her arguments on the merits. Finally, on October 17, eleven days before the show cause hearing, Nora moved to postpone the hearing because she had become "progressively mildly cognitively impaired as the result of a whiplash injury" from a car accident on September 13. We denied the request to postpone the hearing but granted Nora, or an attorney on her behalf, leave to argue by speakerphone. On October 28, Nora appeared in person for a 20-minute hearing.

II. Discussion

In responding to our earlier opinion, Nora has dug in her heels and continues to press the same arguments that were thoroughly rejected in the district court and our earlier opinion. Nora spends much of her response quoting portions of our earlier opinion and arguing that she could prove them wrong if given an evidentiary hearing. She made the same argument at her hearing. But Nora fails to specify what evidence she would present to undermine our opinion; she merely declares—without citation to the record—that a dozen different statements in our opinion were "false." These contentions do nothing to justify the removal, motion to reconsider, and appeal in this case. She also argues that she properly appealed on her own behalf because "the effect of the district court decision was to require her to indemnify Ms. Spencer." But as we explained in our earlier opinion, the award was against Spencer, not Nora, and Nora has not shown that she agreed to indemnify Spencer.

Nora also argues that, by depriving her of an evidentiary hearing, we violated her constitutional right to due process, citing *In re Ruffalo*, 390 U.S. 544 (1968). That argument is frivolous. *Ruffalo* holds that an attorney must receive fair notice of adverse charges and an opportunity to respond before being disciplined. *Id.* at 550; *see Lightspeed Media Corp. v. Smith*, 761 F.3d 699, 704 (7th Cir. 2014). These requirements were satisfied here through our opinion and subsequent order describing our concerns, and our allowance of time to respond and a hearing.

Sanctions are warranted under Rule 38 when a litigant or attorney presents appellate arguments with no reasonable expectation of success for the purposes of delay, harassment,

or sheer obstinacy. *See Wachovia Sec., LLC v. Loop Corp.*, 726 F.3d 899, 909–10 (7th Cir. 2013); *Hartz v. Friedman*, 919 F.2d 469, 475 (7th Cir. 1990); *Mays v. Chi. Sun-Times*, 865 F.2d 134, 138–39 (7th Cir. 1989). Nora's responses provide us with no persuasive reason to doubt that her arguments in this appeal were motivated by improper purposes. We note that this is far from the only case—from the last two years alone—where Nora has raised frivolous and unsupported allegations of fraudulent mortgage documents. *See In re Residential Capital, LLC*, No. 12-12020 (MG), 2013 WL 6227582, at *2 (Bankr. S.D.N.Y. Nov. 27, 2013) (concluding that "[a]lmost everything asserted in the [Response Nora filed] is frivolous" as "most of the Response contains unsupported allegations of fraud and various constitutional violations"); *Rinaldi v. HSBC Bank USA, N.A.*, Nos. 13-CV-336-JPS, 13-CV-643-JPS, 2013 WL 5876233, at *9--10 (E.D. Wis. Oct. 31, 2013) (rejecting numerous claims against a mortgage as lacking "any arguable basis" and noting that Nora's briefs were "almost unintelligible"); *In re Schmid*, 494 B.R. 737, 752 (Bankr. W.D. Wis. 2013) (rejecting fraud allegations as based on Nora's opinions drawn "without the benefit of a factual or legal basis"); *see also Van Stelton v. Van Stelton*, 994 F. Supp. 2d 986, 994 (N.D. Iowa 2014) (refusing to dismiss abuse-of-process claim alleging that plaintiffs represented by Nora brought lawsuit for improper purposes).

Nora also fails to alleviate our concern about her engaging in "conduct unbecoming a member of the court's bar" under Rule 46(c). She contends that her comments during this litigation have amounted to nothing more than unsanctionable rudeness, citing *In re Snyder*, 472 U.S. 634 (1985). In *Snyder*, the Supreme Court concluded that a single ill-mannered letter did not rise to the level of "conduct inimical

to the administration of justice" that is sanctionable under Rule 46(c). *Id.* at 645–47; *see In re Lightfoot*, 217 F.3d 914, 916–17 (7th Cir. 2000) (discussing this standard and collecting cases applying it). But Nora's conduct is more egregious than that in *Synder*. As noted in our earlier opinion, Nora has repeatedly acted with needless antagonism toward opposing counsel and judicial officers. In her responses to our order to show cause, she has refused to back down from her accusations of libel against Judge Crabb and "actionable civil fraud and racketeering" against opposing counsel. She denies accusing the state court judge of altering transcripts, but the record belies her denial: she not only made the accusations but moved for substitution of the judge on that basis. She also now derides "this panel and many of the judges in this circuit" as being biased "against homeowners' rights to be heard and defend their homes." This bandying about of serious accusations without basis in law or fact is unacceptable and warrants sanctions. *See In re Hendrix*, 986 F.2d 195, 201 (7th Cir. 1993) (explaining that attorney's filing of submissions not grounded in law or fact is sanctionable); *Mays*, 865 F.2d at 140 (sanctioning attorney for falsely imputing positions on opponents and the court).

Nora suggested at her hearing that her problems represent a personal dispute with Judge Crabb, pointing out that the judge decided to unseal Nora's medical records in an appeal Nora filed in her own bankruptcy case. But Nora has failed to persuade us that the judge's actions amounted to anything more than adverse rulings against her. *Cf. Liteky v. United States*, 510 U.S. 540, 555 (1994) ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion."). Moreover, we affirmed Judge Crabb's dismissal of that case for failure to prosecute, agreeing that

Nora had unjustifiably prolonged the proceedings by claiming to be "totally disabled" even though she continued to actively litigate. *See In re Nora*, 417 F. App'x 573, 575–76 (7th Cir. 2011). When we questioned Nora about the lack of basis for her libel accusations at the hearing in this case, she proposed that she could substantiate her accusations if allowed to discuss them with us in chambers. There is no reason to believe that allowing Nora to disparage Judge Crabb in private would convince us that sanctions are inappropriate.

Furthermore, a review of Nora's other recent litigation makes clear that she has a pattern of engaging in this type of antagonistic behavior. The chief bankruptcy judge of the Western District of Wisconsin criticized Nora this past summer for repeatedly disregarding the judge's instructions about the court's jurisdictional and constitutional limits. *In re Bechard*, Bankr. No. 14-11862-13, 2014 WL 3671419, at *6 (Bankr. W.D. Wis. July 21, 2014). Nora then challenged that decision through a petition for a writ of mandamus, arguing that the judge had issued the decision for the sole purpose of defaming her. *Nora v. Furay*, No. 14-cv-527-jdp, 2014 WL 4209608 (W.D. Wis. Aug. 25, 2014). The district court found that the judge's "stern, but restrained, criticism" of Nora had been "well within the bounds of propriety and civility," though "Nora's petition [was] not." *Id.* at *3 n.7. Additionally, Nora was recently sanctioned $1,000 by another district judge in this circuit for ignoring the judge's "extremely clear warning" against filing frivolous submissions. *Rinaldi*, Nos. 13-CV-336-JPS, 13-CV-643-JPS, ECF Doc. 48, at 3 (E.D. Wis. Apr. 9, 2014). Earlier in that case, the judge observed that, as in this case, Nora had "*at every turn* filed briefs that ha[d] done little to clarify the matters under consideration while further confusing matters," noting that Nora's filings lacked

coherent focus, cited controlling legal authority sparingly if at all, rehashed rejected arguments, and contained "irrelevant and argumentative language that has no place in a legal brief." *Rinaldi*, Nos. 13-CV-336-JPS, 13-CV-643-JPS, ECF Doc. 37, at 2 (E.D. Wis. Dec. 13, 2013). We affirmed that sanction on appeal. *Rinaldi v. HSBC USA, N.A.*, Nos. 13-3865, 14-1887 (7th Cir. Feb. 11, 2015). There is also a pending disciplinary case against Nora in Wisconsin. *See Office of Lawyer Regulation v. Nora*, No. 2013AP000653-D (Wis. filed Mar. 20, 2013).

Because the $1,000 sanction imposed in *Rinaldi* does not appear to have deterred Nora from continuing to submit frivolous and needlessly antagonistic filings, we now impose an increased sanction of $2,500. We suspend this sanction, however, until the time, if ever, that Nora submits further inappropriate filings. We also direct the clerk of this court to forward a copy of this order and our earlier opinion to the Office of Lawyer Regulation of the Wisconsin Supreme Court.