No. 22-

IN THE

Supreme Court of the United States

NEJLA K. LANE,

Petitioner,

v.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In an attorney disciplinary matter in which charges against an attorney must be proven by clear and convincing evidence, and without any substantive evidence of misconduct presented, whether the Hearing Board's and the Review Board's Recommendation and Report (collectively "the Board" and "the Report") violated Petitioner's rights as set forth in the Due Process Clauses of the Fourteenth Amendment to the U. S. Constitution and Article 1§2 of the Illinois Constitution. The Fourteenth Amendment Due Process Clause states: "nor shall any State deprive any person of life, liberty, or due process of law."

   (a) Whether the Administrator's enhancement of a new Rule 8.2(a) violation—when one did not exist in the initial federal district court's citation or suspension order—in the one-count complaint against the Petitioner violated Petitioner's Fourteenth Amendment due process rights.

   (b) Whether the Board's denial of Petitioner's request for a four-day hearing to present Petitioner's evidence, and instead only allowing for two-day hearing, violated Petitioner's Fourteenth Amendment due process rights.

   (c) Whether the Board's exclusion of Petitioner's exhibits during the hearing, including but not limited to the federal

court reporter's *certified* transcripts of court proceedings, violated Petitioner's Fourteenth Amendment due process rights.

(d) Whether the Board's denial of Petitioner's March 14, 2021 Motion for Leave to Add Character Witness, Officer of Consulate General of Turkey pursuant to ARDC Rule 253(c), for mitigation at her hearing, as well as exclusion of the disclosed expert witness, Dr. Michael Fields, from testifying in his capacity as an expert, and instead allowing him to testify only as a character witness, violated Petitioner's Fourteenth Amendment due process rights.

2. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution provides protection to every individual, *including attorneys*, and prohibits states from treating individuals differently based on certain characteristics without a valid justification. The Equal Protection Clause states: "No State shall deny to any person within its jurisdiction the equal protection of the laws." This clause has been interpreted by courts to ensure that individuals are treated equally by the government and that laws do not discriminate against people based on characteristics such as race, gender, religion, or national origin. Whether the Boards' Report violated Petitioner's rights under Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Article 1§2 of the Illinois Constitution when it imposed suspension rather than censure or reprimand, per Rule 108(a) and/or did not allow an ARDC Rule 56 diversion program, for the eligible Petitioner.

3. The First Amendment to the United States Constitution protects the freedom of speech, religion, and the press, as well as the right to assemble and petition the government for redress of grievances. These protections apply to individuals, *including attorneys*, and prohibits the government from abridging their freedom of speech or other constitutional rights. Whether the Boards' Report (affirmed by the Illinois Supreme Court) violated Petitioner's rights under the First Amendment to the U.S. Constitution and of Article 1§4 (Freedom of Speech) and Article 1§5 of the Illinois Constitution (Right to Petition and to Apply for Redress of Grievances).

Illinois Rules of Professional Conduct 8.2(a), 3.5(d) and 8.4(d), as applied, are unconstitutional, restricting attorney speech and in so doing imposing a chilling effect.

LIST OF PARTIES

The Petitioner is Nejla K. Lane, who was the Respondent in the Illinois Attorney Registration and Disciplinary Commission action and Petitioner in the Illinois Supreme Court for leave to file exceptions to the Report and Recommendation of the Review Board. The Respondent is the Illinois Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois ("ARDC").

CORPORATION DISCLOSURE STATEMENT

Petitioner Nejla K. Lane is an individual, not a public company and thus has no parent company, and no public company owns 10% or more of stock.

RELATED CASES

In re: Nejla K. Lane, 2019PR00074. Report and Recommendation of the Hearing Board of the Illinois Attorney Registration and Disciplinary Commission, decided on November 4, 2021.

In re: Nejla K. Lane, 2019PR00074. Report and Recommendation of the Review Board of the Illinois Attorney Registration and Disciplinary Commission, decided on July 12, 2022.

In re: Nejla K. Lane, M.R.031402. The Supreme Court of Illinois, denying Petitioner's Petition for Leave to File Exceptions to the Report and Recommendation of the Review Board, upholding the Review Board's Report and Recommendation, mandate issued on January 17, 2023.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Nejla K. Lane respectfully petitions this Court for a *Writ of Certiorari* to review the Illinois Supreme Court's decision denying her Petition for Leave to File Exceptions and upholding the Attorney Registration and Disciplinary Commission's disciplinary actions against her, which conflict not only with her rights under the Constitution of the United States of America and the Constitution of the State of Illinois, but also with decisions of this Court in similar disciplinary cases.

CITATIONS TO OFFICIAL AND UNOFFICIAL REPORTS AND ORDERS ENTERED IN THE CASE BY THE LOWER COURTS

The Illinois Supreme Court's Order is published at https://www.iardc.org/DisciplinarySearch under Illinois Supreme Court Miscellaneous Record on 01-17-23, M.R. 031402, www.illinoiscourt.gov and reproduced at Pet. App. 1a-4a.

The Reports and Recommendations of the Review Board and Hearing Board of the Illinois Attorney Registration and Disciplinary Commission are at www.iardc.org, https://www.iardc.org/DisciplinarySearch and reported on July 12, 2022 and on November 4, 2021, are respectively reported at www.Iardc.org and Iardc.org and reproduced at Pet. App. 5a-41a and 42a-65a.

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant 28 U.S.C. §1257(a).

(i) The Judgment or Order sought to be reviewed was entered on January 17, 2023. On April 6, 2023, this Court submitted Petitioner's application (22A883) to extend the time to file the Petition from April 17, 2023 to June 16, 2023 to Justice Barrett. On April 11, 2023, Justice Barrett extended the time to file the Petition to June 16, 2023.

(ii) The Illinois Supreme Court denied Petitioner's Petition for Leave to File Exceptions to the Report and Recommendation of the Review Board of the Attorney Registration and Disciplinary Commission and upheld the Report and Recommendation of the Review Board and issued its Mandate on January 17, 2023.

(iii) The Statutory provision conferring jurisdiction on this Court to review a Writ of Certiorari contesting the Order in question is: (A) U.S. Const. Art. III, §2, Clause 2 ["In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make"]; (B) the authority of the United States Supreme Court to hear cases is set out in 28 U.S.C. §1257(a); and (C) Rule 10(a) of the Rules of the United States Supreme Court ["Review on a writ of *certiorari* is not a matter of right, but of judicial discretion. A petition for a writ of *certiorari* will be granted only for compelling reasons"]. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers: "(a) a *** court *** has entered a decision *** ["that] has so far departed from the accepted and usual course of

judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power."

(iv) This petition does raise the constitutionality of the Illinois Supreme Court's denial of Petitioner's Petition for Leave to File Exceptions to the Report and Recommendation of the Review Board, upholding the Attorney Registration and Disciplinary Commission's disciplinary actions against Petitioner, which has a chilling effect in violation of the constitutional rights of every attorney similarly situated.

CONSTITUTION PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV § 1.

Article 1§2 of the Illinois Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws." Ill. Const. Art. 1§ 2.

The First Amendment of the U.S. Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. Amend. I.

Article 1§4 of the Illinois Constitution provides that "All persons may speak, write and publish freely, being responsible for the abuse of that liberty. In trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense." Ill. Const. Art. 1§4.

Article 1§5 of the Illinois Constitution provides that "[t]he people have the right to assemble in a peaceable manner, to consult for the common good, to make known their opinions to their representatives and to apply for redress of grievances." Ill. Const. Art. 1§5.

STATEMENT OF THE CASE

I. Procedural Background:

On October 31, 2017, Magistrate Judge Sheila Finnegan ("Judge Finnegan") for the Northern District Illinois Eastern Division, filed a formal complaint against the Petitioner with the Executive Committee ("federal district court") for sending one email containing unprofessional and inappropriate language to Judge Finnegan and two emails to Judge Finnegan's law clerk, Allison Engel, while Petitioner was representing the plaintiff, Mr. Barry Epstein, in *Barry Epstein v. Paula Epstein and Jay Frank*, No. 2014-cv-8431, pursuant to 18 U.S.C. §2520, for alleged multiple violations of the Federal Wiretap Act ("Wiretap Act"). Petitioner's three emails were allegedly in violation of the American Bar Association Model Rules of Professional Conduct ("Rule") Rule 3.5(d), which provides that "a lawyer shall not engage in conduct intended to disrupt a tribunal"; and Rule 8.4(d), which provides that "it is professional misconduct

for a lawyer to engage in conduct that is prejudicial to the administration of justice." On November 14, 2017, Petitioner was issued a "citation" *In re: Nejla K. Lane*, No. 17D43 before the Executive Committee. R-Ex. 10, # 123-124; Adm Ex. 5, Citation, pp. 1-2.

On January 22, 2018, the United States District Court for the Northern District of Illinois (federal district court) issued an Order *In re: Nejla Kassandra Lane*, No. 18MC40, suspending Petitioner from the general bar for six (6) months, and the trial Bar for twelve (12) months, *inter alia*, for the "*use of unprofessional and inappropriate language*" and for sending these three emails. Adm Ex. 7, p. 2; (R22, R427, R450). Petitioner was reinstated to both bars, on August 7, 2018, and on June 11, 2019, respectively.

Neither Judge Finnegan nor the federal district court accused, alleged or charged Petitioner with violation of Illinois Rule of Professional Conduct *8.2(a)*, which states: "a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity *concerning the qualifications or integrity of a Judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office*." (Emphasis added). (Adm Ex. 5, ¶6-7, R92-95) (Ex.2, Review Bd, pp. 7-9).

Thereafter, the federal district court forwarded said Attorney Disciplinary record *In re: Nejla K. Lane*, No. 18MC40, to the Illinois Attorney Registration and Disciplinary Committee ("ARDC").

On August 28, 2019, the Illinois Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (hereinafter "ARDC" or "Administrator") brought a one-count complaint (2019PR00074) against the Petitioner, not only charging her for violating Illinois Rules of Professional Conduct 3.5(d) and 8.4(d), but also enhanced the complaint with the charge of a *violation of Rule 8.2(a)*, "*making a false or reckless statement impugning the integrity of a judge,*" a charge which did not exist in the previous federal district court citation or order. (C#11-19). (Emphasis added).

The Illinois State disciplinary matter was set for a hearing to start on March 16, 2021, before the ARDC Hearing Board.

After denying the Petitioner's requested four-day hearing, this matter proceeded to a two-day hearing on March 16 and 17 2021. Thereafter, the first Report and Recommendation of the Hearing Board ("Report") was issued on November 4, 2021, in favor of suspending Petitioner from the practice of law for nine months, with the suspension stayed after six months, followed by six months' probation. Petitioner appealed the Hearing Board's Report and Recommendation to the Review Board, and after a hearing, on July 12, 2022, the Review Board issued its Report and Recommendation affirming the Hearing Board and in favor of suspending Petitioner. On October 25, 2022, Petitioner filed in the Supreme Court of Illinois her Verified Petition for Leave to File Exceptions to the Reports and Recommendation of the Boards. On January 17, 2023, the Supreme Court denied Petitioner's petition and upheld the Boards' Recommendations (M.R.031402), suspending Petitioner

from practice of law, effective February 7, 2023, for nine months, with the suspension stayed after six months, by six months' probation.

II. Factual Background:

The ARDC disciplinary matter arose from an email-incident that transpired while Petitioner was representing Mr. Barry Epstein, in *Barry Epstein v. Paula Epstein et. al.*, No. 14-cv-8431, in the Northern District of Illinois ("NDIL"). R-Ex. #5, #776-801.

Mr. Epstein's federal complaint in the NDIL against his then-wife Ms. Epstein and his wife's then-divorce attorney, Mr. Frank, alleged multiple violations of the Federal Wiretap Act ("Wiretap Act") pursuant to 18 U.S.C. §2520. The complaint, *inter alia*, alleged that Ms. Epstein unlawfully intercepted, disclosed, and used Mr. Epstein's emails (as leverage to gain more in settlement in their divorce litigation pending at the time) in violation of the Wiretap Act.

Initially, Judge Thomas Durkin ("Judge Durkin") dismissed this suit on the pleadings on April 20, 2015; however, plaintiff filed an appeal in the United States Court of Appeals for the Seventh Circuit, titled *Epstein v. Epstein at. al.*, Case No. 15-2076. The Seventh Circuit reversed the dismissal of the federal action against plaintiff's wife, Ms. Epstein, but affirmed the dismissal of the wife's divorce attorney, Mr. Frank, and remanded the case back to Judge Durkin. *See Epstein v. Epstein et. al.*, 843 F.3d 1147 (7th Cir. 2016)[1]. R-Ex.# 1.2 EM, #33-

1. Mr. Epstein appealed the Seventh Circuit ruling dismissing Mr. Frank from the federal action by filing two, one redacted and one

39. (R166, 299). However, Seventh Circuit Judge Richard Posner wrote a separate concurring opinion—*dicta*—to address an issue not raised on appeal, namely "whether the Wiretap Act should be thought applicable" to invasions of privacy as it relates to marital infidelity. Ms. Epstein's federal matter attorney, Mr. Scott Schaefers, adopted Judge Posner's *dicta* and referred to it as the "Posner Defense" thus creating a new "affirmative defense." (*See* R-Ex. 5, #5, actual DE62 at p. 11-12, *See* also R-Ex. 5, # 119 of 1626). (R133) (*See* R-Ex. 5.15, #751-762[2], 5.16 # 426-27 of 1626) (270-272).

On remand, on January 6, 2017, over the objection of Mr. Epstein's counsel (Petitioner), Judge Durkin put the case on an aggressive schedule, stating, among other things: "Well, let's set a trial date and work backwards …. If you're going to talk reasonably and settle about this case - - settle this case, you'll do it under the threat of a trial date." And this matter was set for trial on June 5, 2017. R-Ex.14, pp.1-7, *see* Transcript of Jan. 6, 2017. (R68-69). This truncated discovery schedule was unreasonably short for a colossal Wiretap Act violation case like this one.

Judge Durkin subsequently assigned Judge Finnegan as magistrate judge for an expedited settlement

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unredacted, Petitions for Writ of Certiorari in the Supreme Court of the United States, *Barry Epstein v. Paula Epstein, et.al.*, Case Nos. 16 M 104 (cert. denied) (under seal) and 16-1162 (cert. denied) (hereinafter collectively referred to as "Federal Action").

2. Seventh Circuit Case no. 12-2076 "Posner Defense" (*See* DE158 Defendant). (Resp. Ex.#5, #734, Pltf's Rule 12(f) mtn to Strike, #724, Pltf's Reply-Rule 12(f) mtn., *see* also attached as Ex. 1 Tr. Bate#747 L:20-24).

conference, but after a failed settlement conference and her having probed the parties, this case was again referred to her for discovery supervision, and she then controlled the direction of the discovery, purposefully steering the case consistent with Judge Posner's *dicta*. Judge Posner's *dicta* was treated as binding law and was now referred to as the "Posner Defense". R-Exs. Transcripts Ex. 14; certified federal court pp. 1-434. R-511-523.

Although a judge is presumed to be impartial, Petitioner's perception was that after the settlement conference, Judge Finnegan demonstrated bias because she was making statements favoring Ms. Epstein and referencing Judge Posner's *dicta.* Petitioner's first email, on April 18, 2017, to Judge Finnegan stated the following, *inter alia*: "[t]his is not about 'catching a cheater or infidelity' and Posner's dicta is not the law, there is no such Posner Defense! This case is not filed for moral rights/ wrongs …". R-Ex. 1-3 #1-3 (pp. 28-29).

With respect to the 2nd and 3rd email incidents, on June 23, 2017, June 26, 2017, respectively, Petitioner's emails were in response to a seven-page order received from Judge Finnegan's law clerk, Ms. Allison Engel stating: "Counsel, [a]ttached is the Order denying Plaintiff's Motion for Extension of Time to Complete Discovery and Leave to Depose Jay Frank [207]. *It will be uploaded to the docket on Monday.*" (Emphasis added).

Notably on June 22, 2017, Judge Finnegan had already entered an Order [Docket 213] denying the motion. Yet, this seven-page order appeared not only unnecessary and redundant, but it also mischaracterized facts and impugned Petitioner's character, professionalism, and

competency as a counsel. The Petitioner perceived this not only as a personal attack but also as evidence of judicial bias. The content of these three private emails cannot be construed as false because, arguably, an opinion cannot be false; hence, any finding of the emails expressing opinions to be false inherently violates Petitioner's First Amendment rights to Freedom of Speech and right to Redress of Grievances.

Thereafter, on July 6, 2017, prior to filing a "Motion for Recusal of Judges Thomas M. Durkin and Sheila Finnegan" ("recusal motion"), Petitioner expressed her concerns about apparent judicial bias in open court directly to Judge Durkin. (*See* R-Ex. 14, TR. July 6, 2017, pp. 9-10). Subsequently, the recusal motion emphasized concerns about extreme judicial bias. This right to redress grievances is a fundamental aspect of our democratic society, allowing individuals to seek justice, accountability, and resolution for their concerns or grievances, which is closely connected to the principles of free speech, petition, and access to justice. (U.S. Const., First Amendment & Article I§5 of the Illinois Const.). Judge Durkin denied the recusal motion; however, due to Petitioner's reported incidents of judicial bias and partiality, he set the case to be tried by a jury. (*See* R-Ex. 14, TR of July 24, 2017).

After the recusal motion was denied and a jury trial commenced, the case was settled after the opening statements concluded. On October 31, 2017, Judge Finnegan reported Petitioner to the Executive Committee stating, *inter alia*: "I informed Ms. Lane in writing that ***the communication was improper*** and *instructed* her not to do this again. Despite this, on June 23, 2017, and again on June 26, 2017, Ms. Lane sent lengthy emails criticizing

another ruling. Not only did Ms. Lane violate my April 17 order but the language that she used in the emails was ***wholly unprofessional*** and ***extremely inappropriate***." (Emphasis added). R-Ex. 10, # 125-127. However, Petitioner believes that Judge Finnegan's complaint against her was for expressing her strong opinion about and visceral reaction to the demonstrated bias, and a personal vendetta for calling her out on following *dicta* rather than the law. (*See* ADM Ex. #6, Attorney Response pp. 1-29, at p.16).

On November 14, 2017, the federal district court issued Citation no. 17D43, and on January 22, 2018, issued Order no. 18MC40, suspending Petitioner for violating Rules 3.5(d) and 8.4(a).

On August 28, 2019, the Administrator filed a one-count complaint against Petitioner, not only charging her with Illinois Rules of Professional Conduct (IRCP) 3.5(d) and 8.4(a) violations, but also with a Rule 8.2(a) violation, "*making a false or reckless statement impugning the integrity of federal Magistrate Judge Finnegan.*" (See R000021).

This matter proceeded to a hearing on March 16 and March 17, 2021. Prior to and during the hearing, Petitioner requested, but was denied, the following: (1) Petitioner's "Motion Requesting In-Person Hearing, to Strike Past Remote WebEx Video Deposition Transcripts, and Allow the Use of Audio-Visual Recording Device," as well as the Motion to Reconsider same (C186-238); (2) a four-day hearing to present her evidence (C183-91, C194-98, C205-209, C304); (3) her Motion for Leave to Add the Character Witness,

Officer of the Consulate General of Turkey (C240-252); (4) admission of Petitioner's exhibits, including but not limited to public records such as docket entries, certified court reporters' transcripts of federal court proceedings, email communications which were part of electronic docket entries/filings, reports by Lawyers' Assistance Program (LAP) Counselor's and Dr. Michael Fields's expert medical reports from his treatment of Petitioner (C302-309, C314-346, C347); and (5) the Board also denied Petitioner's disclosed expert witness (Dr. Fields) the opportunity to testify in his capacity as an expert, instead designating him only as a character witness (R337-345). The Board denied Petitioner's otherwise admissible evidence, stating:

> "It's not that you have gone beyond the scope of my cross, the point is, this is not going to come into evidence**.** ***It's a transcript***. That is a transcript of a deposition, right?" "No, no. It's actually - - **it doesn't matter**. ***It's a court proceeding, and it's not coming into evidence***." (Emphasis added) (*See* R316, R246-251).

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari in this case because there is a conflict between the lower court and agency's rulings and the U. S. Constitution as well as decisions of this Court in similar disciplinary cases.

ARGUMENT

The Board's Report and Recommendation to suspend the Petitioner must be immediately stayed and ultimately reversed. The Due Process Clause of the Fourteenth Amendment imposes binding obligations on governmental entities to ensure that individuals are afforded fair treatment and procedural protections. Due process is a fundamental constitutional principle that guarantees certain rights and safeguards in legal proceedings. The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law." In the context of disciplinary hearings or other legal proceedings, due process requires that individuals are afforded a fair and impartial hearing, including the opportunity to present relevant evidence and arguments, challenge evidence presented against them, and call witnesses in their defense. A hearing should be conducted in accordance with these established rules and procedures.

A. DUE PROCESS CLAUSE VIOLATION

The Administrator's enhancement of the one count-complaint to add an uncharged Rule 8.2(a) violation, which did not exist in the federal district court's order to suspend Petitioner, coupled with Administrator's lack of witnesses or evidence to support this violation, deprived Petitioner of the opportunity to redress this violation and thus violated Petitioner's due process rights.

Prior to the hearing, *supra*, Petitioner requested, but was denied, the following: (1) Petitioner's "Motion Requesting In-Person Hearing, to Strike Past Remote

WebEx Video Deposition Transcripts, and Allow the Use of Audio-Visual Recording Device," as well as the Motion to Reconsider same (C186-238); (2) a four-day hearing to present her evidence. (C183-91, C194-98, C205-209, C304); (3) Motion for Leave to Add the Officer of the Consulate General of Turkey to testify as a character witness (C240-252); and (4) admission of Petitioner's exhibits, including but not limited to public records such as docket entries, certified court reporters' transcripts of federal court proceedings, email communications which were part of electronic docket entries/filings, reports by Lawyers' Assistance Program (LAP) Counselors and Dr. Michael Fields's expert medical reports from his treatment of Petitioner (C302-309, C314-346, C347). Similarly, the Board also denied Petitioner's disclosed expert witness (Fields) the opportunity to testify in his capacity of expertise, instead designating him only as a character witness (R337-345). These denials violated Petitioner's Fourteenth Amendment due process rights (R481-536) (R13, R371-72) by depriving her of a meaningful opportunity to respond to the charges against her. The Board denied Petitioner's exculpatory and otherwise admissible evidence, stating:

> "It's not that you have gone beyond the scope of my cross, the point is, this is not going to come into evidence**. *It's a transcript***. That is a transcript of a deposition, right?" "No, no. It's actually - - **it doesn't matter**. ***It's a court proceeding, and it's not coming into evidence***." (Emphasis added) (*See* R316, R246-251).

The Board's unreasonable exclusion of admissible evidence constitutes a violation of due process, which

impacted the fundamental fairness of the proceedings. "The fundamental requisite of due process of law is the opportunity to be heard." *Greene v. Lindsay*, 456 U.S. 444, 455 (1982). Procedural due process, guaranteed to all persons by the Fourteenth Amendment to the U.S. Constitution, is triggered where, as here, the government has deprived a person of life, liberty, or property. Also, the Board's exclusion of Petitioner's evidence is contrary to §120.560 of Illinois Administrative Procedures Act. *See also In re Silvern*, 92 Ill. 2d 188, 196 (1982). At an administrative hearing, such transcripts should have been admitted under the relaxed evidentiary standards of Section 120.560 of the Illinois Administrative Procedures Act ("technical rules of evidence, including the hearsay rule, need not be mechanically followed in attorney discipline cases").

"Since a disciplinary action's primary purpose is to protect the public from unqualified or unethical practitioners (*In re Nesselson* (1966), 35 Ill. 2d 454), technicalities will not be invoked either to shield an attorney from discipline (*In re Czachorski* (1969), 41 Ill. 2d 549) or to prevent him from establishing a legitimate defense (*In re Ashbach* (1958), 13 Ill. 2d 411). Therefore, we find that the hearing panel did not err in weighing all of respondent's testimony (including his Ebert testimony) to help determine the true facts." *In re Yamaguchi*, 118 Ill. 2d 417, 424 (1987).

B. THE ILLINOIS SUPREME COURT'S ORDER VIOLATED THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION

The Equal Protection Clause requires the government to have a valid and legitimate reason, known as a compelling state interest, or at a minimum a rational basis, to treat people differently for legal purposes. Laws or government actions that discriminate against certain individuals or groups without a compelling justification may be found unconstitutional. The Equal Protection Clause plays a crucial role in promoting fairness, equality, and non-discrimination in the United States, and it applies to all individuals, *including attorneys*, ensuring that they are entitled to equal protection under the law. Petitioner asserts that there is substantial disparity between the discipline recommended and imposed on worse misconduct by other lawyers, which violates the Equal Protection Clause violations. As the Supreme Court has consistently held, "arbitrary and irrational discrimination violates the Equal Protection Clause under even [the] most deferential standard of review." *Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71, 83, 100 L. Ed. 2d 62, 108 S. Ct. 1645 (1988). Thus, a law will fail under rational basis review if "'the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that [the court] can only conclude that the [legislature's] actions were irrational.'" *Gregory v. Ashcroft*, 501 U.S. 452, 471, 115 L. Ed. 2d 410, 111 S. Ct. 2395 (1991) (quoting *Vance v. Bradley*, 440 U.S. 93, 97, 59 L. Ed. 2d 171, 99 S. Ct. 939 (1979)); accord *City of Cleburne, Tex. v. Cleburne Living Center, Inc.*, 473 U.S. 432, 446, 87 L. Ed. 2d 313, 105 S. Ct. 3249 (1985) [**78]

(finding that a government "may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational"). *Allen v. Leis*, 154 F. Supp. 2d 1240, 1269.

Attorneys with conducts remotely similar to Petitioner were either not disciplined at all or were only *censured*, were eligible for Rule 108(a) deferral, reprimanded, or granted a Rule 56 diversion progra*m*[3]. (R456, Ex. A, Respondent's Appeal Brief p. 31). According to the ARDC Rule 56 Diversion Eligibility[4]Petitioner was otherwise eligible for the diversion because the conduct in question did not involve misappropriation of funds; criminal acts; actual loss to a client or other persons; or dishonesty, fraud, deceit, or misrepresentation. Congruently, "[t]he Hearing Board also found that Respondent's misconduct *did not arise from a dishonest or improper motive*." Ex. 2, Review Bd. Report p. 9. (Emphasis added). The Administrator's refusal to allow Petitioner the Rule 56 diversion program violated Petitioner's equal protection under the Fourteenth Amendment.

It is true that equal protection does not require equal or proportional penalties for dissimilar conduct. (*Bradley,*

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3. https://www.iardc.org/Files/Rules_of_the_ARDC.pdf

4. Rule 56 Diversion Eligibility. The Administrator and respondent may agree to a diversion of the respondent (a) to a program designed to afford the respondent an opportunity to address concerns identified in the investigation if the Administrator concludes that diversion would benefit and not harm the public, profession and the courts, and the conduct under investigation does not involve any "misappropriation of funds; criminal acts; actual loss to a client or other persons; or dishonesty, fraud, deceit, or misrepresentation."

79 Ill. 2d at 416, citing *McGowan v. Maryland* (1961), 366 U.S. 420, 427, 6 L. Ed. 2d 393, 400, 81 S. Ct. 1101, 1105-06.) Neither does it deny the State the power to draw lines that treat different classes of people in different ways. (See, *e.g., Esposito,*121 Ill. 2d at 502 (drivers whose blood-alcohol content is 0.10% or more and those whose blood-alcohol content falls below that mark are not so similarly situated as to require identical treatment)). These observations, however, do not answer the question of whether a classification or distinction such as was made in Petitioner's case is valid. If the power to classify has been exercised arbitrarily, the State cannot justify the legislation simply by labeling it a "classification." (*People v. McCabe* (1971), 49 Ill. 2d 338, 341, 275 N.E.2d 407.) There must be a rational basis for distinguishing the class to which the law applies from that to which it does not. (*People v. Coleman* (1986), 111 Ill. 2d 87, 95, 94 Ill. Dec. 762, 488 N.E.2d 1009). To determine whether a statutory classification is justified by a rational basis, we must examine its purpose. *People v. Reed*, 148 Ill. 2d 1, 9 (1992).

The discipline recommended and imposed is contrary to Article 1§2 of the Illinois Constitution, which further shows its violation of due process under the Fourteenth Amendment, as well as being an equal protection violation, as the amendment states: "No person shall be deprived of life, liberty or property without *due process of law nor be denied the equal protection of the laws*." (Emphasis added).

Petitioner's expression of her opinion is factually dissimilar from cases such as *In re Kelly,* 808 F.2d 549, 549 (7th Cir. 1986), in which an attorney filed a motion to recuse a judge from participating in the appeal of a sex-

discrimination suit brought against a Catholic-affiliated university. In *Kelly*, the attorney filed an affidavit, which stated that the judge, a graduate of the university and its law school, was personally opposed to abortion, an issue allegedly raised by the university. The attorney was ordered to substantiate his allegations about the judge. He referenced the judge's membership in a Catholic legal society and his alleged participation in its presentations about the issue of abortion. *Id.* at 551. Thereafter, the attorney was ordered to show cause why he should not be disciplined for violating Fed. R. Civ. P. 11. The court discharged the rule to show cause. Under Fed. R. App. P. 46(c), a lawyer was subject to discipline for unbecoming conduct and Rule 11, although not a part of the appellate rules, helped to define such conduct. Furthermore, lawyers were obligated to be scrupulous about the accuracy of their sworn statements about fellow lawyers and judges. However, the court concluded that discipline was not warranted because of the possibility that the affidavit was the *result of clumsy, rather than dishonest*, drafting. *Kelly*, 808 F.2d at 552. (Emphasis added).

When comparing the *Kelly* case with Petitioner's, it is obvious that Mr. Kelly made factual and false statements, but Petitioner in said emails was venting, when she expressed her opinion. Mr. Kelly's statements were false, but the veracity of Petitioner's statements are "debatable" because she was expressing an opinion. Mr. Kelly's false statement of fact was under oath about a judge in a motion that is available to the public, but Petitioner's emails were neither under oath nor in a motion available to the public view, rather, they were in a small private group email. (R49, R112, R456, R518, R286). *See* also R-Ex. 11, Petitioner's Response to the Citation, #498 of 532, Adm.

Ex. #6, #1-17. However, in *In re Kelly*, the court held that *discipline was not warranted*, the attorney was not even investigated by the state bar; yet, in Petitioner's matter she was being investigated for almost five years, and is being treated differently than Mr. Kelly. In *Kelly*, the court held, "to punish an attorney for a single violation of Rule 11 of the Federal Rules of Civil Procedure *would violate the speech and petition clauses of the First Amendment*." *Kelly*, 808 F.2d at 550. (Emphasis added).

Although Petitioner was already punished by the federal district court, by being suspended, the ARDC disciplinary matter continued to-date. Petitioner was denied equal protection under law because other attorneys were differently treated for worse conduct.

In re Benjamin Edward Harrison, July 12, 2007, Commission No. 06CH36. Though, "it was proven that Respondent made ***false statements in two motions*** and ***acted inappropriately in court***," the Hearing Board stated that they believed that the Respondent had learned his lesson and believed that Respondent is unlikely to engage in similar misconduct in the future and recommended Respondent be censured." (*Id.* p. 8-9).

The recommended discipline for Petitioner is far more drastic, because there is not only a six-month suspension, but also an additional six months' probation, contrary to *In re Kelly* and *In re Barringer.* Ex. 1, Review Bd. at 14.

C. THE REPORTS FAILED TO MAKE A FINDING THAT PETITIONER KNEW THAT ANY CLAIMS IN HER EMAIL WERE FALSE, WHICH IS WHY RULE 8.2 IS UNCONSTITUTIONAL AS APPLIED TO PETITIONER

RULE 8.2(a) states:

> A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a Judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

The Report failed to make any finding at all as to whether Petitioner knew that any of the claims that she made in her emails were false, much less that she knew that they were false by clear and convincing evidence. The Administrator did not identify any evidence in the record showing that Petitioner made any of these statements with reckless disregard as to their truth or falsity. The Report does not allege intent to make false statements, nor can intent or reckless disregard be inferred from any of the Boards' findings. There is not even an allegation of awareness on the part of Petitioner that she knew that there was insufficient evidence to support her claims. *See Cranwill v. Donahue*, 99 Ill.App.3d 968, 426 N.E.2d 337, 55 Ill. Dec. 362 (Ill. App. 1981). Reckless disregard, in regard to derogatory statements, requires proof that the defendant had a "high degree of awareness of their probable falsity." *Garrison v. Louisiana* (1964), 379 U.S. 64, 74, 85 S. Ct. 209, 215, 13 L.Ed.2d 125. *Accord Kuwik v.*

Starmark Star Marketing and Admin., Inc., 619 N.E.2d 129, 156 Ill.2d 16, 188 Ill. Dec. 765 (Ill. 1993). The Reports provided none.

Instead, the Reports conclude that Petitioner "had no objective, factual basis for her comments". (Pet. App.at 22a). However, neither Report establishes that she knew that her comments were false nor that she had a high degree of awareness of their probable falsity. It is well established that an individual may hold a belief regardless of whether it is objectively reasonable. *See, e.g. Ford v. McGinnis*, 352 F.3d 582, 590 (2d Cir. 2003) ("We refused to evaluate the objective reasonableness of the prisoner's belief"). The Reports point to nothing in the record which shows that Petitioner believed her assertions against the Judge were untrue (at the time she made them), much less had a high awareness of their probable falsity.

The Administrator failed to identify any evidence in the record which shows Petitioner's intent. *See Holder v. Caselton*, 657 N.E.2d 680, 275 Ill.App.3d 950 (Ill. App. 1995) ("Defendants assert that plaintiff raises this issue for the first time on appeal, and plaintiff appears to concede that point in her reply brief by failing to respond or point out where the record contains any objection she made at the trial level.") Instead, the Administrator invited the Review Board to ignore the plain language of the Rule and the decisions of the U.S. and Illinois Supreme Courts, and substitute in their place another rule altogether: "[a] lawyer who attacks a judge's honesty or integrity must have an objectively reasonable basis for doing so in order to escape liability under Rule 8.2(a)." Administrator's Brief at p. 18, relying upon Review Board decisions. The Administrator, however, does not even claim that these

decisions are binding upon this Board. But those of the U.S. and Illinois Supreme Court are.

Again, in each instance, the Administrator bore the burden of proving by clear and convincing evidence that Petitioner knew or had a high probability of awareness that these statements were untrue, regardless of whether the Report found that they were in fact untrue. Accordingly, the Report is bereft of any basis for concluding that Petitioner has violated rule 8.2(a).

Inasmuch as the Administrator has failed to identify any evidence in the record showing that Petitioner had a high degree of, or any, awareness of the probable falsity of her statements, thus the Report's finding that Petitioner violated Rule 8.2(a) was against the manifest weight of the evidence, and as such, violated Petitioner's First and Fourteenth Amendment (due process) rights.

D. RULE 8.2(a) AS APPLIED HERE, IS UNCONSTITUTIONAL

The First Amendment to the United States Constitution protects the freedom of speech, religion, and the press, as well as the right to assemble and petition the government for redress of grievances. These protections apply to individuals, *including attorneys*, and prohibit the government from abridging their freedom of speech or other constitutional rights.

Attorneys have the right to criticize the government and its officials, including judges, as part of their practice of law. Attorneys, as did Petitioner, may file motions to recuse judges who have shown bias, and such motions

may include criticism of the judge's conduct or decisions. These actions are protected under the First Amendment free speech and freedom of expression. Attorneys have the same constitutional protections as any individual, including the right to criticize the government and its officials. Citizens have a right under the United States' constitutional system to criticize government officials and agencies. "The courts are not, and should not be, immune to such criticism. Government censorship can no more be reconciled with the national constitutional standard of freedom of speech and press when done in the guise of determining 'moral character,' than if it should be attempted directly." *Konigsberg v. State Bar of Cal.*, 353 U.S. 252, 253 (1957).

Rule 8.2(a) is a government restriction on speech in that it is aimed directly, and solely, at a "statement". This Court has set forth the following guidelines for determining the constitutionality of governmental restrictions on speech:

> *First*, the regulation ... in question must further an important or substantial governmental interest unrelated to the suppression of expression... *Second*, the limitation of First Amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interest involved.

Procunier v. Martinez, 416 U.S. 396, 413, 94 S. Ct. 1800, 40 L. Ed. 2d 224 (1974), *Accord, Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1054, 111 S. Ct. 2720, 2734 (1991), expressly applying the *Martinez* test to state bar sanctioning of attorney speech. The Administrator fails to identify any

governmental interest unrelated to the suppression of expression furthered by Rule 8.2(a), and does not even claim the limitation on First Amendment freedoms are no greater than is necessary or essential to the protection of the particular governmental interest involved. Therefore, the Rule as applied is unconstitutional. *Holder, supra.*

Here, in his discussion of reckless disregard, the Administrator ignores the applicable judicial precedent in favor of non-binding Board decisions which appear to not even be aware of this Court's precedent on this point. The one U.S. Supreme Court decision he cites, *Cantwell v. Connecticut,* 310 U.S. 296, 309-10 (1940), is distinguishable because in Cantwell there was a government interest unrelated to the suppression of expression, inasmuch as one could be convicted under the statute the petitioner was accused of violating "if he commits acts or make statements likely to provoke violence and disturbance of good order." *Cantwell,* 310 U.S. at 309. Again, the Administrator failed to identify any similar purpose forwarded by Rule 8.2(a), and the only purpose asserted by the comments to the Rule itself is completely unrelated to the actions complained of here.

Ultimately, by failing to dispute that the sanctioning of Petitioner under Rule 8.2(a) contravenes both steps of the *Martinez* (and *Gentile*) test, the Administrator has conceded that enforcement of Rule 8.2(a) in this situation is in violation of Petitioner's First Amendment rights.

It is apparent from the comments to this Rule that it was never intended to apply to private or semi-private communications such as this to begin with. Rather, the comments show that the Rule is aimed at preventing public

attacks upon judges running for office. Therefore, the Rule is bereft of any important or substantial governmental interest unrelated to the suppression of expression which applies to the facts of this matter.

Reviewing the particular facts found here shows that Rule 8.2(a) was applied without regard to any purpose other than suppression of expression. It is only the Petitioner's statements that are criticized in connection with this Rule. In contrast to the allegations pertaining to Rule 3.5(d), which refers to "disruption of the tribunal" or Rule 8.4(d) which is aimed at preventing "prejudice to the administration of justice", to prove a violation of Rule 8.2(a) the government need only establish that the Petitioner made the relevant statements with the requisite intent and, again, the Comments show clearly that the Rule was intended to protect the integrity of judicial elections, which could not conceivably be prejudiced here.

In addition, here, the limitations on Petitioner's First Amendment freedoms are greater than is necessary or essential to the protection of the particular governmental interest involved. In fact, the sanctions sought here demonstrate that the rule is being used to kill a fly with a surface-to-air-missile. The proposed sanction of six months' suspension is likely to leave the Petitioner bereft of income.

These disciplinary proceedings not only involve penalties that are vastly greater than is necessary or essential to the protection of whatever particular governmental interest is involved, but they are in fact entirely redundant and unnecessary. Accordingly, Rule 8.2(a), as applied to private communications between

judges and attorneys, or ones shared with an extremely small email group of individuals who are highly unlikely to disseminate it further to the public is unconstitutional. Public officials, including judges, should be open to criticism as part of their public role. They should be willing to engage in dialogue, address concerns, and provide justifications for their decisions when necessary. This fosters accountability and helps to maintain public trust in the government and the judiciary.

E. RULE 3.5(d), AS APPLIED HERE, IS UNCONSTITUTIONAL

Rule 3.5(d) provides that "[a] lawyer shall not engage in conduct intended to disrupt a tribunal." The Reports found that Petitioner violated this rule because the fact that she "continued to send inappropriate emails to the proposed order account after Judge Finnegan directed her to stop demonstrates that she acted with an intent to disrupt the tribunal." (Pet. App. at 54a). The Report found that Petitioner's "emails were inappropriate and unprofessional under any circumstances (and that) her conduct was improper". *Id.*

Nowhere, however, did the Reports explain how or why exactly Petitioner's sending of inappropriate emails, even if unprofessional or improper, were intended to "disrupt the tribunal." Quite the contrary, all the evidence suggests that the only thing the Petitioner intended to do was to vent her frustration about personal attacks on her person and competency in said June 23, 2017 Order. Because the Report entirely fails to even suggest how Petitioner intended to disrupt the tribunal, much less how she actually did it, the Report fails to show how the

Administrator established a violation of Rule 3.5(d) by clear and convincing or, in fact, any, evidence.

Inasmuch as the Administrator has failed to identify any evidence in the record showing that Petitioner intended to disrupt the Court with her emails, it must be concluded that the Report's finding that Petitioner violated Rule 3.5(d) was against the manifest weight of the evidence, and so the Report should be reversed.

Petitioner asserts that Rule 3.5(d) was applied as punishment of her speech through disciplinary proceedings in a manner vastly beyond what is necessary to protect the government's interests in its tribunals not being disrupted, and in fact is entirely superfluous, since the judge can easily and far more effectively punish such disruptions as they occur with her contempt powers. The Administrator did not, however, cite the pages of the record relied on because nothing in the record shows any evidence of what is necessary to protect the government's interests in its tribunals not being disrupted, or whether those interests could be adequately served by some purpose other than the Board's overbroad use of its disciplinary powers to destroy Petitioner's career. Accordingly, the Rule is also unconstitutional as applied here.

F. RULE 8.4(d), AS APPLIED HERE, IS UNCONSTITUTIONAL

Rule 8.4(d) provides that "[i]t is professional misconduct for a lawyer to: … (d) engage in conduct that is prejudicial to the administration of justice."

Illinois Courts have relied upon Black's Law Dictionary to define prejudice as "more than a mere inconvenience but a '[d]amage or detriment to one's legal rights.' Black's Law Dictionary (10th ed. 2014)." *Direct Auto Ins. Co. v. Reed*, 2017 IL App (1st) 162263, 76 N.E.3d 85 (Ill. App. 2017). The Report fails to identify any damage to the administration of justice by Petitioner's emails. Even the purported prejudice to the Judge by being required to do her job is mere inconvenience. Among several hundreds of emails, Judge Finnegan appears to be inconvenienced by one single email, which was clearly everything that was held on the April 18, 2017 court proceeding transcript record and Petitioner's responsive email. (R262, R324-3370. (*See* Petitioner's Appeal Brief).

A definition of "prejudicial to the administration of justice" which allows virtually any attorney who appears before any tribunal to be sanctioned cannot be correct. Such a definition would give the Administrator an easy pretext to discipline any attorney at any time at his whim. *See Grayned v. City of Rockford*, 408 U.S. 104, 108-09, 92 S. Ct. 2294, 2299 (1972) ("A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application."). Rule 8.4(a) is not necessarily vague on its face, but the Administrator's proposed definition would make it so.

The Professional Rules 8.2(a) 3.5(d), and 8.4(d), the punishment of speech, even if prejudicial to justice, through disciplinary proceedings, is vastly beyond what is necessary to protect the government's interests in justice not being prejudiced, and in fact is entirely superfluous,

since Judges can (and normally do) protect justice from prejudice by errant attorneys through their contempt powers." Petitioner's Brief at 46.

The Administrator's response is premised entirely upon the claim that Petitioner's argument is "devoid of any citations to authority." Administrator's Brief at 25. Petitioner's private emails are considered her *opinion*; she was emphatic and zealous, and she was not making her official statement for the record, accordingly this course of action is in fact permitted under the Article 1§5 of the Illinois Constitution, "[t]he people have the right … to make known their *opinions* to their representatives and to apply for *redress of grievances*." *Id.* (Emphasis added). Though the Hearing Board Report and Recommendation ("the Report") determined that the Administrator proved that the Petitioner had violated Rules 3.5(d), 8.2(a) and 8.4(d) of the Illinois Rules of Professional Conduct, the charged misconduct, by clear and convincing evidence, it failed to show how the Administrator proved any violations by any legal standard at all, much less clear and convincing evidence. The Report is against the manifest weight of the evidence. These rules as applied here are unconstitutional, specifically, Rule 8.2(a), as applied to private communications between Judges and attorneys, or ones shared with an extremely small group of individuals who are highly unlikely to disseminate it further. The use of these Rules to punish Petitioner for the three emails, to Magistrate Judge Sheila Finnegan and/or her law clerk, violates Petitioner's First Amendment right to freedom of speech. (R68, R291, R323).

It appears that the reason for imposing six- months' suspension followed by six-month probation, is because it

is aimed to silence her speech, potentially having a chilling effect on all attorneys' freedom of speech. Its effect is to sanction attorney speech, in violation of the First Amendment, which requires that the Government's chosen restriction on the speech at issue be "actually necessary" to achieve its interest. There must be a direct causal link between the restriction imposed and the injury to be prevented. *United States v. Alvarez*, 567 U.S. 709, 725 (2012). Here, neither the suspension nor the probation do bear such a link. Ergo, the disciplinary action imposed on Petitioner is not necessary or proportionate to the alleged violation or harm caused and it should be "reversed".

CONCLUSION

Petitioner respectfully requests that this Court grant certiorari, as this case presents a "manifest injustice" in the form of suspending the Petitioner from the practice of law for nine months, with the suspension stayed after six-months, by a six-month period of probation, subject to the recommended conditions ***including supervision of her law practice***. (Emphasis added). The suspension and probation for innocent and opinion-based ***speech-related conduct*** should not include the suspension or supervision of Petitioner's law practice, which does negatively affect Petitioner's professional reputation. This kind of discipline has a long-lasting effect on Petitioner's ability to practice law, earn a living, attract future clients and maintain a thriving practice.

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

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APPENDIX A — ORDER OF THE STATE OF ILLINOIS SUPREME COURT, DATED JANUARY 17, 2023

STATE OF ILLINOIS SUPREME COURT

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

Present: Mary Jane Theis, Chief Justice

Justice P. Scott Neville, Jr. Justice David K. Overstreet

Justice Lisa Holder White Justice Joy V. Cunningham

Justice Elizabeth M. Rochford Justice Mary K. O'Brien

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

M.R.031402

In re:

NEJLA K. LANE.

Attorney Registration & Disciplinary Commission

2019PR00074

Petition by respondent for leave to file exceptions to the report and recommendation of the Review Board. Denied. Respondent Nejla K. Lane is suspended from the practice

of law for nine (9) months, with the suspension stayed after six (6) months by a six (6) month period of probation subject to the following conditions, as recommended by the Review Board:

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

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

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

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

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

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

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

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

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

Suspension effective February 7, 2023.

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

As Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, I certify that

the foregoing is a true copy of the final order entered in this case.

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

/s/

Clerk,
Supreme Court of the State of Illinois

APPENDIX B — REPORT AND RECOMMENDATION OF THE REVIEW BOARD OF THE ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION, FILED JULY 12, 2022

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

Commission No. 2019PR00074

In the Matter of:

NEJLA K. LANE,

Respondent-Appellant,

No. 6290003.

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

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

The complaint alleged that Respondent sent three emails to a federal magistrate judge and others that

contained false and reckless statements attacking the judge's integrity, which were intended to disrupt the court proceedings, and which prejudiced the administration of justice.

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

Respondent appealed, challenging the Hearing Board's findings of misconduct and sanction recommendation, and asking that this matter be dismissed, or that the sanction be limited to a reprimand or censure. The Administrator argues that the Hearing Board's findings should be affirmed and asks this Board to adopt the Hearing Board's recommended sanction.

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

FACTS

Respondent

Respondent has been licensed to practice law in Illinois since 2006. She is also licensed to practice law in

Texas and Michigan. She is a solo practitioner, and her law firm – Lane Keyfli Law, Ltd. – focuses on civil, criminal, and immigration matters. She has no prior discipline.

Respondent's Misconduct

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

Respondent's First Email - April 18, 2017

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

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

order box. Respondent's email stated the following, in relevant part:

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

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

Appendix B

Judge Finnegan's Directive to Respondent

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

> As a convenience to parties, I sometimes allow them to communicate by email (to the proposed order box) regarding scheduling issues. I do not, however, allow lawyers to send emails to argue the merits of a motion, to share their feelings about my past rulings, or to talk generally about the case with me. Outside of the settlement context, everything must be filed so that it is part of the record. Therefore, you are not to send any future emails to my proposed order box such as the one sent yesterday. It is improper. I also do not wish to be copied on emails that the lawyers send to each other. If I receive another email of this type, I will enter an order that no emails of any kind may be sent to the proposed order box without leave of court.

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

Respondent's Second Email – June 23, 2017

In June 2017, Respondent filed a motion seeking to extend discovery and requesting permission to depose Jay Frank, opposing counsel in the divorce proceeding.

The judge denied that motion in a written order. On June 23, the judge's law clerk emailed a copy of that order to Respondent and her opposing counsel, stating it would be uploaded to the docket in two days.

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

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

> I'm outraged by the miscarriage of justice and judges are in this to delay and deny justice for my client!
>
> I'm sickened by this Order!!!

(Adm. Ex. 2 at 1.)

Respondent's Third Email – June 26, 2017

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

> Dear Allison, ***
>
> Plaintiff's motion is not late just because this court decided not to extend discovery deadlines, to protect the Defendant! I have asked this court numerous times for an extension of all cutoff deadlines, without avail. Take this into account when drafting your flawed order. ***
>
> For anyone to insult me in this degree calls questions this court's sincerity and veracity. How dare you accuse me of not having looked at the [Supreme Court] docket regularly….so refrain from accusing me of such ugly conducts, publicly…. How do you know I did not see the [Supreme Court] order???? Where do you get

> this information? Ex Parte communications with Defendant's attorney, Scott [Schaefers]? – smearing dirt behind my back?
>
> The more I read this order, again and again, I am sick to my stomach, and I get filled with anger and disgust over this "fraudulent" order by this court! This Court has always treated my client and myself with disrespect!!!! ***
>
> You both, Allison and J. Finnegan, have done me wrong, and depicted me very poorly in your public order. How dare you do that to me?!
>
> What goes around comes around, justice will be done at the end! I wonder how you people sleep at night? Including Scott [Schaefers]!

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

Judge Finnegan's Order

The next day, the judge issued an order in which she stated:

> On 6/23/2017 … and on 6/26/2017 … Attorney Lane sent emails to the proposed order box (also emailed to the Court's law clerk and to opposing counsel) in which she argued the merits of a written Order issued on 6/23/2017 and made several statements that this Court considers to be highly inappropriate. Attorney Lane shall

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

(Adm. Ex. 4 at 1.)

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

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

> [Barry Epstein's] affidavit, in large part, tracks the progress of the docket in this matter, summarizing rulings made by Judge Finnegan and this Court regarding scheduling [and] discovery …. [Epstein] prefaces this chronology with his conclusion that "both judges have consistently ruled against me and blocked my progress at every turn."… It

> is well established that "rulings by the judge almost never constitute a valid basis for a bias or partiality motion." … Indeed, they will only do so "if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." … No such favoritism or antagonism can be gleaned from the rulings in this case. Even the selected docket entries on the plaintiff's timeline show multiple orders favorable to the plaintiff's litigation position …. [T]he discovery and trial schedules impact preparation for both sides, and so tend to be relatively neutral in their effect. It is therefore difficult for the plaintiff to claim that the schedule was biased against him and in favor of the defendant. The Court notes now, as it has previously, that discovery in this case was open for more than five months, which is typical of a case of this size and complexity.

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

Executive Committee Sanction

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

Executive Committee issued an order, explaining the need to sanction respondent, stating, in part:

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

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

Respondent's Testimony and Character Witness

At the disciplinary hearing, Respondent admitted that she sent the three emails to the judge. Respondent testified that it was wrong to send the emails and she

regretted having done so. She testified that she believed the judge was biased against her, and was treating her unfairly, based on the judge's actions, which included unfavorable rulings and a short discovery schedule.

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

HEARING BOARD'S FINDINGS AND SANCTION RECOMMENDATION

Misconduct Findings

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

> The statements at issue clearly pertained to Judge Finnegan's qualifications and integrity. Respondent not only expressly questioned Judge Finnegan's "sincerity and veracity" but accused her of protecting and assisting criminal conduct, participating in improper *ex parte* communications with attorney Schaefers, and entering a "fraudulent" order. These statements unquestionably crossed

> the line from expressing disagreement with rulings to making unsubstantiated accusations that maligned Judge Finnegan's honesty. An attorney violates Rule 8.2(a) by making such statements without a reasonable basis for believing they are true. There is no such reasonable basis on the record before us.

(Hearing Bd. Report at 7.)

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

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

Aggravation and Mitigation Findings

In aggravation, the Hearing Board found that Respondent sent an inappropriate email to Barry Epstein's adult daughter, in July 2017, in which Respondent explained that Epstein was ill and asked the daughter, who was estranged, to contact him. The email stated, in relevant part:

> Between you and your mother – you guys are destroying him…. YOU and your Loving GREEDY mother will take nothing when you go

> to face GOD or rotten instead in HELL…. So if anything happens to your father - the blood is in both your and your mother's HANDS! I am awaiting that you will make peace with your father, and if NOT I already know who you are!!!

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

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

Recommendation

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

ANALYSIS

Respondent challenges the Hearing Board's findings of misconduct, including that her statements in the emails were false or reckless; that her conduct intentionally

disrupted the tribunal; and that her conduct prejudiced the administration of justice. Respondent also argues that her statements in the emails were protected by the First Amendment.

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

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

Rule 8.2(a) provides that a "lawyer shall not make a statement that the lawyer knows to be false or with

reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge." The Hearing Board found that Respondent violated Rule 8.2(a). Respondent argues that she subjectively believed her statements were true, because she thought the judge was biased and unfair, and therefore the Hearing Board erred in finding that Respondent violated Rule 8.2(a).

Impugning a judge's integrity violates Rule 8.2(a), unless there is an objectively reasonable basis for the relevant statements. *See In re Denison*, 2013PR00001 (Review Bd., May 28, 2015) at 2-4, *approved and confirmed*, M.R. 27522 (Sept. 21, 2015) (attorney who failed to provide an objective factual basis for statements impugning a judge's integrity violated Rule 8.2(a)). "A reasonable belief must be based on objective facts. Thus, subjective belief, suspicion, speculation, or conjecture does not constitute a reasonable belief." *In re Walker*, 2014PR00132 (Hearing Bd., Dec. 18, 2015) at 21, *affirmed*, (Review Bd., Nov. 4, 2016), *recommendation adopted*, M.R. 28453 (March 20, 2017); *see also In re Amu*, 2011PR00106 (Review Bd., Dec. 13, 2013), *recommendation adopted*, M.R. 26545 (May 16, 2014) (attorney violated Rule 8.2(a) by basing "his statements on his own subjective beliefs that the judges were corrupt rather than on any objective facts."); *In re Hoffman*, 08 SH 65 (Review Bd., June 23, 2010), *petition for leave to file exceptions denied and recommendation adopted*, M.R. 24030 (Sept. 22, 2010) (insinuation in lawyer's statements that judge's rulings were based on personal vendetta rather than on facts and law attacked judge's honesty and integrity violated Rule 8.2(a)). The mere fact that a judge has ruled against a party is

insufficient to establish bias on the part of the judge, for disqualification purposes. *See People v. Patterson*, 192 Ill. 2d 93, 131-32 (2000) (*citing Liteky v. U.S.*, 510 U.S. 540, 555 (1994) ("judicial rulings alone almost never constitute a valid basis for a bias or partiality motion"); *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002) ("Allegedly erroneous findings and rulings by the trial court are insufficient reasons to believe that the court has a personal bias for or against a litigant.").

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

- the judge had issued a fraudulent order;
- the judge had engaged in *ex parte* communications with opposing counsel, smearing dirt behind Respondent's back;
- the judge was protecting a criminal and helping that criminal to escape punishment;
- the judge's sincerity and veracity were called into question;
- the judge was not objective;
- the judge was denying justice to Respondent's client;

- and the judge was not giving Respondent a fair chance, was treating Respondent badly, and was protecting the opposing party.

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

We conclude that Respondent intentionally accused the judge of fraud, knowing that statement was false.

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

Another example is in the June 23rd email, in which Respondent falsely accused the judge of protecting a criminal, namely, Jay Frank, who was opposing counsel in the divorce proceeding. Respondent wrote, "[I will] show the world what a corrupt lawyer he is! And the judges who protect this criminal by squeezing the discovery deadlines!!! No no no! This is outrageous order of Judge Finnegan and it will be addressed accordingly! Judges are helping the criminal to escape punishment by forcing to shorten all deadlines!!!" (Adm. Ex. 2 at 1.) When asked what evidence Respondent had to show that Jay Frank was a criminal and corrupt, Respondent testified that Jay

Frank "is a good person," and Respondent had "apologized to him." (Tr. 74.) Thus, Respondent admitted that Jay Frank was neither corrupt nor a criminal. Although Respondent had seen an article about Jay Frank, and she thought he had stolen emails from her client, she had no objective factual evidence that he had been convicted of a crime or engaged in corrupt activities. (*See* Tr. 74-77.) Thus, Respondent falsely accused the judge of protecting and assisting a criminal, even though Respondent knew that Jay Frank was not a criminal.

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

> Although Respondent disputes that she knowingly or recklessly made false statements, she had no objective, factual basis for her comments. Subjective belief, suspicion, speculation, or conjecture does not constitute a reasonable belief. *Walker*, 2014PR00132 (Hearing Bd. at 21). Here, Judge Finnegan, who is presumed to be impartial, set forth the factual and legal reasons why she denied Respondent's requests to extend discovery. For Respondent to assert that Judge Finnegan made her rulings to deny justice to Barry Epstein and protect criminal conduct, rather than for the reasons articulated in her orders, was unreasonable and untenable. Respondent was not entitled to decisions in her client's favor, and a judge's rulings alone "almost never constitute a valid basis for a claim of judicial bias

> or partiality." *See Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). Likewise, there are no objective facts whatsoever to support Respondent's accusations that Judge Finnegan's conduct was "fraudulent" or that she engaged in improper ex parte communications.

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

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

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

The evidence shows that Respondent's emails needlessly interrupted the case in front of the judge, caused the judge to unnecessarily expend time reviewing and addressing Respondent's emails, and diverted the judge's attention away from other matters. Moreover, as the Hearing Board concluded, Respondent's misuse of the judge's proposed order box was, in itself, intentionally disruptive. The proposed order box was limited to very

specific purposes, which did not include the submission of emails falsely accusing the judge of misconduct. By sending the emails to the proposed order box, Respondent circumvented the established legal procedures for filing a motion in the public record, according to the rules of procedure, which would have allowed opposing counsel to respond, and would have allowed the public to review those motions.

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

Moreover, the record shows that Respondent intended to disrupt the proceedings by preventing the judge from filing the order in June. Respondent states in her opening brief, "In point of fact, she composed the emails, in an effort to stop the order from being electronically filed." (Appellant's Br. at 37.) Respondent cites to her

testimony at the disciplinary hearing, where she testified, "I am reading the order. They're beating me up; public humiliating me. That's what I was trying to stop." (Tr. at 85.) Respondent's intentional attempt to prevent the judge from filing the order was disruptive. For the foregoing reasons, we affirm the Hearing Board's finding that Respondent violated Rule 3.5(d).

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

Rule 8.4(d) provides that a lawyer shall not "engage in conduct that is prejudicial to the administration of justice." The Hearing Board found that Respondent violated Rule 8.4(d), by causing the judge to take needless actions in response to Respondent's emails. Respondent argues that her emails did not result in any additional work for the judge, since judges routinely respond to litigant's emails and issue orders, and therefore the Hearing Board erred in its conclusion.

An attorney's "conduct prejudices the administration of justice if it causes judges or other attorneys to perform additional work." *In re Cohn*, 2018PR00109 (Hearing Bd., Oct. 9, 2020) at 11, *affirmed*, (Review Bd., Oct. 9, 2020), *petitions for leave to file exceptions allowed and sanction increased*, M.R. 030545 (Jan. 21, 2021); *see also In re Hoffman*, 08 SH 65 (Review Bd., June 23, 2010), *petition for leave to file exceptions denied and recommendation adopted*, M.R. 24030 (Sept. 22, 2010) (the judge "had to issue orders specifically addressing Respondent's

behavior and ordering him to appear. This misconduct … clearly interfered with the effective functioning of the judicial process."); *In re Zurek,* 99 CH 45 (Review Bd., March 28, 2002), at 10, *petition for leave to file exceptions denied,* M.R. 18164 (Sept. 25, 2002) ("Misconduct of this nature [involving false accusations against a judge and opposing counsel] during the course of ongoing litigation clearly interferes with the effective functioning of the judicial process and thereby causes prejudice to the administration of justice.").

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

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

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

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

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

have been disciplined under Rule 8.2(a), in matters unrelated to judges running for office. That argument is not supported by the law.

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

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

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> While attorneys do not lose their First Amendment rights by becoming attorneys, as officers of the court they accept the imposition of certain ethical standards intended to maintain faith in the integrity of the judiciary and the profession, even though some of those standards impact their personal rights. *Ditkowsky*, 2012PR00014 (Hearing Bd. at 23-24). For this reason, it has long been recognized that attorneys who make unfounded statements impugning the integrity or competence of a judge are subject to discipline. *Id.* …. [A] long line of cases holds that Rule 8.2(a) does not violate the Constitution. In *In re Denison*, for example, the Review Board determined that "[no] ruling of the United States Supreme Court or any other court supports the conclusion that Rules 8.2(a) or 8.4(c) are unconstitutional, or that enforcing the rules in this case violates [Denison's] First Amendment Rights." *In re Denison*, 2013PR00001, M.R. 27522 (Review Bd. at 5).

Cohn, 2018PR00109 (Hearing Bd., at 12-13); *See also In re Mann*, 06 CH 38 (Review Bd., March 29, 2010) at 10-14, *petition for leave to file exceptions denied and recommendation adopted*, M.R. 23935 (Sept. 20, 2010) (attorney's false accusations of corruption by judges were not protected by the First Amendment); *In re Gerstein*, 99 SH 1 (Review Bd., Aug. 12, 2002) at 9-13, *petition for leave to file exceptions denied and recommendation adopted*, M.R. 18377 (Nov. 26, 2002) (First Amendment did not

protect attorney's verbal abuse of others); *In re Kozel*, 96 CH 50 (Review Bd., Dec. 30, 1999), at 14, *petitions for leave to file exceptions allowed and sanction increased*, M.R. 16530 (June 30, 2000) (First Amendment does not protect "statements which might appear to be matter of opinion, where those statements imply a factual basis and where there is no support for that factual basis."); *In re Chiang*, 07 CH 67 (Review Bd., Jan. 30, 2009), at 11, *petition for leave to file exceptions denied*, M.R. 23022 (May 18, 2009) ("an attorney cannot unjustly impugn the character or integrity of a judge without having any basis for doing so"); a*ccord Garrison v. Louisiana*, 379 U.S. 64, 75 (1964) ("the knowingly false statement and the false statement made with reckless disregard of the truth, do not enjoy constitutional protection"); *Alvarez v. United States*, 567 U.S. 709, 719 (2012) ("a knowing or reckless falsehood" is not protected by the First Amendment under certain circumstances).

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

SANCTION RECOMMENDATION

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

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The Administrator argues that the Hearing Board's recommendation is appropriate and asks this Board to make the same recommendation.

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

Based upon our review of the record, we agree with the Hearing Board's recommended sanction. Respondent's misconduct was very serious. On three separate occasions, Respondent sent emails that contained false accusations against the judge. As the Hearing Board explained,

"unfounded attacks on the judiciary have the potential to damage the reputation of the judge involved and to undermine confidence in the integrity of the entire judicial process." (Hearing Bd. Report at 11.) Respondent also used aggressive and threatening language in her last email. Significantly, Respondent sent the last two emails after the judge warned Respondent that her first email was improper, and specifically directed Respondent not to submit similar emails to the proposed order box.

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

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

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

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

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

Additionally, throughout the disciplinary process, Respondent has repeatedly continued to lash out at the judge, which also shows that Respondent's misconduct was not an aberration. In the federal case, Judge Durkin, who was familiar with the facts and legal issues of that case, reviewed Respondent's claims of bias, and found that Judge Finnegan had not acted with bias against Respondent. Despite that, Respondent has continued to lambast the judge. In responding to the Executive Committee, Respondent went so far as to assert to that "Judge Finnegan brings this complaint against me in bad faith, for personal vengeance." (Adm. Ex. 6 at 6.) There is nothing in the record indicating that Respondent had an objective factual basis for making that statement.

Respondent next argues that she should not be suspended because she was previously sanctioned by

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

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

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

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

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

Appendix B

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

In *Cohn,* the attorney was suspended for six months and until he completed the ARDC Professionalism Seminar. Cohn made false statements concerning a judge's integrity and used abusive language to opposing counsel. Cohn falsely claimed that the judge was acting out of anger. In that case, as in this one, there was no factual basis for making the statements attacking the judge. In both cases, the conduct involved statements against one judge, in one proceeding. In both cases, the attorneys failed to fully acknowledge their wrongdoing or its impact; failed to express sincere remorse; and attempted to rationalize their misconduct, which included blaming the judge.

In *Sides,* the attorney was suspended for five months, with the suspension stayed after sixty days by a two-year period of probation, subject to conditions. The attorney made false and reckless statements about the integrity of judges in the judicial circuit and about another attorney. The attorney acknowledged wrongdoing and expressed remorse, although he continued to believe that he had been treated unfairly by the judges. The aggravating factors in the instant case are greater than in *Sides*,

including that Respondent used threatening language, Respondent disregarded the judge's directive concerning sending additional emails, and Respondent failed to fully acknowledge her wrongdoing and attempted to minimize and defend her conduct.

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

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

Appendix B

CONCLUSION

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

Respectfully submitted,

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

APPENDIX C — REPORT AND RECOMMENDATION OF THE HEARING BOARD OF THE ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION, FILED NOVEMBER 4, 2021

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

Commission No. 2019PR00074

In the Matter of:

NEJLA K. LANE,

Attorney-Respondent,

No. 6290003.

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

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

Appendix C

INTRODUCTION

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

PLEADINGS

The Administrator's one-count Complaint alleges Respondent engaged in misconduct by sending emails containing false or reckless statements about Magistrate Judge Sheila Finnegan to the judge's proposed order account and other persons. In her Answer, Respondent admits she drafted and sent the emails at issue but denies engaging in misconduct.

ALLEGED MISCONDUCT

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

Appendix C

EVIDENCE

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

proof. *In re Winthrop*, 219 Ill. 2d 526, 542-43, 848 N.E.2d 961 (2006).

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

A. Summary

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

B. Admitted Facts and Evidence Considered

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

Barry Epstein hired Respondent in 2012 to represent him in a dissolution proceeding filed by Paula Epstein. In 2014, Respondent filed a complaint on Barry's behalf in the

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

Respondent sent the first email at issue on April 18, 2017, after Judge Finnegan denied her emergency motion for an extension of time to take Paula's deposition. Respondent sent the email to the proposed order account, opposing counsel Scott Schaefers, and Scott White, the courtroom deputy. It stated as follows in relevant part:

> Today in court, no matter what I said to you, you had already made up your mind, and even questioned my sincerity with regard to my preparation for upcoming trial.
>
> ***
>
> . . . since the beginning, you never seem to doubt anything he [Schaefers] says, as you appear to doubt me. Still, I stated to you in open court that "I don't want to be hated" for doing my job, but it sure seems that way, as I never get a break. Scott is the lucky guy who senses same as he can just pick up the phone to call you knowing

> he will get his way…or for so-called the Posner Defense[2].
>
> ***
>
> It's not fair that my client (and I) is [sic] being treated badly for suing his wife/ex wife, and everyone is protecting Paula – why? Since when does "two" wrongs make a "right"? [sic] How am I to prove my case if I am not given a fair chance to do my work, properly.

(Adm. Ex. 1).

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

On June 15, 2017, Respondent filed a motion to extend discovery and for leave to depose Jay Frank. Judge Finnegan denied the motion. Allison Engel, Judge Finnegan's law clerk, emailed a copy of Judge Finnegan's order to Respondent and Schaefers at 6:37 p.m. on June

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

23, 2017. Two hours later, Respondent sent an email to Engel, Schaefers, and the proposed order account which stated as follows, in relevant part:

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

(Adm. Ex. 2).

Appendix C

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

> Plaintiff's motion is not late just because this court decided not to extend discovery deadlines, to protect the Defendant! I have asked this court numerous times for an extension of all cutoff deadlines, without avail. Take this into account when drafting your flawed order.
>
> ***
>
> For anyone to insult me in this degree calls questions [sic] this court's sincerity and veracity. How dare you accuse me of not having looked at the SC docket regularly.
>
> ***
>
> How do you know I did not see the SC order???? Where do you get this information? Exparte communications with Defendant's attorney, Scott? – smearing dirt behind my back?
>
> The more I read this order, again and again, I am sick to my stomach, and I get filled with anger and disgust over this 'fraudulent' order by this court!
>
> ***

> You both, Allison and J. Finnegan, have done me wrong, and depicted me very poorly in your public order. How dare you do that to me?!
>
> What goes around comes around, justice will be done at the end! I wonder how you people sleep at night? Including Scott!

(Adm. Ex. 3).

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

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

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

After the Epstein matter ended, Judge Finnegan submitted a complaint about Respondent's conduct to the Executive Committee of the United States District Court for the Northern District of Illinois (Executive Committee). On January 22, 2018, the Executive Committee suspended Respondent from the general bar for six months and the trial bar for twelve months. The Executive Committee found that Respondent used "unprofessional, inappropriate, and threatening language" in her emails. In order to be reinstated, Respondent was required to demonstrate that she obtained professional assistance with managing her anger and complying with the Rules of Professional Conduct. (Adm. Ex. 7). The Executive Committee reinstated Respondent to the general bar on August 7, 2018 and the trial bar on June 11, 2019. (Adm. Exs. 9, 10).

C. Analysis and Conclusions

Rule 8.2(a)

Attorneys may express disagreement with a judge's rulings but, as officers of the court, have a duty to protect the integrity of the courts and the legal profession. *In re Walker*, 2014PR00132, M.R. 28453 (March 20, 2017) (Hearing Bd. at 19-20). Consequently, Rule 8.2(a) prohibits an attorney from making a statement concerning the

qualifications or integrity of a judge that she knows to be false or with reckless disregard as to its truth or falsity. Ill. R. Prof'l Conduct 8.2(a). Respondent is charged with violating Rule 8.2(a) when she made the statements set forth above impugning Judge Finnegan's integrity. We find the Administrator proved this charge by clear and convincing evidence.

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

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

Although Respondent disputes that she knowingly or recklessly made false statements, she had no objective, factual basis for her comments. Subjective belief, suspicion, speculation, or conjecture does not constitute a reasonable belief. *Walker*, 2014PR00132 (Hearing Bd. at 21). Here,

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

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

Rule 3.5(d)

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

We find Respondent violated Rule 3.5(d) when she misused the proposed order account to express her anger with Judge Finnegan's rulings and make unfounded

accusations against Judge Finnegan. Respondent's contention that the purpose of the proposed order account was unclear lacks merit. Respondent's emails were inappropriate and unprofessional under any circumstances. Moreover, after the first email in question, Judge Finnegan made it absolutely clear to Respondent that her conduct was improper. The fact that Respondent continued to send inappropriate emails to the proposed order account after Judge Finnegan directed her to stop demonstrates that she acted with an intent to disrupt the tribunal.

Rule 8.4(d)

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

Appendix C

EVIDENCE IN AGGRAVATION AND MITIGATION

Aggravation

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

Mitigation

Respondent testified at length about stressful circumstances in her life around the time she sent the emails at issue. Her client, Barry Epstein, was abusive and threatening. She felt she was his "slave" and believes she is now being punished for doing his dirty work. (Tr. 213, 217). In addition, in 2015 she was involved in a lawsuit against her former partner, which caused her stress. Respondent accused the former partner of stealing money and data from her. (Tr. 190-91).

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

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

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

Prior Discipline

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

RECOMMENDATION

A. Summary

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

B. Analysis

The purpose of the disciplinary process is not to punish attorneys, but to protect the public, maintain the integrity of the legal profession, and safeguard the

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

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

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

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

Respondent testified at length about the stressful circumstances in her life at the time of the misconduct. We accept Respondent's testimony but, for the following reasons, do not give it significant weight in mitigation. If a Respondent's circumstances contributed to an aberration in his or her behavior, we may consider that in mitigation. *See In re Czarnik*, 2016PR00131, M.R. 029949 (Sept. 16, 2019) (Hearing Bd. at 48). While we do not doubt that Respondent was under stress, her testimony and conduct in this disciplinary hearing lead us to conclude that her misconduct was not an aberration. Although Respondent expressed that what she did was wrong, she spent a great deal of time maligning others and presenting numerous excuses for lashing out against Judge Finnegan. It also concerns us that Respondent called one of the Administrator's questions "so stupid" and accused others of criminal conduct in attempting to justify her own wrongful behavior. Based on these observations, we believe Respondent still has work to do on addressing and managing her anger.

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

In aggravation, we agree with the Executive Committee that Respondent's language toward Judge Finnegan and Allison Engel was threatening, in addition to being inappropriate and unprofessional. Respondent used particularly aggressive language in the June 26, 2017 email, which the recipients could have reasonably

interpreted as threatening and concerning. Respondent used similarly inappropriate language in her email to Barry Epstein's daughter. Such language has no place in any legal matter.

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

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

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

Of the Administrator's cited cases, we find the misconduct in this case most similar to *In re Sides*, 2011PR00144, M.R. 26732 (Nov. 13, 2014). Sides falsely

asserted in several pleadings that three specific judges and all of the judges in the Sixth Judicial Circuit were biased and had colluded against him. Similar to Respondent, Sides expressed remorse and recognized his language was inappropriate, but still believed the court had treated him unfairly. *Sides*, 2011PR00144 (Hearing Bd. at 60-61). Sides was suspended for five months, with the suspension stayed after 120 days by two years of probation. The probationary conditions included working with a supervising attorney who reviewed and appraised Sides' legal work. *Sides*, 2011PR00144 (Hearing Bd. at 68).

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

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

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

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

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

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

We do not agree with the Administrator that a suspension until further order of the court (UFO) is necessary. A suspension UFO is the most severe sanction other than disbarment. *In re Timpone*, 208 Ill. 2d 371, 386, 804 N.E.2d 560 (2004). It is typically reserved for cases where there are issues of mental health or substance abuse, a disregard of ARDC proceedings, or other factors that call into question the attorney's ongoing fitness to practice law consistent with the Rules of Professional Conduct. *In re Forrest*, 2011PR00011, M.R. 26358 (Jan. 17, 2014). The Administrator has not articulated what circumstances in this case warrant a suspension UFO, and we do not find any such circumstances on the record before us. Respondent recognizes that she acted inappropriately, even though she continues to place some of the blame for her conduct on others. In our view, this belief does not render her unfit to resume practice once the term of suspension is completed.

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

Having considered the purposes of the disciplinary process, the nature of Respondent's misconduct, the factors in aggravation and mitigation, and the cases cited

above, we recommend that Respondent, Nejla K. Lane, be suspended for nine months, with the suspension stayed after six months by six months of probation subject to the following conditions:

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

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

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

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

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

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

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

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

Appendix C

Respectfully submitted,

Stephen S. Mitchell
Giel Stein
Julie McCormack