No. 23-

IN THE
Supreme Court of the United States

MARYLIN PIERRE AND ASHER WEINBERG

Petitioners,

v.

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND

Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Maryland

APPENDIX TO
JOINT PETITION FOR A WRIT OF CERTIORARI

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January 8, 2024 *Counsel for Petitioners*

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IN THE SUPREME COURT OF MARYLAND
AG No. 42
September Term, 2021
485 Md. 504, 301 A.3d 142

ATTORNEY GRIEVANCE COMMISSION
OF MARYLAND
v.
MARYLIN PIERRE

Opinion by Fader, C.J.
Battaglia, J., concurs.
Watts, J., concurs and dissents.

Filed: August 16, 2023

Opinion by Fader, C.J.

This Attorney Grievance Commission of Maryland proceeding concerns the alleged professional misconduct of Marylin Pierre, the respondent and a member of the Bar of this State. It also concerns an overlay of factors that significantly complicates our review of Ms. Pierre's alleged violations of the Maryland Attorneys' Rules of Professional Conduct ("MARPC"). That overlay arises from the circumstances in which the investigation of Ms. Pierre began and the absence of provisions in our rules to guide investigations arising in such circumstances.

The core allegations against Ms. Pierre arose from accusations made in an August 2020 campaign email. The email was sent by the campaign manager for a slate of four sitting judges against whom Ms. Pierre was running for a seat on the Circuit Court for Montgomery County. Sent just over two months before

election day, the email was directed to Montgomery County attorneys and identified an "Urgent Need for Action." The email alleged, among other things, that Ms. Pierre's campaign had made false statements about the sitting judges, that Ms. Pierre had misstated her professional qualifications, and that she had engaged in unprofessional conduct in connection with a lawsuit more than two decades earlier.

Among the recipients of the campaign email was then-Bar Counsel. In the absence of any rules or procedures governing the investigation of allegations of misconduct arising in the midst of a judicial election, Bar Counsel immediately opened an investigation, informed the sitting judges' campaign manager of the existence of the investigation, and sought additional information. Soon thereafter, less than two months before the election, Bar Counsel sent Ms. Pierre a letter summarizing many of the allegations leveled by her rivals' campaign and insisted that Ms. Pierre respond to them in writing, in many cases by explaining and justifying statements made by her or her campaign, within two weeks.

The judicial electoral context in which the MARPC violations at the heart of this matter arose, combined with the timing of the investigation, presents two challenges for our review of those violations. First, any case in which alleged violations arise from speech that is related to an election or that is critical of judges presents First Amendment concerns. This case involves both. Second, the initiation of an investigation into an attorney challenging a slate of sitting judges at a sensitive point in the campaign gives rise to a risk that the investigation will be perceived as an attempt to interfere in the election to favor the sitting judges. In that circumstance, absent a need to proceed expeditiously, the good faith of Bar Counsel—which is something we do not question here—may be

insufficient to avoid undermining public confidence in the integrity of the attorney disciplinary process. Both of those challenges play prominently in our review of the charges against Ms. Pierre and our consideration of the appropriate sanction.

After completing its investigation, the Commission, acting through Bar Counsel, filed a petition for disciplinary or remedial action in which it alleged that Ms. Pierre violated the MARPC and the New York Code of Professional Responsibility Disciplinary Rules ("NYDR") as a result of her: (1) misleading or false statements about the sitting judges in her 2020 campaign materials; (2) willful misrepresentations about her background on her 1999 Application for Admission to the Bar of New York ("New York Bar Application"); (3) willful misrepresentations about her background and career experience on her applications for various judgeships in Montgomery County between 2012 and 2017; and (4) false statements under oath and failure to timely respond to Bar Counsel's investigatory demands. The Commission asserted that Ms. Pierre's conduct violated MARPC 8.1 (Bar Admission and Disciplinary Matters) (Rule 19-308.1), MARPC 8.2 (Judicial and Legal Officials) (Rule 19-308.2), MARPC 8.4 (Misconduct) (Rule 19-308.4),[1] NYDR 1-101 (Maintaining Integrity and Competence of the Legal Profession), and NYDR 1-102 (Misconduct).[2]

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[1] Effective July 1, 2016, the Maryland Lawyers' Rules of Professional Conduct, which employed the numbering format of the American Bar Association Model Rules, were renamed the MARPC and recodified without substantive modification in Title 19, Chapter 300 of the Maryland Rules. For ease of reference and comparison with our prior opinions and those of other courts, we will refer to the MARPC rules using the numbering of the model rules, as permitted by Rule 19-300.1(22) and as identified in the paragraph to which this footnote is appended.

[2] The Commission charged Ms. Pierre under the NYDR that were

The assigned hearing judge found by clear and convincing evidence that Ms. Pierre had violated each MARPC and NYDR alleged, although the hearing judge rejected several of the grounds on which Bar Counsel had relied for those violations. The hearing judge also determined the existence of seven aggravating and four mitigating factors.

Bar Counsel filed no exceptions. Ms. Pierre filed exceptions that, in effect, challenge all of the hearing judge's findings of fact and conclusions of law that were adverse to her. We sustain many of Ms. Pierre's exceptions to the hearing judge's findings of fact but overrule those exceptions concerning two false statements she made about the sitting judges and a misrepresentation on her New York Bar Application. We sustain Ms. Pierre's exceptions to the hearing judge's conclusions of law that she violated MARPC 8.1(a) and (b) and 8.4(b). We overrule her exceptions to the hearing judge's conclusions of law that she violated MARPC 8.2(a), MARPC 8.4(a), (c), and (d), and NYDR 1-101 and 1-102.

Bar Counsel recommended the sanction of disbarment, while Ms. Pierre recommended imposing no sanction. Given the overlay of circumstances mentioned above, and without intending to diminish the seriousness of the misconduct in which Ms. Pierre engaged, we will issue a reprimand.

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in place in 1999, which was the year Ms. Pierre engaged in the conduct alleged to have violated those rules.

BACKGROUND

A. Context

The 2020 election for four seats on the Circuit Court for Montgomery County is the context underlying both the initiation of the investigation that resulted in this proceeding and several of the alleged violations. We therefore begin by discussing four considerations arising from that context that are important to our analysis.

First, any investigation into a candidate for elected office that is undertaken at a sensitive point in the electoral process presents risks that should be avoided or minimized to the extent possible.[3] Few things in our form of government rise to the level of importance of the State's interest in promoting faith in the integrity of the electoral process by which citizens choose their elected officials. Any perception that a government actor has attempted to exert undue influence on the outcome of an election risks undermining that faith. Government investigations of candidates for office during the heat of a campaign—especially, but not only, if they become a matter of public knowledge before the election—risk either: (1) an appearance of an attempt to exert influence on the election; or (2) actually affecting the outcome, whether intended or not.[4]

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[3] Our comments and analysis throughout this opinion are confined to the activities of the Commission and Bar Counsel, and specifically are not intended to encompass the activities of entities whose responsibilities include oversight of the electoral process.

[4] *See, e.g.,* Dennis Halcoussis, Anton D. Lowenberg & G. Michael Phillips, An Empirical Test of the Comey Effect on the 2016 Presidential Election, 101 Soc. Sci. Q. 161, 168-69 (2020) (concluding that "[a]nnouncements by the FBI regarding investigations of Clinton's emails ... did appear to have an effect"

To avoid the potentially corrosive or otherwise unintended effects that could accompany the pursuit of an investigation during the heat of an election, future investigations by Bar Counsel into alleged misconduct by a candidate in a judicial election should generally be postponed until after the election unless: (1) doing so would put an individual or the public at risk from past or potential future misconduct that is within the purview of the Commission and that could be avoided by prompt investigation; or (2) prompt investigation is necessary to preserve evidence. In either case, Bar Counsel should generally confine pre-election activities to what is necessary to satisfy the exigency. Although our own rules do not yet contain such guidance,[5] other investigative agencies have recognized in rule or practice that such investigations should be delayed, postponed, or at least not disclosed during the run-up to an election.[6]

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on the candidates' electoral chances); Nathaniel Rakich, How Trump's Indictment Could Affect the 2024 Election, FiveThirtyEight (Mar. 31, 2023), https://fivethirtyeight.com/features/trump-indictment-2024-election/ (last accessed July 26, 2023), archived at https://perma.cc/QY37-5NDE.

[5] Following the issuance of this opinion, we will refer to the Standing Committee on the Rules of Practice and Procedure consideration of adopting a rule establishing procedures for addressing alleged misconduct violations that arise during the pendency of election campaigns generally and campaigns for judicial offices specifically.

[6] For example, Michigan Rules governing judicial disciplinary procedures state that "[i]f a request for investigation is filed less than 90 days before an election in which the respondent is a candidate" and is not frivolous, the investigating commission "shall postpone its investigation until after the election" unless two-thirds of the commission members determine "the public interest and the interests of justice require otherwise." Mich. Ct. R. 9.220(C). On the federal level, the United States Department of Justice has an unwritten but widely acknowledged general practice of delaying public disclosure of investigative steps related

The sensitivity of the timing of such investigations is recognized in memoranda distributed to employees of the United States Department of Justice. In a 2022 memorandum, Attorney General Merrick Garland stated that all Department employees "must be particularly sensitive to safeguarding the Department's reputation for fairness, neutrality, and nonpartisanship."[7] For that reason, the Attorney General directed that any employee facing "an issue, or the appearance of an issue, regarding the timing of

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to electoral matters or a candidate for office within 60 days of a primary or general election. See U.S. Dep't of Just., Off. of the Inspector Gen., A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election 16-18 (2018) ("[T]here is a general admonition that politics should play no role in investigative decisions, and that taking investigative steps to impact an election is inconsistent with the Department's mission and violates the principles of federal prosecution."); Federal Prosecution of Election Offenses 8-9 (Richard C. Pilger ed., 8th ed. 2017) (discussing Department of Justice procedure when investigating an individual in relation to election fraud, noting that "any criminal investigation by the Department must be conducted in a way that minimizes the likelihood that the investigation itself may become a factor in the election. ... Accordingly, it is the general policy of the Department not to conduct overt investigations ... until after the outcome of the election allegedly affected by the fraud is certified.").

[7] *Election Year Sensitivities Memorandum from the Attorney General to All Department of Justice Employees* (May 25, 2022), available at https://www.documentcloud .org/documents/ 22089098-attorney-general-memorandum-election-year-sensitivities, archived at https://perma.cc/ P9VR-QD98. The 2022 memorandum is substantially similar in relevant part to a 2012 memorandum from Attorney General Eric Holder. *See, e.g., Election Year Sensitivities Memorandum from the Attorney General to All Department of Justice Employees* (Mar. 9, 2012), available at ht tps://www.justice.gov/sites/default/files /oip/legacy/2014/07/23/ag-memo-election-year-sensitivities.pdf, *archived at* https://perma.cc/7PP2-TN8X.

statements, investigative steps, charges, or other actions near the time of a primary or general election [should] contact the Public Integrity Section of the Criminal Division ... for further guidance."[8] In February 2020, then-Attorney General William Barr similarly warned of the need to "be sensitive to safeguarding the Department's reputation for fairness, neutrality, and nonpartisanship," and imposed special requirements for the opening of any investigation into a candidate for federal office.[9] His memorandum announcing the requirements recognized that

> [i]n certain cases, the existence of a federal criminal or counterintelligence investigation, if it becomes known to the public, may have unintended effects on our elections. For this reason, the Department has long recognized that it must exercise particular care regarding sensitive investigations and prosecutions that relate to political candidates, campaigns, and other politically sensitive individuals and organizations—especially in an election year.[10]

Second, election-related speech is at the very heart of the First Amendment to the United States Constitution and Article 40 of the Maryland Declaration of Rights.[11] This Court has acknowledged

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[8] *Id.*

[9] *Additional Requirements for the Opening of Certain Sensitive Investigations* (Feb. 5, 2020), available at https://docs.house.gov/meetings/JU/JU00/20200624/110836/HHRG-116JU00-20200624-SD009-U19.pdf, *archived at* https://perma.cc/553S-B85D.

[10] *Id.*

[11] The First Amendment to the United States Constitution provides in relevant part: "Congress shall make no law ... abridging the freedom of speech[.]" Article 40 of the Maryland Declaration of Rights provides in relevant part: "[T]hat every

that " 'speech about the qualifications of candidates for public office,' including judicial candidates, is 'at the core of our First Amendment freedoms.' " *Attorney Grievance Comm'n v. Stanalonis*, 445 Md. 129, 140, 126 A.3d 6 (2015) (quoting *Republican Party of Minn. v. White*, 536 U.S. 765, 774, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002)). Such political speech is entitled to "the highest level of First Amendment protection." *Stanalonis*, 445 Md. at 141, 126 A.3d 6; *see also McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346-47, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995) ("Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression[.]" (quoting *Buckley v. Valeo*, 424 U.S. 1, 14-15, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976))).

Third, speech that is critical of judges is also subject to robust free speech protection. *See Attorney Grievance Comm'n v. Frost*, 437 Md. 245, 265-68, 85 A.3d 264 (2014). As a result, for such speech to be actionable as a violation of the MARPC, it must meet the high standard set forth by the United States Supreme Court in *New York Times v. Sullivan*, 376 U.S. 254, 279-80, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), which is to say that it must be false and must have been made either knowing it to be false or with reckless disregard for its truth or falsity. *Frost*, 437 Md. at 263, 85 A.3d 264.

Fourth, given Bar Counsel's close association with the Judiciary, special considerations apply to

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citizen of the State ought to be allowed to speak, write and publish [that citizen's] sentiments on all subjects, being responsible for the abuse of that privilege."

investigations by Bar Counsel into the conduct of a candidate in a judicial election during the pendency of the election. This Court is ultimately responsible for the regulation of the practice of law in the State. *Attorney Grievance Comm'n v. Clevenger*, 459 Md. 481, 492, 187 A.3d 81 (2018) ("Our power to issue rules concerning practice and procedure in Maryland courts derives from the Maryland Constitution, and the General Assembly has recognized our broad authority to regulate the practice of law[.]" (citations omitted)). In furtherance of that responsibility, we, by Rule, have established the Attorney Grievance Commission and the position of Bar Counsel. The Commission, established by Rule 19-702, is comprised of 12 members, including nine attorneys and three non-attorneys, all appointed by this Court for three-year terms and subject to removal by this Court at any time. Md. Rule 19-702(a), (b), (f). Among other duties, the Commission appoints Bar Counsel, subject to approval from this Court; supervises Bar Counsel's activities; authorizes Bar Counsel's employment of attorneys, investigators, and other staff; approves or rejects Bar Counsel's recommendations concerning actions to take after investigating complaints, including dismissal, reprimand, or the filing of a petition for disciplinary or remedial action; and prepares an annual budget for the disciplinary fund subject to this Court's approval. Md. Rule 19-702(h).

The position of Bar Counsel is established by Rule 19-703. Bar Counsel is appointed by the Commission, subject to this Court's approval, and serves at the pleasure of the Commission. Md. Rule 19-703(a). Among other duties, Bar Counsel is charged with investigating professional misconduct or incapacity by attorneys in the State; filing statements of charges and prosecuting all disciplinary and remedial proceedings; filing petitions for disciplinary and remedial actions in

the Commission's name; monitoring and enforcing compliance with this Court's disciplinary and remedial orders; and initiating, intervening in, and prosecuting actions to enjoin the unauthorized practice of law. Md. Rule 19-703(b).

The roles and activities of the Commission and Bar Counsel with respect to all aspects of attorney discipline investigations, proceedings, and dispositions are further established by Rules promulgated by this Court. *See* Md. Rules 19-701–19-752. Although the Commission and Bar Counsel, by design, function independently of this Court, they play a critical role in carrying out our responsibility to regulate the legal profession in Maryland by, as set forth in the Commission's mission statement, "protecting the public and maintaining the integrity of the legal profession."[12] The Commission's and Bar Counsel's close connection to the Judiciary advise caution in taking actions against a candidate who is challenging sitting judges to avoid the possibility that members of the public may perceive such actions as motivated by a desire to support the sitting judges.[13]

With that context, we turn to the facts of the matter before us.

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[12] *See* Attorney Grievance Commission of Maryland, Administrative and Procedural Guidelines, Updated Nov. 23, 2021, available at: https://www.courts.state.md.us/sites/default/files/import/attygrievance/docs/administrativeprocedures.pdf, archived at https://perma.cc/6UXZ-EWEE.

[13] In discussing the need to avoid the possibility that members of the public may perceive an investigation or charges pursued by Bar Counsel as improperly motivated, we do not mean to suggest that the actions of Bar Counsel in this case were improperly motivated.

B. Procedural History

In the November 2020 general election, five candidates were vying for four seats on the Circuit Court for Montgomery County. Four of the candidates, Judges Bibi Berry, David Boynton, Christopher Fogleman, and Michael McAuliffe, were sitting judges who had been appointed by Governor Lawrence J. Hogan, Jr. following their formal vetting and nomination by the Montgomery County Judicial Nominating Commission. Exec. Order. No. 01.01.2019.05. The four sitting judges were running together as a unified slate, with a campaign chaired by J. Stephen McAuliffe III. One of the challengers was Ms. Pierre, who had been unsuccessful in several attempts at making it through the nominating commission and was attempting to win a seat by direct election, as permitted by the Maryland Constitution. Md. Const. art. IV, §§ 3, 5.

On August 28, 2020, just over two months before the November 3 election, Mr. McAuliffe sent a campaign email to attorneys in Montgomery County with the subject line, "Lawyers and the Urgent Need for Action." The email had a picture of the four sitting judges, referenced an earlier email promoting the qualifications of the sitting judges and the rigorous process by which they were selected, and provided "some facts about the challenger, Ms. Marylin Pierre." Mr. McAuliffe provided some factual information to refute claims that Ms. Pierre had made about bias in the judicial selection process and diversity on the bench, and then made a series of allegations against Ms. Pierre under the headings "Deliberately Inflating Her Qualifications" and "Unprofessional Conduct as an Attorney." Among the allegations were that Ms. Pierre (1) had claimed to have courtroom experience that she did not have, (2) had made several statements during

the campaign that were "untrue and misleading to voters," and (3) in the mid-1990s, had evaded service of process in a case and was taken into custody on a body attachment when she did not appear in court.

One of the recipients of Mr. McAuliffe's email was Bar Counsel, who received it as a member of the Montgomery County Bar Association. Mr. McAuliffe's email was sent at 3:48pm on Friday, August 28. At 4:47pm, Bar Counsel replied. Bar Counsel (1) informed Mr. McAuliffe that she had opened an investigation to determine whether Ms. Pierre had violated any rules of professional conduct, (2) asked Mr. McAuliffe to provide "any information or documentation in [his] possession that support[ed] any allegation that Ms. Pierre made false or misleading statements," and (3) asked him to identify individuals with personal knowledge of the allegations in his email. Bar Counsel informed Mr. McAuliffe that the investigation was confidential and asked that he maintain that confidentiality.

Mr. McAuliffe responded 30 minutes later thanking Bar Counsel for the email response "and for opening an investigation." He agreed to maintain the confidentiality of the investigation, but asked if he could inform the individual sitting judges about it, and offered to discuss the matter by phone. Subsequent correspondence references a telephone conversation that evening.

On Monday, August 31, the next business day, Mr. McAuliffe responded by providing the information Bar Counsel had requested.

On September 7, less than two months before the election, Bar Counsel sent Ms. Pierre a letter stating that a complaint had been docketed in Bar Counsel's name based on Mr. McAuliffe's email and that "an investigation will be conducted[.]" In the letter, Bar Counsel asked that Ms. Pierre respond in writing to 12

different inquiries and provide documentation to support her responses. For example, after identifying two statements Ms. Pierre allegedly made about the consequences of voting for the sitting judges, Bar Counsel wrote:

> Please provide all information and documentation to support your statement that any firm would control "Justice" in the Circuit Court for Montgomery County. Please also state whether your tweets should be read as an accusation that the sitting judges are, or will be, in violation of Rule 18-102.4(b) or (c).

And after identifying tweets by Ms. Pierre sent in the aftermath of the death of George Floyd, Bar Counsel wrote:

> Please state with specificity what you contend the public could expect to "hear" from sitting judges regarding the death of George Floyd and associated proceedings that would not violate Rule 18-102.10.

and:

> If you contend that an arrestee can be "presumed of committing murder" and that the burden of proof is on a criminal defendant to "prove that they are not guilty of contributory negligence and involuntary manslaughter" are accurate statements of the law, please provide all authority to support your position.

Bar Counsel requested a response by September 21.

Ms. Pierre put her malpractice carrier, CNA, on notice of the investigation. CNA opened a claim file on

September 15, 2020 identifying "J McAuliffe III" as the claimant against Ms. Pierre. Ms. Pierre did not respond to Bar Counsel's letter by September 21. When Bar Counsel followed up the next day, Ms. Pierre requested additional time to see if her carrier would retain counsel for her. In several subsequent email exchanges, Bar Counsel continued to request a response to the original letter, while Ms. Pierre said she was still waiting for an answer from CNA and did not want to respond without an attorney. Bar Counsel also sought dates to take Ms. Pierre's statement under oath, to which Ms. Pierre did not respond. Ms. Pierre, through counsel (not retained by CNA), ultimately responded to Bar Counsel's September 7 letter on December 4 and sat for a statement under oath on December 18.

In November 2021, after completing the investigation, Bar Counsel filed a petition for disciplinary or remedial action. A four-day hearing was scheduled to begin in April 2022. However, this Court granted Ms. Pierre's emergency motion to stay the proceedings to consider questions related to discovery disputes and the effect of recent changes to the Rules. We lifted the stay on May 11, 2022 after changes to Rule 19-726 rendered the discovery issue moot. After a four-day merits hearing in September 2022, the hearing judge issued a written opinion containing findings of fact and conclusions of law.

C. The Hearing Judge's Findings of Fact

The hearing judge's findings of fact address five categories of alleged misconduct by Ms. Pierre: (1) misrepresentations about sitting judges; (2) misrepresentations about her own experience; (3) misrepresentations about events that transpired in a lawsuit against her in the mid-1990s; (4) misrepresentations about her employment in the early 1990s at a company called Network Engineering, Inc.; and (5) her misrepresentations to Bar Counsel and failure to cooperate with the investigation. We address each category in turn.

1. Misrepresentations About Sitting Judges

The Commission alleged misconduct associated with three statements Ms. Pierre made about sitting judges during the campaign.

First, on May 20, 2020, Ms. Pierre's campaign Twitter account posted:

> Also there are some sitting judges who are only English speakers send people to jail because they could not speak English and discriminate against people based on skin color, country of origins, religious backgrounds or sexual orientations. Moco is cosmopolitan & need more!

At the hearing, Ms. Pierre acknowledged that the statement was false. She testified that the impetus for the tweet was her mistaken recollection of Child in Need of Assistance ("CINA") hearings in 2004 and 2005 during which she had misremembered a circuit court judge threatening her client with contempt if the client did not learn English. In fact, the judge—who was no longer an active judge at the time of the tweet—had

ordered Ms. Pierre's non-English speaking client to attend English class as part of a reunification plan, and the judge did not threaten or take any disciplinary action when the client failed to attend the class. Ms. Pierre also argued that she did not send out the tweet, although she acknowledged that her campaign did and that she supplied the information on which it was based. The hearing judge found that Ms. Pierre authorized the tweet, that it was false, and that Ms. Pierre knew it was false or acted with reckless disregard at the time.

Second, on May 23, 2020, Ms. Pierre's campaign Twitter account posted:

> The Sitting Judges are somewhat diverse in that they are black, Asian, gay, and straight, and men and women. But they are not really diverse. They are an in-group. Most of them have worked at the same law firm, go to the same church, and are related by marriage.

At the hearing, Mr. McAuliffe testified based on personal knowledge that the statement that "[m]ost" of the sitting judges worked at the same law firm, went to the same church, and were related by marriage was false, both as to the four sitting judges running for reelection and as to the bench as a whole. As with the first tweet, Ms. Pierre claimed that she had not posted it herself. Unlike with the first tweet, Ms. Pierre asserted that this statement was an accurate reflection of her opinion or belief. The only support she identified for the statement was: (1) a claim that a member of the bar told her that four judges on the bench attended the same church; and (2) that she had overheard someone else say that one of the sitting judges was related by

marriage to another.[14] The hearing judge found that Ms. Pierre was responsible for the tweet, that it was false, and that Ms. Pierre acted with reckless disregard at the time.

Third, Ms. Pierre's campaign made several

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[14] Ms. Pierre also introduced an exhibit at the hearing, Respondent's Exhibit P, which purported to show connections by law firm or familial relationship among current and former members of the bench from Montgomery County. Exhibit P identified:

- Two judges as having worked at Miles & Stockbridge, Rachel McGuckian and Rosalyn Tang. However, although both were judges at the time of the 2022 hearing, neither had been appointed at the time of the campaign tweet and only one was ever on the circuit court.
- Three judges and the spouses of two other judges as having worked at Debelius, Clifford, Debelius, Crawford & Bonifant. However, of the three judges, one (John Debelius) had retired from the circuit court in 2017 and a second (Gary Crawford), who was never a circuit court judge, retired from the District Court of Maryland in 2011.
- Two judges as having worked at Paley Rothman. However, only one of those judges had been appointed at the time Ms. Pierre sent her tweet. The other, Kathleen Dumais, was not appointed until December 2021.
- Two judges as having worked for the law firm Ethridge, Quinn, Kemp, McAuliffe, Rowan & Hartinger. However, one of those judges, again Judge Dumais, was not appointed until December 2021.
- Eight judges as "Related." However, the only purported relationship identified among active judges on the circuit court bench was between Judges Christopher Fogleman and John Maloney, who the exhibit claimed were "[r]elated by marriage per sources at Judge Fogleman's investiture."

Exhibit P thus (1) did not identify a single law firm in common between even two active judges at the time of Ms. Pierre's tweet, and (2) identified, based on an anonymous source, only one familial relationship between two sitting judges. (Information about the dates of service of the judges mentioned above can be found on the Maryland Manual On-line, available at https://msa.maryland.gov/msa/mdmanual/html/mmtoc.html

references to a statement Judge Berry had made at a campaign forum. During the forum, Judge Berry was asked about a study that identified high incarceration rates of Black men in the State. Judge Berry responded:

> What we do, is there are a lot of correctional options other than incarceration. We're not incarcerating people who are non-violent offenders for long periods of time or anything like that. There is home detention, there's inpatient residential treatment, there's problem solving courts, there's work release or weekend incarceration. There are a lot of things you can do. So, we're not ... certainly, I understand that it is an issue, but it's not as much of an issue as being portrayed by the other two candidates[15]....

Ms. Pierre attended the forum. Her campaign later sent a text message to prospective voters that read, "When a sitting judge says 'it's not much of an issue' that Black males are jailed at a higher rate in MD it's clear we need Marylin Pierre, who understands restorative justice." Her campaign made similar statements elsewhere, including after Mr. McAuliffe emailed her complaining that her use of the quote was out of context and misleading. In some of those statements, she corrected her omission of the word "as"

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[15] "[T]he other two candidates" appears to be a reference to Ms. Pierre and a second challenger, Thomas P. Johnson, III, whose name was not on the ballot but who was running as a write-in candidate. See Official 2020 Presidential General Election results for Montgomery County (last updated Dec. 4, 2020) available at: https://elections.maryland.gov/elections/2020/results/general/gen_results_2020_4_by_county_16-1.html, archived at https://perma.cc/NER7-8PAH.

from the quoted language; in at least one other, she did not.

At the hearing, Ms. Pierre acknowledged that her use of the quote without including "as" before "much" was incorrect but said that was what she had heard and that the inaccuracy was an oversight. Noting that Ms. Pierre had republished the statement after being informed that it was inaccurate, the hearing judge found that Ms. Pierre had knowingly and intentionally misrepresented the substance of the quote.

2. Misrepresentations About Ms. Pierre's Experience

The Commission also alleged that Ms. Pierre knowingly and intentionally misrepresented her legal experience in her campaign statements and in her answers to questionnaires submitted in connection with her eight applications for a judgeship.

a. Campaign Statements

The Commission cited two instances from the campaign in which it alleged that Ms. Pierre had misled voters about her experience and qualifications. First, in a campaign text to Montgomery County voters, Ms. Pierre stated that she has practiced "civil and criminal law in Maryland's trial and appellate courts." Interpreting that statement as a representation that she had practiced civil law in both trial and appellate courts, and criminal law in both trial and appellate courts, the Commission asserted that it was a knowing and intentional misrepresentation because Ms. Pierre had never represented a client in a criminal matter in an appellate court. Second, during a candidate forum, Ms. Pierre stated that she had "represented clients in hundreds of cases in state and federal trial and

appellate courts, [and that] some of [her] cases have established precedents in the State of Maryland and are regularly cited by courts in other states." The Commission contended that the statement was a knowing and intentional misrepresentation because Ms. Pierre had not represented a client in a federal appellate court and had not represented a client in a Maryland appellate court that had resulted in a reported opinion.

The hearing judge found that Ms. Pierre's statements were "essentially true" because Ms. Pierre had practiced both civil and criminal law, had practiced in both trial and appellate courts, had practiced in both federal and state courts, had represented clients in hundreds of cases, and had handled cases at the trial level that had later resulted in reported appellate opinions. The hearing judge declined to "undertake the parsing and/or dissection [of Ms. Pierre's words] required to accept [the Commission's] analysis on this issue."

b. Judicial Questionnaires

The Commission also alleged that Ms. Pierre misrepresented the scope of her legal experience in each of the eight questionnaires she submitted in applying for judgeships between March 2012 and August 2017.[16] In each of those questionnaires,

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[16] Applicants for a judicial vacancy are required to submit a confidential personal data questionnaire that asks for detailed information about an applicant's personal history, education, law practice, business and civic involvement, any disciplinary history either as a party in a legal matter or in professional life, and other questions relevant to an application for a judicial vacancy. See Maryland Courts, *How to Apply for a Judicial Vacancy*, https://www.courts.state.md.us/judgeselect/judgeappl (last visited August 10, 2023), *archived at* https://perma.cc/VM5X-UPNG.

Question 16 asked applicants, with respect to each of five subparts, about their experience "[w]ith respect to the last five years." The Commission alleged that Ms. Pierre's answers were false and misleading. With respect to the entirety of Question 16, instead of confining her responses to information about the most recent five years, Ms. Pierre included her entire career. She testified that she had misread Question 16 when completing the first questionnaire in 2012, and then simply updated the information on subsequent questionnaires to add additional experience.

The Commission also alleged that Ms. Pierre made further false representations concerning her experience in response to subparts (b), (c), (d), and (e) of Question 16 on all eight questionnaires. In subpart (b), applicants were asked what percentage of their appearances were in specified types of courts. Ms. Pierre's answers, which varied across the eight questionnaires, ranged from 0-3% of matters in federal court, 0-5% in state appellate court, 55-70% in state circuit court, 10-30% in the District Court of Maryland, and 10-20% in other courts. The hearing judge determined that a correct response in each case would have been that more than 99% of her cases were in state circuit courts, and so found that Ms. Pierre's answers were false. However, given the "wildly inconsistent" responses, and observing that Ms. Pierre had in the past represented clients in appellate cases and federal cases, the hearing judge concluded that if Ms. Pierre had intended to mislead, her answers "would not have been so carelessly inconsistent." On that basis, the hearing judge determined that her misrepresentations were not knowing and intentional.

In subpart (c), applicants were asked to identify the percentage of their litigation that was civil or criminal. In her first three questionnaires, Ms. Pierre responded that 75% of her cases were civil. That percentage went

up to 85% in the next three questionnaires and 90% in the final two. The hearing judge found those answers to be false because the correct response on every questionnaire would have been that her practice was more than 99% civil. However, based on the same rationale applied to the subpart (b) responses, the hearing judge concluded that Ms. Pierre's misrepresentations were not knowing and intentional.

In subpart (d), applicants were asked to identify "the number of cases [the applicant] tried to verdict or judgment (rather than settled)" and whether the applicant was "sole counsel, chief counsel, or associate counsel." In her first questionnaire, Ms. Pierre responded that she had "tried over five hundred cases to verdict or judgment." In her second questionnaire, that response went down to "over 430," and then progressively increased back to "over 500" by her final questionnaire. At the hearing, Ms. Pierre testified that she thought the question encompassed any cases in which a judge had issued any decision, including if an agreement by the parties to settle resulted in a dismissal of the case by the court. She further testified that she provided what she believed to be a conservative estimate of such cases, albeit for her entire career rather than just the most recent five years. The hearing judge rejected that explanation, finding that an experienced attorney like Ms. Pierre could not misunderstand the meaning of "tried to verdict or judgment" and that it was inconceivable that she had tried that many cases to verdict or judgment. On that basis, the hearing judge concluded that Ms. Pierre's responses were knowingly and intentionally false "for the purpose of bolstering her judicial applications."

In subpart (e), applicants were asked to identify the percentage of their cases that involved jury trials. In her first three questionnaires, Ms. Pierre responded

5%. In her last five questionnaires, she responded 1%. Finding that Ms. Pierre had handled only two jury trials in her entire career, both before 1996, the hearing judge concluded that her responses were false. The hearing judge further found that Ms. Pierre's responses were knowing and intentional misrepresentations because the judge "[could] not accept that [Ms. Pierre] did not recall that she had had only two jury trials throughout her career[.]"

3. Misrepresentations Concerning a Student Loan Case and Associated Failure to Appear, Body Attachment, and Detention

The Commission alleged that Ms. Pierre made knowing and intentional misrepresentations in her questionnaire responses and in her 1999 New York Bar Application regarding a student loan case against her in the mid-1990s. The underlying facts concern a lawsuit filed in November 1993 by the New York State Higher Education Services Corporation ("N.Y. Higher Education") against Ms. Pierre in the Circuit Court for Montgomery County. In the lawsuit, N.Y. Higher Education alleged that Ms. Pierre had defaulted on promissory notes associated with her student loans. After Ms. Pierre defaulted on payments owed pursuant to a settlement payment plan and the court entered a judgment against her, she failed to appear in court in response to a show cause order. The court issued a writ of body attachment, and Ms. Pierre was taken into custody by the sheriff. Ms. Pierre testified that she had failed to appear due to a personal tragedy. She posted bail and was released the same day. On March 25, 2004, N.Y. Higher Education filed a line of satisfaction.

a. Ms. Pierre's Judicial Applications

The Commission alleged that in her responses to questions on seven of her eight judicial questionnaires, Ms. Pierre knowingly and intentionally failed to disclose facts concerning her failure to respond to the show cause order, the issuance of the writ of body attachment, and her detention by the sheriff. First, Question 28 called upon applicants to disclose whether they had "ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation or ordinance." On her first questionnaire, from 2012, Ms. Pierre responded that a body attachment had been filed against her for nonpayment of her student loans and that she had been detained on July 1, 1996. She did not disclose the incident in response to Question 28 on the subsequent seven questionnaires. The hearing judge accepted Ms. Pierre's testimony that, after the first questionnaire, she interpreted Question 28 to relate only to criminal proceedings. Finding that interpretation to be reasonable, the hearing judge found that Ms. Pierre's failure to disclose was not a knowing and intentional misrepresentation.

Second, Question 29 called upon applicants to "[g]ive particulars of any litigation, including divorce, in which you personally are now or previously have been either a plaintiff or defendant. For each, list the dates, the names of the moving parties, the number of the case, the court, and the grounds for the litigation." In all eight questionnaires, Ms. Pierre disclosed: "New York State Higher Education filed a suit for nonpayment of student loans against me on November 16, 1993. I was able to pay them off and they filed a Line of Satisfaction on March 25, 2004." The hearing judge found that Ms. Pierre's response to Question 29

was "sufficient" and so not a knowing and intentional misrepresentation.

Question 32 asked if there was "any other information concerning [her] background that might be considered detrimental or that otherwise should be taken into consideration by the Commission[.]" On each of the eight questionnaires, Ms. Pierre answered no. With respect to the seven questionnaires after the first, the hearing judge found that, because Ms. Pierre did not disclose "her failure to appear, the Show Cause Order and the Body Attachment in the Higher Education case in response to Questions 28 or 29, ... she was required to disclose the detrimental information in response to Question 32[.]" The hearing judge did not identify the basis for the implicit conclusion that Ms. Pierre understood that the incident, which had occurred in 1996 and which she blamed on a personal tragedy, would be considered detrimental to her fitness for the bench in 2013 through 2017.

b. Ms. Pierre's New York Bar Application

The Commission also alleged that Ms. Pierre made knowing and intentional misrepresentations by providing incomplete information about the student loan case in response to Questions 16 and 17(b) on her New York Bar Application. Question 16 asked, in relevant part, whether Ms. Pierre had "ever been arrested, taken into custody, charged with, indicted, convicted or tried for, or pleaded guilty to, the commission of any felony or misdemeanor or the violation of any law or ordinance, except traffic or parking violations[.]" Ms. Pierre answered no. As with Question 28 on the judicial questionnaires, the hearing judge accepted Ms. Pierre's testimony that she believed the question applied only to criminal proceedings. The

hearing judge found that interpretation reasonable.

Question 17(b) asked whether Ms. Pierre had "ever failed to answer any ticket, summons or other legal process served upon [her] at any time" and "[i]f so, was any warrant, subpoena or further process issued against [her] as a result of [her] failure to respond to such legal process?" Ms. Pierre answered "yes," identified the student loan case, and explained that she had a court date related to nonpayment of student loans for which she was sent a summons and did not appear because she was hospitalized and forgot. She further stated: "A summons was sent to my house and I answered it to the Court's satisfaction. No further action was taken on the summons since I have made arrangements to pay the student loan." The hearing judge concluded that response was a knowing and intentional "misrepresent[ation] by omission that the court issued a writ of body attachment for her failure to appear in response to a show cause order, and that she was detained and brought to court by the Sheriff and charged." Having made that finding, the hearing judge also "f[ound] that [Ms. Pierre] falsely swore that her answers were complete and truthful when she signed the Bar Application[.]"

4. Misrepresentations About Ms. Pierre's Employment with Network Engineering

The Commission alleged that Ms. Pierre had made knowing and intentional misrepresentations in her judicial applications and during a statement under oath in December 2020 about her prior employment in the late 1990s with Network Engineering. Question 14 on each of the eight judicial questionnaires asked for a chronological description of the applicant's "law practice and experience after ... graduation from law school[.]" As part of her description, Ms. Pierre

included that she had served as "corporate counsel" for Network Engineering from December 1997 through August 1999. She testified to the accuracy of that information during her statement under oath made in December 2020.

At the hearing, Ms. Pierre again testified that the information about her employment with Network Engineering was accurate. In response to a question about why she had not disclosed that position on her 1999 New York Bar Application in response to a question asking the applicant to identify any "law firm, law department or legal institution" in which she had worked, Ms. Pierre testified that the position had not been part of a law firm, law department, or legal institution. The hearing judge found that Ms. Pierre's testimony was not credible because Ms. Pierre "was unable to describe, with any detail, any legal work she claims to have performed as 'corporate counsel'" and because the judge believed Ms. Pierre should and would have disclosed that role on her New York Bar Application if it were correct. On that basis, the hearing judge found that Ms. Pierre knowingly and intentionally misrepresented her position with Network Engineering on her judicial applications and in her statement under oath.

5. Misrepresentations to Bar Counsel and Failure to Cooperate with Investigation

The Commission alleged that Ms. Pierre failed to cooperate with Bar Counsel's investigation. As discussed above, Bar Counsel initiated correspondence with Ms. Pierre on September 7, 2020, less than two months before the election. Bar Counsel's five-page letter set forth 12 numbered paragraphs: (1) nine paragraphs identified statements or categories of statements made by Ms. Pierre or her campaign and

asked that she explain or substantiate the basis for the statements; (2) one paragraph inquired whether during a particular online campaign forum Ms. Pierre had been asked whether she had ever been taken into custody and what her answer was; (3) one paragraph asked whether she had disclosed information about her evasion of service, the writ of body attachment, and her detention as part of the student loan litigation on her judicial questionnaires; and (4) the final paragraph asked for documentation of five endorsements she claimed to have received. The letter asked that Ms. Pierre provide the information and documentation by September 21. When Ms. Pierre did not meet that deadline, Bar Counsel sent follow-up requests on September 22 (requesting a response by September 29), October 4 (requesting a response by October 9), October 16 (requesting a response), and November 6 and 9 (requesting that Ms. Pierre provide dates to make a statement under oath).

From September 23 through November 9, Ms. Pierre corresponded with Bar Counsel to seek more time to obtain counsel, which she was initially hoping would be provided by her malpractice carrier, CNA. On November 9, Ms. Pierre informed Bar Counsel that CNA had denied her request and that she was in the process of obtaining other representation. On November 19, not having received dates from Ms. Pierre, Bar Counsel scheduled a statement under oath for December 18 and emailed Ms. Pierre a copy of a subpoena.

On December 4, Ms. Pierre, through counsel, responded substantively to the inquiries contained in Bar Counsel's September 7 letter. She also sat for the statement under oath on December 18. At the hearing, Ms. Pierre testified that she spoke with CNA several times while awaiting its response and that she learned that CNA was denying coverage on November 2, which

was the day before the election. The hearing judge, observing that Ms. Pierre had sent Bar Counsel an email on November 6 stating that she was still waiting to hear from CNA, found Ms. Pierre's testimony to not be credible. The hearing judge further found that Ms. Pierre "knowingly and intentionally delayed responding to Bar Counsel's requests for information without excuse."

D. The Hearing Judge's Conclusions of Law

The hearing judge concluded that Ms. Pierre violated:

- MARPC 8.1(a) and (b) (Bar Admission and Disciplinary Matters), when she: (1) "unequivocally testified falsely during her statement under oath on December 18, 2020 that she worked as general counsel for Network Engineering"; (2) signed her New York Bar Application in March of 1999 attesting to its accuracy; and (3) "failed to timely respond to Bar Counsel's requests for information made on September 7, 2020, September 22, 2020, and October 4, 2020[,] and when she failed to provide available dates for her statement under oath."
- MARPC 8.2(a) and (b) (Judicial and Legal Officials), when she made statements that "were either knowingly false or made with reckless disregard as to their truth or falsity" and "were made for the specific purpose of misleading voters about both [her] credentials and the qualifications and integrity of the sitting judges."
- MARPC 8.4(a), (b), (c), and (d) (Misconduct), when she violated other rules of professional conduct and when she "knowingly and intentionally testified falsely," "chose to misrepresent her qualifications for her personal gain" on both her judgeship applications

and in her campaign materials, and "made numerous misrepresentations by omission" by not disclosing certain details of her 1996 court case.

- NYDR 1-101 (Maintaining Integrity and Competence of the Legal Profession), when she failed to disclose on her New York Bar Application the details of her 1996 student loan case, including that "the court issued a writ of body attachment for her failure to appear in response to a show cause order, that she was detained and brought to court by the Sheriff[,] and that she was required to post a bond."
- NYDR 1-102 (Misconduct), "when she falsely swore that her answers were complete and truthful when she signed the [New York] Bar Application[.]"

DISCUSSION

I. EXCEPTIONS TO THE HEARING JUDGE'S FINDINGS OF FACT

"This Court has original and complete jurisdiction in attorney discipline proceedings and conducts an independent review of the record." *Attorney Grievance Comm'n v. Bonner*, 477 Md. 576, 584, 271 A.3d 249 (2022). "The hearing judge's findings of fact are left undisturbed unless those findings are clearly erroneous or either party successfully excepts to them." *Attorney Grievance Comm'n v. Fineblum*, 473 Md. 272, 289, 250 A.3d 148 (2021) (quoting *Attorney Grievance Comm'n v. Ambe*, 466 Md. 270, 286, 218 A.3d 757 (2019)).

Bar Counsel did not file any exceptions. Having reviewed the record thoroughly, we find no error in the hearing judge's findings of fact that favored Ms. Pierre and so will not disturb them. Ms. Pierre filed a lengthy document that we interpret as excepting to all of the hearing judge's findings of fact and conclusions of law that were adverse to her. Because Ms. Pierre does not

tie most of her exceptions directly to specific findings of fact, we will address them generally as they relate to the five categories of misconduct set forth above.

A.Misrepresentations About Sitting Judges

1. *Background Legal Principles*

As noted at the outset of this opinion, several aspects of the context in which this matter has arisen will prove critical to our resolution of Ms. Pierre's exceptions and our consideration of appropriate discipline for the violations we sustain. We therefore begin with a discussion of background legal principles that help define the standards that apply to the hearing judge's findings and conclusions.

In *Attorney Grievance Commission v. Stanalonis*, 445 Md. 129, 126 A.3d 6 (2015), we discussed the significance of the election context in assessing claims of violations of the MARPC. We explained that the election context was important for three reasons. "First, as the [United States] Supreme Court has observed, 'speech about the qualifications of candidates for public office,' including judicial candidates, is 'at the core of our First Amendment freedoms.' " *Id.* at 140, 126 A.3d 6 (quoting *Republican Party of Minnesota v. White*, 536 U.S. 765, 774, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002)). Such speech "is core political speech and has the highest level of First Amendment protection." *Stanalonis*, 445 Md. at 140-41, 126 A.3d 6. "Second, the election context is significant as there inevitably is some imprecision in language used during the heat of a political campaign." *Id.* at 141, 126 A.3d 6. Short timeframes in which to respond, "limited time to vet language," and a natural preference for "a short and snappy one-liner" over lengthier explanations with more context are features of elections that courts must

take into account in assessing whether statements violate the MARPC. *Id.* at 141-42, 126 A.3d 6. Third, because MARPC 8.2(a) also regulates statements made about "public legal officers," including the Attorney General and State's Attorneys, "whatever we hold [with respect to judicial campaigns] will also control what a lawyer may say about a candidate for election" to those other offices. *Id.* at 142, 126 A.3d 6.

This matter involves not just an election contest, but an election for a judicial position, which adds important context of its own. MARPC 8.2(a) provides: "An attorney shall not make a statement that the attorney 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." As we have noted, "the purpose of [MARPC] 8.2(a) is not to protect judges, judicial officers, or public legal officials from unkind or undeserved criticisms. Rather, [MARPC] 8.2(a) protects the integrity of the judicial system, and the public's confidence therein[.]" *Attorney Grievance Comm'n v. Frost*, 437 Md. 245, 263, 85 A.3d 264 (2014); *see* MARPC 8.2 cmt. 1 ("Assessments by attorneys are relied on in evaluating the professional or personal fitness of individuals being considered for election or appointment to judicial office and to public legal offices .... [F]alse statements by an attorney can unfairly undermine public confidence in the administration of justice.").

To ensure that enforcement of MARPC 8.2(a) does not infringe on core speech rights, a high standard is embedded within that rule, which encompasses only speech that is false and made with knowledge of its falsity or with reckless disregard as to its truth or falsity. As we observed in *Stanalonis*, "[i]n the First Amendment context, 'reckless disregard for truth or

falsity' evokes the subjective test for civil liability for defamation of a public figure set forth in *New York Times Co. v. Sullivan*, 376 U.S. 254 [84 S.Ct. 710, 11 L.Ed.2d 686] (1964)." 445 Md. at 143, 126 A.3d 6. Under that test, "reckless disregard" demands more than just a conclusion that a reasonable person would have refrained from making the comment or performed additional investigation. That standard demands that the plaintiff produce "sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of [the defendant's] publication."[17] *Id.* (quoting *St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968)). Nonetheless, as we highlighted in *Stanalonis*: "Every Maryland attorney takes an oath to act 'fairly and honorably.' Those who seek judicial office must resist the temptation to advance at the risk of violating that pledge." 445 Md. at 149, 126 A.3d 6 (footnote omitted).

One additional point bears on our assessment of Ms. Pierre's exceptions to the hearing judge's findings of fact. As she correctly points out, in assessing both whether a statement is false and whether the speaker had knowledge of its falsity or acted with reckless disregard thereof, there is an important distinction between statements of fact and statements of opinion. "Under the First Amendment there is no such thing as a false idea. ... But there is no constitutional value in false statements of fact. Neither the intentional lie nor the careless error materially advances society's interest in 'uninhibited, robust, and wide-open' debate on public

[17] As we observed in *Stanalonis*, there is disagreement among the states concerning whether an objective or subjective test should apply in attorney discipline cases. 445 Md. at 143, 126 A.3d 6. As in that case, we need not resolve that disagreement here because it would not be dispositive as to the statements at issue.

issues." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339-40, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974) (quoting *Sullivan*, 376 U.S. at 270, 84 S.Ct. 710). Although statements of opinion are generally not subject to being proven false, statements of fact are. Moreover, statements of opinion, even those widely viewed as erroneous or unfair, are both less likely to mislead and more valuable to protect in the service of free and open public discourse than are false statements of fact. *See id.* It is therefore false statements of fact that are the subject of MARPC 8.2(a) and analogous provisions in other states. *See, e.g.*, *Matter of Callaghan*, 238 W.Va. 495, 796 S.E.2d 604, 628 (2017) (finding judicial candidate's materially false statements on campaign flyer impugning opponent were not protected by First Amendment and violated rules of professional conduct); *In re O'Toole*, 141 Ohio St.3d 355, 24 N.E.3d 1114, 1126 (2014) ("Lies do not contribute to a robust political atmosphere, and 'demonstrable falsehoods are not protected by the First Amendment in the same manner as truthful statements.' " (quoting *Brown v. Hartlage*, 456 U.S. 45, 60, 102 S.Ct. 1523, 71 L.Ed.2d 732 (1982))); *In re Chmura*, 461 Mich. 517, 608 N.W.2d 31, 33 (2000) (finding canon of judicial conduct restricting false or misleading public communications by judicial candidates unconstitutionally overbroad before narrowing it to prohibit only "knowingly or recklessly using forms of public communication that are false").

2. The Statements at Issue

The hearing judge concluded that clear and convincing evidence established that three different campaign statements made by Ms. Pierre were false and that Ms. Pierre either knew they were false or made them with reckless disregard for their truth or

falsity. We address each in turn.

First, with respect to the tweet that "some sitting judges who are only English speakers send people to jail because they could not speak English," Ms. Pierre conceded before the hearing judge that the statement is false, and the record establishes that it is. Ms. Pierre contends, however, that her campaign's tweet was not knowingly and intentionally misleading, or made with reckless disregard as to its truth or falsity, because it was based on her mis-recollection of a proceeding in which a judge had ordered her client to take English classes as part of a CINA reunification plan. She also suggests that her tweet was protected as a statement of opinion, rather than fact. We find no clear error in the hearing judge's findings. First, even if Ms. Pierre's recollection about the single incident were accurate, it would have provided no support for her campaign's tweet. Second, other than that mistaken recollection, Ms. Pierre offered no basis at all for the tweet. Third, a statement that judges send people to jail because they do not speak English is a statement of fact, subject to demonstrable verification, not a statement of opinion. Whether viewed through an objective or subjective lens, the record supports the hearing judge's finding that Ms. Pierre, at a minimum, acted with reckless disregard for the truth or falsity of her statement at the time she made it. We therefore overrule Ms. Pierre's exceptions to the hearing judge's findings of fact concerning her campaign's tweet about judges sending people to jail for not speaking English.

Second, with respect to the tweet that "[m]ost" of the sitting judges "have worked at the same law firm, go to the same church, and are related by marriage," Ms. Pierre excepts to all of the hearing judge's findings of fact. We overrule those exceptions. Ms. Pierre first contends that the statement is one of opinion, which she sincerely held, rather than one of fact. In making

that argument, Ms. Pierre recasts the statement as a general allegation that the sitting judges are not diverse and are all part of "an in-group." Notably, however, the same tweet includes two other sentences that state exactly that—that the sitting judges "are not really diverse" and "are an in-group." Those sentences were not the basis for either the Commission's charges or the hearing judge's findings. A statement that "[m]ost" sitting judges have worked at the same law firm is a statement of fact subject to objective verification. The same is true of statements that "[m]ost" sitting judges go to the same church and are related by marriage. At trial, Mr. McAuliffe testified from personal knowledge that all three contentions were false, and Ms. Pierre did not provide evidence that any of them were true.

Ms. Pierre also argues that the hearing judge erred in finding that she knew the statements were false or acted with reckless disregard for their truth or falsity at the time they were made. We disagree. At the hearing, Ms. Pierre identified the sole bases for her purported belief that her statement was true at the time she made it as: (1) having overheard an anonymous source state that two active judges and one retired judge were related by marriage; and (2) having been told by a member of the bar that four (out of 23) active judges attend the same church. Ms. Pierre also contends that she identified a sufficient number of relationships among the active judges to provide general support for her belief that her statement was true. However, the comments on which she relies, even if true, would not come close to supporting her statement, and the general support she purports to have identified in her Exhibit P is sufficiently deficient, *see* discussion above at note 14, that it lends significantly more weight to the Commission than to her.

We therefore overrule Ms. Pierre's exceptions to the hearing judge's factual findings that Ms. Pierre's tweet about most sitting judges working at the same law firm, attending the same church, and being related (1) were false, and (2) were made knowing they were false or with reckless disregard for their truth or falsity.

Finally, Ms. Pierre also excepts to all of the hearing judge's findings concerning her several campaign statements about an answer Judge Berry gave at a candidate forum attended by Ms. Pierre. At that forum, when asked about a study identifying a high rate of incarceration of Black men in Maryland, Judge Berry provided an answer that discussed various alternatives to incarceration and concluded: "I understand that it is an issue, but it's not as much of an issue as being portrayed by [the other two candidates.]" *See* discussion above at 19. The first statement with which the Commission takes issue, which is representative of the others, is an October 20, 2020 text message stating:

> Hi [voter], this election matters. When a sitting judge says "it's not much of an issue" that Black males are jailed at a higher rate in MD it's clear we need Marylin Pierre, who understands restorative justice. Can we count on your support?

Mr. McAuliffe objected to Ms. Pierre's message on the grounds that it took Judge Berry's statement out of context and because it omitted the word "as" before "much," which he contended changed its meaning. Ms. Pierre took that statement down and posted a different one that included the "as," although in only one of two places where the quote appeared. Mr. McAuliffe again objected and demanded that the post be removed, stating: "Your adding the word 'as' to the portion of the quote ... does not correct the intentionally misleading nature of your post but only serves to prove that your

actions are deliberate misrepresentations." The hearing judge found that Ms. Pierre's campaign used other versions of the quote three more times, once including the "as," once not, and a third time shortening the quote to only "much of an issue."

At the hearing, Ms. Pierre testified that she had believed her initial quote was accurate based on what she heard Judge Berry say. She also testified that the omission of "as" in the subsequent statements was inadvertent. However, the hearing judge found that even if that were true, Ms. Pierre

> had a responsibility to completely and accurately correct her campaign literature once notified of her error on October 12, 2020. Instead, she republished the incomplete, misleading quote on October 13th, 17th, 23rd and 31st. The court finds that she knowingly and intentionally misrepresented the substance of Judge Berry's quote and repeatedly attributed the incomplete, misleading quote to Judge Berry.

The hearing judge thus concluded that, more than the omission of the word "as"—which was not missing from all the communications identified—Ms. Pierre violated the MARPC by failing to provide "complete[] and accurate[]" context for the statement.

Ms. Pierre excepts to the hearing judge's findings concerning these communications on the grounds, among other things, that her omission of the word "as" did not change the context of the quote because her point was that the sitting judges were not taking seriously the high rate of incarceration of Black males in Maryland; that Ms. Pierre, by contrast, was a candidate "who understands restorative justice"; and that voters should therefore choose her.

In this case, the protection afforded by the First

Amendment for this core political speech is not overcome. The comments at issue attempted to draw a distinction between Ms. Pierre and her opponents on an issue of significant public importance. Ms. Pierre's statements conveyed a message that she believed one of her opponents was minimizing the importance of that issue. That Ms. Pierre did not endeavor to provide full context for a statement she attributed to her opponent and did not get the quote completely accurate is neither commendable nor, in the context of an election, exceptional. The issue, however, is whether it is sanctionable as misconduct under the MARPC. As noted, "imprecision in language" is an inevitable feature of campaign speech. *Stanalonis*, 445 Md. at 141, 126 A.3d 6. The question before us is not whether the words within the quotation marks were a full and accurate transcript of that portion of Judge Berry's remarks. In some of the quotes they were and in some they were not. Nor is the question whether Ms. Pierre provided sufficient context around the quoted language to convey Judge Berry's point as Judge Berry originally made it. Ms. Pierre did not. The relevant question, instead, is whether, understanding the circumstances and the nature of campaign speech and the First Amendment interests that protect it, there is clear and convincing evidence that the campaign statements at issue were knowingly and intentionally false or misleading. We do not find evidence in the record to meet that high standard. We therefore sustain Ms. Pierre's exceptions to the hearing judge's findings of fact concerning the statement attributed to Judge Berry.

B. Misrepresentations About Ms. Pierre's Experience

Ms. Pierre excepts to the hearing judge's findings that she knowingly and intentionally misrepresented her legal experience for the purpose of bolstering her judicial applications in her responses to Question 16(d) and (e). As discussed above, the hearing judge concluded that Ms. Pierre did not knowingly and intentionally misrepresent her legal experience in responding to two other subparts of Question 16, subparts (b) and (c). The hearing judge concluded that Ms. Pierre's responses to those questions were so "wildly inconsistent" that she could not have had the intent to mislead. However, the hearing judge reached a different conclusion with respect to Ms. Pierre's answers to subparts (d) and (e).

Bar Counsel did not except to the hearing judge's findings with respect to subparts (b) and (c) of Question 16. Those findings are compelling. The inconsistency among responses from questionnaire to questionnaire, as well as the inconsistency between the responses and other information contained in the questionnaires about Ms. Pierre's practice, is much more consistent with sloppiness and inattentiveness than with a deliberate effort to mislead.

Ms. Pierre contends that her responses to subparts (d) and (e) share the same characteristics as her responses to subparts (b) and (c) and, for the same reasons, there is not clear and convincing evidence of a knowing and intentional effort to mislead. We agree. In her responses to subpart (d), Ms. Pierre stated in her first questionnaire that she had handled "over five hundred" cases to trial or verdict. The number then went down to 430 in the next questionnaire before eventually climbing back to 500. And although the question called only for a list of cases handled to trial

or verdict within the past five years, Ms. Pierre's responses, as the hearing judge found, could not possibly have been accurate across that timeframe. Similarly, in her initial responses to subpart (e), Ms. Pierre identified that 5% of her cases had involved jury trials, but later reduced that, all at once, to 1%. In both cases, the information provided by Ms. Pierre was inconsistent across questionnaires and inconsistent with other information contained in the questionnaires about her experience. The logic underlying the hearing judge's findings concerning subparts (b) and (c) compels the same result with respect to subparts (d) and (e). We therefore sustain Ms. Pierre's exceptions with respect to the hearing judge's findings concerning Question 16(d) and (e) of her judicial questionnaires.

C. **Misrepresentations Concerning Student Loan Case**

We turn next to Ms. Pierre's lack of disclosure that, in connection with the student loan litigation in the mid-1990s, she had failed to respond to a show cause order and was subsequently detained on a body attachment. For different reasons, the hearing judge found that Ms. Pierre's failure to disclose that information in response to Questions 28 and 29 on seven of her eight judicial applications did not constitute knowing and intentional misrepresentations. Bar Counsel did not except to that finding, and we agree that it is supported by the record. In addition to the reasons identified by the hearing judge, Ms. Pierre disclosed the issuance of the body attachment and her subsequent detention in response to Question 28 on her first judicial questionnaire, submitted in March 2012. She could not reasonably have believed that information would not still be within the knowledge of, and fully accessible to,

the members of the same judicial nominating commission when she submitted her next questionnaire the following year or, indeed, any of her subsequent questionnaires.[18]

The hearing judge reached a different conclusion with respect to Question 32, a catchall question that asked if there was "any other information concerning [the applicant's] background that might be considered detrimental or that otherwise should be taken into consideration by the Commission[.]" The hearing judge found that because Ms. Pierre did not disclose "her failure to appear, the Show Cause Order and the Body Attachment in the Higher Education case in response to Questions 28 or 29 [in her last seven questionnaires], ... she was required to disclose the detrimental information in response to Question 32[.]" For three reasons, we conclude that the record does not contain clear and convincing evidence to support the hearing judge's finding.

First, implicit in that finding is a determination that Ms. Pierre would necessarily have viewed her brief

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[18] Ms. Pierre's first five judicial applications, spanning dates from March 5, 2012 through September 26, 2014, were filed during the second term of Governor Martin O'Malley. According to the Maryland Manual, 11 of the 13 members of the Trial Courts Judicial Nominating Commission for Montgomery County were the same from at least August 9, 2011 through July 21, 2014. *See* Maryland Manual On-Line, 2011, Trial Courts Nominating Commissions (Aug. 9, 2011) available at: http://2011.mdmanual.msa.maryland.gov/msa/mdmanual/26excom/html/22jnomt.htm l (identifying members of the 11th Commission District as of August 9, 2011), *archived at* https://perma.cc/2FVB-5782; Maryland Manual On-Line, 2014, Trial Courts Nominating Commissions (July 21, 2014) available at: http://2014.mdmanual.msa.maryland.gov/msa/mdmanual/ 26excom/html/22jnomt.html (identifying members of the Commission as of July 21, 2014), *archived at* https://perma.cc/ L2N6-BK5G.

detention on a body attachment approximately two decades earlier, as part of student loan litigation that was fully resolved approximately one decade earlier, as something "detrimental" to her fitness for the judgeships she was seeking. Unlike Questions 28 and 29, Question 32 is subjective, requiring applicants to reach conclusions as to whether aspects of their background "might be considered detrimental" or "should be taken into consideration by the Commission." The hearing judge did not cite any basis in the record to conclude that Ms. Pierre viewed that information as detrimental to her fitness for judicial office. To the contrary, Ms. Pierre explained that the circumstances that led to the body attachment and her detention were attributable to a personal tragedy she endured at the time. Given the subjectivity of Question 32 and the lack of any evidence to the contrary, the record does not support a conclusion by clear and convincing evidence that Ms. Pierre viewed those matters as detrimental to her candidacy.

Second, as noted above, Ms. Pierre disclosed the body attachment and detention in her answer to Question 28 on her first judicial questionnaire, which she submitted in March 2012. Her second was submitted in October 2013, and she submitted six more through August 2017. After her disclosure in the first questionnaire, she could not reasonably have believed that failing to mention it in her second and subsequent questionnaires would keep knowledge of it from the members of the very same judicial nominating commission.

Third, as the hearing judge noted, Ms. Pierre disclosed the student loan case itself on the seven questionnaires at issue in response to Question 29. A simple check of Judiciary Case Search reveals that the court issued a body attachment and delivered it to the sheriff on June 21, 1996, that the sheriff's return was

filed on July 1, 1996, that Ms. Pierre appeared in court that day with a public defender, that the court set a $500 bond, and that Ms. Pierre paid it on July 10, 1996. *See* Maryland Judiciary, *Case Search*, https://casesearch.courts.state.md.us/casesearch. Knowing that the judicial nominating commission was investigating her background based on the information provided in the questionnaire, her identification of the litigation in response to Question 29 is inconsistent with the finding that her failure to disclose easily uncovered details about it in response to Question 32 constituted a knowing and intentional misrepresentation by omission.

For all those reasons, we conclude that the record cannot support the finding, by clear and convincing evidence, that Ms. Pierre's responses to Question 32 on her judicial questionnaires constituted knowing and intentional misrepresentations by omission. Accordingly, we sustain Ms. Pierre's exception to that finding.

The hearing judge also found that Ms. Pierre made knowing and intentional misrepresentations by omission when she provided incomplete information about her student loan case in her response to Question 17(b) on her application for the New York Bar. That question asked whether Ms. Pierre had "ever failed to answer any ticket, summons or other legal process served upon [her] at any time" and "[i]f so, was any warrant, subpoena or further process issued against [her] as a result of [her] failure to respond to such legal process?" Ms. Pierre's answer identified the case and acknowledged that she had failed to appear in response to a summons. She further stated: "A summons was sent to my house and I answered it to the Court's satisfaction. No further action was taken on the summons since I have made arrangements to pay the student loan." The hearing judge concluded that

Ms. Pierre knowingly and intentionally provided a misleading response to Question 17(b). Ms. Pierre excepts to that finding.

Question 17(b) and Ms. Pierre's response to it are different from Question 32 on the judicial questionnaires and Ms. Pierre's responses to it in two critical respects. First, unlike the subjective nature of Question 32, Question 17(b) called for the disclosure of specific, factual information: whether "any warrant, subpoena or further process issued against" Ms. Pierre after she failed to respond to the show cause order. Such process had issued, and Ms. Pierre failed to identify it. Second, in responding to Question 17(b), Ms. Pierre made the affirmatively misleading statements that a summons was merely "sent" to her house, she addressed it satisfactorily, and "[n]o further action was taken on the summons[.]" Those statements constitute an affirmative, false representation that Ms. Pierre's receipt of a summons at her house ended the matter. As a result, the record contains sufficient support for the hearing judge's finding, by clear and convincing evidence, that Ms. Pierre's answer to Question 17(b) contained a knowing and intentional misrepresentation by omission. We therefore overrule Ms. Pierre's exceptions to that finding as well as the hearing judge's associated finding that, based on her answer to Question 17(b), Ms. Pierre falsely swore that her answers were complete and truthful when she signed her New York Bar Application.

D. **Misrepresentations About Ms. Pierre's Employment with Network Engineering**

Ms. Pierre excepts to the hearing judge's finding that she knowingly and intentionally misrepresented that she had been employed as corporate counsel for Network Engineering on her judicial questionnaires

and in her statement under oath. Among other things, Ms. Pierre contends that Bar Counsel did not introduce any evidence that she was not employed as corporate counsel for Network Engineering. We agree. Ms. Pierre testified that she was corporate counsel for Network Engineering. No other evidence was introduced on the subject. Although the hearing judge was not convinced by Ms. Pierre's answers, that alone is insufficient to carry the Commission's burden of proving by clear and convincing evidence that Ms. Pierre made a knowing and intentional misrepresentation. *See* Md. Rule 19-727(c); *Attorney Grievance Comm'n v. White*, 480 Md. 319, 352-53, 280 A.3d 722 (2022). We therefore sustain Ms. Pierre's exceptions to the hearing judge's findings concerning Ms. Pierre's representations about her employment with Network Engineering.

E. **Misrepresentations to Bar Counsel and Failure to Cooperate with Investigation**

Ms. Pierre also excepts to the hearing judge's findings that she failed to cooperate during the initial stages of Bar Counsel's investigation and made misrepresentations to Bar Counsel concerning her efforts to secure counsel. Ms. Pierre contends that she did not see Bar Counsel's initial email, responded to later correspondence and remained in contact with Bar Counsel as she was waiting for information from her malpractice carrier, and ultimately answered Bar Counsel's questions in writing and in her statement under oath.

We find it impossible to separate the circumstances of Ms. Pierre's delay in responding to Bar Counsel's inquiry from the circumstances under which the inquiry began. As noted, on September 7, 2020, less than two months before election day, Bar Counsel forwarded Ms. Pierre an email from the campaign

manager of Ms. Pierre's four opponents that made numerous accusations against her. Bar Counsel demanded that Ms. Pierre provide a written defense of multiple statements she had made in the course of the campaign, along with other matters. Ms. Pierre failed to respond by the September 21 deadline, and then sought extensions to see if her malpractice carrier would provide her with a defense. She eventually responded, through counsel, on December 4, and then sat for her examination under oath on December 18.

Although the hearing judge resolved a factual issue against Ms. Pierre concerning the timing of when she heard back from her insurance carrier, the larger issue is that the investigation should not have occurred when it did. No exigent circumstances existed that demanded an immediate investigation. No client interests were at stake. And there is no suggestion anywhere in the record that Bar Counsel's investigation would have been prejudiced by waiting until November 4 or later to initiate it. Bar Counsel points out that Bar Counsel's office did not disclose the investigation publicly before the election, which we agree is significant. However, Ms. Pierre's perception is also significant, as is the perception of the public when the facts of the investigation became public. Here, those facts included the initiation of an investigation by Bar Counsel as an immediate response to a campaign email that expressly solicited urgent action from the legal community. In the waning weeks of the election, Ms. Pierre, the target of the investigation, was asked to divert attention from her campaign to justify, in writing and with supporting documentation, several of her campaign statements.

To be clear, we do not question Bar Counsel's motives here. Nonetheless, the risk that an impartial observer might question those motives was not worth whatever marginal value might have been perceived to

lie in proceeding on the chosen timeline. Ensuring that the fairness and neutrality of investigations is not reasonably subject to question is crucial to preserving the integrity of the attorney disciplinary process. Given these very unusual circumstances, we sustain Ms. Pierre's exception to the finding that Ms. Pierre "knowingly and intentionally delayed responding to Bar Counsel's request for information without excuse."

II. CONCLUSIONS OF LAW

We assess the hearing judge's legal conclusions without deference. *Attorney Grievance Comm'n v. O'Neill*, 477 Md. 632, 658, 271 A.3d 792 (2022); Md. Rule 19-740(b)(1). The hearing judge concluded by clear and convincing evidence that Ms. Pierre violated MARPC 8.1(a) and (b), 8.2(a) and (b), 8.4(a)-(d), and NYDR 1-101 and 1-102. Upon our independent analysis, we conclude that there is clear and convincing evidence that Ms. Pierre violated MARPC 8.2(a) and 8.4(a), (c), and (d) and NYDR 1-101 and 1-102.

A. MARPC 8.1 (Bar Admission and Disciplinary Matters)

The hearing judge's conclusions that Ms. Pierre violated MARPC 8.1(a) and (b) were based on findings of fact concerning her lack of cooperation with Bar Counsel's investigation. Because we sustained Ms. Pierre's exceptions to those findings of fact, we also sustain her exceptions to the conclusions that she violated MARPC 8.1(a) and (b).

B. MARPC 8.2 (Judicial and Legal Officials)

The hearing judge concluded that Ms. Pierre violated MARPC 8.2(a) and (b) when she authorized campaign tweets about the sitting judges knowing they were false or with reckless disregard as to their truth or falsity for her personal benefit. MARPC 8.2(a) provides:

> An attorney shall not make a statement that the attorney 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.

"In this and in other jurisdictions, the rule is well settled that an attorney who engages in making false, scandalous or other improper attacks upon a judicial officer is subject to discipline." *Attorney Grievance Comm'n v. Frost*, 437 Md. 245, 265, 85 A.3d 264 (2014) (quoting *In re Evans*, 801 F.2d 703, 707 (4th Cir. 1986)); *see Attorney Grievance Comm'n v. McClain*, 406 Md. 1, 15-16, 18, 956 A.2d 135 (2008) (finding that attorney violated Rule 8.2(a) when the attorney asserted in a brief that a judge was motivated by personal bias); *Attorney Grievance Comm'n v. DeMaio*, 379 Md. 571, 585, 842 A.2d 802 (2004) (finding that attorney violated Rule 8.2(a) when the attorney made "false, spurious and inflammatory representations and allegations with respect to" the Chief Judge and Clerk of the Appellate Court of Maryland). To constitute a violation of MARPC 8.2(a), "three things must be proven by clear and convincing evidence: (1) that the lawyer made a false statement; (2) that the statement concerned the qualifications or integrity of a judge or a candidate for judicial office; and (3) that the lawyer made the statement with knowledge that it was false

or with reckless disregard as to its truth or falsity." *Attorney Grievance Comm'n v. Stanalonis*, 445 Md. 129, 139, 126 A.3d 6 (2015).

We sustained the hearing judge's findings of fact that Ms. Pierre made two false statements knowing they were false or with reckless disregard as to their truth or falsity: (1) that some sitting judges "send people to jail because they could not speak English"; and (2) that "most" of the sitting judges worked at the same law firm, attend the same church, and are related. The hearing judge concluded that both of those statements also impugned the integrity of the sitting judges and so satisfied the third criteria for a violation of MARPC 8.2(a). Ms. Pierre excepts to both conclusions.

With respect to the first statement, Ms. Pierre argues that the statement did not impugn the integrity or qualifications of the sitting judges because she did not name anyone specifically. We disagree. Ms. Pierre's statement was made in the course of an election campaign in which she was running against a slate of four sitting judges on a bench of 23 active judges. The statement—made using the present tense, that "some" among that relatively small group of judges illegally send people to jail because they cannot speak English—impugned the integrity of the bench. *See Frost*, 437 Md. at 260-62, 85 A.3d 264 (finding a violation of MARPC 8.2(a) where attorney made statements accusing judges of corruption, including collusion to commit an illegal arrest); *see also Attorney Grievance Comm'n v. Hermina*, 379 Md. 503, 520-21, 842 A.2d 762 (2004) (finding MARPC 8.2 violation when attorney accused trial judge of having *ex parte* communications with opposing counsel).

We reach a different conclusion concerning the second statement, which the hearing judge found impugned the integrity of the sitting judges because "it

implies that the judges were appointed, not based on their qualifications and merit, but rather based upon where they worked, where they worship, and to whom they are married." The hearing judge thus found that Ms. Pierre "clearly intended to malign and misrepresent the relationships between the judges." The support for the hearing judge's conclusion is the language of the tweet, which is:

> The Sitting Judges are somewhat diverse in that they are black, Asian, gay, and straight, and men and women. But they are not really diverse. They are an in-group. Most of them have worked at the same law firm, go to the same church, and are related by marriage.

Keeping in mind that we are addressing core political speech entitled to the highest level of First Amendment protection, *Federal Election Comm'n v. Cruz*, ––– U.S. ––––, 142 S. Ct. 1638, 1650, 212 L.Ed.2d 654 (2022), and that the purpose of our inquiry is not to protect judges "from unkind or undeserved criticisms," but to "protect[ ] the integrity of the judicial system, and the public's confidence therein," *Frost*, 437 Md. at 263, 85 A.3d 264, we do not agree that Ms. Pierre's statement impugned the qualifications or the integrity of the sitting judges. The message expressed in the tweet is not that any sitting judge is unqualified or lacks integrity. Instead, the message is that they are not sufficiently diverse from each other. The facts Ms. Pierre asserts to prove that point are false, but that does not alter the character of the point. And although the hearing judge found that the tweet contains an implicit criticism of the basis on which the judges were appointed, such an implication is insufficient to provide clear and convincing evidence given the level of protection afforded to campaign speech under the First

Amendment.

We therefore overrule Ms. Pierre's exception to the hearing judge's conclusion that she violated MARPC 8.2(a), but only with respect to her campaign's tweet stating that some sitting judges send people to jail for not speaking English.

The hearing judge also concluded that Ms. Pierre violated MARPC 8.2(b), which provides, in relevant part:

> A candidate for a judicial office:
> (1) shall maintain the dignity appropriate to the office and act in a manner consistent with the impartiality, independence and integrity of the judiciary;
> ...
> (3) shall not knowingly misrepresent his or her identity or qualifications, the identity or qualifications of an opponent, or any other fact[.]

The hearing judge's conclusions that Ms. Pierre violated MARPC 8.2(b)(1) and (3) were premised on Ms. Pierre's various statements addressing the quote attributed to Judge Berry. Because we have sustained Ms. Pierre's exceptions to the findings of fact concerning those statements, we also sustain her exceptions to the conclusions of law premised on those findings. We therefore conclude that Ms. Pierre did not violate MARPC 8.2(b).

C. MARPC 8.4 (Misconduct)

The hearing judge concluded that Ms. Pierre violated MARPC 8.4(a), (b), (c), and (d). MARPC 8.4 provides:

> It is professional misconduct for an attorney to:
> (a) violate or attempt to violate the Maryland

> Attorneys' Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
> (b) commit a criminal act that reflects adversely on the attorney's honesty, trustworthiness or fitness as an attorney in other respects;
> (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; [or]
> (d) engage in conduct that is prejudicial to the administration of justice[.]

1. MARPC 8.4(a)

"An attorney violates Rule 8.4(a) when '[the attorney] violates any other Rule under the MARPC.' " *Attorney Grievance Comm'n v. Parris*, 482 Md. 574, 597, 289 A.3d 703 (2023) (quoting *Attorney Grievance Comm'n v. Hoerauf*, 469 Md. 179, 214, 229 A.3d 802 (2020)). Ms. Pierre violated MARPC 8.4(a) because, as discussed, she violated MARPC 8.2(a).

2. MARPC 8.4(b)

The hearing judge concluded that Ms. Pierre violated MARPC 8.4(b) by committing perjury when she: (1) testified falsely during her statement under oath about her delay in responding to Bar Counsel's letters and her prior employment with Network Engineering; and (2) signed her New York Bar Application under oath. We sustained Ms. Pierre's exceptions concerning the findings of fact supporting the 8.4(b) violation related to her statement under oath. As a result, we conclude that Ms. Pierre did not violate 8.4(b) based on that statement.

Although we overruled Ms. Pierre's exceptions concerning her New York Bar Application, that conduct is properly subject to New York's disciplinary rules, not

those of Maryland. MARPC 8.5(b) (Rule 19-308.5) provides:

> **Choice of Law**. In any exercise of the disciplinary authority of this State, the rule of professional conduct to be applied shall be as follows:
> (1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and
> (2) for any other conduct, the rules of the jurisdiction in which the attorney's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. An attorney shall not be subject to discipline if the attorney's conduct conforms to the rules of a jurisdiction in which the attorney reasonably believes the predominant effect of the attorney's conduct will occur.

See generally Attorney Grievance Comm'n v. Tatung, 476 Md. 45, 72-81, 258 A.3d 234 (2021) (providing a detailed discussion of MARPC 8.5(b)). New York's disciplinary rules at least arguably apply to Ms. Pierre's New York Bar Application pursuant to subpart (1) of MARPC 8.5(b), because her application was submitted to and was pending before the New York Supreme Court, Appellate Division, Third Department. *See Tatung*, 476 Md. at 72 n.29, 258 A.3d 234 (observing that the MARPC defines "tribunal" as including, but not being limited to, a court). Even if not, the "predominant effect of the conduct" occurred in New York, where Ms. Pierre was seeking admission to the bar, not in Maryland.[19] *See id.* at 79-81, 258 A.3d

[19] Ms. Pierre signed her New York Bar Application in Prince

234 (discussing application of the "predominant effect" test). As a result, MARPC 8.4(b) is not applicable to Ms. Pierre's conduct in swearing under oath, at the conclusion of her New York Bar Application, that she had "read the foregoing questions and ha[d] fully, truthfully and accurately answered the same." We therefore sustain Ms. Pierre's exceptions to the hearing judge's conclusion that she violated MARPC 8.4(b).

3. MARPC 8.4(c)

"As used in this Rule, a misrepresentation is made when the attorney knows the statement is false, and cannot be the product of mistake, misunderstanding, or

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George's County, Maryland. However, under MARPC 8.5(b)(2), the rules of the jurisdiction in which the conduct occurred are applied unless "the predominant effect of the conduct is in a different jurisdiction." In the context of a bar application, the predominant effect of misrepresentations contained in it is felt in the state to which the application is submitted. In *Attorney Grievance Comm'n v. Malone,* 477 Md. 225, 269 A.3d 282 (2022), we examined the respondent's misconduct related to false and misleading statements made in connection with his application to the Texas Bar under the MARPC. However, we observed that Mr. Malone had waived any potential claim for relief based on MARPC 8.5(b) by failing to raise any objection on that ground. *Id.* at 290 n.23, 269 A.3d 282. Here, given that Ms. Pierre's signature under oath on the New York Bar Application is the only remaining source of a potential MARPC 8.4(b) violation, and the Commission otherwise correctly charged conduct in connection with the New York Bar Application under that State's disciplinary rules, we elect to raise the choice of law issue related to MARPC 8.4(b) ourselves. *See Bailey v. State,* 464 Md. 685, 698, 212 A.3d 912 (2019) ("In rare instances, pursuant to Maryland Rule 8-131(a), we may exercise our discretion to review an unpreserved issue."); *see also Ray v. State*, 435 Md. 1, 22, 76 A.3d 1143 (2013) (stating that Rule 8-131(a) "clearly authorizes an appellate court to address an unpreserved issue").

inadvertency." *Attorney Grievance Comm'n v. Taniform*, 482 Md. 272, 315, 286 A.3d 1072 (2022) (quoting *Attorney Grievance Comm'n v. Dore*, 433 Md. 685, 698, 73 A.3d 161 (2013)). An attorney violates Rule 8.4(c) by knowingly and intentionally making a false statement or by making an intentionally misleading statement or misrepresentation by omission. *Attorney Grievance Comm'n v. Vasiliades*, 475 Md. 520, 557-58, 257 A.3d 1061 (2021). The hearing judge concluded that Ms. Pierre violated MARPC 8.4(c) repeatedly. Although we have sustained Ms. Pierre's exceptions to the hearing judge's factual findings underpinning many of those violations, we overruled her exception concerning her statement that sitting judges send people to jail for not speaking English. On the basis of that statement only, we conclude that Ms. Pierre violated MARPC 8.4(c).

4. MARPC 8.4(d)

"Generally, a lawyer violates M[A]RPC 8.4(d) where the lawyer's conduct would negatively impact the perception of the legal profession of a reasonable member of the public." *Attorney Grievance Comm'n v. Collins*, 477 Md. 482, 510, 270 A.3d 917 (2022) (quoting *Attorney Grievance Comm'n v. Slate*, 457 Md. 610, 645, 180 A.3d 134 (2018)). Clear and convincing evidence supports the hearing judge's conclusion that Ms. Pierre violated MARPC 8.4(d). We agree with the hearing judge that knowledge that a lawyer had falsely, and very publicly, accused judges of unlawfully sending people to jail for not speaking English would negatively affect a reasonable member of the public's perception of the legal profession. *See Frost*, 437 Md. at 265, 85 A.3d 264 ("[A] public, false and malicious attack on a judicial officer ... may bring discredit upon the administration of justice amongst citizens who have no way of

determining the truth of the charges." (quoting *In re Evans*, 801 F.2d at 707)). We overrule Ms. Pierre's exception to that conclusion of law.

D. NYDR 1-101 (Maintaining Integrity and Competence of the Legal Profession)

NYDR 1-101(a), as of the date Ms. Pierre submitted her 1999 New York Bar Application, provided:

> A lawyer is subject to discipline if the lawyer has made a materially false statement in, or has deliberately failed to disclose a material fact requested in connection with, the lawyer's application for admission to the bar.

Consistent with this Court's application of the analogous MARPC provisions, the Supreme Court Appellate Divisions of New York have emphasized that "[c]andor and the voluntary revelation of negative information by an applicant are the cornerstones upon which is built the character and fitness investigation of an applicant for admission to the New York State Bar." *Matter of Avolio*, 215 A.D.3d 1167, 186 N.Y.S.3d 858, 859 (2023) (per curiam). "[A] material misrepresentation or omission in an applicant's admission application deprives the Court's Committee on Character and Fitness ... of all the information it might find relevant in assessing the applicant's candidacy, and lack of candor ultimately effects an admission upon false pretenses[.]" *Matter of DeMaria*, 154 A.D.3d 1161, 62 N.Y.S.3d 226, 228 (2017) (per curiam). "Whatever the importance of any one question or answer or item of information, the overriding consideration is disclosure and truthfulness." *Matter of Steinberg*, 137 A.D.2d 110, 528 N.Y.S.2d 375, 379 (1988) (per curiam).

The hearing judge concluded that Ms. Pierre violated NYDR 1-101 when she provided knowingly false and misleading information in response to Question 17(b). We overruled Ms. Pierre's exception to the hearing judge's findings concerning the response to Question 17(b). Based on those findings, we agree that clear and convincing evidence supports the conclusion that Ms. Pierre violated NYDR 1-101 by providing incomplete and intentionally misleading information about the July 1, 1996 incident in which she was detained on a body attachment, brought to court by the sheriff, and required to post a bond to obtain her release. *See Matter of Avolio*, 186 N.Y.S.3d at 860 (finding that attorney who failed to disclose an arrest that occurred after attorney submitted application but before admitted demonstrated a lack of candor and cautioning that "even a careless mistake in failing to make required disclosures in the admission process—as opposed to a failure based on a deceptive or fraudulent motive—warrants the need for a public disciplinary sanction"); *Matter of DeMaria*, 62 N.Y.S.3d at 227-29 (finding attorney made material misrepresentation on application when he indicated that he was seeking admission in a foreign jurisdiction but failed to disclose his admission had been denied); *Matter of Olivarius*, 94 A.D.3d 1224, 941 N.Y.S.2d 763, 765 (2012) (per curiam) ("[The attorney] clearly fell woefully short of submitting an application for admission that properly and with candor supplied all requested information. The application submitted by respondent had the effect of deflecting appropriate inquiry by this Court's Committee on Character and Fitness rather than apprising it of relevant potential character and fitness concerns."); *Matter of Wood*, 1 A.D.3d 791, 767 N.Y.S.2d 286, 286 (2003) (per curiam) ("We reiterate that candor and the voluntary revelation of negative information by an applicant for admission are the

cornerstones upon which is built the character and fitness investigation." (citation omitted)).

E. NYDR 1-102 (Misconduct)

NYDR 1-102, as of the date Ms. Pierre submitted her New York Bar Application, provided:

> a. A lawyer or law firm shall not:
> 1. Violate a Disciplinary Rule.
> ...
> 4. Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
> 5. Engage in conduct that is prejudicial to the administration of justice.
> ...
> 8. Engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

The hearing judge concluded that the same "facts that support violations of NYDR 1-101(a) also support violations of NYDR 1-102(a)(1), (4), (5) and (8)." According to the hearing judge, Ms. Pierre also "violated NYDR 1-102(a)(1), (4), (5) and (8) [because] she falsely swore that her answers were complete and truthful when she signed the Bar Application" under oath and stated that she had "fully, truthfully and accurately answered the same."[20] We agree that Ms. Pierre's knowingly false and misleading response to Question 17(b) constitutes clear and convincing evidence of a violation of NYDR 1-102(a)(1), (4), (5),

[20] The Commission did not charge Ms. Pierre with a violation of NYDR 1-102(a)(3), the analogue to MARPC 8.4(b), which prohibits an attorney from "[e]ngag[ing] in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer."

and (8), for reasons previously discussed.

In sum, we conclude that Ms. Pierre violated MARPC 8.2(a), MARPC 8.4(a), (c), and (d), and NYDR 1-101 and 1-102(a)(1), (4), (5), and (8).

4. SANCTION

"As we have often stated, the purpose of attorney discipline proceedings is not to punish the attorney but to protect the public and deter other lawyers from engaging in misconduct." *Attorney Grievance Comm'n v. Culberson*, 483 Md. 294, 324, 292 A.3d 274 (2023). "[W]e seek to impose sanctions that are 'commensurate with the nature and gravity of the violations and the intent with which they were committed,' while considering the unique circumstances of each case and any aggravating or mitigating factors." *Attorney Grievance Comm'n v. Kaufman*, 466 Md. 404, 428, 220 A.3d 316 (2019) (quoting *Attorney Grievance Comm'n v. Williams*, 446 Md. 355, 376, 132 A.3d 232 (2016)).

A. Aggravating and Mitigating Factors

Aggravating factors "militate in favor of a more severe sanction." *Attorney Grievance Comm'n v. Bonner*, 477 Md. 576, 608, 271 A.3d 249 (2022) (quoting *Attorney Grievance Comm'n v. Miller*, 467 Md. 176, 233, 223 A.3d 976 (2020)); *see also Attorney Grievance Comm'n v. Malone*, 482 Md. 82, 120, 285 A.3d 546 (2022) (providing a list of recognized aggravating factors). The hearing judge found by clear and convincing evidence the existence of seven aggravating factors, including that Ms. Pierre: (1) "had a dishonest or selfish motive"; (2) obstructed the attorney discipline proceeding; (3) "engaged in illegal conduct when she testified falsely under oath and when she signed her New York Bar Application under oath";

(4) engaged in a pattern of misconduct; (5) committed multiple violations of the MARPC; (6) "made misrepresentations to Bar Counsel"; and (7) has substantial experience in the practice of law, having been admitted to practice law in 1992.

Ms. Pierre excepted to each factor other than experience in the practice of law, stating that Bar Counsel failed to produce clear and convincing evidence to sustain those factors. Of her experience in the practice of law, Ms. Pierre noted that this case is not about her law practice and therefore that aggravating factor should carry little weight. We conclude that clear and convincing evidence supports three aggravating factors: (1) a dishonest or selfish motive; (2) substantial experience in the practice of law; and (3) illegal conduct.

First, clear and convincing evidence supports the conclusion that Ms. Pierre demonstrated a selfish motive when she falsely stated that sitting judges send people to jail for not speaking English to bolster her campaign against the sitting judges and in her false and misleading response to Question 17(b) on her New York Bar Application in her attempt to gain admission to the New York Bar. Second, Ms. Pierre has substantial experience in the practice of law, although that was not true at the time of her New York Bar Application. Although Ms. Pierre is correct that her violations do not relate to her legal practice, her level of experience is nonetheless relevant to expectations of her conduct. Third, Ms. Pierre engaged in illegal conduct when she signed her New York Bar Application under oath and attested that she had "fully, truthfully and accurately" answered the questions in the application.

Clear and convincing evidence does not support the other aggravating factors found by the hearing judge. First, because we sustained Ms. Pierre's exceptions to

the findings related to her initial delay in responding to Bar Counsel, we do not find the aggravating factor of bad faith obstruction of the disciplinary process. Second, because we have sustained violations based on only one statement made in 2020 and one response on her New York Bar Application, and those two incidents are entirely unrelated, Ms. Pierre did not engage in "a pattern of misconduct." Third, although Ms. Pierre violated multiple provisions of the MARPC, they were all based on a single statement. Fourth, because we sustained Ms. Pierre's exceptions to the findings related to her statement under oath to Bar Counsel, clear and convincing evidence does not support the aggravating factor of submission of false evidence or statements during the attorney disciplinary process.

"[T]he existence of mitigating factors tends to lessen or reduce the sanction an attorney may face." *Attorney Grievance Comm'n v. Johnson*, 472 Md. 491, 548, 247 A.3d 767 (2021) (quoting *Attorney Grievance Comm'n v. Smith-Scott*, 469 Md. 281, 365, 230 A.3d 30 (2020)); *see also Attorney Grievance Comm'n v. Kalarestaghi*, 483 Md. 180, 242, 291 A.3d 728 (2023) (providing a list of recognized mitigating factors). The hearing judge found by a preponderance of the evidence the existence of four mitigating factors: (1) no prior record of attorney discipline; (2) Ms. Pierre "generally enjoys a good reputation as a zealous advocate for her clients in CINA and juvenile matters" and "is of generally good character, despite certain lapses in judgment in her pursuit of a judgeship"; (3) "it is more likely than not that [Ms. Pierre's] expressed remorse is sincere"; and (4) repetition of the misconduct is unlikely. Bar Counsel did not except to any of these findings and the record supports the hearing judge's findings.

Ms. Pierre excepted to the hearing judge not finding: (1) the absence of a dishonest or selfish motive; (2) good faith efforts to rectify any misconduct; (3) full and free

disclosure to the disciplinary board; (4) a cooperative attitude towards the proceedings; and (5) delay in the disciplinary proceedings for violations related to her student loan case from nearly 30 years ago. Having thoroughly reviewed the record, we find no error in the hearing judge's determinations with respect to any of those mitigating factors.

B. The Sanction

The Commission recommends that Ms. Pierre be disbarred. In making that recommendation, the Commission "focuses on [Ms. Pierre's] misconduct associated with her 1999 New York bar application and the eight [Judicial] Questionnaires she filed ... between March 2012 and August 2017." Ms. Pierre recommends that the Court impose no sanction.

In determining an appropriate sanction, we are mindful of the context in which this case has arisen, as discussed above at length. Because of the unusual context, we do not find our dispositions rendered in other matters to be useful in identifying an appropriate sanction here. Considering all relevant factors, we conclude that a reprimand is the appropriate sanction. Although Ms. Pierre's violations, especially in connection with her New York Bar Application, would call for a more severe sanction under different circumstances, we cannot ignore the circumstances present here. We acknowledge that our rules do not contain any guidelines for how to handle allegations of misconduct by lawyers involved in elections generally or in judicial elections specifically.[21] In the absence of

[21] As identified in footnote 5, to provide guidance in the future, we will refer to our Standing Committee on the Rules of Practice and Procedure consideration of adopting a rule establishing procedures for addressing alleged misconduct violations that arise during the pendency of election campaigns generally and campaigns for

such guidelines, we do not assign fault for the path taken here. However, in determining an appropriate sanction, we cannot ignore that path and its potential implications for the public perception of the integrity of the attorney disciplinary process.

We also cannot ignore that Ms. Pierre engaged in serious misconduct. She falsely accused sitting judges of sending people to jail for not speaking English, and she provided a false and misleading response to a question on her New York Bar Application that omitted important information expressly covered by the question. She also engaged in other conduct that, even if it has not resulted in sustained violations of the MARPC, is troublesome. To be clear, similar conduct in different circumstances may result in much different outcomes than we reach today with respect to both violations and sanction. Nothing in this opinion should be viewed as approving of the conduct underlying the charges brought.

The unusual circumstances presented in this matter dictate its outcome. *Cf. Attorney Grievance Comm'n v. Jackson*, 477 Md. 174, 218-19, 225, 269 A.3d 252 (2022) (imposing no sanction because of "unique facts" of case); *Attorney Grievance Comm'n v. Pinkney*, 311 Md. 137, 141-43, 532 A.2d 1367 (1987) (imposing only a 90-day sanction despite finding numerous disciplinary violations because of the "highly unusual circumstances" of the case). Accordingly, we impose a reprimand.

IT IS SO ORDERED; PETITIONER AND RESPONDENT SHALL EVENLY SPLIT ALL COSTS AS TAXED BY THE CLERK OF THIS COURT,

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judicial offices specifically.

INCLUDING COSTS OF ALL TRANSCRIPTS, PURSUANT TO MARYLAND RULE 19-709(d).

Battaglia, J., concurring.

I write separately to concur. I agree with the majority in its thorough analysis of the rule violations and the determination of sanction of Ms. Pierre.

I briefly write separately to underscore that the "context" of the case created by Bar Counsel, addressed so eloquently by the majority as well as the dissent, is deeply regretful to me as reflecting poor judgment by an individual in whom the Court invested the authority to investigate and enforce the rules governing our profession. As a former United States Attorney, I believe that those who enforce our norms must do so by exercising judgment that is unassailable.

In the present situation, the initiation of an investigation by Bar Counsel of an attorney running for office during an election, on a "moment's notice" on the basis of an email and a conversation with an avowed antagonist to Ms. Pierre in the campaign process, does not reflect "good judgment." My disquietude with the acts of Bar Counsel certainly encompasses all that which has been identified by the majority and discussed with more specificity by the dissent, but I need only emphasize that the decision to pursue an investigation, especially during the course of an election, should have been undertaken with greater deliberateness and prudence.

The rapidity by which Bar Counsel reacted was not only not justified under the circumstances, as the majority notes, but undermined the legitimacy of Bar Counsel's endeavor. I write separately to underscore that there were other choices in terms of timing and demeanor that should have been exercised by Bar Counsel.

Watts, J., concurring and dissenting.

Respectfully, I concur and dissent. I substantially agree with the majority opinion and its thorough analysis and resolution of the violations of the Maryland Attorneys' Rules of Professional Conduct ("MARPC") at stake in this case. In particular, I agree that Marylin Pierre, Respondent, violated MARPC 8.2(a) by making statements with reckless disregard for their truth or falsity about Judges of the Circuit Court for Montgomery County sending people to jail because they do not speak English. *See* Maj. Op. at 98-100, 111-12, 300 A.3d at 226-27, 233-34. I write separately to provide my views because of the extraordinary circumstances involved in the investigation and handling of this matter. In light of those circumstances, I would have gone a step further than the majority opinion, which determines a reprimand to be the appropriate sanction, *see* Maj. Op. at 122-24, 300 A.3d at 240-41—I would have dismissed the case and imposed no sanction.

Due to the extraordinary circumstances of the case discussed at length in the majority opinion, as in *Attorney Grievance Comm'n v. Jackson*, 477 Md. 174, 269 A.3d 252 (2022), and *Attorney Grievance Comm'n v. Singh*, 483 Md. 417, 292 A.3d 818 (2023) (per curiam), I would conclude that no sanction is appropriate in this case. It is not possible to separate the circumstances of the investigation, which should not have been initiated and conducted in the manner that it was, from the imposition of a sanction. Like the respondents in *Jackson* and *Singh*, Ms. Pierre was the subject of a lengthy investigation by Bar Counsel that resulted in most of the charges in the petition for disciplinary or remedial action ("PDRA") not being sustained. As in both *Jackson* and *Singh*, the violations

determined did not involve harm to any client. *See Jackson*, 477 Md. at 181-82, 223-24, 269 A.3d at 256-57, 281-82; *Singh*, 483 Md. at 421-22, 292 A.3d at 821. And, like the respondent in *Singh*, Ms. Pierre was subject to an intense, wide-ranging investigation. *See Singh*, 483 Md. at 420, 292 A.3d at 820.

More importantly, this case has additional extraordinary circumstances that were not present in *Jackson* or *Singh*. This case arose in the context of alleged violations of the MARPC concerning speech related to a judicial election and presented First Amendment concerns, and the manner in which the investigation was initiated and conducted gave rise to the risk that it could have been seen as an attempt to interfere in a judicial election in favor of sitting judges. None of the cases in which we have previously found that a sanction was not appropriate and dismissed have involved investigations that had the potential to so severely undermine the integrity of the attorney disciplinary process. None of the cases in which we have previously found that a sanction was not appropriate and dismissed resulted in recommendations from this Court for new Maryland Rules because of Bar Counsel's investigation. In this case, Bar Counsel pursued a 14-month-long investigation of Ms. Pierre[1] (which Bar Counsel had the discretion not to initiate), after not having filed a complaint and under circumstances that risked giving rise to the perception that the investigation was undertaken to influence a contested judicial election and caused this Court to recommend the development of a new Rule pertaining to Bar Counsel's investigation

[1] The investigation began on August 28, 2020, less than an hour after Bar Counsel received an email from the campaign chairperson for sitting judges in a judicial election and ended at the time the PDRA was filed on November 18, 2021.

of candidates during elections. These are extraordinary circumstances not present in any other case that this Court has had before it and negate the propriety of imposing a sanction.

In this case, because of the investigation, the Majority makes a thoughtful recommendation (which I agree with) concerning the need for a Rule governing Bar Counsel's investigation of candidates for judicial office and in elections in general. *See* Maj. Op. at 73-79 & n.5, 300 A.3d at 211-14 & n.5. The majority opinion's suggestion is warranted and will undoubtedly enhance fairness in the disciplinary process. The majority opinion points out that no Maryland Rule concerns an investigation by Bar Counsel of a candidate in a judicial election, or requires Bar Counsel to delay such an investigation until after a judicial election. *See* Maj. Op. at 70-71, 300 A.3d at 209-10. To be sure, Maryland Rule 19-711 does not contain such a provision. There is no election-related counterpart to Maryland Rule 19-711(b)(5), which allows Bar Counsel, with the approval of the Attorney Grievance Commission, to defer action on a complaint where "a civil or criminal action involving material allegations against the attorney substantially similar or related to those alleged in the complaint is pending in any court of record in the United States, or" where "substantially similar or related allegations presently are under investigation by a law enforcement, regulatory, or disciplinary agency[.]"

In this case, though, it is of no moment that no Maryland Rule required Bar Counsel to defer action on a complaint until after a judicial election, given that there was no complaint filed against Ms. Pierre by anyone in the first place—rather, Bar Counsel initiated an investigation of Ms. Pierre on her own (in response to campaign literature), without a complaint from anyone. In other words, Bar Counsel did not receive a

complaint, which would have ordinarily required an inquiry. Bar Counsel acted completely independently in initiating an investigation based on a campaign email. Maryland Rule 19-711(b) dictates how Bar Counsel must respond to a complaint. Maryland Rule 19-711(b)(1) states that "Bar Counsel shall make an inquiry concerning every complaint that is not facially frivolous, unfounded, or duplicative." Under Maryland Rule 19-711, in the absence of a complaint, Bar Counsel was not required to open an investigation of Ms. Pierre approximately 2 months before the election and Bar Counsel had the discretion not to do so.

The unique facts of this case make it readily apparent that the circumstances under which Bar Counsel initiated and pursued the investigation gave rise to—irrespective of Bar Counsel's motivations—at a minimum, the risk that members of the public could perceive that the investigation was undertaken to influence the election in favor of the sitting judges, *i.e.*, the appearance of a conflict of interest for the Office of Bar Counsel and Bar Counsel. A reasonable member of the public could easily have perceived that, without having received a complaint or even a request for an investigation, Bar Counsel opened an investigation on her own initiative approximately 2 months before an upcoming judicial election and risked potentially intervening in the election in a manner that benefitted the sitting judges. In this case—regardless of any motivations on Bar Counsel's part—it easily could have been perceived that the Office of Bar Counsel's resources were deployed in a manner that could have been seen as intervening in a judicial election in a way that helped the sitting judges. This is an extraordinary circumstance that undermines public confidence in any sanction imposed in the case and on its own warrants the dismissal of the case.

Another extraordinary circumstance in the case is

that the record reflects that Ms. Pierre received no notice of Bar Counsel's investigation of her New York Bar application prior to the filing of the PDRA and was deprived of an opportunity to provide a response to this aspect of investigation for consideration by the Attorney Grievance Commission prior to its authorization of the PDRA. Maryland Rule 19-711(c)(1) states that "Bar Counsel shall notify the attorney who is the subject of the complaint that Bar Counsel is undertaking an investigation to determine whether the attorney has engaged in professional misconduct" and that "[t]he notice ... shall include ... the general nature of the professional misconduct ... under investigation."[2] Bar Counsel notified Ms. Pierre of the investigation in a letter dated September 7, 2020. The letter identified 12 items related to alleged misconduct but did not contain any information concerning Ms. Pierre having made a false statement by act or omission on her New York Bar application. Although Bar Counsel mentioned Ms. Pierre's judicial questionnaires and questioned her disclosure of the circuit court's issuance of a writ of body attachment in the questionnaires, the September 7, 2020 letter gave Ms. Pierre no notice that her 1999 New York Bar application was the subject of investigation.

Apart from Bar Counsel's September 7, 2020 letter, the record does not contain any other notice of alleged misconduct under investigation that Bar Counsel sent to Ms. Pierre or her counsel before filing the PDRA. As

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[2] The only exceptions to this requirement are that "Bar Counsel need not give notice of investigation to an attorney if, with the approval of the Commission, Bar Counsel proceeds under" Maryland Rule 19-737 (Reciprocal Discipline or Inactive Status), Maryland Rule 19-738 (Discipline on Conviction of Crime), or Maryland Rule 19-739 (Transfer to Disability Inactive Status). Md. R. 19-711(c)(2). These exceptions do not apply here.

a result, in his December 4, 2020 response to Bar Counsel's September 7, 2020 letter, Ms. Pierre's counsel was unable to address the omission of information about the body attachment from her New York Bar application. Additionally, when Ms. Pierre provided a statement under oath for Bar Counsel on December 18, 2020, Ms. Pierre had no notice that Bar Counsel was investigating whether she made false statements on her New York Bar application. The lack of notice to Ms. Pierre on the topic of her New York Bar application is an extraordinary deviation from the process afforded attorneys in disciplinary cases under the Maryland Rules and undercuts the validity of the imposition of a sanction for the violation—even the issuance of a reprimand.

After a thoughtful and well-written explanation of the unusual circumstances of the investigation and appropriately instructing that "[t]he Commission's and Bar Counsel's close connection to the Judiciary advise caution in taking actions against a candidate who is challenging sitting judges to avoid the possibility that members of the public may perceive such actions as motivated by a desire to support the sitting judges[,]" the Majority elects to impose the sanction of a reprimand. Maj. Op. at 78, 300 A.3d at 214. This case involves an overlay of extraordinary circumstances, *see* Maj. Op. at 70-71, 300 A.3d at 209-10, however, and too many questions remain unanswered as to Bar Counsel's investigation and use of the Maryland Rules to permit the imposition of a sanction. These questions include, but are not limited to:

1. What occurred during the less than one hour between Bar Counsel receiving the campaign email and opening the investigation?
2. Why did Bar Counsel not file a complaint against Ms. Pierre pursuant to Maryland Rule 19-711(a)?

3. Why did Bar Counsel fail to notify Ms. Pierre pursuant to Maryland Rule 19-711(c)(1) that she was under investigation for having made false statements on her New York Bar application?
4. Why did Bar Counsel cite Maryland Rule 19-711(d) and advise Ms. Pierre in the September 7, 2020 letter notifying her of the investigation that she had until September 21, 2020, to respond, that she had only 10 days to request an extension, and that ordinarily no extension would be granted for more than 10 days without good cause?
5. Did the investigation comply with Maryland Rule 19-707's requirement of confidentiality? Was it reasonably necessary for Bar Counsel to disclose the existence of the investigation to the campaign chairperson or to the sitting judges and did the existence of the investigation become more widely known before the PDRA was filed?
6. Why did Bar Counsel respond to a discovery request from Ms. Pierre by stating that Bar Counsel had "initiated a complaint" when no complaint had been filed? Was Bar Counsel's response to the request for admissions accurate and fair to opposing counsel?
7. What were the circumstances of Bar Counsel's involvement in the discovery dispute that necessitated this Court granting Ms. Pierre's emergency motion to stay and subsequently approving amendments to Maryland Rule 19-726, which rendered the dispute moot?
8. Is MARPC 1.7(a)(2), which provides in relevant part that an attorney shall not represent a client if there is a significant risk that the representation of a client will be materially limited by a personal interest of the attorney, implicated based on the extraordinary circumstances of the investigation?[3]

[3] At various points in its opinion, the Majority states "we do not

On the other side of the ledger, although Ms. Pierre violated the MARPC, the misconduct that she engaged in is unlikely to be repeated and involved no harm to any client. The conduct in one instance occurred during Ms. Pierre's candidacy in a judicial election and, by its nature, is conduct that is unlikely to recur and, in the second instance, the conduct occurred decades ago and is also unlikely to be repeated. Although Ms. Pierre's campaign tweet about sending people to jail for not

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question Bar Counsel's motives[,]" "we do not mean to suggest that the actions of Bar Counsel in this case were improperly motivated[,]" and that it does not question "the good faith" of Bar Counsel. Maj. Op. at 109, 79 n.13, 71, 300 A.3d at 233, 214 n.13, 210. Undoubtedly, these comments were made in an effort to ensure public confidence in the integrity of the attorney discipline process and in the imposition of a sanction in this case. My fear is that such statements, though well intended, under the circumstances of this case, may have the exact opposite effect.

In her exceptions, Ms. Pierre raised numerous questions about Bar Counsel's motives and good faith. For instance, Ms. Pierre asserted that "Bar Counsel's approach would protect the power of incumbents while increasing her own authority to punish their rivals" and that this Court's ruling had the potential to "give one of its most powerful officials free reign to take sides in contested elections and punish the opposition." In determining whether Ms. Pierre violated the charged MARPC, it is not necessary for this Court to reach any conclusions as to Bar Counsel's motives. And, motivation and good faith, or the lack thereof, like intent, are often difficult for a hearing judge or trial court to assess, even after extensive fact-finding special counsel to do the same. proceedings, which have not occurred here. In this case, the better course of action to ensure public confidence in the investigation and sanction imposed would be for the Court to refer the matter to the Attorney Grievance Commission for the appointment of special counsel pursuant to Maryland Rule 19-702(h)(6) to investigate the circumstances of the investigation and issue a report as to its compliance with the Maryland Rules or for the Court under its inherent supervisory authority to appoint special counsel to do the same.

speaking English was false, was not written as a statement of opinion, and was made, at a minimum, with reckless disregard for its truth or falsity, this case involved no complaint from any client and Ms. Pierre has no prior disciplinary history. In addition, Ms. Pierre candidly admitted at the disciplinary hearing that the campaign statement was false.

As to Ms. Pierre having made a false statement by omission on her New York Bar application by not disclosing the existence of the show cause order and body attachment, this conduct occurred approximately 24 years ago, in 1999. The hearing judge found that Ms. Pierre "generally enjoys a good reputation as a zealous advocate for her clients in CINA and juvenile matters[,]" and "is of generally good character[.]" It is not possible to know whether the Attorney Grievance Commission would have even authorized charging this conduct in the PDRA had Ms. Pierre been given notice of this part of the investigation and an opportunity to respond. In light of the circumstances of this case—that the case does not involve any client harm, that Ms. Pierre generally enjoys a good reputation with respect to her work, and that the conduct at issue is unlikely to be repeated—it cannot be said that sanctioning Ms. Pierre is necessary to protect the public. It must not be forgotten that the purpose of the imposition of a sanction in an attorney discipline case is to protect the public, not punish the attorney. *See, e.g., Attorney Grievance Comm'n v. Wescott*, 483 Md. 111, 127, 290 A.3d 1014, 1023 (2023).

Given the extraordinary circumstances of the case, which exceed those of *Jackson* and *Singh*, and which gave rise to the risk that members of the public could potentially conclude that an investigation was undertaken in an attempt to interfere with a judicial election and that this necessitated a recommendation for rulemaking (which I join), I would exercise the

Court's discretion to conclude that no sanction is appropriate. These circumstances, along with numerous unresolved questions about the investigation, serve to undermine confidence in the integrity of any sanction imposed in the case, and sanctioning Ms. Pierre is not necessary to protect the public.

For the above reasons, respectfully, I concur and dissent.

APPENDIX B

IN THE CIRCUIT COURT FOR
ANNE ARUNDEL COUNTY
Case No. C-02-CV-21-001655

ATTORNEY GRIEVANCE COMMISSION
OF MARYLAND
v.
MARYLIN PIERRE

Findings of Fact and Conclusions of Law
By The Honorable Donna McCabe Schaeffer

Filed: November 17, 2022

This matter came before the court on September 6-9, 2022 for a hearing on the Petition for Disciplinary or Remedial Action filed by the Attorney Grievance Commission of Maryland ("Petitioner") against Marylin Pierre ("Respondent") in accordance with Maryland Rule 19-721. Petitioner was represented by Lydia E. Lawless, Bar Counsel, and Kelly A. Robier, Assistant Bar Counsel. Respondent was represented by counsel, Irwin R. Kramer. Upon consideration of the Petition, Respondent's Answer, exhibits, witness testimony and arguments of counsel, this court makes the following Findings of Fact and Conclusions of Law.

PROCEDURAL POSTURE

Bar Counsel filed the Petition for Disciplinary or Remedial Action ("PDRA") on November 18, 2021. The Court of Appeals transmitted the matter to the trial court on November 29, 2021. The Clerk of the Court for Anne Arundel County issued a Summons on November 30, 2021. Bar Counsel served Respondent with the

PDRA, the transmittal Order, and the Summons on December 30, 2021. Respondent filed an Answer to the PDRA on January 13, 2022. On January 18, 2022, a Scheduling Conference was held via Zoom, and a four-day trial was scheduled to begin April 19, 2022.

On March 11, 2022, the Court of Appeals granted Respondent's Emergency Motion to Stay, and proceedings in the Circuit Court were stayed. In light of its amendments to Maryland Rule 19-726, the Court of Appeals ruled that the discovery issue was moot and lifted the stay on May 11, 2022. The Court of Appeals also directed the issuance of a new scheduling order. On June 7, 2022, Judge Elizabeth S. Morris recused herself from the case, and on June 10, 2022, it was reassigned to the undersigned.

On June 13, 2022 the undersigned sought a ninety day extension from the Court of Appeals to conduct the judicial hearing. On June 16, 2022, Petitioner and Respondent filed a Joint Motion for Extension of Time to Complete Hearing of Charges. The Court of Appeals granted the extension the following day, thereby extending the time limit to complete the hearing through September 30, 2022. On June 30, 2022, a Scheduling Conference was held in open court. The court extended the discovery deadline to August 19, 2022 and set the trial date for September 6, 2022. Motions in Limine were to be filed by August 22, 2022. All other deadlines remained unchanged.

On September 6, 2022, the parties appeared for the merits hearing. The hearing concluded on September 9, 2022 at which time the court ordered Petitioner to submit written Proposed Findings of Fact and Conclusions of Law to the court by September 23, 2022 and Respondent to submit her written Proposed Findings of Fact and Conclusions of Law by September 26, 2022. Subsequently, at the request of the parties, the court extended the deadline for the submission of

the Proposed Findings of Fact and Conclusions of Law for Petitioner to October 5, 2022 and for Respondent to October 7, 2022.

STANDARD OF REVIEW

Petitioner has the burden of proving the averments of the Petition and any aggravating factors by clear and convincing evidence. Md. Rule 19-727(c). Respondent has the burden of proving any affirmative defenses or matters of mitigation or extenuation by a preponderance of the evidence. *Id.*

FINDINGS OF FACT

The court makes the following findings of fact based on clear and convincing evidence.

BACKGROUND

The Respondent, Marylin Pierre, was admitted to the Bar of the Court of Appeals of Maryland on February 6, 1992. Sept. 6 Tr. 62.

New York State Higher Education Services v. Pierre

On November 16, 1993, New York State Higher Education Services Corporation ("Higher Education"), filed a Complaint against the Respondent in the Circuit Court for Montgomery County, *New York State Higher Education Services Corporation v. Pierre*, Case No. 113774-V. Pet. Ex. 2 at 11. The Complaint alleged the Respondent had defaulted on five installment promissory notes associated with student loans and owed a total of $18,892.01. Pet. Ex. 2 at 11. On November 17, 1993, the clerk of the court issued a Summons directed to the Respondent. Pet. Ex. 2 at 26.

Between February 7, 1994 and July 18, 1994, a process server returned three Affidavits of Service indicating that the Respondent had not been served. Pet. Ex. 1 at 1-2.

On August 11, 1994, Higher Education filed a Motion for Alternative Service. Pet. Ex. 1 at 2. The court granted the Motion and ordered service be effectuated by mailing a copy of the Summons and Complaint to the Respondent's last known address and posting a copy of same at her residence. Pet. Ex. 1 at 3; Pet. Ex. 2 at 46-47. On August 16, 1994, the court issued an order directing the parties to appear for a scheduling conference on December 2, 1994. Pet. Ex. 2 at 48.

On September 6, 1994, the process server returned a proof of service indicating that he had posted original service on the Respondent's property including the Complaint, Bill of Particulars, Motion for Summary Judgment, Order, and Writ of Summons. Pet. Ex. 1 at 3; Pet. Ex. 2 at 50.

On October 5, 1994, Higher Education filed a Stipulation of Settlement in which the Respondent acknowledged she owed the debt as charged and agreed to make monthly payments. The Respondent consented to the entry of a judgment in the event she defaulted on the payment plan. Pet. Ex. 2 at 51-53. The Respondent subsequently defaulted, and on September 29, 1995, the court entered judgment in favor of Higher Education and against the Respondent in the amount of $18,892.01, plus prejudgment interest in the amount of $5,464.29 and attorneys' fees in the amount of $2,833.00. Pet. Ex. 2 at 54-59.

On December 29, 1995, the court granted Higher Education's request for an order directing the Respondent to appear for examination in aid of enforcement of judgment and directed the Respondent to appear for an examination under oath on January

31, 1996, provided a copy of the order was served on the Respondent by January 16, 1996. Pet. Ex. 2 at 64-67. The Order stated: "NOTICE TO PERSON SERVED: If you refuse or without sufficient excuse neglect to obey this Order, you may be punished for contempt." Pet. Ex. 2 at 67.

On January 29, 1996, the Respondent filed a Motion for Continuance stating that she was scheduled to appear at a pretrial conference on the morning of January 31, 1996 in Prince George's County. Pet. Ex. 2 at 68-69. The Respondent's Motion was not ruled on before January 31, 1996, and the Respondent failed to appear for oral examination. Pet. Ex. 1 at 5; Pet. Ex. 2. On February 27, 1996, Higher Education requested the court issue a show cause order for contempt. Pet. Ex. 2 at 70-73. By Order filed March 5, 1996, the court directed the Respondent to appear on April 1, 1996 to show cause why she should not be held in contempt for violating the December 29, 1995 Order. Pet. Ex. 2 at 74. The Show Cause Order was to be served by March 22, 1996. Pet. Ex. 2 at 74. The Respondent was not served by March 22, Pet. Ex. 1 at 5, and on April 1, 1996 no one appeared when the case was called. Pet. Ex. 2 at 75-76. On May 15, 1995, Higher Education filed a Motion for Alternative Service, Pet. Ex. 1 at 5, which was granted by Order entered May 21, 1996. Pet. Ex. 2 at 85. Also on May 30, 1996, the court issued a second Show Cause Order directing the Respondent to appear in the circuit court on June 21, 1996 at 10:00 a.m. to show cause why she should not be held in contempt of court. Pet. Ex. 2 at 87. The Order noted, "FAILURE TO APPEAR AT HEARING MAY RESULT IN IN [*sic*] [the Respondent] BEING BROUGHT TO COURT, PER BODY ATTACHMENT." Pet. Ex. 2 at 87. The court directed that service of the Show Cause Order be effectuated by mailing a copy to the Respondent's residence and by posting a copy of same

at her residence. Pet. Ex. 2 at 85.

The Respondent failed to appear on June 21, 1996, and the circuit court issued a Writ of Body Attachment. Pet. Ex. 2 at 88-90. On July 1, 1996, the Respondent was served with the Writ of Body Attachment and taken into custody by the Sheriff. Pet. Ex. 2 at 95. After she was taken into custody, the Respondent was assigned a public defender and appeared before the circuit court. Pet. Ex. 3. The Respondent addressed the court directly stating:

> [RESPONDENT] Well, if I could speak to Your Honor for just one second. In January I received this notice that I was supposed to be in court, but it conflict, I'm an attorney, and it conflicted with a date that I had previously.
> [THE COURT] Then you knew better then. You knew better.
> [RESPONDENT] Well, if Your Honor could just bear with me for just one moment. I did a motion for continuance. It must in the file somewhere, like it's in the regular file. And then it was continued to a date in March. And in March, I had a baby in March, and the baby died just around that time, and I, even now (unintelligible) talk about it, so then that's why I didn't show up.
> [THE COURT] Judge Beard issued a body attachment for you.
> [RESPONDENT] Yes, because I didn't show up.
> [THE COURT] Yes.
> [RESPONDENT] I just can't handle certain things emotionally right now.

Pet. Ex. 3 at 136-37.

The Respondent posted a bail bond in the amount of $500.00 and was released. Pet. Ex. 2 at 96-102; Pet. Ex. 3 at 138-39. The Respondent signed the bail bond

acknowledging that she had been charged with contempt. Pet. Ex. 2 at 96; Sept. 6 Tr. 72.

On July 21, 1997, Higher Education filed a second request for an order directing the Respondent to appear for examination. Pet. Ex. 2 at 107-08. On August 14, 1997, the court granted the request and ordered the Respondent to appear on September 24, 1997, provided she was served by September 12, 1997. Pet. Ex. 2 at 110. On September 25, 1997, the process server filed a proof of non-service. Pet. Ex. 1 at 9. On March 25, 2004, Higher Education filed a Line of Satisfaction. Pet. Ex. 2 at 133.

NEW YORK BAR APPLICATION

On or about March 2, 1999, the Respondent filed an Application for Admission to the Bar of the New York Supreme Court, Appellate Division, Third Department ("Bar Application"). Pet. Ex. 4; Sept. 6 Tr. 75.

Question 16 of the Bar Application stated:

> Have you ever been arrested, taken into custody, charged with, indicted, convicted or tried for, or pleaded guilty to, the commission of any felony or misdemeanor or the violation of any law or ordinance, except traffic or parking violations, or been the subject of any juvenile delinquency or youthful offender proceeding?

The Respondent answered "no" to Question 16. Pet. Ex. 4 at 149. The Petitioner contends that the Respondent knowingly and intentionally answered Question 16 falsely. The Respondent contends that she was not required to disclose the July 1, 1996 incident because it was her belief that Question 16 only sought information about criminal cases, Sept. 6 Tr. 76; Sept. 7 Tr. 77; Sept. 8 Tr. 64-65, because she does not "have a

criminal record," Sept. 7 Tr. 76, and because she believed she was taken into custody on July 1, 1996 "[f]or nonpayment of student loans." Sept. 6 Tr. 75. The Respondent claims further that she did not disclose the July 1st incident in response to Question 16 because she "revealed the information in Question 17." Sept. 6 Tr. 76. The court accepts Respondent's testimony, and finds that she did not knowingly and intentionally answer Question 16 falsely, as it can reasonably be interpreted as applying to criminal proceedings.

Question 17(b) of the Bar Application stated, in relevant part:

> State whether you have ever failed to answer any ticket, summons or other legal process served upon you at any time. If so, was any warrant, subpoena or further process issued against you as a result of your failure to respond to such legal process?

The Respondent answered "yes" to Questions 17(b) and stated further:

> I had a court date in a civil matter involving student loans. I failed to report to court on that date because I was in the hospital. A summons was sent to my house.
> I was suppose [*sic*] to report to court as a defendant in a civil matter involving student loans in the Circuit Court of [*sic*] Montgomery County, Maryland. I did not show up because I was hospitalized (for 4 days) and I forgot. A summons was sent to my house and I answered it to the Court's satisfaction. No further action was taken on the summons since I have made arrangements to pay the student loan.

Pet. Ex. 4 at 149. The Petitioner contends that the Respondent's response to Question 17(b) was knowingly and intentionally false and misleading, specifically that a "summons" was sent to her house, that she "answered it to the Court's satisfaction[,]" and that she failed to disclose that the court issued a writ of body attachment for her failure to appear in response to a show cause order and she was detained, brought to court by the Sheriff and charged. The Respondent's argument essentially boils down to a claim that a "summons" is equated to a show cause order and a writ of body attachment, that she did not "have the benefit" of the relevant records to accurately answer the question, and that she disclosed enough information about the matter that would enable "anybody to follow up on the case if they had questions about it." Sept. 6 Tr. 76-86; Sept. 7 Tr. 79. The court rejects the Respondent's testimony and finds that she knowingly and intentionally sought to mislead the New York admissions authorities by disclosing only that a "summons" was sent to her house and that she "answered it to the Court's satisfaction[,]" with no further detail. The court finds that the Respondent misrepresented by omission that the court issued a writ of body attachment for her failure to appear in response to a show cause order, and that she was detained and brought to court by the Sheriff and charged.

Having found that the Respondent knowingly and intentionally provided a misleading answer to Question 17(b), the court finds that the Respondent falsely swore that her answers were complete and truthful when she signed the Bar Application as follows:

> I, Marylin Pierre, being duly sworn, say: I have read the foregoing questions and have fully, truthfully and accurately answered the same. The

> foregoing answers are true of my own knowledge, except if stated to be made upon information and belief, and as to such answers, I believe them to be true.

Pet. Ex. 4 at 152. On or after July 27, 1999, the Respondent was admitted to the New York Supreme Court, Appellate Division, Third Department. Pet. Ex. 6 and Pet. Ex. 7 at 161.

MARYLAND JUDICIAL APPLICATIONS

Between March 2012 and August 2017, the Respondent applied for numerous judicial appointments on the District Court of Maryland for Montgomery County and the Circuit Court for Montgomery County. As part of the application process, the Respondent filed eight Confidential Personal Data Questionnaires with the Administrative Office of the Courts for transmittal to the Trial Courts Judicial Nominating Commission. The Questionnaires were dated as follows: (1) March 5, 2012 (District Court); (2) October 15, 2013 (District Court); (3) November 14, 2013 (Circuit Court); (4) September 26, 2014 (District Court); (5) September 26, 2014 (Circuit Court); (6) August 5, 2015 (Circuit Court); (7) July 12, 2016 (Circuit Court); and (8) August 21, 2017 (Circuit Court). Pet. Exs. 7-14.

Higher Education Disclosures
Questions 28, 29 & 32

Each of the eight Questionnaires included the following:

> **Question 28:** Have you ever been arrested, charged, or held by federal, state, or other law

> enforcement authorities for violation of any federal law or regulation, state law or regulation, or county or municipal law, regulation or ordinance? If so, provide details. DO NOT include motor vehicle offenses for which a fine of $50.00 or less was imposed.

On her March 5, 2012 Questionnaire, in response to Question 28, the Respondent stated: "New York State Higher Education Services Corporation filed a body attachment for nonpayment of student loans and I was detained for a couple of hours on July 1, 1996." Pet. Ex. 7 at 170. On each of the seven subsequent Questionnaires, the Respondent failed to disclose any information about the July 1, 1996 incident in response to Question 28. Pet. Ex. 8 at 187-88; Pet. Ex. 9 at 206; Pet. Ex. 10 at 225; Pet. Ex. 11 at 243; Pet. Ex. 12 at 263; Pet. Ex. 13 at 284; Pet. Ex. 14 at 304-05.

The Petitioner contends that the Respondent knowingly and intentionally failed to disclose that she was taken into custody on July 1, 1996 and charged with contempt. The Respondent contends that she was not required to disclose the July 1, 1996 incident in response to Question 28 "because the case was a civil case, and [Question 28] really asked about criminal cases." Sept. 6 Tr. 89. The Respondent argues that she properly disclosed information about the Higher Education case in response to Question 29. Sept. 6 Tr. 89. Question 29 is identical on each Questionnaire: "Give particulars of any litigation, including divorce, in which you personally are now or previously have been either a plaintiff or defendant. For each, list dates, the names of the moving parties, the number of the case, the court, and the grounds for the litigation." In addition to providing the case caption, the totality of the information provided by the Respondent on the seven Questionnaires filed between October 15, 2013

and August 21, 2017 was as follows: "New York State Higher Education filed a suit for nonpayment of student loans against me on November 16, 1993. I was able to pay them off and they filed a Line of Satisfaction on March 25, 2004." Pet. Ex. 8 at 188; Pet. Ex. 9 at 206; Pet. Ex. 10 at 225; Pet. Ex. 11 at 243; Pet. Ex. 12 at 263; Pet. Ex. 13 at 284; Pet. Ex. 14 at 305; Sept. 6 Tr. 95-97.

The court accepts the Respondent's testimony and explanation and finds that, a reasonable person could have interpreted Question 28 to apply to criminal actions only. With respect to Question 29, the court finds that Respondent's answer was sufficient.

However, each of the eight Questionnaires also included the following:

> **Question 32:** Is there any other information concerning your background that might be considered detrimental or that otherwise should be taken into consideration by the Commission in evaluating your application? If so, provide details, including a description of each incident with relevant dates, names and addresses.

In response to Question 32, the Respondent stated "no" on each of the eight Questionnaires. The Petitioner contends that the Respondent, in response to Question 32 on each of the eight Questionnaires, knowingly and intentionally failed to disclose the following information that might be considered detrimental: (1) on January 31, 1996, she failed to appear for oral examination without obtaining leave of court; (2) on May 30, 1996, the circuit court issued a Show Cause Order based upon her failure to appear for oral examination on January 31, 1996; and (3) on June 21, 1996, she failed to appear for the show cause hearing and the circuit court issued a writ of body

attachment. Petitioner contends further that, on the seven Questionnaires filed between October 15, 2013 and August 21, 2017, the Respondent, having failed to disclose the July 1, 1996 incident in response to Question 28 also knowingly and intentionally failed to disclose the incident in response to Question 32.

Question 32 is a catch-all question, essentially requiring the applicant to provide any detrimental information not otherwise disclosed. Had the Respondent disclosed her failure to appear, the Show Cause Order and the Body Attachment in the Higher Education case in response to Questions 28 or 29, she would not have been required to disclose the information again in response to Question 32. However, she did not do so. Consequently, she was required to disclose the detrimental information in response to Question 32 on each Questionnaire.

The court finds that on each of the seven Questionnaires filed between October 15, 2013 and August 21, 2017, the Respondent failed to disclose that she had been detained on July 1, 1996 as the result of a body attachment and charged with contempt—a fact that was certainly detrimental—in response to Question 32.

Network Engineering Employment
Question 14

Each of the eight Maryland Questionnaires included the following, in relevant part:

> Question 14: Describe chronologically your law practice and experience after your graduation from law school, including, but not limited to, the following items:
>
> ***
>
> []The names and addresses of law firms or offices,

companies, or governmental agencies with which you have been connected, and the dates and nature of your connection with each.
[]The reasons for termination of employment and/or practice and any other relevant details.

The Respondent responded to Question 14, in relevant part, as follows:

Questionnaire	Response
03/2012 (district)	Corporate Counsel, Network Engineering, Inc., Fort Washington, Maryland December 1997 to August 1999, Drafted, negotiated, and administered a variety of commercial and governmental contracts for a fast growing 8(a) firm. The 8(a) program is small business development program that was created by the United States Small Business Administration to assist small minority and women owned businesses. I was released upon the employer learning that I was planning to leave.
10/2013 (district) 11/2013 (circuit) 09/2014 (district) 09/2014 (circuit) 08/2015 (circuit)	Corporate Counsel, Network Engineering, Inc., Fort Washington, Maryland December 1997 to August 1999, Drafted, negotiated, and administered a variety of commercial and governmental contracts for fast growing 8(a) firm. The owner was upset that I was planning on leaving and so he let

	me go.
07/2016 (circuit) 08/2017 (circuit)	Corporate Counsel, Network Engineering, Inc., Fort Washington, Maryland December 1997 to August 1999, Drafted, negotiated, and administered a variety of commercial and governmental contracts for fast growing 8(a) firm. The company no longer had a need for my services.

The Petitioner contends that the Respondent knowingly and intentionally misrepresented her job title and job description associated with her Network Engineering employment that she was not employed as an attorney or "corporate counsel," and she did not provide any legal services to the company. The Respondent maintains that the information submitted on the eight Questionnaires is accurate, although she did not provide any evidence of her role as "corporate counsel," aside from her own testimony.

The court finds the Respondent to not be credible on this issue and finds that on each of the eight Questionnaires, the Respondent knowingly and intentionally misrepresented that she worked as "corporate counsel" for Network Engineering. In finding the Respondent not to be credible, the court has considered that the Respondent failed to disclose her purported legal employment with Network Engineering anywhere on her New York Bar Application which was filed during the time period she claims to have been employed as corporate counsel. Pet. Ex. 4 at 146. When the Respondent was initially asked by Bar Counsel why she failed to disclose her Network Engineering employment on that Bar Application, she testified, "I don't know." Sept. 7 Tr. 15.

Later, in response to follow-up questions, the Respondent testified that the New York Bar Application did not require disclosure of the employment. Sept. 8 Tr. 65-67. However, Question 9 of the Bar Application states, "Are you now, or have you ever been employed in or associated with any law office, law department or legal institution? If so, enumerate all such employments, associations, occupation, service and past and present practice in the legal profession in chronological order. Include employments by members of family or other relatives and employments with or without monetary compensation." Pet. Ex. 4 at 146. Question 9 clearly calls for a complete statement of an applicant's legal employment, and the court does not accept Respondent's contention that she did not disclose her "corporate counsel" position because Network Engineering is not a law office, law department or legal institution. At a minimum, if Respondent was truly corporate counsel, her employment would have been in a law department, even if it was a department of one, and she would have disclosed it.

The document introduced regarding Petitioner's position at Network Engineering is an unsigned and undated letter purportedly from Network Engineering offering her a position as "Senior Member – Technical Staff." Pet. Ex. 48. The Respondent was unable to describe, with any detail, any legal work she claims to have performed as "corporate counsel." The majority of the work the Respondent was able to describe was not legal work. It was primarily human resources functions which is consistent with the purported letter. Sept. 6. Tr. 161-63; Sept. 7 Tr. 6-15, 92-102. Ultimately, the Respondent was unable to articulate to this court the type of work Network Engineering was engaged in, testifying generally that the company "ha[d] different employees who provided different technical services to

different federal agencies." Sept. 7 Tr. 89.

The Respondent suggests that it is reasonable that she cannot remember specifics about her employment dating back to 1997. *See* Sept. 7 Tr. 95-96. Contrary to the Respondent's argument, she was not asked about her employment in 1997, she was questioned about affirmative representations she made about her job duties and functions in the Questionnaires submitted between 2012 and 2017, Pet Ex. 14, and further representations that she made during discovery in this proceeding in 2022. Sept. 7 Tr. 6-14. For example, Petitioner's Interrogatory No. 5 states: "State with particularity all tasks you performed as an employee of Network Engineering, Inc. and include the identity of any person with discoverable information associated with any task performed." Sept. 7 Tr. 9. In response, the Respondent stated that she drafted an employee handbook for Network Engineering. *Id.* At 8. During her July 1, 2022 deposition in this matter, she testified that she spent a significant amount of time drafting the employee handbook, that she maintained different versions or drafts of the handbook on her computer, and that she would produce those drafts to Bar Counsel. However, she never did so. When questioned why by Bar Counsel, Petitioner stated that she "couldn't find it." Sept. 7 Tr. 8-10. In further response to Interrogatory No. 5, the Respondent stated that she "researched trademark issues pertaining to company name." Sept. 7 Tr. 9. When asked to describe specifically how she researched trademark issues, she testified that she went to the Office of Patent and Trademark, "looked up the information that [she] thought [she] needed," "filled out the information," and asked the President of Network Engineering to "continue with the process." Sept. 7 Tr. 10-11. When asked about what she "filled out," the Respondent testified that she could not recall. Sept. 7 Tr. 11. The

Respondent's answer to Interrogatory No. 5 was different from her testimony at deposition, where she testified affirmatively that she did not do trademark work, but rather copyright work. Sept. 7 Tr. 12-13. At trial, the Respondent was unable to describe either a trademark or a copyright to the court or distinguish between the two. Sept. 7 Tr. 13.

The Respondent is not credible on this issue, and the court finds that on each of the eight Questionnaires, the Respondent knowingly and intentionally misrepresented that she was "corporate counsel" to Network Engineering and that she performed legal services for the company.

The Respondent's Law Practice

Question 16 on each of the eight Questionnaires requested information about the Respondent's experience practicing law. Question 16 included the following, in relevant part:

> *With respect to the last five years*:[1]
> a. Did you appear in court regularly, occasionally, or not at all? If the frequency of your appearances in court has varied during this period, please describe.
> b. What percentage of your appearances was in the following courts?
> 1. Federal Appellate Courts. 2. Other Federal Courts. 3. State Appellate Courts. 4. State Circuit Courts. 5. The District Court of Maryland, 6. Other (Specify)[?]

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[1] Pet. Ex. 7 at 163; Pet. Ex. 8 at 181; Pet. Ex. 9 at 200; Pet. Ex. 10 at 219; Pet. Ex. 11 at 237; Pet. Ex. 12 at 256; Pet. Ex. 13 at 277; Pet Ex. 14 at 297 (emphasis added).

c. What percentage of your litigation was
1. Civil [or] 2. Criminal[?]
d. State the number of cases you tried to verdict or judgment (rather than settled) and indicate whether you were sole counsel, chief counsel, or associate counsel.
e. What percentage of these trials was
1. Jury [or] 2. Non-jury[?]

The Petitioner produced evidence of every available case where the Respondent entered her appearance in any court in which she claimed she practiced from her admission in 1992 through the date of the last Questionnaire, August 2017. Pet. Exs. 42-53. At trial, the Respondent testified that she believed Question 16 sought information about all cases she had handled from the time of her admission to the bar to the date of the relevant Questionnaire. Sept. 8 Tr. 79. The Respondent testified that she "made a mistake" on each of the eight Questionnaires when she failed to limit her response to the preceding five years, Sept. 6 Tr. 138, and claimed that, after submitting the first Questionnaire, she did not re-read the questions in the subsequent seven applications because she "thought [she] knew what the questions were asking," Sept. 8 Tr. 79, and she simply "thought about what changes needed to be made, what additions and things of that sort." Sept. 6 Tr. 139.

Question 16(b)

In response to Question 16(b), the Respondent provided the following information:

Respondent's Answers Question 16(b) What percentage of your appearance was in the following courts?								
	03/2012 Ex. 7	10/2013 Ex. 8	11/2013 Ex. 9	09/2014 Ex. 10	09/2014 Ex. 11	08/2015 Ex. 12	07/2016 Ex. 13	08/2017 Ex. 14
Federal Appellate Courts	0%	0%	0%	0%	0%	0%	0%	0%
Other Federal Courts	3%	0%	0%	0%	0%	0%	0%	0%
State Appellate Courts	2%	5%	5%	0%	0%	0%	1%	1%
State Circuit Courts	55%	55%	55%	70%	70%	70%	70%	70%
District Court of Maryland	30%	20%	20%	10%	10%	10%	10%	10%
Other (Specify)	10% DC/NY	20% DC/NY	20% DC/NY	20% DC	20% DC	20% DC	19% DC/NY	19% DC/NY

Question 16 plainly begins "*With respect to the last five years.*" Respondent's various answers to Question 16(b) over the years are wildly inconsistent. For example, on her March 2012 Questionnaire, the Respondent indicated that 3% of her appearances were in "Other Federal Courts," Pet. Ex. 7 at 164, which, she identified as the United States District Court for the District of Maryland and the United States District Court for the District of Columbia. Sept. 6 Tr. 98-99; Sept. 8 Tr. 79-80. On her very next Questionnaire, dated October 2013, and the six Questionnaires filed thereafter, the Respondent reported that 0% of her appearances were in "Other Federal Courts." Pet. Ex. 8 at 182. Similarly, on her 2013 Questionnaires, she indicated that 5% of her practice was in State Appellate Courts, Pet. Ex. 8 at 182; Pet. Ex. 9 at 200, while on the following Questionnaire filed less than a year later, she indicated that none of her practice was in State Appellate Courts. Pet. Ex. 10 at 219. When questioned about this discrepancy, the Respondent failed to provide any explanation, stating simply, "I

don't know." Sept. 6. Tr. 153.

The court cannot find that the Respondent, on each of the eight Questionnaires, knowingly and intentionally misrepresented her experience in response to Question 16. If her inaccuracies were the result of a conscience decision to mislead, the court believes she would not have been so carelessly inconsistent. Contrary to Petitioner's contention, the court finds that the inconsistencies belie the claim of knowing and intentional misrepresentation. Careless, haphazard, sloppy, and inaccurate all aptly describe the Respondent's answers.[2] However, the court believes she would have been far more careful and calculating had she intended to mislead. The Respondent admitted that she was in possession of her client files for the relevant time periods and failed to provide any explanation for why she did not review her own records in completing the Questionnaire. Sept. 6 Tr. 128; Sept. 6 Tr. 149-50, 157-58.

The court has no question that the Respondent's answers to Question 16(b) regarding the number of cases she tried to verdict or judgment and the number of jury trials she handled were inaccurate. Petitioner's evidence shows that the Respondent did not represent any client in any federal court,[3] state appellate court,[4] District of Columbia Superior Court,[5] or any New York

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[2] From Petitioner's Exhibits 10, 11 and 12 it appears the Respondent even used the wrong form for three of her judicial applications, as all three of these Exhibits are Appellate Court Applications and the Respondent applied exclusively for trial court positions.

[3] The Respondent represented 54 clients in the U.S. District Courts between 1992 and 2004. Pet. Ex. 44.

[4] The Respondent represented one client in the Court of Special Appeals in 2003/2004, Pet. Ex. 43, and ten clients in the District of Columbia Court of Appeals between 2000 and 2003. Pet. Ex. 47.

[5] The Respondent represented 14 clients in the Superior Court between 2000 and 2006. Pet. Ex. 47.

court[6] during the five years prior to submission of each of the eight Questionnaires. The evidence additionally shows that the Respondent, in the five years prior to submission of each of the eight Questionnaires, entered her appearance in only a handful of cases in the District Court of Maryland: 2006 (3), 2007 (3), 2008 (2), 2009-2015 (0), 2016 (1). Pet. Ex. 45.[7]

At trial, the Respondent argued that the filing dates for the circuit court cases do not accurately reflect whether she was still involved in the matter during any of the relevant time periods. Petitioner's Exhibit 49 contains the docket entries for the cases included in the summary admitted as Petitioner's Exhibit 46.

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[6] The Respondent produced evidence that she represented 1 client in New York state court in 2020. R's Ex. C at R-182. She testified that she represented another client in 2021 and that she entered her appearance in one case in New York prior to 2020. She did not provide any documentation to support her claim, was unable to recall in which court she entered her appearance and was unable to identify the case. Sept. 6 Tr. 100-101. The court finds the Respondent to not be credible on this issue and rejects her testimony that she ever represented a client in a New York court prior to 2020.

[7] In addition to the cases noted during the relevant time periods, the Respondent entered her appearance in 35 cases in the District Court between 1992 and 2005.

A review of the docket entries shows that the Respondent was involved in the following circuit court cases:[8]

	New Mont.	Old Mont.	New PG	Old PG	New Fred.	Old Fred.	New Other	TOTAL
2006[9]	25	n/a	4	n/a	1	n/a	0	30
2007	18	49	9	7	3	17	1	104
2008	21	39	11	11	7	10	0	99
2009	15	33	10	18	7	14	0	97
2010	25	31	11	20	4	15	0	106
2011	21	35	11	21	2	14	1	105
2012	23	42	8	27	5	9	1	115
2013	14	34	5	27	1	8	0	89
2014	11	26	2	22	1	4	0	66
2015	9	23	3	17	1	6	0	59
2016	6	17	0	12	4	2	1	42
2017	5	12	1	8	1	6	0	33

[8] "New" cases reflect the filing dates for cases filed during the relevant calendar year, those figures are reflected on Petitioner's Exhibit 46. "Old" cases reflect cases that were filed in a prior year and remained open as of January 1 of the year indicated. Those figures are found in the docket entries at Petitioner's Exhibit 49 and the updated summary attached to the Petitioner's Proposed Findings of Fact and Conclusions of Law as Appendix 1. For example, as of January 1, 2007, the Respondent had 17 pending cases in Frederick County and, during 2007 she entered her appearance in 3 additional cases in Frederick County.

The correct response to Question 16(b) is as follows:

Correct Answers Question 16(b) What percentage of your appearance was in the following courts?								
	03/2012 Ex. 7	10/2013 Ex. 8	11/2013 Ex. 9	09/2014 Ex. 10	09/2014 Ex. 11	08/2015 Ex. 12	07/2016 Ex. 13	08/2017 Ex. 14
Federal Appellate Courts	0%	0%	0%	0%	0%	0%	0%	0%
Other Federal Courts	0%	0%	0%	0%	0%	0%	0%	0%
State Appellate Courts	0%	0%	0%	0%	0%	0%	0%	0%
State Circuit Courts	99+%	99+%	99+%	99+%	99+%	99+%	99+%	99+%
District Court of Maryland	-1%	-1%	-1%	0%	0%	0%	-1%	-1%
Other (Specify)	0%	0%	0%	0%	0%	0%	0%	0%

Question 16(c)

Question 16(c) The Respondent answered Question 16(c) (What percentage of your litigation was 1. Civil or 2. Criminal?) as follows:

	Civil	Criminal
03/2012 (district)	75%	25%
10/2013 (district)	75%	25%
11/2013 (circuit)	75%	25%
09/2014 (district)	85%	15%
09/2014 (circuit)	85%	15%
08/2015 (circuit)	85%	15%
07/2016 (circuit)	90%	10%
08/2017 (circuit)	90%	10%

The evidence shows that the Respondent, in the five years prior to submission of each of the eight Questionnaires, handled a total of 6 criminal cases in the District Court of Maryland: 2005 (0), 2006 (3), 2007 (1), 2008 (1), 2009-2015 (0), 2016 (1). R Ex. C at R-60. The accurate answers, as they should have been reported by the Respondent are as follows:

	Civil	Criminal
03/2012 (district)	99+%	-1%
10/2013 (district)	99+%	-1%
11/2013 (circuit)	99+%	-1%
09/2014 (district)	99+%	-1%
09/2014 (circuit)	99+%	-1%
08/2015 (circuit)	100%	-1%
07/2016 (circuit)	99+%	-1%
08/2017 (circuit)	99+%	-1%

However, the court finds, for the same reason it so found with respect to Question 16(b), that Respondent's misrepresentations were not intentional or knowing. They were sloppy.

Question 16(d)

The Respondent answered Question 16(d) as follows:

Respondent's Answers	
Question 16(d) State the number of cases you tried to verdict or judgment (rather than settled) and indicate whether you were sole counsel, chief counsel, or associate counsel.	
03/2012 Ex. 7	I have tried over five hundred cases to verdict or judgment. I have been the sole or lead counsel on all but about five of the cases.
10/2013 Ex. 8	I have tried over 430 hundred cases to verdict or judgment. I have been the sole attorney on all the cases except for about 20 of those cases.
11/2013 Ex. 9	I have tried over 430 hundred cases to verdict or judgment. I have been the sole attorney on all the cases except for about 20 of those cases.
09/2014 Ex. 10	I have tried over 450 hundred cases to verdict or judgment. I have been the sole attorney on all the cases except for about 20 of those cases.
09/2014 Ex. 11	I have tried over 450 hundred cases to verdict or judgment. I have been the sole attorney on all the cases except for about 20 of those cases.
08/2015 Ex. 12	I have tried over 480 hundred cases to verdict or judgment. I have been the sole attorney on all the cases except for about 20 of them.
07/2016 Ex. 13	I have tried over 500 hundred cases to verdict or judgment. I have been the sole attorney on all the cases except for about 20 of them.
08/2017 Ex. 14	I have tried over 500 hundred cases to verdict or judgment. I have been the sole attorney on all the cases except for about 20 of them.

The Respondent concedes that she did not try the number of cases reported during any of the relevant five year periods. Sept. 6 Tr. 122-123, 135, 145, 151.

She testified that she provided her "best guess" as to the number of clients she represented or cases she "was involved in" and that she "tried to guesstimate on the lower side." Sept. 6 Tr. 123-27. She claimed that she understood the question to request information about the "number of cases" she handled since her admission to the bar. Sept. 6. Tr. 128. The court rejects the Respondent's testimony on this question as it strains the court's credulity to accept that the Respondent, a trial attorney for over twenty years as of the date of her first Maryland Judicial application, could not distinguish between 'handling' a case and 'trying a case to judgment or verdict.'

The vast majority of the Respondent's cases were in the Circuit Court for Montgomery County. Pet. Ex. 46 at 468. The Circuit Court for Montgomery County docket entries indicate whether the Respondent appeared for any contested hearing or trial. Pet. Ex. 46; Sept. 6. Tr. 143. According to the docket entries set forth on Petitioner's Exhibit 46, in the five years prior to submission of each of the eight Questionnaires, the Respondent handled the following contested hearings or trial in Montgomery County: 2006 (6),[10] 2007 (3),[11] 2008 (2),[12] 2009 (3),[13] 2010 (2),[14] 2011 (4),[15] 2012 (4),[16] 2013 (0), 2014 (6),[17] 2015 (3),[18] 2016 (0), 2017 (0). There was no evidence of any additional cases that Respondent tried to judgment during the relevant time periods. In twelve years, Respondent tried a total of

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[10] 2006 cases identified on lines 253, 254, 269, 277, 287, and 289.
[11] 2007 cases identified on lines 209, 268, and 292.
[12] 2008 cases identified on lines 313 and 328.
[13] 2009 cases identified on lines 334, 335, and 353.
[14] 2010 cases identified on lines 342 and 361.
[15] 2011 cases identified on lines 363, 367, 373, and 389.
[16] 2012 cases identified on lines 340, 396, 399, and 414.
[17] 2014 cases identified on lines 427, 428, 431, 435, 438, and 444.
[18] 2015 cases identified on lines 433, 450, and 451.

thirty-three cases in Montgomery County. Even accepting Respondent's testimony that she mistakenly did not limit her answers to the preceding five years, Respondent averaged fewer than three trials per year in Montgomery County. It is therefore inconceivable that she mistakenly calculated 500 trials over the entirety of her twenty year career.

Question 16(e)

The Respondent answered Question 16(e) (What percentage of these trials was 1. Jury or 2. Non-jury?) as follows:

	Jury	Non-Jury
03/2012 (district)	5%	95%
10/2013 (district)	5%	95%
11/2013 (circuit)	5%	95%
09/2014 (district)	1%	99%
09/2014 (circuit)	1%	99%
08/2015 (circuit)	1%	99%
07/2016 (circuit)	1%	99%
08/2017 (circuit)	1%	99%

The Respondent admitted that she has only tried two jury trials in her career. Sept. 6 Tr. 103. One case was tried in 1994 and carried over to 1995, Pet. Ex. 50, and the second was tried in 1995. Pet. Ex. 51. In the five years preceding the submission of each Questionnaire, the Respondent did not try a single case before a jury.

The court cannot accept that Respondent did not recall that she had had only two jury trials throughout her career and finds that on each of the eight Questionnaires, she knowingly and intentionally misrepresented the number of cases she tried to a jury

or otherwise. Any attorney who has had so few jury trials would certainly remember such a de minimis number. When reviewed in light of Respondent's representation in response to Question 16(d) that she had tried anywhere from 430-500 cases as of her final application in 2017, this misrepresentation becomes even more obvious. Therefore, the court finds that the Respondent made knowing and intentional misrepresentations about her experience for the purpose of bolstering her judicial applications in responding to Questions 16(d) and 16(e).

2020 JUDICIAL CAMPAIGN

On July 2, 2019, the Respondent filed a Certificate of Candidacy and became a candidate for Judge of the Circuit Court for Montgomery County. Pet Ex. 15. The Respondent sought election to one of the four available seats on the circuit court and ran against a slate of four sitting judges (the "sitting judges"). Sept. 7 Tr. 18.

Twitter Account

As part of her 2020 campaign, the Respondent established a public twitter account, @Pierreforjudge. Pet. Ex. 20; Sept. 7 Tr. 19-20. The account profile included a picture of the Respondent, a banner "Marylin Pierre for Judge," and a pinned tweet stating, in part: "My name is Marylin Pierre. Please vote for me for Montgomery County Circuit Court judge." Pet. Ex. 20; Sept. 7 Tr. 18-19. The Respondent testified that her campaign manager, Luramon Jean-Pierre, managed the twitter account. Sept. 7 Tr. 19; Sept. 8 Tr. 18. The court finds that the Respondent was at all times responsible for the campaign twitter account.

On May 20, 2020, @Pierreforjudge tweeted:

> Also there are some sitting judges who are only English speakers send people to jail because they could not speak English and discriminate against people based on skin color, country of origins, religious backgrounds or sexual orientations. Moco is cosmopolitan & need more!

Pet. Ex. 16. (all *sic* in original).

The Petitioner contends that the Respondent's statement that the sitting judges "send people to jail because they could not speak English" was made with reckless disregard as to its truth or falsity and impugned the integrity of the sitting judges. The Respondent agrees that the statement was false but claims that she did not write or authorize the tweet. Sept. 7 Tr. 21-24. She claims further that, as of May 2020, she misremembered that a circuit court judge had in fact threatened that if her client did not learn English, the client would be held in contempt and sent to jail. (Emphasis supplied). Sept. 7 Tr. 24-26. The court finds that while Respondent may not have personally authored the May 20th tweet, she authorized the tweet to be sent from her campaign twitter account and provided Mr. Jean-Pierre with the information contained in the tweet. In finding the Respondent authorized the tweet, the court has considered that the Respondent told Mr. Jean-Pierre about the case and events that were the subject matter of the tweet—namely her recollection of what occurred in the 2004 and 2005 hearings in a CINA matter. Sept. 7 Tr. 25-26. The Respondent admits that she was in possession of the relevant client file which would have contained any court orders and that she failed to review the file prior to providing Mr. Jean-Pierre with this misinformation. Sept. 7 Tr. 26-27. The court finds that her failure to verify what she claims was a mistaken recollection demonstrates that the tweet was

published with reckless disregard for its truth or falsity.

On May 23, 2020, @Pierreforjudge tweeted:

> The Sitting Judges are somewhat diverse in that they are black, Asian, gay, and straight, and men and women. But they are not really diverse. They are an in-group. Most of them have worked at the same law firm, go to the same church, and are related by marriage.

Pet. Ex. 17.

The Petitioner contends that the Respondent's statements that "[m]ost of [the sitting judges] have worked at the same law firm, go to the same church, and are related by marriage" were made with reckless disregard as to their truth or falsity and impugned the integrity of the sitting judges.

The Respondent agrees that the statement that "[m]ost of [the sitting judges] have worked at the same law firm, go to the same church, and are related by marriage" was false but claims that she did not write or authorize the tweet. Sept. 7 Tr. 27-28, 35. As noted above, the court rejects the Respondent's testimony and finds that she authorized the tweet. The Respondent admitted that she provided Mr. Jean-Pierre with information that formed the basis of the tweet. Sept. 7 Tr. 29.

At trial, the Respondent appeared to argue that the statements were true or, in the alternative, accurately stated her opinion or belief about what an "in-group" is or how she defines "diversity." Sept. 8 Tr. 52. Mr. McAuliffe testified that the statements contained in the May 23 tweet were false based on personal knowledge and his relationship with not only the four sitting judges but also the broader bench of the Circuit Court for Montgomery County. Sept. 8 Tr. 172- 174.

The Respondent admitted that she did not know whether the four sitting judges worked at the same law firm, Sept. 7 Tr. 28, or if any of the sitting judges were related by marriage. Sept. 7 Tr. 29-30. On examination by her attorney, the Respondent testified that when she referred to "the sitting judges" she was "talking about Montgomery County judges in general." Sept. 8 Tr. 19. The Respondent testified that it was her belief that many of the "Montgomery County judges in general" worked for the same law firm or go to the same church or are related by marriage. Sept. 8 Tr. 20. In explaining her belief that sitting judges are related by marriage, the Respondent was only able to point to one instance: she claims to have heard at Judge Fogleman's investiture that he is related by marriage to one sitting circuit court judge and one retired circuit court judge. Sept. 7 Tr. 32-33. The Respondent admitted that she took no action to verify whether or not the two judges were actually related by marriage. Sept. 7 Tr. 34-35.

In explaining that she believed that the four sitting judges were members of the same church, the Respondent testified that a member of the bar told her that the four judges attended the same church and that she took no further action to verify whether the information was accurate. Sept. 7 Tr. 28-29. The Respondent failed to take any reasonable action to verify the statements prior to authorizing the tweet.

While the Respondent may have a subjective belief that the sitting judges "are not really diverse" and are part of "an in-group," she is not charged with violating any Rule for stating an opinion. She is charged with making misrepresentations with reckless disregard for the statements' truth or falsity, specifically, "Most of [the sitting judges] have worked at the same law firm, go to the same church, and are related by marriage." The court finds that the statement was not one of

opinion and that the Respondent, on May 23, 2020, with reckless disregard for its truth or falsity stated that "Most of [the sitting judges] have worked at the same law firm, go to the same church, and are related by marriage." The Respondent's attempts to disclaim or explain the May 23 tweet are not supported by the evidence.

Respondent's Statements About Her Qualifications

In or about May 2020, the Respondent's campaign sent the following text message to Montgomery County voters:

> Hi, my name is Marylin Pierre!
> I've spent the last 28 years practicing civil and criminal law in Maryland's trial and appellate courts. I'm a former chair of the Montgomery County Criminal Justice Coordinating Commission and a U.S Army veteran.
> I am asking for your vote for Montgomery County Circuit Court Judge. For more information on me or how to vote in the June 2nd election, please visit my website: https://www.pierreforjudge.com.

Pet. Ex. 18.

The Petitioner contends that the Respondent knowingly misrepresented her qualifications, namely that, for 28 years, she practiced "civil and criminal law in Maryland's trial and appellate courts." The Respondent contends that the statement is true. Sept. 7 Tr. 167. Although it is undisputed that the Respondent only represented one client in a Maryland appellate court, Sept. 6 Tr. 98-108; Sept. 7 Tr. 38-39, the court does not find that the Respondent knowingly misrepresented her experience in this instance. Her statement is essentially true. The court will not

undertake the parsing and/or dissection required to accept Petitioner's analysis on this issue.

On May 11, 2020, the Respondent attended a virtual Montgomery County Democratic Party Forum and discussed her experience and qualifications. During the forum, the Respondent stated: "I have represented clients in hundreds of cases in state and federal trial and appellate courts, some of my cases have established precedents in the State of Maryland and are regularly cited by courts in other states." Pet. Ex. 19. The Petitioner contends that Respondent knowingly misrepresented that she represented clients in a federal appellate court and that "some of [her] cases have established precedents in the State of Maryland." Notwithstanding Respondent's admission that she never represented any client in a federal appellate court, the court finds Respondent's statements are essentially true. Sept. 7 Tr. 167-168. The Respondent testified that she represented three clients in the circuit court whose cases ultimately resulted in reported Maryland opinions. Sept. 7 Tr. 39-40. The Respondent contends that, because she "established a record" in the circuit court, she correctly represented that "some of [her] cases have established precedents." Sept. 7 Tr. 41, 111-15. For the same reasons the court rejects Petitioner's arguments concerning Respondent's statements regarding her qualifications, the court rejects this argument as well.

Quote Attributed to Judge Berry

On October 9, 2020, the Respondent and the four sitting judges participated in a virtual forum hosted by Afrique Today. Pet. Ex. 22; Sept. 7 Tr. 43-44. During the forum, one of the sitting judges, Judge Berry, was asked about the high incarceration ratio for black men in Maryland. She replied:

> What we do, is there are a lot of correctional options other than incarceration. We're not incarcerating people who are non-violent offenders for long periods of time or anything like that. There is home detention, there's inpatient residential treatment, there's problem solving courts, there's work release or weekend incarceration. There are a lot of things you can do. So, we're not ... certainly, *I understand that it is an issue, but it's not as much of an issue as being portrayed by the other two candidates [Johnson and Pierre].*

Pet. Ex. 22; Sept. 7 Tr. 43-44 (emphasis added).

On October 10, 2020, the Respondent's campaign sent a text message to Montgomery County voters that read:

> Hi [voter], this election matters. When a sitting judge says "it's not much of an issue" that Black males are jailed at a higher rate in MD it's clear we need Marylin Pierre, who understands restorative justice. Can we count on your support?

Pet. Ex. 23. On her campaign website, www.Pierreforjudge.com, the Respondent twice repeated this truncated quote attributed to Judge Berry posting "A sitting judge candidate said 'it's not much of an issue.'" Pet. Ex. 24. On October 12, 2020, J. Stephen McAuliffe, III, the Chairman of the Elect Sitting Judges Montgomery County Slate, emailed the Respondent:

> The link to your website is https://www.pierreforjudge.com/marylin-for-restorative-justice. You have misquoted and taken completely out of

> context something that Judge Berry said during the October 9th Afrique Today forum. After a question about the high incarceration rates for Black men in Maryland, Judge Berry talked about all the alternatives to incarceration programs in Montgomery County, then said **'Certainly, I understand that it is an issue, but it's not as much of an issue as being portrayed by the other two candidates [Johnson and Pierre].' This is pretty much the complete opposite of what your campaign website says now.** *See* 45:39 to 35:54 of the October 9th Afrique Today Forum https://www/youtube.com/watch?v=hLa13c9UDao.
>
> As chairman of the Elect Sitting Judges Montgomery County Slate I request that you immediately either delete or correct the above-referenced false information that appears on your Campaign website. I also request that you immediately stop sending text messages to Montgomery County voters that contain the same false and misleading information.

Pet. Ex. 25 (emphasis in original). Following receipt of Mr. McAuliffe's email, the Respondent deleted the referenced post from her website. Pet. Ex. 26. A day or two later, the Respondent re- posted a slightly modified version of the original statement where she changed one of the quotes to a sitting judge candidate said, "it's not as much of an issue." The second time the quote appeared on that post it was unchanged. Pet. Ex. 26 at 329.

On October 14, 2020, Mr. McAuliffe emailed the Respondent again, stating:

> As you know, I am writing to you for the second time regarding this issue. After my first email you deleted your inaccurate website post.

> Unfortunately, you have chosen to repost the same inaccurate post on your website this time under "Restorative Justice." The link to your website is https://www.pierreforjudge.com/marylin-for-restorative-justice. You have again misquoted and taken completely out of context something that Judge Berry said during the October 9th Afrique Today forum. After a question about the high incarceration rates for Black men in Maryland, Judge Berry talked about all the alternatives to incarceration programs in Montgomery County, then said **"Certainly, I understand that it is an issue, but it's not as much of an issue as being portrayed by the other two candidates [Johnson and Pierre]." This is pretty much the complete opposite of what your campaign website says now.** *See* 34:39 to 35:54 of the October 9th Afrique Today Forum https://www.youtube.com/watch?v=hLa13c9UDao. Your adding the word "as" to the portion of the quote that appears after the arrow in this post does not correct the intentionally misleading nature of your post but only serves to prove that your actions are deliberate misrepresentations.
>
> As chairman of the Elect Sitting Judges Montgomery County Slate I request that you immediately either delete or correct the above-referenced false information that appears on your Campaign website. I also request again that you immediately stop sending text messages to Montgomery County voters that contain the same false and misleading information.

Pet. Ex. 26 (emphasis in original).

On October 17, 2020, the Respondent's campaign sent a text message to Montgomery County voters that read:

> Hi [voter], this election matters. When a sitting judge says "it's not as much of an issue" that Black males are jailed at a higher rate in MD it's clear we need Marylin Pierre, who understands restorative justice. Can we count on your support?

Pet. Ex. 27.

On October 23, 2020, @Pierreforjudge tweeted the same information stating:

> A #vote for Marylin is a vote for justice, fairness, and an end to insiders controlling our justice system. When a sitting judge says "it's not much of an issue" that Black males are jailed at a higher rate in MD, it's clear we need someone who understands restorative justice[.]

Pet. Ex. 28.

On October 31, 2020, @Pierreforjudge retweeted Progressive Maryland's tweet:

> Justice is on the ballot! Maryland has the highest incarceration rates for young Black males. One of @MarylinPierre1 opponents recently said that this is not "much of an issue" despite the impact we know this has on individuals and communities. Vote for
> @Pierreforjudge

Pet. Ex. 29.

The Petitioner contends that the Respondent repeatedly, knowingly, and intentionally misrepresented that Judge Berry stated it is "not much of an issue" that black males are jailed at a higher rate in Maryland. The Respondent admits that the quote attributed to Judge Berry was inaccurate and contends

that she believed the quote was "what [she] heard" and that the inaccuracy was "an oversight." Sept. 7 Tr. 45-53, 171-72. She claims further that the misquote did not "change the context of what Judge Berry was expressing." Sept. 7 Tr. 172. The Respondent admitted that prior to attributing the quote to Judge Berry she did not listen to the recording of the forum. Sept. 7 Tr. 50-51. Even accepting that the Respondent misheard Judge Berry on October 9, 2020, she had a responsibility to completely and accurately correct her campaign literature once notified of her error on October 12, 2020. Instead, she republished the incomplete, misleading quote on October 13th, 17th, 23rd and 31st. The court finds that she knowingly and intentionally misrepresented the substance of Judge Berry's quote and repeatedly attributed the incomplete, misleading quote to Judge Berry.

BAR COUNSEL'S INVESTIGATION

On September 7, 2020, Bar Counsel wrote to the Respondent, advised that a complaint had been docketed for investigation, and requested information and documentation to be produced by September 21, 2020. The letter was sent by email and included the following:

> The Court of Appeals is concerned about delays in the disciplinary process and has established a time for completing the investigation of this matter. *See* Rule 19-711(d). Therefore, if you need additional time to respond, you must submit a written extension request within ten (10) days. Your request should propose a specific date by which your response will be provided to this office. Please note that ordinarily no extension will be granted for more than ten (10) additional days, absent good

> cause.
>
> As you know, Rule 19-308.1(b) of the Maryland Attorneys' Rules of Professional Conduct provides, in relevant part, that it is professional misconduct for an attorney to knowingly fail to respond to a lawful request for information from this office.

Pet. Ex. 30 (emphasis in original). The court rejects the Respondent's testimony that she did not see the September 7th correspondence, Sept. 7 Tr. 57; Sept. 8 Tr. 30-31, and finds that she knowingly failed to respond to Bar Counsel's request for information. On September 22, 2020, no response having been received, Bar Counsel again sent a letter to the Respondent, enclosed a copy of the September 7th correspondence, and requested a response by September 29, 2020 stating: "I remind you that Rule 19-308.1(b) of the Maryland Attorneys' Rules of Professional Conduct provides, in relevant part, that it is professional misconduct for an attorney to knowingly fail to respond to a lawful request for information from this office." Pet. Ex. 31.

Also on September 22, 2020, Bar Counsel emailed the Respondent, attached a copy of the September 7 correspondence and requested a response by September 29, 2020. Pet. Ex. 32 at 353. On September 23, 2020, the Respondent replied to Bar Counsel via email, stating: "I have contacted my malpractice carrier. My assigned attorney has not had a chance to consult with me yet. I keep [*sic*] you abreast of my progress." Bar Counsel responded, "Thank you for your email. Please provide your attorney's contact information." Pet. Ex. 33 at 355. In response, the Respondent provided the name and contact information for a claim representative, not an attorney. Pet. Ex. 32.

On October 4, 2020, no substantive response having

been received to the September 7 letter, Bar Counsel emailed the Respondent again and requested a response by October 9, 2020, stating "I again remind you of your obligations pursuant to Rule 8.1 of the Maryland Attorneys' Rules of Professional Conduct." Pet. Ex. 32. Between October 7, 2020 and November 9, 2020, the following exchanges occurred, Pet. Ex. 32:

October 7, 2020

RESPONDENT As per my September 23rd e-mail, my assigned attorney's contact information is as follows:
Celena Givens
CNA Claim Representative – Lawyers Professional Liability Professional Services Initial Solutions Team
151 N. Franklin, 14th Floor
Chicago, IL 60606
Phone 312-822-4209 Fax 866-419-6308
Email Celena.Givens@cna.com
My attorney and I still have not had an opportunity to consult with one another and I would appreciate receiving additional time to respond to the allegations against me.

BAR COUNSEL Celena Givens is a claim representative, not an attorney. If you have an attorney in this matter, please provide his or her name.

October 8, 2020

RESPONDENT Thank you for letting me know. I thought that she was an attorney. I have been calling and e-mailing her because she is the only point of contact that I was given but she has not been responding to me. I will let you know as soon as get [*sic*] more information.

October 16, 2020

BAR COUNSEL Please provide an update on this matter. As of today, I have not received any response to my September 7 correspondence. I again remind you of your obligations pursuant to Rule 8.1 of the Maryland Attorneys' Rules of Professional Conduct.

RESPONDENT I have been in discussion with Ms. Givens since the last time that I e-mailed you. Ms. Givens and I communicated again two days ago. She said she needs to follow-up on something and I am waiting to hear back from her. As I have stated before, I want my malpractice carrier to represent me in this matter because I do not want to address these issues without an attorney. It has taken longer to get a response than I expected since I never had to use the attorneys from my malpractice carrier before. I will contact you as soon as I hear back from Ms. Givens or someone from CNA.

October 22, 2020

RESPONDENT I am still waiting to hear from CNA. I have contacted them twice since my last e-mail to you but I still have not received a response.

October 29, 2020

RESPONDENT I am sending this e-mail to update you on this matter. I am still communicating with CNA but they have not assigned a lawyer to represent me in this matter yet.

October 30, 2020

BAR COUNSEL Received.

November 6, 2020

RESPONDENT CNA sent me an e-mail stating that they sent me a letter, through regular mail, in reference to me claim. I will update you when I receive the letter.

BAR COUNSEL Thank you. In the meantime, please provide me with your availability for a statement under oath on December 14, 17, 18 or
21. Please also advise if you will accept service of a subpoena by email.

November 9, 2020

RESPONDENT I heard from my malpractice carrier that they are denying my request for representation. I am in the process of obtaining an attorney to represent me in this matter. I will contact you as soon as I am able to get an attorney.
Marylin

BAR COUNSEL Thank you for the update. Please select a date for your statement under oath – if and when you retain counsel we can reschedule if necessary. The available dates are as follows: December 14, 17, 18 or 21.

The Respondent failed to provide any dates so Bar Counsel scheduled the statement under oath for December 18, 2020 and on November 19, 2020, emailed a copy of a subpoena to the Respondent. Pet. Ex. 35. At trial, the Respondent testified that she had numerous contacts with her malpractice insurance about retaining counsel, including a number of emails. Sept. 8 Tr. 31-37.The Respondent did not produce any of the referenced emails. The Respondent's testimony, namely that she learned that her carrier was denying coverage "around November 2nd," Sept. 8 Tr. 33, is inconsistent with her email statement to Bar Counsel

that as of November 6th she was awaiting information from the carrier. The court finds the Respondent's testimony to not be credible on this issue and finds that she knowingly and intentionally delayed responding to Bar Counsel's requests for information without excuse.

On December 4, 2020, the Respondent, through counsel, provided a response to Bar Counsel's September 7th letter. R. Ex. H.

On December 18, 2020, the Respondent appeared for her virtual statement under oath. The Respondent testified:

BAR COUNSEL All right. If you could just give me a brief summary of your employment as an attorney since your admission to the – to the Bar.

RESPONDENT I worked for a law firm called Woodward and I can't remember the name of the law firm. I know one of the partners was Woodward, and – for a short amount of time. Then I started my own law practice and at the same time I started working for another law firm as their general – I'm sorry. Not at a law firm. A – a technology company as their general counsel and – while continuing to practice law as well, and then I went out on my own after working for the IT company.

* * *

BAR COUNSEL All right. And what was the name of the tech company where you were general counsel?

RESPONDENT Network Engineering, Incorporated.

BAR COUNSEL And where was that company located?

RESPONDENT In Fort Washington.

BAR COUNSEL And what years did you serve as general counsel?

RESPONDENT I know I ended in 1997. I can't remember when I began.

Pet. Ex. 36 at 364.

The Petitioner contends that the Respondent knowingly and intentionally testified falsely that she worked as general counsel for Network Engineering, Inc. The Respondent maintains that her representation is accurate. The court, having found that the Respondent did not work as corporate counsel for Network Engineering, finds that the Respondent knowingly and intentionally testified falsely during her statement under oath that she worked as "general counsel" for the company.

Also, during her statement under oath, the Respondent was questioned about the May 20, 2020 tweet regarding sitting judges purportedly sending non-English speaking people to jail. The Respondent testified as follows:

> And so my client shows up to court basically making this very difficult decision and – because of the trauma that her family had gone through, that was caused by her husband, and the first thing the judge asked her after everybody introduced themselves why – was why she was using the services of an interpreter and how it cost the court so much money. And after many protests by me, he ended up by saying that if she did not learn to speak English when we came back to court in the next six months, he was going to hold her in contempt of court and put her in jail.

Pet. Ex. 36 at 365.

The Petitioner contends that the Respondent's testimony was knowingly and intentionally false. The incident that the Respondent was referring to occurred in 2004 and involved a circuit court judge who ordered the Respondent's non-English speaking client attend English classes as part of a reunification plan in a

CINA proceeding. Pet. Ex. 39 at 407. When it was later reported to the judge that the Respondent's client was not attending English classes, the judge explicitly stated that he would not order a show cause hearing based on the client's failure to attend English classes and declined to continue the requirement. Pet. Ex. 40 at 415-16; Pet. Ex. 41 at 425.

At trial, the Respondent claimed that, during her statement under oath, she testified to the best of her recollection which later proved to be incorrect. She contends that she was asked a question about a hearing that had occurred seventeen years prior. Without the benefit of a transcript (which she contends she could not obtain because it involved a CINA proceeding), she testified to her incorrect memory. Sept. 7 Tr. 157-60; Sept. 8 Tr. 47-48. The court cannot find by clear and convincing evidence that the Respondent's testimony was not an accurate representation of her memory in 2020. However, that is not to say that making such statements during her campaign with no attempt to verify or confirm prior to doing so was not careless and reckless.

MITIGATING FACTORS

The Court of Appeals recognizes the following mitigating factors, which are to be proven by a preponderance of the evidence:

(1) the absence of prior attorney discipline;
(2) the absence of a dishonest or selfish motive;
(3) personal or emotional problems;
(4) timely good faith efforts to make restitution or to rectify the misconduct's consequences;
(5) full and free disclosure to Bar Counsel or a cooperative attitude toward the attorney discipline proceedings;

(6) inexperience in the practice of law;
(7) character or reputation;
(8) a physical disability
(9) a mental disability or chemical dependency, including alcoholism or drug abuse, where:
(a) there is medical evidence that the attorney is affected by a chemical dependency or mental disability;
(b) the chemical dependency or mental disability caused the misconduct;
(c) the attorney's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
(d) the recovery arrested the misconduct, and the misconduct's recurrence is unlikely;
(10) delay in the attorney discipline proceeding;
(11) the imposition of other penalties or sanctions;
(12) remorse;
(13) remoteness of prior violations of the rules of professional conduct; and
(14) unlikelihood of repetition of the misconduct.

Att'y Griev. Comm'n v. Fineblum, 473 Md. 272, 308-09 (2021) (citing *Att'y Griev. Comm'n v. Slate*, 457 Md. 610, 647, 180 A.3d 134, 156 (2018)). Based on the testimony, the court finds by a preponderance of the evidence that the Respondent has no prior discipline and generally enjoys a good reputation as a zealous advocate for her clients in CINA and juvenile matters. The court further finds by a preponderance of the evidence that the Respondent is of generally good character, despite certain lapses in judgment in her pursuit of a judgeship. The court also finds that it is more likely than not that Respondent's expressed remorse is sincere and that repetition of this conduct is unlikely.

The court finds no other mitigating factors by a preponderance of the evidence.

AGGRAVATING FACTORS

The Court of Appeals recognizes the following aggravating factors which must be proven by clear and convincing evidence:

> (1) prior attorney discipline;
> (2) a dishonest or selfish motive;
> (3) a pattern of misconduct;
> (4) multiple violations of the rules of professional conduct;
> (5) bad faith obstruction of the attorney discipline proceeding by intentionally failing to comply with the Maryland Rules or orders of the Court [of Appeals] or the hearing judge;
> (6) submission of false evidence, false statements, or other deceptive practices during the attorney disciplinary process;
> (7) a refusal to acknowledge the misconduct's wrongful nature;
> (8) the victim's vulnerability;
> (9) substantial experience in the practice of law;
> (10) indifference to making restitution or rectifying the misconduct's consequences;
> (11) illegal conduct, including that involving the use of controlled substances; and
> (12) likelihood of repetition of the misconduct.

Fineblum, 473 Md. at 307 (citing *Att'y Griev. Comm'n v. Sperling,* 459 Md. 194, 275 (2018)). The Petitioner has alleged the existence of factors (2), (3), (4), (5), (6), (7), (9), and (11) and has the burden of proving these factors by clear and convincing evidence. This court finds Petitioner has met the burden with respect to

factors (2), (3), (4), (5), (6), (9), and (11).

The Respondent had a dishonest or selfish motive when she made misrepresentations and misleading statements for her personal benefit. The Respondent made misrepresentations and misleading statements to gain admission to the New York Bar. She made misrepresentations on all eight of her Maryland Judicial Questionnaires for the purpose of bolstering her judicial qualifications. She made misrepresentations during the 2020 campaign to better her prospects at the polls. She delayed responding substantively to Bar Counsel for nearly three months. The Respondent made misrepresentations to Bar Counsel under oath about her prior employment in an effort to conceal her prior misrepresentations. She engaged in illegal conduct when she testified falsely under oath and when she signed her New York Bar Application under oath. The Respondent engaged in a course of misconduct, spanning more than ten years that involved multiple violations of the Rules of Professional Conduct. The Respondent having been admitted to practice law in 1992 has substantial experience in the practice of law.

CONCLUSIONS OF LAW[19]

This court finds, by clear and convincing evidence, that the Respondent violated the following Rules of Professional Conduct:

[19] Additional findings of fact may be referenced in these conclusions of law.

MARPC 19-308.1.

Bar Admission and Disciplinary Matters (8.1)

Rule 8.1 states:

> An applicant for admission or reinstatement to the bar, or an attorney in connection with a bar admission application or in connection with a disciplinary matter, shall not:
> (a) knowingly make a false statement of material fact; or
> (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 19-301.6 (1.6).

"An attorney violates [Rule] 8.1(a) 'whenever an attorney makes intentional misrepresentations to Bar Counsel' in connection with a disciplinary matter." *Att'y Griev. Comm'n v. Lang*, 461 Md. 1, 59 (2018) (citing *Att'y Griev. Comm'n v. Mitchell*, 445 Md. 241, 259 (2015)) (emphasis in original). In analyzing whether an attorney violated Rule 8.1(a), the Court of Appeals distinguishes between "equivocal statements" and unequivocal, "emphatic statements of fact." *Att'y Griev. Comm'n v. Moore*, 451 Md. 55, 83 (2017) (quoting *Att'y Griev. Comm'n v. Lee*, 393 Md. 385, 411 (2006)).

Rule 8.1 applies to bar applications and to disciplinary proceedings. The court concludes that the Respondent violated Rule 8.1(a) when she unequivocally testified falsely during her statement under oath on December 18, 2020 that she worked as

general counsel for Network Engineering. *Cf. Att'y Griev. Comm'n v. Mooney,* 359 Md. 56, 78-81 (2000) (concluding attorney did not violate Rule 8.1(a) when attorney stated that he believed he had assigned a case to his associate when in fact he had not) (emphasis added). When she signed her New York Bar Application in March of 1999, she violated subsection (b) of Rule 8.1(b).

Rule 8.1(b) requires that an attorney not only respond to lawful requests for information but also that an attorney "timely respond to a request from Bar Counsel[.]" *Att'y Griev. Comm'n v. Rand*, 445 Md. 581, 638 (2015) (emphasis added). "The [R]ule does not distinguish between attorneys who fail to respond to lawful demands due to dilatoriness, on the one hand, and those on the other hand, who intentionally fail to respond." *Att'y Griev. Comm'n v. Edwards*, 462 Md. 642, 705 (2019) (quoting *Att'y Griev. Comm'n v. Weiers*, 440 Md. 292, 304 (2014)). Later cooperation with Bar Counsel "does not overcome a violation of failing to respond to Bar Counsel in the first instance." Id. (*quoting Att'y Griev. Comm'n v. Wills*, 441 Md. 45, 56 (2014)).

The court does not find it credible that the Respondent was simply waiting on her insurance adjuster and concludes that she violated Rule 8.1(b) when she failed to timely respond to Bar Counsel's requests for information made on September 7, 2020, September 22, 2020, and October 4, 2020 and when she failed to provide available dates for her statement under oath. *See Wills*, 441 Md. at 56 ("Belated participation in a Bar Counsel investigation does not overcome a violation of failing to respond to Bar Counsel in the first instance."); *Att'y Griev. Comm'n v. Gracey,* 448 Md. 1, 26 (2016) (concluding attorney violated Rule 8.1(b) when he failed to respond to Bar Counsel until after bar counsel sent a second letter and

when he failed to provide requested documents); *Att'y Griev. Comm'n v. Kreamer*, 387 Md. 503, 530-31 (2005) (explaining that no matter how busy a respondent attorney was, a tardy oral response to inquiries in a grievance matter did not excuse failure to respond as originally requested, particularly given the time constraints applicable to such investigations); *Att'y Griev. Comm'n v. Taylor*, 405 Md. 697, 719 (2008) (noting that, even when attorney ultimately responds thoroughly, Bar Counsel's persistence will not absolve an attorney of the responsibility to make a reasonably prompt reply); *Att'y Griev. Comm'n v. Dailey*, 474 Md. 679, 709 (2021) (finding that attorney violated Rule 8.1(b) when she failed to respond to Bar Counsel's proposed dates for her statement under oath).

MARPC 19-308.2. Judicial and Legal Officials (8.2)

Rule 8.2 states:

> (a) An attorney shall not make a statement that the attorney knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.
> (b) Rule 18-104.1(c)(2)(D) (4.1) of the Maryland Code of Judicial Conduct, set forth in Title 18, Chapter 100, provides that an attorney becomes a candidate for a judicial office when the attorney files a certificate of candidacy in accordance with Maryland election laws, but no earlier than two years prior to the general election for that office. A candidate for a judicial office:
> (1) shall maintain the dignity appropriate to the office and act in a manner consistent with the impartiality, independence and integrity of the

> judiciary;
>
> (2) with respect to a case, controversy, or issue that is likely to come before the court, shall not make a commitment, pledge, or promise that is inconsistent with the impartial performance of the adjudicative duties of the office;
>
> (3) shall not knowingly misrepresent his or her identity or qualifications, the identity or qualifications of an opponent, or any other fact;
>
> (4) shall not allow any other person to do for the candidate what the candidate is prohibited from doing; and
>
> (5) may respond to a personal attack or an attack on the candidate's record as long as the response does not otherwise violate this Rule.

The Court of Appeals has explained that Rule 8.2 is not intended to protect judges from criticism, it is to protect "the integrity of the judicial system, and the public's confidence therein[.]" *Att'y Griev. Comm'n v. Frost*, 437 Md. 245, 263 (2014).

> "Assessments by attorneys are relied on in evaluating the professional or personal fitness of individuals being considered for election . . . to judicial office . . . Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statement by an attorney can unfairly undermine public confidence in the administration of justice."

Comment [1] to Rule 8.2; *see also Frost*, 437 Md. at 262-63 ("While a lawyer as a citizen has a right to criticize [judges, judicial officers or public legal officers] publicly, he [or she] should be certain of the merit of his complaint, use appropriate language, and avoid petty criticisms, for unrestrained and intemperate

statements tend to lessen public confidence in our legal system.") (quoting *In re Simon*, 913 So.2d 816, 824 (La. 2005)) (alterations in original). In the election context, "imprecise wording" may, but does not always, violate Rule 8.2 and the court must analyze the intent with which the statements were made. *Att'y Griev. Comm'n v. Stanalonis*, 445 Md. 129, 141-44 (2015).

Here, the statements at issue were either knowingly false or made with reckless disregard as to their truth or falsity in violation of Rule 8.2 and were made for the specific purpose of misleading voters about both the Respondent's credentials and the qualifications and integrity of the sitting judges.

The Respondent's May 20, 2020 tweet that "there are some sitting judges who are only English speakers send people to jail because they could not speak English" violates Rule 8.2(a). Whether the court applies a subjective test or an objective test in determining whether the statement was made with reckless disregard for its truth or falsity is not material as the Respondent fails either test. *See Stanalonis,* 445 Md. at 144 (leaving open whether the Court of Appeals would apply a subjective or objective test to Rule 8.2(a)). The Respondent fails the subjective test because she had personal knowledge that the statement was false—she was present in the courtroom for the incident at issue. The incident did not involve "some sitting judges" and no one was "sen[t] to jail because they could not speak English." Even crediting the Respondent's testimony that she misremembered the incident and recalled that her client was threatened with contempt of court if she failed to learn English, the Respondent published the statement with reckless disregard as to its truth or falsity. The Respondent failed to consult her file before the statement was published to confirm her memory and failed to immediately (or timely) remove the statement

from her campaign twitter account. Additionally, the court finds that under an objective test, a reasonably prudent attorney, running for judicial office, would not have published the May 20, 2020 statement absent a verified factual basis.

The May 20, 2020 tweet impugned the integrity of the sitting judges. The statement communicates a fact, that "some sitting judges" act in a corrupt manner inconsistent with the law in that they send individuals to jail, not for violation of any law, but because the individuals do not speak English. The false statement, read within the context of the complete sentence that some sitting judges also "discriminate against people based on skin color, country of origins, religious backgrounds or sexual orientations," clearly indicates that the Respondent intended to communicate that "some sitting judges" violate the law. *See Frost*, 437 Md. at 260-62 (finding violations of Rule 8.2(a) where statements include false factual allegations of corrupt activity, including colluding to illegally arresting the respondent attorney); *Att'y Griev. Comm'n v. Hermina*, 379 Md. 503, 520-21 (2004) (finding that attorney violated Rule 8.2(a) when he accused a trial judge of having an ex parte communication with opposing counsel); *Att'y Griev. Comm'n v. McClain*, 406 Md. 1, 15-16, 18 (2008) (determining that attorney violated Rule 8.2(a) when he stated, in a brief, that judge was motivated by personal bias); *Cleveland Metro. Bar Ass'n v. Morton*, 185 N.E.3d 65, 68, 71-72 (Ohio 2021) (finding that an attorney's statement that a judicial decision "was based upon politics, not law" violated Rule 8.2(a) of the Ohio Rules of Professional Conduct because the attorney made no investigation and only relied on his interpretations of facts in making his statements).

The Respondent's May 23, 2020 tweet that most of the sitting judges "have worked at the same law firm,

go to the same church, and are related by marriage" violates Rule 8.2(a). The statement was made with reckless disregard as to its truth or falsity. The Respondent admits that she had no factual basis to believe that "most of the sitting judges" worked at the same law firm, attended the same church, and are related by marriage. *Cf. Stanalonis*, 445 Md. at 145-46 (finding credible the attorney's testimony that he believed his statement about his opponent, a newly-appointed judge, was true where attorney proved a "demonstrable basis" for making an inference, later demonstrated to be false). Additionally, this court finds that the Respondent's statement, made without any attempt to verify its accuracy, indicates that the Respondent did not have a demonstrable basis for believing the statement to be true and is a "'gross departure' from the understanding that a reasonably prudent lawyer in [her] position would have." *Id.* at 146.

The statement, that "most" of the sitting judges "have worked at the same law firm, go to the same church, and are related by marriage," impugns the qualifications and integrity of "most" of the sitting judges in that it implies that the judges were appointed, not based on their qualifications and merit, but rather based upon where they worked, where they worship, and to whom they are married. The Respondent clearly intended to malign and misrepresent the relationships between the judges.

Rule 8.2(b)(1) requires that the Respondent, as a candidate for a judicial office, "shall maintain the dignity appropriate to the office and act in a manner consistent with the impartiality, independence and integrity of the judiciary[.]" For the reasons explained herein, each of the following statements made or published by the Respondent constitutes a violation of Rule 8.2(b)(1): (1) May 20, 2020 tweet; (2) May 23, 2020

tweet; (3) October 10, 2020 text message; (4) October 17, 2020 text message; (5) October 2020 website posts; (6) October 23, 2020 tweet; and (7) October 31, 2020 retweet.

Following the October 9, 2020 forum, the Respondent repeatedly and knowingly misrepresented a fact in violation of Rule 8.2(b)(3) when she attributed a misleading truncated quote to Judge Berry. On October 10, 2020, the Respondent sent a text message to Montgomery County voters alleging that a sitting judge said "'it's not much of an issue' that Black males are jailed at a higher rate in MD[.]" She repeated the quote twice and attributed it to Judge Berry on her campaign website at some time between the October 9, 2020 forum and Mr. McAuliffe's October 12, 2020 email. When it was brought to her attention that the quote was inaccurate, the Respondent knowingly continued to misquote Judge Berry. Between October 12, 2020, when Mr. McAuliffe sent his first email, and October 14, 2020, when he sent his second email, the Respondent modified her website but failed to correct the quote and continued to represent that Judge Berry stated "'it's not much of an issue' that Black males are jailed at a higher rate in MD[.]"

On October 23, 2020, the Respondent tweeted the same information stating: "When a sitting judge says 'it's not much of an issue' that Black males are jailed at a higher rate in MD, it's clear we need someone who understands restorative justice[.]" On October 31, 2020, she retweeted and published Progressive Maryland's tweet: "Justice is on the ballot! Maryland has the highest incarceration rates for young Black males. One of @MarylinPierre1 opponents recently said that this is not 'much of an issue' despite the impact we know this has on individuals and communities. Vote for @Pierreforjudge."

In concluding that the Respondent knowingly and

intentionally misquoted Judge Berry, the court has considered that the Respondent put the statements attributed to Judge Berry in quotation marks, indicating that it was accurate. The court also considered that the October 9th forum was recorded, and the Respondent could have, at any time, reviewed Judge Berry's statement to confirm its accuracy. Even after it was brought to her attention that the quote was inaccurate, the Respondent knowingly and intentionally continued to publish the misleading version of the statement. The court concludes that each false quote attributed to Judge Berry published by the Respondent violated Rule 8.2(b)(3).

MLRPC/MARPC 19-308.4. Misconduct (8.4)

Rule 8.4 provides, in part:

> It is professional misconduct for an attorney to:
> (a) violate or attempt to violate the Maryland Attorneys' Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
> (b) commit a criminal act that reflects adversely on the attorney's honesty, trustworthiness or fitness as an attorney in other respects;
> (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
> (d) engage in conduct that is prejudicial to the administration of justice[.]

The court concludes that the Respondent violated Rule 8.4(a), (b), (c) and (d) as charged. The Respondent violated Rule 8.4(a) because she violated other Rules of Professional Conduct. *See Att'y Griev. Comm'n v. Framm*, 449 Md. 620, 664 (2016) ("We have held that, when an attorney violates a rule of professional

conduct, the attorney also violates MLRPC 8.4(a).").

The Court of Appeals has held that "it is not a prerequisite […] that the attorney has been charged with, or convicted of, a violation of the criminal statute" to conclude the attorney violated Rule 8.4(b). *Att'y Griev. Comm'n v. Yates*, 467 Md. 287, 301 (2020). To establish a violation of Rule 8.4(b), the Petitioner must prove that the attorney committed a criminal act and that the criminal act "reflects adversely on [the attorney's] honesty, trustworthiness or fitness as [an attorney] in other respects." *Att'y Griev. Comm'n v. Katz*, 443 Md. 389, 403 (2015). The Respondent violated Rule 8.4(b) when she testified falsely during her December 18, 2020 statement under oath and when she signed her New York Bar Application under oath in violation of Maryland Code, Criminal Law § 9-101. Perjury, which states:

> (a) A person may not willfully and falsely make an oath or affirmation as to a material fact:
>
> (1) if the false swearing is perjury at common law;
>
> * * *
>
> (5) in an affidavit or affirmation made under the Maryland Rules.

"To be willful, the false oath must be deliberate and not the result of surprise, confusion or bona fide mistake." *Att'y Griev. Comm'n v. Collins*, 447 Md. 482, 509 (2022) (quoting *Furda v. State*, 421 Md. 332, 353 (2011)). As discussed in reference to Rule 8.1(a), the Respondent knowingly and intentionally testified falsely. Her testimony was not a result of surprise as she was on notice that Bar Counsel was investigating her May 2020 tweets and statements she had made about her qualifications and experience. Additionally, the testimony was not a result of confusion or a bona

fide mistake. The Respondent testified unequivocally, and she did not express a concern that she could not accurately recall. Furthermore, the Respondent was testifying from her personal knowledge, namely her job experience. The Respondent violated Maryland Code Criminal Law § 9-101. Clearly the crime of perjury reflects adversely on her honesty and trustworthiness. *See id.; Att'y Griev. Comm'n v. Kapoor*, 391 Md. 505, 520 (2006) (upholding the trial court's findings that the attorney's actions reflected adversely on his honesty and trustworthiness when he wrongly appropriated a client's funds, forged a signature on a check, and falsely testified about his actions, thus in violation of Rule 8.4(b)).

An attorney violates Rule 8.4(c) when she makes a "false statement knowing that it is untrue." *Att'y Griev. Comm'n v. Smith*, 442 Md. 14, 34 (2015). An attorney also violates Rule 8.4(c) when she makes intentionally misleading statements or misrepresentations by omission. *See Att'y Griev. Comm'n v. Barton*, 442 Md. 91, 141-42 (2015) (finding attorney violated the Rule where she intentionally failed to disclose compensation she received from her client from the bankruptcy court "thereby shielding it from distribution to creditors").

The Respondent violated Rule 8.4(c) repeatedly. In her quest for a judgeship, the Respondent, on many occasions, chose to misrepresent her qualifications for her personal gain. The court finds that the Respondent's misrepresentations in her responses to Questions 14 and 16(d) and (e) on each of the eight Maryland Judicial Questionnaires constitute violations of Rule 8.4(c). The Respondent made knowing and intentional affirmative misrepresentations in an effort to bolster her judicial applications. She misrepresented that she was employed as "corporate counsel" by Network Engineering and made misrepresentations

about her experience. *See Att'y Griev. Comm'n v. Narasimhan*, 438 Md. 638, 668 (2014) (finding violation of Rule 8.4(c) where attorney made misrepresentations about her experience in an effort to obtain a government contract).

The Respondent also made numerous misrepresentations by omission on the Questionnaires in an attempt to hide negative information from the Nominating Commission. She knowingly and intentionally failed to disclose the July 1, 1996 incident on each of the seven Questionnaires submitted between October 15, 2013 and August 21, 2017 in response to Question 28 and she failed to disclose that detrimental information discussed supra in response to Question 32. *See Att'y Griev. Comm'n v. Slate*, 457 Md. 610, 643 (2018) ("silence with regard to required information after [the attorney] submitted his bar application, constituted acts that involved dishonesty, deceit, and misrepresentation"); *Att'y Griev. Comm'n v. Van Dusen*, 443 Md. 413, 430 (2015) (holding that the lawyer's deliberate and continued failure to disclose material information on his bar application constituted a violation of Rule 8.4(c)); *Att'y Griev. Comm'n v. Floyd*, 400 Md. 236, 249 (2007) (concluding that attorney violated Rule 8.4(c) when she failed to disclose that her husband authored the letter she used to obtain employment at a higher salary).

The court finds that the Respondent violated Rule 8.4(c) when she made knowing misrepresentations during the pendency of the 2020 campaign. *See Stanalonis*, 445 Md. at 148 (explaining that campaign speech may violate Rule 8.4(c) if the statement at issue is knowingly false and there is "evidence of an omission or misrepresentation with a 'conscious objective or purpose' to conceal truthful information"). The Respondent made repeated knowing misrepresentations of fact. The Respondent, over a

period of weeks, made numerous knowingly misleading statements when she attributed an incomplete quote to Judge Berry as discussed in reference to Rule 8.2(b). The Respondent's misrepresentations during the campaign were made with a conscious objective or purpose to mislead voters about her qualifications and to impugn the integrity of the sitting judges.

Finally, as discussed in reference to Rule 8.1(a) and 8.4(b), the Respondent violated Rule 8.4(c) when she testified falsely during her statement under oath on December 18, 2020. *See Att'y Griev. Comm'n v. Brigerman*, 441 Md. 23, 39 (2014) ("We have said that [Rule] 8.1(a) and 8.4(c) are violated when an attorney acts dishonestly and deceitfully by knowingly making false statements to Bar Counsel.") (quoting *Att'y Griev. Comm'n v. Harris,* 403 Md. 142, 164 (2008)).

With respect to Rule 8.4(d), the Court of Appeals has held that "[c]onduct which is likely to impair public confidence in the profession […] and engender disrespect for the court is conduct prejudicial to the administration of justice." *Brigerman*, 441 Md. at 40. "In other words, a lawyer violates [Rule] 8.4(d) where the lawyer's conduct tends to bring the legal profession into disrepute." *Att'y Griev. Comm'n v. Basinger*, 441 Md. 703, 712 (2015) (citing *Att'y Griev. Comm'n v. Reno,* 436 Md. 504, 511 (2014)) (internal quotations omitted). The Respondent's conduct, including her disregard for the truth to further her personal interests, brings the legal profession into disrepute in violation of 8.4(d).

NYDR 1-101. Maintaining Integrity and Competence of the Legal Profession.

NYDR 1-101(a)[20] states:

> A lawyer is subject to discipline if the lawyer has made a materially false statement in, or has deliberately failed to disclose a material fact requested in connection with, the lawyer's application for admission to the bar.

Like Maryland, the Supreme Court Appellate Divisions of New York have repeatedly stated that "[c]andor and the voluntary revelation of negative information by an applicant are the cornerstones upon which is built the character and fitness investigation of an applicant for admission to the New York State bar[.]" *Matter of Mendoza*, 573 N.Y.S.2d 922, 922. (App. Div. 1990) (per curiam). "[A] material misrepresentation or omission in an applicant's admission application deprives the Court's Committee on Character and Fitness… of all the information it might find relevant in assessing the applicant's candidacy, and lack of candor ultimately effects an admission upon false pretenses. . . ." *In re DeMaria*, 62 N.Y.S.3d 226, 228 (App. Div. 2017). "Whatever the importance of any one question or answer or item of information, the overriding consideration is disclosure and truthfulness." *Matter of Steinberg*, 528 N.Y.S.2d 375, 379 (App. Div. 1988).

In March 1999, the Respondent filed an Application for Admission to the Bar of the New York Supreme Court, Appellate Division, Third Department. The Respondent violated NYDR 101-1(a) when, in response

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[20] The court will apply the effective New York Rule as of the date of the alleged misconduct.

to Question 17(b) on that Application, she provided knowingly false and misleading information. Question 17(b) of the Bar Application stated, in relevant part:

> State whether you have ever failed to answer any ticket, summons or other legal process served upon you at any time. If so, was any warrant, subpoena or further process issued against you as a result of your failure to respond to such legal process?

The Respondent answered "yes" to Questions 17(b) and stated further:

> I had a court date in a civil matter involving student loans. I failed to report to court on that date because I was in the hospital. A summons was sent to my house.
> I was suppose [*sic*] to report to court as a defendant in a civil matter involving student loans in the Circuit Court of [*sic*] Montgomery County, Maryland. I did not show up because I was hospitalized (for 4 days) and I forgot. A summons was sent to my house and I answered it to the Court's satisfaction. No further action was taken on the summons since I have made arrangements to pay the student loan.

The Respondent provided a false and misleading statement that a "summons" was sent to her house and that she "answered it to the Court's satisfaction[.]" The court finds that the Respondent misrepresented by omission by failing to disclose that the court issued a writ of body attachment for her failure to appear in response to a show cause order, that she was detained and brought to court by the Sheriff and that she was required to post a bond. *In re Olivarius*, 941 N.Y.S.2d 763, 765 (App. Div. 2012) ("[The attorney] clearly fell

woefully short of submitting an application for admission that properly and with candor supplied all requested information. The application submitted by respondent had the effect of deflecting appropriate inquiry by this Court's Committee on Character and Fitness rather than apprising it of relevant potential character and fitness concerns."); *In re Nurse*, 714 N.Y.S.2d 73, 74 (App. Div. 2000) (finding that the attorney violated Rule 1-101(a) where she failed to list her previous legal and business employment with a company from which she had been terminated); *see In re Osredkar*, 805 N.Y.S.2d 760, 761 (App. Div. 2005) (finding that attorney violated Rule 1-101(a) where he failed to disclose "certain legal employment, a material fact requested in the [bar] application"); *In re Canino*, 781 N.Y.S.2d 686, 687-88 (App. Div. 2004) (finding that attorney failed to disclose summer internship in response to request for employment information on his bar application); *Matter of Harper*, 645 N.Y.S.2d 846, 847 (App. Div. 1996) (finding that attorney failed to disclose that he had attended a law school and that he had failed to receive a degree).

NYDR 1-102. Misconduct.

New York Disciplinary Rule 1-102[21] provides, in part:

> a. A lawyer or law firm shall not:
>
> 1. Violate a Disciplinary Rule.
>
> * * *
>
> 4. Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
>
> 5. Engage in conduct that is prejudicial to the

[21] The court will apply the effective New York Rule as of the date of the alleged misconduct.

administration of justice.

* * *

8. Engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

The facts that support violations of NYDR 1-IOI(a) also support violations of NYDR 1- 102(a)(l), (4), (5) and (8). Additionally, the Respondent violated NYDR 1-102(a)(l), (4), (5) and (8) when she falsely swore that her answers were complete and truthful when she signed the Bar Application as follows: "1, Marylin Pierre, being duly sworn, say: 1 have read the foregoing questions and have fully, truthfully and accurately answered the same. The foregoing answers are true of my own knowledge, except if stated to be made upon information and belief, and as to such answers, 1 believe them to be true." *See Olivarius*, 941 N.Y.S.2d at 764 (concluding that suppression of information on her bar application violated, inter alia, Rule 1-102(a)(4) and (5)).

CONCLUSION

WHEREFORE, it is this 17th day of November, 2022 found by the Circuit Court for Anne Arundel County, for the reasons set forth herein, that the Respondent, Marylin Pierre, has violated Maryland Code of Professional Responsibility Rules 8.1, 8.2 and 8.4 and New York Disciplinary Rules 1-101 and 1-102.

11/17/2022
Date

/s/
DONNA M. SCHAEFFER,
Judge,
Circuit Court for
Anne Arundel County

APPENDIX C

IN THE SUPREME COURT OF MARYLAND
AG No. 1
September Term, 2022
485 Md. 504, 301 A.3d 142

ATTORNEY GRIEVANCE COMMISSION
OF MARYLAND
v.
ASHER WEINBERG

Filed: August 31, 2023

Opinion by Eaves, J.

On March 14, 2022, the Attorney Grievance Commission of Maryland (the "Commission"), acting through Bar Counsel, filed a Petition for Disciplinary or Remedial Action (the "Petition") against Respondent, Asher N. Weinberg, a member of the Maryland Bar, arising out of his representation of Megan B. Lemons and Bar Counsel's subsequent investigation. The Commission alleged that Respondent violated the following Maryland Attorneys' Rules of Professional Conduct ("MARPC")[1]:

- 19-301.1 Competence (1.1);

[1] Effective July 1, 2016, the Maryland Lawyers' Rules of Professional Conduct, which employed the numbering format of the American Bar Association Model Rules, were renamed the MARPC and recodified without substantive modification in Title 19, Chapter 300 of the Maryland Rules. For ease of reference and comparison with our prior opinions and those of other courts, we will refer to the MARPC using the numbering of the model rules, as permitted by Rule 19-300.1(22).

- 19-301.2 Scope of Representation and Allocation of Authority between Client and Attorney (1.2);
- 19-301.16 Declining or Terminating Representation (1.16);
- 19-303.3 Candor Toward the Tribunal (3.3);
- 19-303.4 Fairness to Opposing Party and Attorney (3.4);
- 19-308.2 Judicial and Legal Officials (8.2); and
- 19-308.4 Misconduct (8.4).

Pursuant to Maryland Rule 19-722(a), this Court referred the matter to the Circuit Court for Montgomery County and designated the Honorable Kathleen M. Dumais (the "hearing judge") to conduct an evidentiary hearing and make findings of fact and conclusions of law. After a two-day hearing held on December 12 and 13, 2022, the hearing judge found clear and convincing evidence that Respondent violated Rules 1.1; 1.2(d); 3.3(a)(1); 8.2(a); and 8.4(a), (c), and (d), as alleged by the Commission.[2] The hearing judge also found four aggravating factors and four mitigating factors. Bar Counsel recommends that Respondent be indefinitely suspended from the practice of law with a right to apply for reinstatement in one year. Respondent has filed exceptions to the hearing judge's Findings of Facts and Conclusions of Law. For the reasons discussed below, we shall sustain Respondent's exceptions to Rules 1.1 and 1.2, overrule Respondent's exceptions to Rules 3.3, 8.2, and 8.4, and indefinitely suspend Respondent with the right to apply for reinstatement after six months from the beginning of the period of suspension.

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[2] Prior to the hearing, Bar Counsel withdrew the allegations that Respondent violated Rules 1.16(a)(1), 3.4(c), and 8.4(b).

I

HEARING JUDGE'S FINDINGS OF FACT

The hearing judge found that Respondent was admitted to the Bar of the Supreme Court of Washington in 2003 and, in his first year as a lawyer, he was a full-time volunteer and operated several legal clinics in Tacoma, Washington. He then worked as a public defender in Yakima County, Washington, for approximately five years. After that, Respondent worked for the Confederated Tribes and Bands of the Yakama Nation "representing tribal members and focusing mostly on criminal law." On July 30, 2013, Respondent was admitted to the Maryland Bar. The hearing judge found that, over the course of Respondent's career in Washington and in Maryland, he has handled "hundreds and hundreds" of criminal cases.

A. Representation of Megan B. Lemons

On November 15, 2019, Megan B. Lemons was charged with armed robbery and related offenses that occurred at a 7-Eleven in Anne Arundel County on October 15, 2019. Important to the State's case against Ms. Lemons was the identification of the alleged robber by Kaija Hirsch, a cashier at the 7-Eleven. At the time of the robbery, Ms. Hirsch was behind the check-out counter when an unknown woman approached her, asking to buy an item located behind the counter. As Ms. Hirsch turned to retrieve the item, the woman knocked Ms. Hirsch to the ground. Once Ms. Hirsch was on the ground, the woman jumped over the counter and held a knife to Ms. Hirsch's throat. The woman proceeded to take money out of the cash register before fleeing on foot. Shortly thereafter, the

police questioned Ms. Hirsch about the identity of the robber. Ms. Hirsch described the robber as a "White female with olive toned skin[,]" and a wide build, standing somewhere between 5' 7" to 5' 8" tall. Additionally, the police posted a still photo taken from the 7-Eleven's security camera online, asking the public to help identify the suspect.

Eventually, a police investigation led to Ms. Lemons being identified as the purported robber. She was arrested in Virginia and extradited to Maryland. On January 27, 2020, a bond review hearing was held in the District Court of Maryland for Anne Arundel County before the Honorable Danielle M. Mosley. Judge Mosley ordered that Ms. Lemons be held without bond and imposed several special conditions, including the condition that Ms. Lemons not contact or harass Ms. Hirsch. One month later, a grand jury sitting in Anne Arundel County indicted Ms. Lemons and her case was transferred to the Circuit Court for Anne Arundel County. The transfer order included Ms. Lemons' regular bond conditions and the special condition that she have no contact with Ms. Hirsch.

After the case was transferred to the circuit court, Respondent entered his appearance on February 23, 2020, on behalf of Ms. Lemons. A few days after doing so, he filed a Motion to Review and Reduce Bond. The circuit court held a hearing on March 6, 2020, at which the Honorable Robert J. Thompson ordered that Ms. Lemons be released on home detention with the condition that she be allowed to travel for "legal, medical, and home detention appointments only." During the disciplinary hearing, Respondent claimed that because Judge Thompson did not include the special condition that Ms. Lemons have no contact with Ms. Hirsch in the home detention order, it was Respondent's understanding that "[Judge Thompson] was striking" the no-contact order. The hearing judge

found, however, that Judge Thompson did not alter or strike the no-contact order imposed upon Ms. Lemons by Judge Mosley.

Throughout Respondent's preparation of Ms. Lemons' case for trial, he consistently asserted that the police wrongly identified Ms. Lemons as the robber and that she, therefore, was innocent. In an email to Glen Neubauer, the Assistant State's Attorney assigned to the matter, Respondent stated, in pertinent part:

> I have left another message for the detective, even though he has yet to ever return one of my calls. I want him to come down to the hospital, or I will drive Megan there to meet him. Someone from your side should actually meet her in person, and compare her to the person in the video.
> If he won't meet us, i will contact the [Ms. Hirsch], and ask her to meet us, and see if she recognizes Megan. If you have another idea, let me know.
> * * *
> Brian,[3] feel free to contact me by phone or e-mail. I will continue to try to get a hold of the detective.

(All *sic* in original).

Mr. Neubauer did not respond to the email, so Respondent reached out to Ms. Hirsch directly and sent her the following text message:

> Ms. Hirsch. My name is Asher Weinberg. I am investigating the 7-11 robbery where you were the victim. If you are available to talk, please call or text me. Or, if you have an email address, I would like to send you some photos, and see if you

[3] "Brian," who was copied on the email to Mr. Neubauer, is Brian Marsh, a Deputy State's Attorney and Mr. Neubauer's supervisor in the State's Attorney's Office for Anne Arundel County.

> recognize the person as the robber. I would also like to find out more information about the height of the woman in relationship to you.
> Thank you.

Ms. Hirsch responded to the text message, and, in the following week, the two began communicating about the robbery via text messages and phone calls. During one of the text-message exchanges, Respondent sent Ms. Hirsch several photographs of different women and asked whether she could identify any of the women as the robber. Ms. Hirsch told Respondent that she could not give him a definitive answer. Eventually, Respondent set up an in-person meeting between Ms. Hirsch and Ms. Lemons, and he sent the following text message to Ms. Hirsch:

> Megan can no longer afford to be on the ankle bracelet, which means she may need to turn herself back into jail on Monday. If you could meet with us tomorrow or Friday, that would be very helpful! I can drive her down to wherever you want, at anytime you want. I hate to be pushy but with Covid, the courts are not having any trials until probably November or December, and if she id truly innocent, I don't want her sitting in jail until then.
> Thank you.

(All *sic* in original). In response, Ms. Hirsch agreed to meet with Ms. Lemons.

On June 5, 2020, Respondent personally transported Ms. Lemons to an agreed-upon location. In total, the meeting lasted 15 minutes, and Respondent, Ms. Lemons, Ms. Hirsch, and a friend of Ms. Hirsch were present. During that time, Respondent questioned Ms. Hirsch about the description of the robbery suspect.

Although Ms. Hirsch observed that the robber was closer to the height of the Respondent than to Ms. Lemons' height, Ms. Hirsch still definitively could not rule out Ms. Lemons as the suspect. At his disciplinary hearing, Respondent testified that, although he did not specifically ask Ms. Hirsch that question, Ms. Hirsch did not tell him that Ms. Lemons was not the robber.

Two days after the meeting, Respondent texted Ms. Hirsch the following: "Good evening. I am filing a motion tomorrow to try and get [Ms. Lemons] release. May I say that when we meet, you could not identify her as your attacker? Would that be accurate?" (All *sic* in original). Ms. Hirsch did not respond to this text message. Respondent then called Ms. Hirsch, but she was unable to give a definitive answer as to whether she could identify Ms. Lemons as the robber. Ms. Hirsch was, however, able to say that she perceived the robber to be taller and heavier than Ms. Lemons.

The hearing judge found that,

> based on [Ms. Hirsch's] testimony and the copies of the written communications, at no point did Ms. Hirsch tell Respondent that Ms. Lemons was not the individual who committed the robbery or give him consent to make that representation on her behalf. In accepting Ms. Hirsch's testimony in its entirety, the Court finds that during her verbal and written exchanges with the Respondent, she never gave the Respondent a definitive answer as to whether Ms. Lemons was the individual who committed the robbery. Ms. Hirsch testified consistently that, at the time of the robbery, she perceived the robber to be taller and heavier because of the terror she felt being robbed at knifepoint. The Court credits Ms. Hirsch's testimony that she was never certain about the robber's identity and never made any affirmative

statements to the Respondent regarding whether Ms. Lemons was or was not the individual who committed the robbery.

B. Respondent Files Various Motions with the Circuit Court for Anne Arundel County

Continuing to believe that Ms. Lemons was misidentified as the robber, Respondent filed with the circuit court a "REQUEST FOR HEARING IN JUNE BEFORE DEFENDANT BECOMES HOMELESS AND IS LIVING ON THE STREET IN ORDER TO DETERMINE WHETHER PROBABLE CAUSE STILL EXISTS TO HOLD MS. LEMONS" (the "Motion" or "June 18 Motion"). In the Motion, Respondent argued that the State did not have probable cause to continue its detention of Ms. Lemons. In support of his proposition, Respondent represented to the court that Ms. Hirsch "will testify that after seeing [Ms. Lemons] in person, she is 100% positive that [Ms. Lemons] was NOT the robber." At the disciplinary hearing, however, Respondent admitted that Ms. Hirsch never made that statement and "never conveyed to him that she would testify that Ms. Lemons was not the robber." Thus, the hearing judge found that Respondent knowingly and intentionally misrepresented that Ms. Hirsch would testify with 100% certainty that "Ms. Lemons was NOT the robber."

Shortly after filing the Motion, Respondent filed a Petition for Writ of Habeas Corpus[4] ("Habeas Petition"), asking for Ms. Lemons' release. In the Habeas Petition, Respondent claimed the following:

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[4] Respondent filed the Petition for Writ of Habeas Corpus in a civil case that was assigned Case No. C-02-CV-20-1400.

> 7. Defense Counsel arranged for Ms. Lemons and the victim of the robbery to meet. After meeting with Ms. Lemons, the victim spoke to Counsel by phone and stated with absolute certainty, Ms. Lemons was not the robber. She is prepared to testify to this.
>
> * * *
>
> 14. The victim of the robbery, Kaija Hirsch will testify that Ms. Lemons was not the robber.

Because receipt of the Habeas Petition was the first time that the State became aware that Respondent had arranged for Ms. Lemons and Ms. Hirsch to meet, the State filed in response a request for the circuit court to inquire about the meeting. The court held a hearing before the Honorable Mark W. Crooks, in which the parties addressed the June 5, 2020, meeting between Respondent, Ms. Lemons, and Ms. Hirsch. Judge Crooks expressed concerns about the meeting and the potential evidentiary issues that it may have created:

> [T]his Court finds that the original order controlled throughout the order that was put in place, which was a no contact order provision, and not withstanding Judge Thompson – presumably, it might have had to do with Covid, I don't know, but had some habeas or bond review, and concluded that there were limited exceptions to the no bond house arrest to meet with counsel, and medical appointments, and that kind of thing.
> And this Court interprets that as being an umbrella that would have forced all of the ability – even that alone would have forced all the ability for the victim to meet with the Defendant, which in no case is appropriate.

(Alteration in original).

During the disciplinary hearing, Respondent acknowledged that he arranged the meeting and transported Ms. Lemons to the meeting location. Respondent testified that, while making the arrangements for, and during, the meeting, he was operating under the assumption that the order for home detention superseded the initial order, as well as the restrictions imposed on Ms. Lemons, including the no-contact order. At the hearing, Respondent alternatively claimed that he was unaware of the no-contact order until the hearing before Judge Crooks, stating that, "I don't believe I had that knowledge [of the no-contact order] at that – when I brought [Ms. Lemons] to meet with Ms. Hirsch, I don't believe I was aware that there was any kind of no-contact order in place." The hearing judge did not find Respondent's testimony credible and found that, "as of June 3, 2020, ... Respondent knew or should have known the no-contact order was in place[ ]" and that he "assisted Ms. Lemons in violating the order."

The hearing judge further stated,

> [i]n addition to his inconsistent statements and evolving explanations, the Court has considered the Respondent's extensive experience representing criminal defendants, and that it is standard for a court to issue a no contact provision between a victim and defendant in a criminal case. The Respondent had access to Ms. Lemons' entire court file through the Maryland Electronic Court ("MDEC") e-filing system, and, knowing of Ms. Lemons' bond status and conditions, filed a Motion to Reduce Bond on February 27, 2020.

Following the hearing with Judge Crooks, the State filed on October 6, 2020, a motion in limine, arguing

that Respondent's presence at the meeting between Ms. Lemons and Ms. Hirsch made him a potential trial witness and that the court should "preclude [the defense's] use of anything obtained at, or as a result of, the meeting [the Respondent] set up between [Ms. Lemons] and the victim, Kaija Hirsch." (Second alteration in original). The Honorable Pamela K. Alban heard arguments on the State's motion. Over Respondent's objection, Judge Alban found that Respondent's conduct violated the court's no-contact order and that he made himself a potential witness for the State. Judge Alban stated the following:

> You committed – potentially committed a crime here by the initial interview with the victim and so based on that, and as I look at the interactions, the results, I don't need to rehash all of it again for you but the problem becomes that the effects of what occurs after your meetings, I think opens the door and allows Ms. (*sic*) Neubauer more latitude in cross examination and potential witness calling.

Thus, Judge Alban struck the Respondent's appearance and directed the parties to then-County Administrative Judge, the Honorable Laura S. Ripken,[5] for a hearing to postpone the trial. Judge Alban advised that, before Judge Ripken, Ms. Lemons could have the matter postponed or elect to proceed without counsel. Ms. Lemons opted to have her trial postponed to December 17, 2020, and a bond hearing was set for October 16, 2020.

At the October 16 bond hearing, Ms. Lemons was represented by Maria E. Mena. The parties appeared before Judge Ripken to review Ms. Lemons' home

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[5] Judge Ripken has since been elevated to the Appellate Court of Maryland.

detention status. Although he was no longer Ms. Lemons' attorney of record, Respondent appeared in the courtroom's gallery and attempted to address the court on behalf of Ms. Lemons. Judge Ripken denied his request to be heard and reminded him that his appearance had been stricken. At the conclusion of the hearing, Judge Ripken revoked the bond for Ms. Lemons and scheduled a further bond hearing to allow Ms. Lemons time to find another home monitoring company that she could afford and that would be acceptable to the court.

The subsequent bond hearing was held before the Honorable Richard R. Trunnell on October 19, 2020. Present at the hearing was Ms. Lemons, Ms. Mena, and the Respondent, who again was seated in the gallery of the courtroom. At the conclusion of the hearing, Judge Trunnell ruled that Ms. Lemons could be released from the Anne Arundel Detention Center to a private house arrest program to which she had been accepted. Judge Trunnell directed the attorneys of record, Mr. Neubauer and Ms. Mena, to submit an order that comported with his ruling for his signature. Following the hearing, however, Respondent used his personal email to send a proposed order for Ms. Lemons' home detention monitoring to Judge Trunnell's chambers. In response to that email, Judge Trunnell's chambers sent Respondent a letter advising him not to contact his chambers regarding Ms. Lemons' matter unless or until his appearance had been reinstated.[6]

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[6] Respondent attempted to be reinstated as Ms. Lemons' attorney on two separate occasions. First, on October 14, 2020, Respondent filed a motion purportedly on behalf of Ms. Lemons, requesting that the court order "Attorney Asher Weinberg be recognized as Attorney for Defendant in this matter[.]" The court did not rule on the motion. Second, on October 22, 2020, Ms. Mena filed a motion requesting that the court reinstate Respondent as attorney for Ms.

Although he was no longer Ms. Lemons' attorney of record, during the disciplinary hearing, Respondent told the hearing judge that he sent the proposed home detention monitoring order to Judge Trunnell's chambers because he did not have access to a laptop to file the order using MDEC. He also stated that Ms. Mena, who is not well versed in using technology,[7] dictated the order while he was typing it, and that she gave him permission to send the order on her behalf. The order, however, had the Respondent's signature block. Respondent also told the hearing judge that he had authority to send the order because Judge Alban had no authority to strike his appearance.[8]

C. Respondent Speaks to Ms. Hirsch After His Appearance Has Been Stricken

Eventually, Ms. Lemons reached a plea agreement with the State and her case was scheduled for a hearing on February 5, 2021. A few days before the plea hearing, however, Respondent sent Ms. Hirsch one last text message about Ms. Lemons:

> Thank you for your honesty with the State. You are now guilty of victimizing an innocent woman as the real robber is. I'm sure Glen [Neubauer] convinced you that megan was guilty, even though

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Lemons. The court denied the motion.

[7] At the disciplinary hearing, Respondent testified that "Ms. Mena, she's essentially computer illiterate. I do a lot of her IT stuff. I'll write emails for her [and] I'll write some motions for her."

[8] Although the hearing judge found that, during the disciplinary hearing, Respondent repeatedly challenged Judge Alban's authority to strike his appearance, that "question [was] not before the Court." Thus, the hearing judge did not make a finding of fact as to this particular point by Respondent.

> everyone who saw the video said it looked nothing like megan. But glen tried to cover that up. Megan has to take a plea to something she didn't do to stay out of jail.
> Thanks again.
> You can go to court on Friday morning and watch the "justice." I'll bet he told you "it's for her own good. She needs the help." Even though you know it wasn't her, and never told him that. If the real robber kills her next victim, don't bother feeling guilty.

(All *sic* in original).

Ms. Hirsch provided a copy of that text message to Mr. Neubauer, and the State filed the next day a motion requesting that the court order Respondent not to have any contact with Ms. Hirsch or any other State's witness. As the matter of *State v. Lemons* was resolved on February 5, 2021, with Ms. Lemons entering an *Alford* plea to second-degree assault and theft from $100 to $1,500, no further hearing was held on the State's motion, and the court, therefore, did not issue a ruling.

The hearing judge credited Ms. Hirsch's testimony that Respondent's final text message "hurt" because she thought she was "doing the right thing by trying to be honest and helping[ ] ... figure out whether or not[ ] ... Megan was [the robber]." The judge also found that Respondent's text was "inappropriate," "[could] be considered harassing[,]" and "show[ed] extremely poor judgment."

D. Respondent's Statements About Multiple Judges After the Conclusion of State v. Lemons

Six months after the conclusion of *State v. Lemons*,

Respondent made statements that the hearing judge found impugned the integrity of Judge Alban, the Honorable J. Michael Wachs, and the Honorable William C. Mulford II.[9] First, Respondent made repeated statements about Judge Alban during an August 6, 2021, hearing in the case of *State v. Delvon Harrod, II.*[10] Second, Respondent sent an email to the County Administrative Judge, the Honorable Glenn L. Klavans,[11] [11]repeating the statements he made about Judge Alban during the August 6 hearing and including statements about Judges Wachs and Mulford. Third, Respondent created a flyer with statements about Judges Alban and Wachs. As to all of these matters, the hearing judge found that "Respondent does not deny making the statements or that the statements impugned the integrity of Judge Alban, Judge Wachs, and Judge Mulford. Rather, he asserts the statements were true, though he offered no proof of the statements[.]"

1. Respondent's statements during the August 6, 2021, hearing

On August 6, 2021, Respondent appeared before Judge Alban for a bond review hearing on behalf of the defendant in *State v. Harrod*. At the hearing, Respondent asked Judge Alban to recuse herself. In support of his request, Respondent stated the following:

You[, Judge Alban,] are a liar, you are biased, you

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[9] Judge Mulford retired on February 14, 2022, and now sits as a Senior Judge.

[10] This matter was before the Circuit Court for Anne Arundel County, Case No. C-02-CR-18-002457.

[11] Judge Klavans retired on April 19, 2023, and now sits as a Senior Judge.

> have demonstrated bias, you have stepped into the shoes of the State's Attorney on occasion, you refuse to apply the law when it doesn't suit your purposes or when you don't agree with it. You are complicit in kidnapping and basically you are corrupt for a judge. So I have to ask you that you recuse yourself.

(All *sic* in original). Judge Alban denied Respondent's request. Throughout the hearing, Respondent renewed his request for Judge Alban to recuse herself, repeating that Judge Alban was "a liar," "biased," "corrupt," "complicit in kidnapping," and improperly stepped "into the shoes of the State's Attorneys" and that, therefore, Mr. Harrod, could not get a fair hearing. Judge Alban again denied his request, and the hearing in the *Harrod* case resumed.

The hearing judge found that the Respondent's statements about Judge Alban "were not opinions and that they were made with reckless disregard as to their truth or falsity and that each of the statements impugned Judge Alban's integrity."

2. <u>Respondent's August 8, 2021, email correspondence with Judge Klavans</u>

On August 8, 2021, Respondent sent Judge Klavans an email that stated the following:

> Good afternoon,
> I am writing to request that a number of the Judges in your courthouse be permanently recused from any case I am named in, due to their corruption which has spread though rot in the judiciary of Anne Arundel Circuit Court.
> Among these are:
> Pam Alban. While on the bench, she has lied, acted

> as a State's attorney, demonstrated bias towards the state, and is complicit in kidnaping. She also refuses to apply the law when it does not suit her personal beliefs, even thought the law was very clear on the issues at hand. When I asked her to recuse herself at my hearing, on Friday, she stated that she did not see any of that in her actions. That is either another lie, or more bias.
> Judge Wachs: His demonstrated bias against the Defense Bar, his hypocrisy, and his refusal to apply the law has caused permanent harm to my some of my clients.
> Judge Mulford: His bias against me, his allowing, along with Pam Alban, State's attorney to lie to the Court, and commit fraud upon the Court all remove him from the ability to be fair and impartial to me or my clients.
> Additionally, as part of my goal to expose the corruption within your Court, and to try and bring about a political action against them, I shall be distributing the attached flyer, or similar, in front of your courthouse on random morning and lunch times.
> Please help to protect my client's constitutional rights, and what is left of the integrity of the Court in your country.

(All *sic* in original).

In addition to the above, Respondent also claimed that Judge Alban

> allowed "[Mr. Neubauer] to lie to the Court [ ] and commit fraud upon the Court" as demonstrated by the Respondent's testimony that Mr. Neubauer filed a response to the Respondent's motion that did not cite case law and that, according to the Respondent, Mr. Neubauer stated that the

> witnesses in the *Lemons* matter all changed their positions regarding the identification of Ms. Lemons as the robber after speaking with the Respondent.

(Alterations in original).

Judge Klavans responded to the email in which he explained that recusal is left to the individual judge. He denied Respondent's request to permanently recuse Judges Alban, Wachs, and Mulford from hearing cases where he appeared as counsel.

3. Respondent's August 2021 flyer

Attached to Respondent's email to Judge Klavans was a copy of a flyer he intended to circulate outside of the courthouse. The flyer had photographs of Judges Wachs and Alban with an "X" superimposed over each of their images. Beneath each photograph were the words, "Bias, Lawless, Criminality[.]" In addition, the flyer included a link to a website named "AnneArundelCorruptCourts.com."[12] Also at the bottom of the flyer there was a tagline, "Anne Arundel Circuit Court – Where our Constitution Comes to Die[,]" and a QR code[13] that directed users to a publicly available Change.org petition[14] calling on former

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[12] It is not discernable from the record what the content of the website was.

[13] "QR Code, in full Quick Response Code, [is] a type of bar code that consists of a printed square pattern of small black and white squares that encode data[.] QR Codes are often used in advertising to encode a URL of a Web site[.] QR Codes are usually read with ... [the] camera on mobile telephones, which then use special software to decode the pattern[,]" allowing the user to go directly to the Web site. *Erik Gregersen*, QR Code, Britannica (April 03, 2023), https://www.britannica.com/ technology/QR-Code *archived at* https://perma.cc/5Y8H-GTW9.

[14] Change.org is a website that allows individuals to create their

Maryland Governor Larry Hogan to recall Judges Wachs and Alban for "violat[ing] their oath of office."[15] (Alteration in original). Respondent disseminated the flyer to Judge Klavans and several attorneys and posted it on the listserv[16] for the Maryland Criminal Defense Attorneys' Association. After considering Respondent's testimony at the disciplinary hearing, the hearing judge found that the statements Respondent made in the email to Judge Klavans and on the flyer regarding Judges Alban and Wachs were "not opinion, and ... [were] made ... with reckless disregard as to [their] truth or falsity."

II

HEARING JUDGE'S CONCLUSIONS OF LAW

The hearing judge found by clear and convincing evidence that Respondent violated Rules 1.1; 1.2(d); 3.3(a)(1); 8.2(a); and 8.4(a), (c), and (d).

A. Rules 1.1 and 1.2

Rule 1.1 states: "An attorney shall provide

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own petitions to advance what they believe are important social causes. Change.org, https://www.change.org/about *archived at* https://perma.cc/RK6J-528U.

[15] During Respondent's disciplinary hearing, the Change.org petition to recall Judges Alban and Wachs was available to public. Currently, however, the Change.org petition is no longer accessible.

[16] A listserv, as used by the Maryland Criminal Defense Attorney's Association, is a "[d]iscussion list" that allows online community members to "send a message to the list for distribution to all subscribers." About Discussion Lists: Building Virtual Communities, https://www.lsoft.com/products/about_discussionlists.asp *archived at* https://perma.cc/NNG4-LDMX. Recipients of a message can opt to respond to the message and engage in a back-and-forth discussion. *See id.*

competent representation to a client. Competent representation requires legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Meanwhile, Rule 1.2(d) states:

> An attorney shall not counsel a client to engage, or assist a client, in conduct that the attorney knows is criminal or fraudulent, but an attorney may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of law.

According to the hearing judge, Respondent violated Rule 1.1 and 1.2(d) because he "knew about the no contact order ... when he assisted his client in violating the no contact order by arranging the meeting with Ms. Hirsch, transporting Ms. Lemons to the meeting, and facilitating communication between Ms. Lemons and Ms. Hirsch on June 5, 2020."

B. Rule 3.3

Rule 3.3(a)(1) states that an attorney shall not knowingly "make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the attorney[.]" The hearing judge found that Respondent violated Rule 3.3(a)(1) when he filed the June 18th Motion and the Habeas Petition. In the Motion, the hearing judge found that Respondent knowingly and intentionally misrepresented the fact that Ms. Hirsch was "100% positive" that Ms. Lemons was not the robber; and, in the Habeas Petition, that Respondent knowingly and intentionally misrepresented that Ms. Hirsch had "stated with absolute certainty" that Ms.

Lemons was not the robber.

C. Rule 8.2

Rule 8.2(a) states:

> An attorney shall not make a statement that the attorney 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 hearing judge found that Respondent made oral and written statements that were made with reckless disregard as to their truth or falsity in violation of Rule 8.2(a) when he made statements about: (1) Judge Alban at the August 6, 2021, hearing in *State v. Harrod*, (2) Judges Alban, Wachs, and Mulford in his August 8, 2021, email to Administrative Judge Klavans, and (3) Judges Alban and Wachs in the flyer attached to an email to Judge Klavans, which was also publicly disseminated and made available on a public website.

D. Rule 8.4

Rule 8.4 states, in pertinent part, that it is professional misconduct for an attorney to "(a) violate or attempt to violate the Maryland Attorneys' Rules of Professional Conduct;" "(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;" and "(d) engage in conduct that is prejudicial to the administration of justice[.]"

First, the hearing judge found that Respondent violated Rule 8.4(a) when he violated multiple rules under the MARPC. Second, she also found that

Respondent violated Rule 8.4(c) by making "false statement[s] knowing that [they were] untrue." Specifically, the hearing judge concluded that the violations of Rule 3.3 constitute violations of Rule 8.4(c). Finally, the hearing judge concluded that Respondent's statements, including those made directly to Judge Alban, in the email to Judge Klavans, and in the flyer violated Rule 8.4(d). Quoting from *Attorney Grievance Commission. v. Basinger*, 441 Md. 703, 713, 109 A.3d 1165 (2015), the hearing judge stated that Respondent's statements "were neither inartful slips of the tongue nor spoken in the heat of an oral altercation[,]" and that his conduct "br[ought] the legal profession into disrepute."

E. Aggravating and Mitigating Factors

The hearing judge found four aggravating factors: (1) a pattern of misconduct; (2) multiple violations of the rules of professional conduct; (3) submission of false evidence, false statements, or other deceptive practices during the attorney disciplinary process; and (4) substantial experience in the practice of law. The hearing judge also found four mitigating factors: (1) absence of a prior disciplinary record; (2) absence of a dishonest or selfish motive; (3) remorse; and (4) unlikelihood of repetition of the misconduct.

III

STANDARD OF REVIEW

"This Court has original jurisdiction and complete jurisdiction in attorney discipline proceedings and conducts an independent review of the record." *Att'y Grievance Comm'n v. Jackson*, 477 Md. 174, 182, 269 A.3d 252 (2022). We review a hearing judge's findings

of fact for clear error. *See* Md. Rule 19-740(b)(1). If, however, the respondent has not filed exceptions to the hearing judge's findings of fact, this Court may accept the findings of fact as established. *See* Md. Rule 19-740(b)(2)(A). We review a hearing judge's conclusions of law without deference and determine whether clear and convincing evidence establishes that a lawyer violated the MARPC. *See* Md. Rule 19-740(b)(2); Md. Rule 19-727(c). In the matter before us, Bar Counsel has not filed any exceptions; however, pursuant to Rule 19-728(b), Respondent has filed exceptions to the hearing judge's findings and conclusions.

IV

EXCEPTIONS

In providing context for his exceptions, Respondent characterizes his conduct and representation of Ms. Lemons as passionate and zealous advocacy on behalf of a mistakenly identified and accused perpetrator of the crimes against Ms. Hirsch. He acknowledges that he "admittedly went too far to protest what he believed to be a miscarriage of justice" and went "overboard in protesting his removal from the case of a woman considered innocent[.]" Respondent also describes his conduct as "[t]inged with hyperbole[,]" "provocative[,]" and an "exercise[in] poor judgment [which]. . . he regrets." But he faults the hearing judge for dismissing as reckless his complaints about Ms. Lemons' treatment by the circuit court and not examining the merits of the rulings of the circuit court in Ms. Lemons' criminal case to determine whether his conduct was sanctionable. Specifically, Respondent excepts to the hearing judge's findings of fact and conclusions of law which we have summarized as follows:

1. Respondent argues that the hearing judge refused to examine the circuit court's judicial rulings concerning his removal as Ms. Lemons' attorney. Among those rulings, Respondent believes the hearing judge was required to consider whether: (1) the circuit court improperly required him to provide competent evidence to support the allegations he made; and (2) the circuit court was required to hold an evidentiary hearing before striking his appearance as Ms. Lemons' attorney.[17] In addition, Respondent argues that the hearing judge failed to require Bar Counsel to produce clear and convincing evidence that Respondent's statements were uttered with actual knowledge of their falsity or that they recklessly disregarded the truth. He urges us to find that, in accordance with *New York Times v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), Bar Counsel had the burden to show "actual malice" with respect to the statements he made, and that Bar Counsel failed to do so.[18]

2. The hearing judge had no basis to find that Respondent violated the no contact order because that restriction was only in a commitment order that was vacated when Judge Thompson signed a Release from Commitment and issued a home detention order that did not include the restriction. In addition, because the home detention order permitted Ms. Lemons to leave home to attend legal appointments, the meeting with

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[17] In his Supplemental Memorandum, Respondent provides an additional exception that, in summary, contends that the hearing judge presumed Respondent's statements were false, and that she shifted the burden to Respondent to prove they were true, and that she failed to examine the merits of Respondent's complaint. We address these points in the broader exception raised here.

[18] In this exception, Respondent raises two issues: (1) Ms. Lemons' Sixth Amendment right to counsel of her own choosing; and (2) his right to criticize the circuit court judges and their rulings. We will address them separately.

Ms. Hirsch qualifies as a legal appointment.

3. The hearing judge erroneously required Respondent to prove "to [the hearing judge's] satisfaction" that he accurately recounted Ms. Hirsch's statements as to the identity of the robber in his pleadings before the circuit court and those made during his arguments to Judge Alban. Pursuant to Maryland Rule 1-311(b), when he signed his various motions to release Ms. Lemons from jail, Respondent had a good-faith basis to believe that Ms. Hirsch would testify consistently with the language in those motions. And, as he testified at his disciplinary hearing, Ms. Hirsch stated in a phone call that "it was not Meghan...[t]he robber was much bigger than her[,w]alk was different .... she said it wasn't her."

4. That, while he was "unceremoniously discharged," the hearing judge should not have punished him for (1) attempting to speak up for Ms. Lemons before Judge Ripken, (2) offering information to Judge Trunnell, or (3) sending the last "caustic text" to Ms. Hirsch. Respondent contends that he is being punished for going "above and beyond to fight for a client divested of fundamental rights."

With respect to the exceptions, we conclude that Respondent's exceptions as to Rules 3.3(a)(1), 8.2(a), and 8.4(d) have no merit and we shall overrule them. Respondent's exceptions as to Rules 1.1 and 1.2(d), however, are well-taken, and we shall sustain them. We explain our reasons below.

V

ANALYSIS

It is helpful to bifurcate Respondent's exceptions into those that encompass more general allegations versus those that directly challenge specific findings or conclusions made by the hearing judge. Thus, we proceed accordingly.

A. General Exceptions

1. The Hearing Judge had No Obligation to Review the Circuit Court's Rulings as to Ms. Lemons' Sixth Amendment Right to Counsel of her Choice

Respondent spent a significant portion of his exceptions arguing that Judge Alban's removal of him as Ms. Lemons' attorney violated Ms. Lemons' Sixth Amendment right to counsel of her choice. Citing *State v. Goldsberry*, 419 Md. 100, 18 A.3d 836 (2011), Respondent argues that the hearing judge should have found that Judge Alban "lacked any legally-sufficient basis for overriding a defendant's Sixth Amendment right to choose her own counsel." In *Goldsberry*, we stated that the presumption in favor of the right to counsel of one's own choosing may be overcome "not only by a demonstration of actual conflict but by a showing of a serious potential for conflict." 419 Md. at 118, 18 A.3d 836 (quoting *Wheat v. United States*, 486 U.S. 153, 164, 108 S.Ct. 1692, 100 L.Ed.2d 140 (1988)). Here, however, Judge Alban's ruling to strike Respondent's appearance as Ms. Lemons' attorney was not subject to review by the hearing judge. That process is covered under our rules governing appeals in

criminal cases.[19] Rather, the hearing judge's responsibility was to determine whether Respondent's conduct violated the MARPC by clear and convincing evidence.[20]

Respondent suggests that the hearing judge still was required to review Judge Alban's ruling to determine whether Respondent's criticisms of that ruling and Judge Alban were warranted. If Respondent's criticisms were factual commentary on Judge Alban's ruling, or if he had simply criticized her for getting the law wrong, we would agree. However, Respondent (1) called Judge Alban a liar, (2) accused her of being biased and acting as the prosecutor, (3) accused her of "refus[ing] to apply the law when it doesn't suit [her] purpose or when [she does not] agree with it; (4) said she was "complicit in kidnapping," and (5) accused her of being corrupt. Whether those accusations qualify as misconduct does not turn in any way on the correctness of Judge Alban's ruling. Because the hearing judge properly declined to review the legality of the circuit court's decision to strike Respondent's appearance, we find no error. Thus, we overrule this exception.

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[19] *See* Md. Rule 4-408 ("An application for leave to the Appellate Court shall be governed by Rule 8-204"); *see also* Md. Rule 8-204(b)(2)(A) (generally an "application [for leave to appeal] shall be filed within 30 days after entry of the judgment from which the appeal is sought.").

[20] The role of the hearing judge in an attorney disciplinary matter is to help determine "a lawyer's fitness to practice law[.]" *Att'y Grievance Comm'n v. Green*, 278 Md. 412, 414–15, 365 A.2d 39 (1976); *see also* Md. Rule 19-300.1 (observing that the MARPC define an "attorney's professional role[ ]" not the rights of their client(s)).

2. **Respondent is not being Punished for Zealously Representing Ms. Lemons**

Respondent argues that, despite "much evidence that [Ms. Lemons] was completely innocent," her Sixth Amendment rights were "trampled on" by Judge Alban, and because he hoped that Ms. Hirsch would exonerate his client, this Court should not punish him for his conduct in going "above and beyond to fight [to prevent Ms. Lemons from being] divested of fundamental rights." This Court, therefore, should find that "the vigorous defense he provided is worthy of commendation, not condemnation." We do not agree that Respondent is being punished for zealously representing Ms. Lemons.

In his exceptions, Respondent raised this issue with respect to his last email to Ms. Hirsch in which he blamed her for Ms. Lemons' pleading guilty. He also notes that "he exercised poor judgment in a brief but caustic text." Although Respondent initially was charged with an ethical violation arising from sending the text to Ms. Hirsch pursuant to Rule 3.4,[21] Petitioner voluntarily dismissed that allegation. And nothing in the record reflects that the hearing judge found a violation of Rule 3.4 based on Respondent harassing Ms. Hirsch.

Here, our holdings in this matter with respect to violations of the MARPC with which Respondent has been charged also do not concern any alleged harassment of Ms. Hirsch by Respondent pursuant to Rule 3.4 or any other MARPC. Therefore, Respondent has not shown by a preponderance of the evidence that he is being punished for zealously representing Ms.

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[21] Pursuant to Rule 3.4(c), an attorney shall not "knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists."

Lemons, and we overrule this general exception.

B. Specific Exceptions

1. Rules 1.1 and 1.2(d): Respondent did not Violate the No-Contact Order when he Arranged the Meeting between Ms. Lemons and Ms. Hirsch

An attorney violates Rule 1.1 if they "fail[ ] to comply with court orders." *Att'y Grievance Comm'n v. Parris*, 482 Md. 574, 592, 289 A.3d 703 (2023). An attorney also violates Rule 1.2(d) if they "assist the client in breaking the law." *Att'y Grievance Comm'n v. Culver*, 381 Md. 241, 275, 849 A.2d 423 (2004). In this case, the hearing judge found that Respondent simultaneously violated Rules 1.1 and 1.2(d) when he arranged the meeting between Ms. Lemons and Ms. Hirsch in violation of the no-contact order believed to be in effect at the time of the meeting on June 5, 2020. We do not agree with the hearing judge that there was clear and convincing evidence that the no-contact order was still in effect, and we will sustain Respondent's exceptions that he violated these two rules. Below, we provide some context as to the timeline of events that perhaps created some of the confusion about the status of the no-contact order.

Respondent offers several reasons in support of his exception that he did not violate the no-contact order and that he also did not assist Ms. Lemons in doing so. First, he claims that he was not aware of the order entered by Judge Mosley in the District Court on January 27, 2020, because he did not enter his appearance until February 23, 2020, after the case had been transferred to the circuit court. Specifically, Respondent testified during his disciplinary hearing that he had no way of knowing that Judge Mosley's no-

contact order existed prior to him entering his appearance in the matter because he "lacked familiarity" with the MDEC system[22] and, thus, should be forgiven for not researching the order prior to his appearance. We do not give this justification any weight for two reasons. Attorneys have been required to use MDEC for cases filed in Anne Arundel County since 2014,[23] so this purported lack of familiarity with the system is confounding and not persuasive.[24] Also, at the time Respondent entered his appearance in the circuit court after Ms. Lemons was indicted on February 21, 2020, Judge Mosley's order carried over to the circuit court in accordance with Maryland Rule 4-216.3(a).[25] Thus, we agree with the hearing judge that Respondent should have been aware of Judge Mosley's order because it was in the circuit court file when he entered his appearance, and a review of the file reflected the no-contact prohibition on the order.

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[22] MDEC is the electronic case management processing and record-keeping system used in the State of Maryland's court system. Through MDEC, state courts "collect, store and process records electronically, and will be able to access complete records instantly as cases travel from District Court to Circuit Court[.]" In essence, MDEC allows for paper records to be available online and on-demand. https://mdcourts.gov/mdec/ about__*archived at* https://perma.cc/RN8D-EJ5Q.

[23] "MDEC launched in October 2014 in Anne Arundel County[.]" MDEC Updates/Alerts, https://mdcourts.gov/mdec/latestupdate sarchive#mdec2017061 *archived at* https://perma.cc/6S82-D3Z4.

[24] *See* Comment 6 to MARPC 1.1 ("To maintain the requisite knowledge and skill, an attorney should keep abreast of changes in the law *and its practice*, engage in continuing study and education and comply with all continuing legal education requirements to which the attorney is subject." (Emphasis added)).

[25] "When conditions of pretrial release have been previously imposed in the District Court, the conditions continue in the circuit court unless amended or revoked pursuant to section (b) of this Rule." Md. Rule 4-216.3(a).

Second, Respondent argues that he did not pay attention to the February 27, 2020, circuit court Commitment because it was not signed by a judge, but by the Clerk of the Court. He conveniently disregards, however, the fact that Judge Mosley's order was still in effect, having carried over from the District Court.

Third, Respondent excepts because he contends that Judge Thompson's order superseded the prior orders that contained the no-contact provision. He points out that, on March 6, 2020, Judge Thompson reviewed Ms. Lemons' bail status and issued an order that superseded Judge Mosley's order—the Order for Home Detention, which released Ms. Lemons from confinement in the detention center. Although the hearing judge found that Judge Thompson did not "alter or strike" the no-contact order, we disagree with this finding. Here, it was not unreasonable for Respondent to conclude that the March home detention order superseded both the circuit court Commitment dated February 27, 2020, as well as Judge Mosley's order. The home detention order did not expressly incorporate by reference any prior orders or terms; it purports to stand on its own, and it does not include the no-contact prohibition. Moreover, certain terms of the two orders were clearly in conflict, as Judge Mosley's order required that Ms. Lemons be held without bond, and Judge Thompson ordered that she be released on home detention. As a result, it was not unreasonable for Respondent to conclude that, as of March 6, 2020, the no-contact order was no longer in force.[26] When Respondent and Ms. Lemons met with

[26] Respondent offers an additional, untenable reason for excepting to the hearing judge's finding that he violated the no-contact order: that Judge Thompson's order for home detention permitted Ms. Lemons to leave her home for legal appointments, and a meeting with Ms. Hirsch qualifies as such. We find this reasoning to be baseless, as it strains credulity that the home detention

Ms. Hirsch on June 5, 2020, it was not unreasonable for him to believe that Judge Mosley's order was no longer in effect because the no-contact order was not reinstated until the hearing before Judge Crooks on July 28, 2020.

Thus, although it was inadvisable for Respondent to arrange the meeting between Ms. Lemons, the charged suspect, and Ms. Hirsch, the victim, this conduct is not clear and convincing evidence of a violation of either Rule 1.1 or Rule 1.2(d) because it was not unreasonable for Respondent to conclude that the no-contact order was not in effect at the time of the meeting. Accordingly, we sustain the Respondent's exceptions to the hearing judge's conclusions of law that Respondent violated them.

2. Rule 3.3(a)(1): Respondent Misrepresented to the Circuit Court Ms. Hirsch's Statements as to whether she could Identify Ms. Lemons as the Robber

The hearing judge found that Respondent violated Rule 3.3(a)(1) when he filed the June 18 Motion and the Habeas Petition in the circuit court. In the Motion, the hearing judge found that Respondent knowingly and intentionally misrepresented the fact that Ms. Hirsch was "100% positive" that Ms. Lemons was not the robber; and, in the Habeas Petition, Respondent knowingly and intentionally misrepresented that Ms. Hirsch "stated with absolute certainty," that Ms. Lemons was not the robber.

In his exceptions, Respondent argues that his statements made in the Motion and Habeas Petition

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order could be interpreted to permit Ms. Hirsch to leave home to have contact with the victim of the crimes with which she is charged.

were not direct quotes of Ms. Hirsch. Instead, Respondent claims that those statements were merely what he perceived would be Ms. Hirsch's "anticipated testimony." Thus, according to Respondent, because he had more than substantial factual justification to proffer what he expected Ms. Hirsch to say, he did not make any false statements of fact to the court. We do not agree for the following reasons.

"As one might expect, an attorney violates Rule 3.3(a)(1) when [they] knowingly provide[ ] a court with false information." *Att'y Grievance Comm'n v. White*, 480 Md. 319, 378, 280 A.3d 722 (2022) (citations and internal quotation marks omitted). In his June 18 Motion, Respondent articulated to the circuit court that "Ms. Hirsch will testify that after seeing Ms. Lemons in person, she is 100% positive that Ms. Lemons was NOT the robber." Similarly, in the Habeas Petition, Respondent definitively stated that Ms. Hirsch, "[a]fter meeting with Ms. Lemons, ... spoke to Counsel by phone and stated with absolute certainty, Ms. Lemons was not the robber. She is prepared to testify to this." Further, in the Motion, Respondent said that "Ms. Hirsch will testify that Ms. Lemons was not the robber."

At the disciplinary hearing, however, Ms. Hirsch testified to the opposite of Respondent's representations, stating:

- She never told anyone, including Respondent, that she was 100 percent positive that Ms. Lemons was not the robber;
- She never gave Respondent a definitive answer when he asked her if she could identify Ms. Lemons;
- She never told Respondent that she was prepared to testify in court that Ms. Lemons was not the robber;

- She never gave Respondent permission to make any sort of representation on her behalf, to the court, that Ms. Lemons was not the robber; and
- She never stated to anyone, either in text or verbally, that she could say whether Ms. Lemons was or was not the robber.

As we have consistently reiterated, the hearing judge, who "is in the best position to assess first hand a witness's credibility[,]" accepted Ms. Hirsch's testimony in its entirety and credits the fact that Ms. Hirsch was never certain about the robber's identity and never made any affirmative statements to Respondent. *Att'y Grievance Comm'n v. Smith*, 442 Md. 14, 35, 109 A.3d 1184 (2015) (quoting *Att'y Grievance Comm'n v. Sheridan*, 357 Md. 1, 17, 741 A.2d 1143 (1999)).

Indeed, our review of the record shows that Ms. Hirsch's testimony was significantly different than the misrepresentations in the pleadings filed by Respondent. In addition, during the hearing, Respondent admitted that Ms. Hirsch never told him whether she was "100% positive" that Ms. Lemons was the robber, and that she never conveyed to him that she would testify that Ms. Lemons was not the robber. Instead, Respondent admitted that his proffer to the court about Ms. Hirsch's testimony was based on "a lot of information." But most importantly, claimed Respondent, his proffer was based on Ms. Hirsch's testimony that the robber was shorter than Ms. Lemons; thus, he assumed that Ms. Hirsch would testify that Ms. Lemons is 100 percent not the robber.

As the reviewing court, we cannot say that the hearing judge's assessment of Ms. Hirsch's credibility was clearly erroneous, and we accept it in full. Accordingly, Respondent violated Rule 3.3(a)(1) when he wrote the following: "Ms. Hirsch will testify that after seeing Ms. Lemons in person, she is 100% positive

that Ms. Lemons was [not] the robber[;]" "After meeting with Ms. Lemons, [Ms. Hirsch] spoke to Counsel by phone and stated with absolute certainty, Ms. Lemons was not the robber[;]" and "The victim of the robbery, Kaija Hirsch will testify that Ms. Lemons was not the robber." Respondent knew this was blatantly untrue. Thus, we overrule Respondent's exceptions to the conclusion of law that he violated Rule 3.3(a)(1).

3. Rule 8.2(a): Respondent Made Statements that were Knowingly False and Reckless and Impugned the Integrity of the Judges about whom the Statements were Made

Rule 8.2(a) provides:

> An attorney shall not make a statement that the attorney 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.

A violation of Rule 8.2(a) requires three things: that (1) a lawyer made a false statement; (2) the statement concerned the qualifications or integrity of a judge or a candidate for judicial office; and (3) the lawyer made the statement with knowledge that it was false or with reckless disregard as to its truth or falsity. *Att'y Grievance Comm'n v. Stanalonis*, 445 Md. 129, 139, 126 A.3d 6 (2015). We make three observations about adjudicating alleged violations of Rule 8.2(a).

First, the purpose of the rule is to protect "the integrity of the judicial system, and the public's confidence therein[,]" not to protect judges from unkind

or undeserved criticism. *Att'y Grievance Comm'n v. Frost*, 437 Md. 245, 263, 85 A.3d 264 (2014). With that in mind, "certain phrases, alone, may not necessarily rise to the level of an attack on a judicial officer or public legal officer sufficient to warrant action[.]" *Id.* at 262, 85 A.3d 264. But when "used in conjunction with false factual allegations of corrupt activity ... [it] is clearly in violation of Rule 8.2(a)." *Id.*

Second, to ensure that enforcement of Rule 8.2(a) does not infringe on core speech rights, a high standard is embedded within that rule, which encompasses only speech that is false and made with knowledge of its falsity or with reckless disregard as to its truth or falsity. As we observed in *Attorney Grievance Commission v. Stanalonis*, "[i]n the First Amendment context, 'reckless disregard for truth or falsity' evokes the subjective test for civil liability for defamation of a public figure set forth [in] *New York Times Co. v. Sullivan*, 376 U.S. 254 [84 S.Ct. 710, 11 L.Ed.2d 686] (1964)." 445 Md. at 143, 126 A.3d 6 (parallel citations omitted). Under that test, "reckless disregard" demands more than just a conclusion that a reasonable person would have refrained from making the comment or performed additional investigation. That standard demands that the plaintiff produce "sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of [the defendant's] publication."[27] *Id.* (quoting *St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968)). Nonetheless, as we highlighted in *Stanalonis*: "Every Maryland attorney takes an oath to

[27] As we observed in *Stanalonis*, there is disagreement among the states concerning whether an objective or subjective test should apply in attorney discipline cases. 445 Md. at 143, 126 A.3d 6. As in that case, we need not resolve that disagreement here because it would not be dispositive as to whether Mr. Weinberg violated MARPC 8.2(a).

act 'fairly and honorably.' " 445 Md. at 149, 126 A.3d 6.

Third, as we recently stated in *Attorney Grievance Commission v. Pierre*:

> [I]n assessing both whether a statement is false and whether the speaker had knowledge of its falsity or acted with reckless disregard thereof, there is an important distinction between statements of fact and statements of opinion. "Under the First Amendment there is no such thing as a false idea. ... But there is no constitutional value in false statements of fact. Neither the intentional lie nor the careless error materially advances society's interest in 'uninhibited, robust, and wide-open' debate on public issues." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339-40, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974) (quoting *Sullivan*, 376 U.S. at 270, 84 S.Ct. 710). Although statements of opinion are generally not subject to being proven false, statements of fact are. Moreover, statements of opinion, even those widely viewed as erroneous or unfair, are both less likely to mislead and more valuable to protect in the service of free and open public discourse than are false statements of fact. *See id.* It is therefore false statements of fact that are the subject of MARPC 8.2(a) and analogous provisions in other states. *See, e.g.*, *Matter of Callaghan*, 238 W.Va. 495, 796 S.E.2d 604, 628 (2017) (finding judicial candidate's materially false statements on campaign flyer impugning opponent were not protected by First Amendment and violated rules of professional conduct); *In re O'Toole*, 141 Ohio St.3d 355, 24 N.E.3d 1114, 1126 (2014) ("Lies do not contribute to a robust political atmosphere, and 'demonstrable falsehoods are not protected by the First Amendment in the same manner as

> truthful statements.' " (quoting *Brown v. Hartlage*, 456 U.S. 45, 60, 102 S.Ct. 1523, 71 L.Ed.2d 732 (1982)); *In re Chmura*, 461 Mich. 517, 608 N.W.2d 31, 33 (2000) (finding canon of judicial conduct restricting false or misleading public communications by judicial candidates unconstitutionally overbroad before narrowing it to prohibit only "knowingly or recklessly using forms of public communication that are false").

485 Md. 56, 70–71, 96-98, 300 A.3d 201 (2023).

Finally, when an attorney's statements are made during litigation—either in court or in court filings—we must also take great care to ensure that we do not chill speech or conduct that might legitimately advance the interests of their clients. A similar interest is protected in our defamation jurisprudence, where we afford absolute privilege for in-court statements that bear a rational relationship to the matter before the court. *See Norman v. Borison*, 418 Md. 630, 650, 653–54, 17 A.3d 697 (2011). Such statements are protected "even if [the attorney's] purpose or motive was malicious, [the attorney] knew that the statement was false, or [the attorney's] conduct was otherwise unreasonable." *Id.* at 651, 17 A.3d 697 (quoting *Adams v. Peck*, 288 Md. 1, 3, 415 A.2d 292 (1980)). "We give the privilege a broad and comprehensive interpretation, so as to foster the free and unfettered administration of justice[,]" because the "ultimate purpose of the judicial process is to determine the truth."[28] *Id.* at 651–52, 17 A.3d 697 (citations and internal quotation marks omitted).

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[28] That protection is less "broad and comprehensive" for out-of-court attorney speech extrinsic to judicial proceedings. *See, e.g.*, *Norman*, 418 Md. at 659, 17 A.3d 697 (discussing higher threshold for applying absolute privilege to statements made extrinsic to a judicial proceeding).

Unlike a defamation action, "there is no absolute privilege that would protect an attorney from disciplinary action." *Frost*, 437 Md. at 268 n.14, 85 A.3d 264. However, the same general purpose underlying the absolute judicial privilege from defamation actions mandates the exercise of great caution in attorney discipline matters to ensure that our enforcement of Rule 8.2(a) does not chill lawyers from engaging in potentially legitimate advocacy. For that reason, statements made in court or in court filings should form the basis for a violation of Rule 8.2(a) only when they could not conceivably be viewed as part of legitimate advocacy.

Accordingly, we begin our review first with the statements Respondent made at the hearing before Judge Alban, the August 8, 2021, email to Judge Klavans, and the August 2021 flyer.

i. The August 6, 2021, hearing before Judge Alban

On August 6, 2021, Respondent was representing the defendant in *State v. Harrod*. The hearing judge found that Respondent's statements during that hearing were all made with reckless disregard as to their truth or falsity, impugning the integrity of the judge. Respondent contends that Bar Counsel failed to prove that these statements were made with reckless disregard as to their truth or falsity. As found by the hearing judge, Respondent's statements about Judge Alban were "random statements not based on fact." Indeed, when Bar Counsel asked him to provide details about instances in which Judge Alban lied and was biased, he indicated that breaking her judicial oath made her a liar. In addition, he admits that his claim that Judge Alban was "complicit in kidnapping" related to Ms. Lemons' bond being revoked by Judge Ripken

and being returned to detention.[29]

As noted, in-court statements made in the course of representing clients should form the basis for a Rule 8.2(a) violation only when they could not conceivably be viewed as part of legitimate advocacy, lest we inadvertently chill legitimate speech or conduct.[30] Respondent's statements were made in connection with his motion for Judge Alban to recuse herself from presiding over a case involving a client of Respondent (not Ms. Lemons). Because they were made in court in connection with a motion made on behalf of a client, it is appropriate to carefully scrutinize Respondent's statements at the August 6, 2021, hearing.

After Respondent asked Judge Alban to recuse herself, Judge Alban asked him to state the basis for his request. He responded:

> You are a liar, you are biased, you have demonstrated bias, you have stepped into the shoes of the State's Attorney on occasion, you

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[29] Ms. Lemon's bail was revoked because she violated the terms and conditions of her pretrial release while serving home detention.

[30] We acknowledge that we have not previously articulated this standard, and that we have found violations of Rule 8.2(a) on at least two occasions based on statements made in court filings in the course of representing clients. *Att'y Grievance Comm'n v. McClain*, 406 Md. 1, 15–16, 18, 956 A.2d 135 (2008) (sustaining Rule 8.2(a) violation based on an attorney's assertion in a brief that the judge was motivated by personal bias); *Att'y Grievance Comm'n v. DeMaio*, 379 Md. 571, 585, 842 A.2d 802 (2004) (sustaining a Rule 8.2(a) violation by an attorney who, among other things, filed a motion containing "false, spurious and inflammatory representations and allegations with respect to" the Chief Judge and Clerk of the Appellate Court of Maryland). However, it does not appear that the respondents in those cases argued that a different standard should apply or raised a concern about chilling legitimate advocacy.

> refuse to apply the law when it doesn't suit your purposes or when you don't agree with it. You are complicit in kidnaping and basically you are corrupt for a judge. So I have to ask you that you recuse yourself.

Later in the hearing, Respondent renewed his request for recusal, stating: "You are a liar, you are bias[ed], you step into the shoes of the State's Attorneys, you are corrupt, you are complic[it] in kidnaping, and my client cannot get a fair hearing in front of you."

Because he made very similar statements on two occasions during different parts of the hearing, it is clear that Respondent's comments were neither mistaken nor the product of a surge of unfortunate or regrettable emotion, but instead were considered and intentional. That is also clear from the explanation he provided to the hearing judge, which is, in essence, that his statements were true. He claimed that Judge Alban: (1) is a liar because she broke her oath to uphold the Constitution by ignoring controlling law in at least two cases; (2) is biased because, among other reasons, she ignored governing case law to rule in favor of the State, denied a motion to reinstate without a hearing, reported him to Bar Counsel without reporting his opposing counsel, and spoke negatively of him with other judges; (3) struck his appearance as counsel in *Lemons*; (4) was complicit in kidnapping because Ms. Lemons would not have been taken into custody if Judge Alban had not removed him as counsel; and (5) is corrupt for all those reasons. The hearing judge concluded that those explanations were "random statements that are not based on fact" and, therefore, that Respondent's statements were made with reckless disregard as to their truth or falsity.

Certain of Respondent's statements, if made by themselves, could conceivably be part of legitimate

advocacy in connection with a recusal motion, including his contentions of general bias and providing improper assistance to an opposing party. Indeed, if an attorney believes that a judge has demonstrated bias justifying recusal, it will ordinarily be incumbent on the attorney to raise that issue and explain the basis. *See, e.g.*, *In re Dixon*, 994 N.E.2d 1129, 1138 (Ind. 2013) (stating that "[c]ounsel's advocacy on such [recusal for bias] matters must not be chilled by an overly restrictive interpretation of Rule 8.2(a)"). If Respondent had stopped there, we would not be inclined to conclude that he violated Rule 8.2(a), notwithstanding the falsity of the claims.

Here, however, Respondent went further, accusing Judge Alban of being "complicit in kidnaping" and being "corrupt for a judge." As the hearing judge correctly found, those are statements of fact, not opinion; they were false; and, absent any reasonable articulable basis for Respondent to have believed they were true, were made with at least reckless disregard for their truth or falsity. The fervency of Respondent's belief that his former client had been wronged neither justifies nor excuses his false, public accusations of corrupt, criminal behavior by Judge Alban. We cannot discern any conceivable role for such accusations in legitimate advocacy. Thus, Respondent's statements during the August 6, 2021, hearing violated MARPC 8.2(a). *See, e.g.*, *Frost*, 437 Md. at 260–62, 85 A.3d 264 (finding Rule 8.2(a) violation where attorney made statements accusing judges of corruption). Moreover, a lawful order of detention is not a crime of kidnapping. The hearing judge, therefore, properly found that these statements were made with reckless disregard as to their truth or falsity and impugned Judge Alban's integrity. Thus, we do not find that the hearing judge's finding is clearly erroneous, and we overrule Respondent's exception as to these statements made by

Respondent at the hearing on August 6, 2021.

ii. The August 8, 2021, email to Administrative Judge Klavans

On August 8, 2021, Respondent sent Judge Klavans the following email, which, in relevant part, stated:

> Pam Alban. While on the bench has lied, acted as a State's attorney, demonstrated bias towards the state, and is complicit in kidnapping. She also refuses to apply the law when it does not suit her personal beliefs[.]
> Judge Wachs: H[e] [has] demonstrated bias against the Defense Bar, his hypocrisy, and his refusal to apply the law has caused permanent harm to [ ] some of my clients.
> Judge Mulford: His bias against me, his allowing, ... [the] State's [A]ttorney to lie to the Court, and commit fraud upon the court, all remove him from the ability to be fair and impartial to me or my clients[.]

Respondent requested that the three judges "be permanently recused from any case [he is] named in[.]" The email was sent only to Judge Klavans. The hearing judge concluded that Respondent's statements contained in the email to Judge Klavans, concerning Judges Alban, Wachs, and Mulford, violated Rule 8.2(a).

We disagree with the hearing judge's finding of fact and conclusions of law with respect to the email. Although Respondent's statements in the email were unseemly and intemperate, and many of them were false, the purpose of Rule 8.2(a) is to "protect[ ] the integrity of the judicial system, and the public's confidence therein," and "not to protect judges[ ] ...

from unkind or [even] undeserved criticisms." *Frost*, 437 Md. at 263, 85 A.3d 264. We fail to see how criticisms made only in a document sent to one administrative judge could potentially have an adverse effect on the integrity of the judicial system or the public's confidence therein. As a result, we find no clear and convincing evidence that any of the statements in Respondent's August 8, 2021, email support the conclusion that he violated Rule 8.2(a). We, therefore, sustain Respondent's exceptions to the hearing judge's conclusion of law that Respondent violated Rule 8.2(a) with respect to the statements in the email.

iii. The August 2021 flyer

The hearing judge found that Respondent also violated Rule 8.2(a) because of the statements he made in the flyer and disseminated to a listserv used by the Maryland Criminal Defense Attorneys' Association. Respondent was aware that other attorneys and judges outside of the listserv also had seen the flyer, as well as the recall petition that was accessible by the QR code. Respondent claims that he was seeking to have Ms. Lemons released and that the judges' actions preventing this should be exposed. The hearing judge also rejected this testimony and concluded that the statements in the flyer were made with "reckless disregard as to [their] truth or falsity, [and] impugned the integrity" of the judges.

Having been circulated that broadly, it was easily foreseeable that the flyer could have been, and perhaps was, distributed to the public (i.e., members outside the legal profession). Moreover, the flyer did not merely accuse the judges targeted in it (Judges Alban and Wachs) of getting the law wrong or even generally being biased. Instead, it directly accused both of them of being "Lawless" and exhibiting "Criminality." Those

accusations fall squarely within the type of "false, scandalous or other improper attacks upon a judicial officer" that we have previously held are "subject to discipline" under Rule 8.2(a). *Frost*, 437 Md. at 265, 85 A.3d 264 (quoting *In re Evans*, 801 F.2d 703, 707 (4th Cir. 1986)); *see also see Att'y Grievance Comm'n v. McClain*, 406 Md. 1, 15–16, 18, 956 A.2d 135 (2008) (finding that attorney violated Rule 8.2(a) when the attorney asserted in a brief that a judge was motivated by personal bias); *Att'y Grievance Comm'n v. DeMaio*, 379 Md. 571, 585, 842 A.2d 802 (2004) (finding that attorney violated Rule 8.2(a) when the attorney made "false, spurious and inflammatory representations and allegations with respect to" the Chief Judge and Clerk of the Appellate Court of Maryland).

On the flyer, Respondent also accused Judge Wachs of refusing to apply the law, refusing to consider evidence, denying a required hearing, and applying the rules unfairly. And he accused Judge Alban of refusing to apply the law when it did not fit the results she wanted, ignoring laws and rules she does not like, and unlawfully depriving a woman of counsel. Although some of those statements, if made on their own, might not rise to the level of supporting an 8.2(a) violation, we must view the statements on the flyer in their totality, including the statements accusing Judges Wachs and Alban of lawless and criminal behavior. After an independent review of the record, we find that the hearing judge's determination is not clearly erroneous. We conclude that the Respondent violated Rule 8.2(a) when he distributed the August 2021 flyer. Thus, we overrule his exception as to the hearing judge's conclusion on this violation.

4. Rules 8.4(a), (c), and (d): Respondent Violated Multiple Rules; Engaged in Conduct Involving Dishonesty, Fraud, or Misrepresentation; and Engaged in Conduct Prejudicial to the Administration of Justice

Here, the hearing judge found that Respondent violated Rule 8.4(a) when he "violate[d] any other Rule under the MARPC." *Parris*, 482 Md. at 597, 289 A.3d 703 (citations and internal quotation marks omitted). Next, she also found that Respondent violated Rule 8.4(c) by making "false statement[s] knowing that [they were] untrue." Specifically, the hearing judge concluded that the violations of Rule 3.3(a)(1) constitute violations of Rule 8.4(c). That is—the hearing judge found that Respondent's June 18 motion and the Habeas Petition misrepresented what Ms. Hirsch would testify to with respect to whether she could identify Ms. Lemons as the person who assaulted her and robbed the 7-11 store. And finally, the hearing judge concluded that Respondent's statements, including those made directly to Judge Alban, as well as those in the email to Judge Klavans and in the Flyer, violated Rule 8.4(d) because the statements "were neither inartful slips of the tongue nor spoken in the heat of an oral altercation," and that his conduct "tend[ed] to bring the legal profession into disrepute." We agree with most of these findings and conclusions of law by the hearing judge.

First, because we conclude that Respondent violated Rules 3.3(a)(1) and 8.2(a), we also conclude that he violated Rule 8.4(a) by "violat[ing] ... the Maryland Attorneys' Rules of Professional Conduct[.]" Md. Rule 19-308.4(a); *see also Att'y Grievance Comm'n v. Hoerauf*, 469 Md. 179, 214, 229 A.3d 802 (2020) (noting that an attorney violates Rule 8.4(a) when "he or she

violates any other Rule under the MARPC").

Second, as to Rule 8.4(c), Respondent made knowing and intentional misrepresentations to the circuit court in his June 18 Motion and Habeas Petition in violation of Rule 3.3(a)(1). Both pleadings contain knowingly false representations of what Ms. Hirsch would testify to regarding her identification of Ms. Lemons as the person who assaulted her and robbed the 7-11. Indeed, the averments do not come close to what Ms. Hirsch had maintained each time she and Respondent communicated about the identity of the perpetrator.

Finally, an attorney violates Rule 8.4(d) if they engage in conduct that "negatively impacts the public's perception of the legal profession." *Basinger*, 441 Md. at 712, 109 A.3d 1165 (quoting *Att'y Grievance Comm'n v. McDowell*, 439 Md. 26, 39, 93 A.3d 711 (2014)). We agree that the August 6 in-court statements to Judge Alban and those statements about Judges Alban and Wachs in the flyer, along with the QR code linking to the recall petition, impugned the judges' character because they were publicly disseminated. By doing so, Respondent negatively impacted the public's perception of the legal profession as contemplated by Rule 8.4(d). With respect to the statements in the August 8 email that Respondent sent to Judge Klavans, however, we do not find that those statements in the email constitute violations of Rule 8.4(d) for the reasons we explained above in Section IV(B)(3)(i). Excluding those statements, Respondent's conduct certainly reflects negatively on the legal profession, impairs public confidence in the legal system, and had the potential to engender disrespect for the courts throughout the State. We conclude, therefore, that this conduct violates Rule 8.4(d) by clear and convincing evidence.

VI

AGGRAVATING AND MITIGATING FACTORS

In every attorney discipline case, we consider whether any aggravating and mitigating factors are present. To begin, we briefly review the established aggravating factors:

> (1) prior attorney discipline; (2) a dishonest or selfish motive; (3) a pattern of misconduct; (4) multiple violations of the M[A]RPC; (5) bad faith obstruction of the attorney discipline proceeding by intentionally failing to comply with the Maryland Rules or orders of this Court [ ]; (6) submission of false evidence, false statements, or other deceptive practices during the attorney discipline proceeding; (7) a refusal to acknowledge the misconduct's wrongful nature; (8) the victim's vulnerability; (9) substantial experience in the practice of law; (10) indifference to making restitution or rectifying the misconduct's consequences; (11) illegal conduct, including that involving the use of controlled substances; and (12) likelihood of repetition of the misconduct.

White, 480 Md. at 385, 280 A.3d 722 (quoting *Att'y Grievance Comm'n v. Keating*, 471 Md. 614, 639, 243 A.3d 520 (2020)). On the opposite end, we consider the following mitigating factors:

> [A]bsence of a prior disciplinary record; absence of a dishonest or selfish motive; personal or emotional problems; timely good faith efforts to make restitution or to rectify consequences of misconduct; full and free disclosure to disciplinary board or cooperative attitude toward proceedings;

> inexperience in the practice of law; character or reputation; physical or mental disability or impairment; delay in disciplinary proceedings; interim rehabilitation; imposition of other penalties or sanctions; remorse; and finally, remoteness of prior offenses.

Id. at 385–86, 280 A.3d 722 (quoting *Keating*, 471 Md. at 639–40, 243 A.3d 520). While it is Bar Counsel's obligation to prove each aggravating factor by clear and convincing evidence, the burden for Respondent is less onerous, requiring proof of any mitigating factors only by a preponderance of the evidence. *Id.* at 386, 280 A.3d 722 (citing *Att'y Grievance Comm'n v. Karambelas*, 473 Md. 134, 171, 248 A.3d 1019 (2021)).

Here, the hearing judge found the following four aggravating factors: a pattern of misconduct; multiple violations of the rules of professional conduct; submission of false evidence, false statements, or other deceptive practices during the attorney disciplinary process; and substantial experience in the practice of law. The hearing judge also found the following mitigating factors: absence of prior discipline; absence of a dishonest or selfish motive; remorse; and unlikelihood of repetition of the misconduct.

A. Aggravating Factors

Of the four aggravating factors that the hearing judge found, Respondent argues that Petitioner proved by clear and convincing evidence only that he has substantial experience in the practice of law. As to the others, Respondent excepts to the hearing judge's conclusions.

As we have held above, Respondent violated multiple MARPCs. He did not measure up to the high ethical standards by which all Maryland attorneys are

expected to abide. So, we find clear and convincing evidence that Respondent's multiple violations of the rules of professional conduct are aggravating factors. Likewise, we agree there is clear and convincing evidence of a pattern of misconduct. Not only on one, but on two occasions Respondent submitted knowingly false statements to the court about witness testimony: in the June 18 motion and in the Habeas Petition. We also must consider Respondent's statements about Judges Alban and Wachs that were made with reckless disregard as to their truth or falsity. "A pattern of misconduct can be demonstrated 'by multiple violations over time[.]' " *Att'y Grievance Comm'n v. Taniform*, 482 Md. 272, 301, 286 A.3d 1072 (2022) (quoting *Att'y Grievance Comm'n v. Sperling*, 459 Md. 194, 276, 185 A.3d 76 (2018)). Although Respondent argues that he was pursuing justice for Ms. Lemons, the egregious misconduct continued well after Ms. Lemons' case ended. His statements about Judges Alban and Wachs in the flyer were made more than six months after Ms. Lemons pleaded guilty.[31]

"We afford great deference to these determinations 'because it is the trier of fact, and not the appellate court, that possesses a better opportunity to view the evidence presented first-hand, including the demeanor-based evidence of the witnesses, which weighs on their credibility.' " *White*, 480 Md. at 387, 280 A.3d 722 (quoting *State v. Manion*, 442 Md. 419, 112 A.3d 506 (2015)). Thus, not only because we afford the hearing judge great deference, we also find clear and

[31] Although the hearing judge found that Respondent engaged in sanctionable practices during the attorney disciplinary process and flatly rejected Respondent's testimony that he did not know about the no-contact order prior to July 28, 2020, concluding that his explanations were "inconsistent ... and evolving[,]" we give no weight to this finding since we have determined that Respondent did not violate Rules 1.1 and 1.2 with respect to that conduct.

convincing evidence that the Commission met its burden as to the aggravating factors and overrule Respondent's objections. Respondent engaged in a pattern of misconduct, had multiple violations of the rules of professional conduct, and has substantial experience in the practice of law.

B. Mitigating Factors

For the following reasons, we conclude that Respondent has shown by a preponderance of the evidence the mitigating factors found by the hearing judge.

Respondent has no prior record of attorney discipline. Accordingly, that mitigating factor is established. In addition, throughout his testimony, Respondent showed remorse and showed that what he did was not for dishonest or selfish motives. Respondent consistently expressed that he simply wanted to see his client get the justice he believed that she deserved. Thus, we agree with the hearing judge that Petitioner proved by a preponderance of the evidence the mitigating factors of both absence of a dishonest or selfish motive and remorse.

Similarly, when recounting the statements he made about the three judges, Respondent testified that he would not do it again. Likewise, in the aftermath of the *Lemons* matter, Respondent reflected on his actions, vowing not to let anything of the like happen again. Accordingly, we agree that Respondent has proven by a preponderance of the evidence the mitigating factor of an unlikelihood of repeating this misconduct.

In addition to the four mitigating factors found by the hearing judge, Respondent also asks us to hold that the following mitigating factors apply to him: personal and emotional problems; remedial actions; full and free disclosure to the disciplinary board; and character and

reputation. We agree with him as to his remedial actions and cooperation with Bar Counsel but overrule his exceptions as to the others.

First, Respondent claims that during the *Lemons* matter, he and his wife were separated, and he was temporarily living in his office. However, the record does not clearly provide evidence of this as a mitigating factor. Respondent did not present any testimony as to how his separation affected his work, and the timeframe for this testimony seems to fall outside the scope of his representation of Ms. Lemons. Thus, he has not provided mitigation to this extent by a preponderance of the evidence.

Second, as to the character and reputation mitigating factor, we also do not agree that factor is applicable. At the hearing, Respondent failed to present any character witnesses, nor evidence of his good character. He "forgot to ask other attorneys whether they would come and testify on [his] behalf, [regarding his] character [and] reputation in the community." Thus, without any evidence in the record as to Respondent's character, we cannot hold that this mitigating factor applies.

Regarding remedial actions, we agree with Respondent that this factor applies. In her findings, the hearing judge observed that Respondent "credibly testified to the remedial actions he has already taken." Notably, he no longer handles circuit court cases or felonies, and he is currently employed by the St. Mary's County Office of the Public Defender, handling District Court matters only. Thus, we agree that this mitigating factor has been proven by a preponderance of the evidence.

Finally, we agree with Respondent that he has proven by a preponderance of the evidence his full and free disclosure to Bar Counsel during the disciplinary process. The hearing judge did not make any findings

regarding this mitigating factor. Bar Counsel also does not address this factor in its Recommendation for Sanction; rather, it "recognizes the mitigation found by the hearing judge[.]" At the disciplinary hearing, regarding the applicability of various mitigating factors, Respondent testified:

> Full and free disclosure to the disciplinary board or a cooperative attitude towards proceedings. I have been nothing but cooperative. I have in many ways bent over backwards. The detective, he lives in Hartford County. When his attorney notified me that he lived in Hartford County, he had a medical appointment with his son. I immediately told him, I am fine with remote and I'm fine with working around his schedule.
> Glenn Neubauer, instead of insisting that he be here today, I said, he can be released as long as I'm able to recall him and it can be remote. I have bent over backwards. (Unintelligible - 4:42:57.) I have done everything to make this easier. I sent everything the bar asked for. I sent to them. Tried to send in somewhat of an, as organized fashion as I could. You've heard no complaints about that.
> You've heard nothing about lack of cooperation, or lack of full and free disclosure. At the deposition when asked about the Judge Watts thing, I came forward and, I brought up on my own about my error with the, the habeas just as I did today. I very easily could have just brushed that over and not said a thing. I would never do that though.

(All *sic* in original).

Respondent's testimony regarding, and exception for, this mitigating factor is well taken. Respondent has put forth sufficient evidence—and Bar Counsel does

not challenge[32]—Respondent's cooperative attitude toward Bar Counsel's investigation. Thus, Respondent has established by a preponderance of the evidence this mitigating factor.

VII

THE SANCTION

Bar Counsel recommends that we suspend Respondent indefinitely, but with the right to apply for reinstatement in one year. Respondent, however, asks that this Court dismiss the charges against him. We believe the appropriate sanction to impose is an

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[32] Indeed, when asked by Bar Counsel whether Petitioner would "change anything about [his] communications with [B]ar [C]ounsel in this case; in State v. Lemons[,]" Respondent answered with the following:

> Obviously. I had sent emails to Ms. Lawless. I, I sent an email asking her about the flyer, whether it's okay to publish, never heard back. I wouldn't have done that because I wouldn't have published the flyer, and I should have known not to expect answers. No, I, I don't remember the details of every email, but *I do remember I was incredibly cooperative*. When I was sent requests, I either immediately replied or sent the reply that I received this and I will get to it, yada, yada, so I was very attentive to them.
>
> At one point, when I was expecting to be in the mountains for a couple months, I sent an email to Mr. Blow, I believe it was, that I was going to be out of touch for two months, and I wouldn't be able to respond to any emails.
>
> *No, I believe my emails in this case, unless you can -- want to ask me about something specific, were, overall, professional, cooperative, providing all the information, plus more*. If you want to ask me about something specific, maybe that answer would change if you showed me something that you had in mind.

(Emphases added). Bar Counsel had no further questions in response.

indefinite suspension with the right to apply for reinstatement six months after the beginning of the period of suspension.

The purpose of sanctions in attorney disciplinary proceedings is to "promote both general and specific deterrence and safeguard the public and its confidence in the legal profession." *White*, 480 Md. at 390, 280 A.3d 722 (citing *Att'y Grievance Comm'n v. Bonner*, 477 Md. 576, 607, 271 A.3d 249 (2022)). It is not to punish attorneys, nor to be retributive. *Id.* (citing *Keating*, 471 Md. at 651, 243 A.3d 520). "In determining the appropriate sanction for an attorney, 'we consider the facts and circumstances of each case and order a sanction that is commensurate with the nature and gravity of the violations and the intent with which they were committed.' " *Parris*, 482 Md. at 598–99, 289 A.3d 703 (some internal quotation marks omitted) (quoting *Att'y Grievance Comm'n v. Edwards*, 462 Md. 642, 712, 202 A.3d 1200 (2019)). Included in our review of the facts and circumstances is the evaluation of any mitigating and aggravating factors. *Id.* at 599, 289 A.3d 703 (citations omitted).

We first observe that Respondent's actions, in part, are similar to the ones found in *Keating*. In *Keating*, the attorney was vehemently committed to the client, to the point where the attorney's "professional judgement and ethical obligations" became clouded. 471 Md. at 655, 243 A.3d 520. The attorney submitted a "will with a knowingly false witness attestation" for probate to the Register of Wills. *Id.* at 636, 656, 243 A.3d 520. Accordingly, this Court found that the attorney's knowingly false statements and "criminal and fraudulent" submission of the will violated Rules 8.4(a)–(d). *Id.* at 650, 243 A.3d 520.

In violating the Rules, however, we found that the attorney acted "without selfish motivation and took action to try and mitigate" any future problems. *Id.*

And based on the circumstances, she was "unlikely" to repeat the misconduct. *Id.* These mitigating factors balanced "with the serious violations of dishonesty before a tribunal" warranted an indefinite suspension, with the right to apply for reinstatement in six months. *Id.* at 654, 243 A.3d 520.

Like *Keating*, Respondent committed serious violations with respect to his professional obligations while representing Ms. Lemons. He submitted two documents to the court that contained knowingly false statements. This misconduct occurred because of Respondent's ill-advised actions to prove Ms. Lemons' innocence, although he acted without selfish or dishonest motives in representing Ms. Lemons and even expressed remorse about his actions in zealously doing so.[33]

Unlike *Keating*, however, we recognize that Respondent also engaged in conduct that occurred after the *Lemons* case had concluded. Respondent made multiple statements about two judges with reckless disregard as to their truth or falsity. Moreover, he impugned their character. Respondent acknowledges that these statements were inappropriate, and that he would not, given the opportunity, repeat this conduct. Respondent has taken remedial actions to prevent this type of conduct from happening again by limiting his practice to District Court cases. The conduct that led to these violations occurred after a long legal career during which he has not had any other disciplinary proceedings brought against him.

For all of the reasons above, Respondent's conduct in

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[33] In saying this, however, we do not intend to caution against attorneys advocating zealously for their clients. Instead, we merely note that zealous advocacy can, at times, cause unintended consequences. Lawyers should not let their commitment to their client(s) cloud their professional judgment and impinge on their ethical obligations. *See Keating*, 471 Md. at 655, 243 A.3d 520.

addition to the relevant aggravating and mitigating factors warrants an indefinite suspension, with the right to apply for reinstatement after six months from the beginning of the period of suspension.

IT IS SO ORDERED; RESPONDENT SHALL PAY ALL COSTS AS TAXED BY THE CLERK OF THIS COURT, INCLUDING COSTS OF ALL TRANSCRIPTS, PURSUANT TO MARYLAND RULE 19-709(d), FOR WHICH SUM JUDGMENT IS ENTERED IN FAVOR OF THE ATTORNEY GRIEVANCE COMMISSION AGAINST ASHER NEWTON WEINBERG.

APPENDIX D

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY
Case No. C-15-CV-22-001132

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND
v.
ASHER WEINBERG

Findings of Fact and Conclusions of Law By The Honorable Kathleen M. Dumais

Filed: February 10, 2023

This matter came before the court on December 12-13, 2022, for a hearing on the Petition for Disciplinary or Remedial Action filed by the Attorney Grievance Commission of Maryland ("Petitioner") against Asher N. Weinberg ("Respondent") in accordance with Maryland Rule 19- 721. Petitioner was represented by Lydia E. Lawless, Bar Counsel, and Kelly A. Robier, Assistant Bar Counsel. Respondent represented himself. Upon consideration of the Petition, Respondent's Answer, exhibits, witness testimony and arguments of counsel, this court makes the following Findings of Fact and Conclusions of Law.

PROCEDURAL BACKGROUND

Bar Counsel filed the Petition for Disciplinary or Remedial Action ("Petition") in the Supreme Court of Maryland-then the Court of Appeals of Maryland-on March 14, 2022. The Supreme Court transmitted the matter to the trial court on March 16, 2022. The Clerk of the Circuit Court for Montgomery County issued a

Summons on March 16, 2022. Bar Counsel served Respondent with the Petition, the transmittal Order, and the Summons on April 13, 2022. Respondent filed an Answer to the Petition on April 26, 2022. On May 11, 2022, a Scheduling Conference was held via Zoom and a seven (7) day trial was set to begin on August 1, 2022. The Court also set discovery deadlines at the conference. Subsequently, on June 22, 2022, the Supreme Court of Maryland stayed the matter until September 6, 2022, due to Respondent's heart attack and related health issues. A second Scheduling Conference was held on September 7, 2022, via Zoom and a seven (7) day trial was set to begin on December 12, 2022. The court issued an amended Scheduling Order with discovery deadlines at the conclusion of the conference.

On December 6, 2022, three Motions for Protective Orders and to Quash Subpoenas were filed on behalf of interested persons. The Assistant Attorney Generals for the various interested parties requested the court quash Respondent's subpoenas served on Court of Special Appeals Judge Laura Ripken and the following Anne Arundel County Circuit Court Judges: Judge Pamela Alban; Judge Mark Crooks; Judge Glenn Klavans; Judge William Mulford; Judge Richard Trunnell; and Judge Michael Wachs; and the following individuals from the Anne Arundel County Office of the State's Attorney: Anne Leitess, Anne Arundel County State's Attorney; Deputy State's Attorney Jessica Daigle; and Deputy State's Attorney Brian Marsh. Respondent filed his opposition to the Motions on December 7, 2022. The court granted the Motions and quashed all the above referenced subpoenas.

Also on December 6, 2022, a Motion for Protective Order and to Quash Subpoenas to Attorney Grievance Commission Individuals was filed on behalf of Lydia Lawless, Bar Counsel; Debora Goodrick, Daniela

Valverde, Nancy LaRocque and Kelsey Rowe (Administrative Assistants to Bar Counsel); Daniel Weishaar (AGC investigator for the case); Marianne Lee (Executive Counsel and Director of the AGC); Sharon Gross (Administrative Assistant to Ms. Lee); and Jason Bogue, Bill Lyon, Marc Fiedler, and Darin Bush (all AGC investigators who had no involvement in the case). Respondent filed his opposition on December 7, 2022. The Court granted the Motion and quashed all the above referenced subpoenas for the Attorney Grievance Commission individuals.

On December 12, 2022, the parties appeared for trial. The hearing concluded on December 13, 2022, at which time the court ordered Petitioner to submit written Proposed Findings of Fact and Conclusions of Law to the court by January 13, 2023, and Respondent to submit his Proposed Findings of Fact and Conclusions of Law to the court by January 18, 2023.

SUMMARY OF ISSUES & EVIDENCE PRESENTED

The Petitioner alleges that the Respondent violated the Maryland Attorneys' Rules of Professional Conduct ("MARPC"). Specifically, Petitioner alleges Respondent violated the following Rules: 19-301.1 (competence); 19-301.2(d) (scope of representation and allocation of authority between client and attorney); 19-303.3(a)(l) (candor toward the tribunal); 19-308.2(a) (judicial and legal officials); and 19-308.4(a), (c), and (d) (misconduct).[1] Respondent generally denied the allegations set forth in the Petition. Trial was held on

[1] Petitioner withdrew the allegations that the Respondent violated Rule 19-301.l6(a)(1) (declining or terminating representation); Rule 19-303.4(c) (fairness to opposing party and attorney); and Rule l9-308.4(b) (misconduct).

December 12 and 13, 2022. Petitioner called Kaija Hirsch, Glen Neubauer, and the Respondent as witnesses and the Court admitted Petitioner's Exhibits 1-l0[2]. The Respondent testified on his own behalf and called Detective Jonathan Eckloff as a defense witness. The Court admitted Respondent's Exhibits 1-7.

STANDARD OF REVIEW

The Petitioner in this matter has the burden of proving, by clear and convincing evidence, the averments in the Petition and any aggravating factors. Md. Rule 19-727(c); *Att'y Griev. Comm'n v. Bah*, 468 Md. 179, 215 (2020) (citations omitted). The Respondent has the burden of proving an affirmative defense or a matter of mitigation or extenuation by a preponderance of the evidence. Maryland Rule 19-727(c); see *Att'y Griev. Comm'n v. Robbins*, 463 Md. 411, 465-66 (2019). The Court makes the following findings of fact and conclusions of law based on clear and convincing evidence.

FINDINGS OF FACT

Respondent, Asher N. Weinberg, was admitted to the Bar of the Supreme Court of Washington in 2003. **Dec.13 Tr. 91.** Respondent ran several legal clinics in Tacoma, Washington before becoming a public defender in Yakama County where he worked for approximately five years. Respondent then worked for the Confederated Tribes and Bands of Yakama Nation representing tribal members and focusing mostly on criminal law. **Dec. 13 Tr. 92.** The Respondent was admitted to the Bar of the Supreme Court of Maryland

[2] The Court excluded pages 424-438; 452-455 of Petitioner's Exhibit 1; and page 693 of Petitioner's Exhibit 5.

on July 30, 2013. **Dec. 12 Tr. 157.** Respondent handled "hundreds and hundreds" of criminal cases in Washington State and Maryland as a private defense attorney, public defender and while representing the Yakama Nation. **Dec. 12 Tr. 159.**

I. THE RESPONDENT'S CONDUCT IN STATE v. LEMONS

A. Background

On November 15, 2019, Megan B. Lemons was charged with armed robbery and related charges in the District Court for Anne Arundel County in connection with a robbery that occurred at a 7-Eleven store on October 15, 2019 (*State v. Lemons*, D-07-CR-19-001966). **Pet. Ex.1 at 16-17**. Kaija Hirsch, an employee of the 7-Eleven, was the victim of the robbery. ***Id.***

On January 24, 2020, Ms. Lemons was arrested in Virginia and extradited to Maryland. **Pet. Ex. 1 at 21.** On January 27, 2020, a bond review hearing was held before Judge Danielle M. Mosely. **Pet. Ex. 1 at 33.** Judge Mosely ordered that Ms. Lemons be held without bond and imposed several special conditions upon her including the conditions that she "NOT CONTACT OR HARASS KAUA HIRSCH. NOT ASSOCIATE WITH KAUA HIRSCH." **Pet. Ex. 1 at 33, 35** (emphasis in original). Respondent did not represent Ms. Lemons at this point in the case; he did not attend the bond review hearing before Judge Mosely.

On February 21, 2020, a grand jury sitting in Anne Arundel County indicted Ms. Lemons and the case was transferred to the Circuit Court for Anne Arundel County (*State v. Lemons*, Case No. C-02-CR-20-000276). **Pet. Ex. 1 at 37-39**. The court transferred all of Ms. Lemons' District Court bond conditions to the Circuit Court case, including the special condition that

Ms. Lemons have no contact with Ms. Hirsch. **Pet. Ex. 1 at 56.**

Ms. Lemons' case was assigned to Assistant State's Attorney Glen Neubauer. **Pet. Ex. 1 at 39; Dec. 12 Tr. 89.** On February 23, 2020, the Respondent entered his appearance on behalf of Ms. Lemons. **Pet. Ex.1 at 45.** From the outset of the representation, the Respondent was adamant that Ms. Lemons was not the individual who committed the robbery, and that Ms. Lemons was wrongly identified by the State's witnesses. **Pet. Ex. 1 at 51-54; Dec. 12 Tr. 164.**

On February 27, 2020, the Respondent filed a Motion to Review and Reduce Bond which was scheduled for March 6, 2020. **Pet. Ex. 1 at 51-54, 59.** On March 6, 2020, a bond review hearing was held before Judge Robert J. Thompson. **Pet. Ex. 3, 632-644.** Judge Thompson ordered that Ms. Lemons be released on home detention with the condition that she be allowed to travel for "legal, medical, and home detention appointments only." **Pet. Ex. 1 at 60, 66-67.** Judge Thompson did not alter or strike the no contact order that was imposed upon Ms. Lemons by the District Court. Respondent assets that because Judge Thompson did not reference the no contact provision, it can be implied that the no contact order was lifted. **Pet. Ex. 3, 632-644; Dec. 12 Tr. 163-64**. The Court disagrees. The no contact order remained in place.

B. The Respondent Makes Settlement "Offers"

On May 14, 2020, the Respondent sent Mr. Neubauer, and his supervisor, Deputy State's Attorney Brian Marsh, an email regarding the Lemons matter stating:

This needs to end now. I am in the emergency

> room of the hospital with Megan [Lemons]. [Ms. Lemons' fiance] just hung himself, and the stress from this is a big reason. He likely has brain damage and is not awake or responding. They may be transporting him to shock trauma. This all happened in the last 90 minutes or so.
> I have left you another message for the detective, even though he has yet to ever return one of my calls. I want him to come down to the hospital, or I will drive Megan there to meet him. Someone from your side should actually meet her in person and compare her to the person in the video.
> If he won't meet with us, i will contact the victim, and ask her to meet us, and see if she recognizes Megan. If you have another idea, let me know.
> Meanwhile, here is my offer. And it has gone up since I was taking to them about this last week: Megan will waive any claims of malicious prosecution, and any other claims I can think of against the police and the State's attorney and their employees and agents. In return, she will receive the State will pay her $15,000. This will cover her legal expenses, lost wages, expenses, and leave her not much for stress, embarrassment pain and suffering. This offer will remain open for one week. After that, the amount goes up.
> Brian, feel free to contact me by phone or e-mail. I will continue to try to get a hold of the detective.
> I have also let ASAP know she is with me at the hospital. I will file something electronically with the court this morning.
> Have a great day!

Pet. Ex. 1 at 102 (all *sic* in original).

On June 4, 2020, the State extended a plea offer to the Respondent. In exchange for Ms. Lemons entering a plea to armed robbery, the State offered to

recommend a sentence of eight years of incarceration with all but 18 months suspended. Pet. Ex. 1 at 125-26. The same day, the Respondent sent a letter addressed to the State's Attorney's Office stating:

> Good evening,
> I have gone over your offer with Ms. Lemons. She rejects the offer completely.
> However, we are making the following counteroffer:
> The State will dismiss all charges pending in this case against Ms. Lemons. Dismissal will be with prejudice.
> The County will pay to Ms. Lemons the sum of One Hundred Thousand Dollars ($100,000). At that time, Ms. Lemons will sign a general waiver against Anne Arundel County, The State's Attorney Office and its employees, and the Anne Arundel County Police Department.
> This offer is valid until June 15th, 2020. It is also revoked if Ms. Lemons is re-incarcerated or charged with any new offenses.
> Thank you.

Pet. Ex. 1 at 128 (all *sic* in original).

The State did not respond to the Respondent's May 14, 2020, or June 4, 2020 "offers." **Dec. 12 Tr. 97-98.**

C. <u>The Respondent's Communications with Ms. Hirsch</u>

On May 14, 2020, the Respondent sent Ms. Hirsch the following text message:

> Ms. Hirsh. My name is Asher Weinberg. I am investigating the 7-11 robbery where you were the victim. If you are available to talk, please call or

> text me. Or, if you have an email address, I would like to send you some photos, and see if you recognize the person as the robber. I would also like to find out more information about the height of the woman in relationship to you.
> Thank you.

Pet. Ex. 4 at 647.

Ms. Hirsch responded to the Respondent's text message and in the ensuing weeks the two began communicating via text messages and phone calls. **Pet. Ex. 4.** The Respondent sent Ms. Hirsch text messages which included several photographs of different women and asked whether she could identify any of the women as the individual who committed the robbery. **Pet. Ex. 4 at 648-52, 657-58**. Ms. Hirsch told the Respondent that she could not give him a definitive answer. **Pet. Ex. 10 at 791; Dec. 12 Tr. 31-32, 41-42.**

On June 3, 2020, the Respondent sent Ms. Hirsch the following text message:

> Megan can no longer afford to be on the ankle bracelet, which means she may need to tum herself back into jail on Monday. If you could meet with us tomorrow or Friday, that would be very helpful! I can drive her down to wherever you want, at any time you want. I hate to be pushy but with the Covid, the courts are not having any trials until probably November or December, and if she id truly innocent, I don't want her sitting in jail until then.
> Thank you.

Pet. Ex. 4 at 659-60 (all *sic* in original).

In response to the Respondent's message, Ms. Hirsch agreed to meet with the Respondent and Ms. Lemons on June 5, 2020, near Sparrows Point High School in

Sparrows Point, Maryland. **Pet. Ex. 4 at 661; Dec. 12 Tr. 32**.

On June 5, 2020, the Respondent transported Ms. Lemons to meet with Ms. Hirsch. Bar Counsel asserted this meeting was in direct violation of the court's no contact order; Respondent asserted that the no contact order was not in effect. Present at the meeting, which lasted approximately 15 minutes, were the Respondent, Ms. Lemons, Ms. Hirsch and a friend of Ms. Hirsch's who drove her to the meeting. **Dec. 12 Tr. 32-33, 170-71**. The Respondent did not arrange to bring another witness to this meeting. **Dec. 12 Tr. 170**. During the meeting, the Respondent questioned Ms. Hirsch about her description of the robbery suspect. **Dec. 12 Tr. 33-34**. At the meeting, Ms. Hirsch told Respondent that she believed the robber was closer to Respondent's height than Ms. Lemons' height but did not give Respondent a definitive answer regarding whether she could identify Ms. Lemons as the perpetrator of the robbery. **Dec. 12 Tr. 33-34, 170**. The Respondent admits that on June 5, Ms. Hirsch did not tell him that Ms. Lemons was not the robber but stated that he did not specifically ask her that question. **Dec. 12 Tr. 171- 72**.

On June 7, 2020, the Respondent sent Ms. Hirsch a text message, stating, "Good evening. I am filing a motion tomorrow to try to get [Ms'. Lemons] released. May I say that when we meet, you could not identify her as your attacker? Would that be accurate?" **Pet. Ex. 4 at 663** (all *sic* in original). Ms. Hirsch did not reply to the Respondent's June 7 text message. **Pet. Ex. 4; Dec. 12. Tr. 38.**

On June 17, 2020, Respondent called Ms. Hirsch and the two spoke by phone. At trial, the two disagreed about what was said during the telephone call. Ms. Hirsch testified that she "was not able to give him a definitive answer" as to whether Ms. Lemons was the

robber and that she "told him that [she] believes that [she] was still unsure." **Dec.12 Tr. 38**. The Respondent contends that, without any prompting, Ms. Hirsch told him that Ms. Lemons was not the robber. **Dec. 12 Tr. 82-84; 173**. However, based on her testimony and the copies of the written communications, at no point did Ms. Hirsch tell Respondent that Ms. Lemons was not the individual who committed the robbery or give him consent to make that representation on her behalf. **Dec. 12 Tr. 41-42.** In accepting Ms. Hirsch's testimony in its entirety, the Court finds that during her verbal and written exchanges with the Respondent, she never gave the Respondent a definitive answer as to whether Ms. Lemons was the individual who committed the robbery. Ms. Hirsch testified consistently that, at the time of the robbery, she perceived the robber to be taller and heavier because of the terror she felt being robbed at knifepoint. **Dec. 12 Tr. 33, 47, 74, 78**. The Court credits Ms. Hirsch's testimony that she was never certain about the robber's identity and never made any affirmative statements to the Respondent regarding whether Ms. Lemons was or was not the individual who committed the robbery. **Dec. 12 Tr. 41-42, 83-84**.

D. **The Respondent Files Various Motions with False Statements to the Court**

On June 18, 2020, the Respondent filed "REQUEST FOR HEARING IN JUNE BEFORE DEFENDANT BECOMES HOMELESS AND IS LIVING ON THE STREET IN ORDER TO DETERMINE WHETHER PROBABLE CAUSE STILL EXISTS TO HOLD MS. LEMONS" ("Motion") **Pet. Ex. 1 at 200-02** (emphasis in original). In the Motion, the Respondent argued that the State did not have probable cause to continue its detention of Ms. Lemons. **Pet. Ex. 1 at 200-01**. In

support, the Respondent represented, "The Cashier, Ms. Hirsch, will testify that after seeing Ms. Lemons in person, she is 100% positive that Ms. Lemons was NOT the robber." **Pet. Ex. 1 at 201** (emphasis in original). The Respondent admits that Ms. Hirsch never told him that she was "100% positive that Ms. Lemons was not the robber" and that she never conveyed to him that she would testify that Ms. Lemons was not the robber. **Dec. 12 Tr. 174, 176**. The Court finds that the Respondent knowingly and intentionally misrepresented that Ms. Hirsch would "testify that after seeing Ms. Lemons in person, she is 100% positive that Ms. Lemons was NOT the robber" (emphasis in the original).

On June 25, 2020, the Respondent filed a Petition for Writ of Habeas Corpus petitioning for Ms. Lemons' release from detention in which he repeated his knowing and intentional misrepresentations stating:

> 7. Defense Counsel arranged for Ms. Lemons and the victim of the robbery to meet. After meeting with Ms. Lemons, the victim spoke to Counsel by phone and stated with absolute certainty, Ms. Lemons was not the robber. She is prepared to testify to this.
>
> ***
>
> 14. The victim of the robbery, Kaija Hirsch will testify that Ms. Lemons was not the robber.

Pet. Ex. 2 at 629-30.

The Court finds that the Respondent knowingly and intentionally misrepresented that Ms. Hirsch "stated with absolute certainty" that "Ms. Lemons was not the robber" and that "[s]he is prepared to testify" and "will testify" "that Ms. Lemons was not the robber." Ms. Hirsch did testify that the robber was more than a head taller than herself. **Dec. 12 Tr.**

73-78. This was verified by review of the security video. Dec. 12 Tr. 73-74.

E. **The Court Strikes the Respondent's Appearance**

On July 1, 2020, the State filed a response to the Petition for Writ of Habeas Corpus requesting that the court inquire about the meeting between Ms. Lemons and Ms. Hirsch, which the State first learned of from the Respondent's Motions referenced above. Pet. Ex. 1 at 234-42; Dec. 12 Tr. 98-99. On July 28, 2020, the court held a motions hearing before Judge Mark W. Crooks. Pet. Ex. 1 at 268, 468-510.

During the hearing, Judge Crooks addressed the June 5th meeting between the Respondent, Ms. Lemons, and Ms. Hirsch. Pet. Ex. 1 at 477, 483-502. Respondent admitted that he arranged the meeting and transported Ms. Lemons' to the meeting. Pet. Ex. 1 at 484-88. He argued that it was his belief that the March 6th order for home detention superseded the initial conditions imposed on Ms. Lemons, including the no contact order. Pet. Ex. 1 at 488-90. Respondent never acknowledged the no contact provisions of the District Court Pet. Ex. 1 at 33-35 and the Circuit Court Commitment Pending Hearing Order dated 2/25/2020. Pet. Ex. 1 at 56. At the Circuit Court, Respondent posited that only the "No Bond" provision the 2/25/2020 Circuit Court Order was effective because it is the only provision with a reference to a judge. Respondent's position is illogical. He suggests that the "no contact" provisions only applied to Ms. Lemons while she was held at the detention center without bond and that a no contact order was NOT in effect when she was released and had the capability to contact or associate with Ms. Hirsch. When Judge Thompson granted Ms. Lemons' request for home detention on March 6, 2020, he did

not alter or strike the no contact provision.

During the hearing before this court on December 12-13, 2022, Respondent claimed that he was unaware of the no contact order until the July 28th hearing.[3] **Dec. 13 Tr. 62; Pet. Ex. 1 at 488-90**. Specifically in response to a question, Respondent stated "I don't believe I had that knowledge at that - when I brought Megan to meet with Ms. Hirsch, I don't believe I was aware that there was any kind of no-contact order in place." **Dec. 13 Tr. 63**. Respondent's position is not credible, and the Court finds that, as of June 3, 2020, when he arranged the meeting between Ms. Lemons and Ms. Hirsch, the Respondent knew or should have known the no contact order was in place. He assisted Ms. Lemons in violating the order.

In addition to his inconsistent statements and evolving explanations, the Court has considered the Respondent's extensive experience representing criminal defendants, **Dec. 12 Tr. 159**, and that it is standard for a court to issue a no contact provision between a victim and defendant in a criminal case. **Dec. 12 Tr. 93**. The Respondent had access to Ms. Lemons' entire court file through the Maryland Electronic Court ("MDEC") e-filing system, **Dec.12 Tr.161,** and, knowing of Ms. Lemons' bond status and conditions, filed a Motion to Review and Reduce Bond on February 27, 2020. **Pet. Ex. 1 at 51-52**.

After hearing from the Respondent at the July 28, 2020 hearing, Judge Crooks expressed his concerns regarding the meeting and the potential evidentiary issues that it may have created. **Pet. Ex. 1 at 477,488, 490-92**. Judge Crooks stated:

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[3] Respondent provided a third explanation arguing that the February 25 order transferring Ms. Lemons bond and bond conditions to Circuit Court was not a valid order because it was not signed by a judge. **Dec. 13 Tr. 133**.

> [T]his Court finds that the original order controlled throughout the order that was put in place, which was a no contact order provision, and not withstanding Judge Thompson- presumably, it might have had to do with Covid, I don't know, but had some habeas or bond review, and concluded that there were limited exceptions to the no bond house arrest to meet with counsel, and medical appointments, and that kind of thing.
> And this Court interprets that as being an umbrella that would have forced all of the ability - even that alone would have forced all the ability for the victim to meet with the Defendant, which in no case is appropriate.

Pet. Ex. 1 at 501.

On October 6, 2020, the State filed a motion in limine arguing that the Respondent's presence at the meeting between Ms. Lemons and Ms. Hirsch made him a potential trial witness and that the court should "preclude the Defendant's use of anything obtained at, or as a result of, the meeting [the Respondent] set up between the Defendant and the victim, Kaija Hirsch." **Pet. Ex. 1 at 277-79**. Respondent pointed out that Judge Crooks discussed procedural measures with the State and Respondent to address the concern of placing Respondent (counsel of record) in the position of testifying as a witness. **Pet. Ex. 1 at 497-501**.

On October 8, 2020, prior to the commencement of trial, the court, Judge Pamela J. Alban, heard argument on the State's motion in limine. **Pet. Ex. 1 at 295, 511-61**. During the hearing, the Respondent described to the court how he arranged the meeting between Ms. Lemons and Ms. Hirsch and then attended the meeting without bringing another witness. **Pet. Ex. 1 at 520, 522, 526**. Given the

Respondent's conflicting statements regarding his intention to use the meeting at trial, Mr. Neubauer requested that the Respondent be stricken as counsel. **Pet. Ex. 1 at 527-30**; **Dec. 12 Tr. 102-04**. During this hearing before Judge Alban, Respondent agreed not reference the meeting with Ms. Hirsch or any information garnered from Ms. Hirsch after the meeting. **Pet. Ex. 1 at 542-543**.

After further discussion with Respondent and ASA Neubauer, Judge Alban found that the Respondent's conduct violated the court's no contact order and that he made himself a potential witness for the State. **Pet. Ex. 1 at 542, 553-56.** Judge Alban addressed the Respondent:

> You committed - potentially committed a crime here by the initial interview with the victim and so based on that, and as I look at the interactions, the results, I don't need to rehash all of it again for you but the problem becomes that the effects of what occurs after your meetings, I think opens the door and allows Ms. Neubauer more latitude in cross examination and potential witness calling.

Pet. Ex. 1 at 559-60.

At the conclusion of the hearing, over the objections of Ms. Lemons and the Respondent, Judge Alban struck the Respondent's appearance and directed the parties to the County Administrative Judge, Laura S. Ripken[4], for a hearing on postponing the trial. **Pet. Ex. 1 at 554-56, 560**. Respondent complained that striking his appearance and postponing the case was prejudicial to Ms. Lemons who could no longer afford home detention. Judge Alban advised that, before Judge

[4] Judge Ripken has since been elevated to the Appellate Court of Maryland.

Ripken, Ms. Lemons could have the matter postponed or elect to proceed without counsel. **Pet. Ex. 1 at 557-558**. Ms. Lemons' trial was scheduled to begin the following day, October 9, 2020, but was postponed to December 17, 2020, and a further bond hearing was set for October 16, 2020. **Pet. Ex. 1 at 585-588**.

F. **The Respondent Continues to Participate in *State v. Lemons***

On October 16, 2020, Maria E. Mena, Esquire, entered her appearance as successor counsel on behalf of Ms. Lemons. **Pet. Ex. 1 at 331**. On the same day, the parties appeared before Judge Ripken to review Ms. Lemons' house arrest status. **Pet. Ex. 1 at 332, 562-78**. Ms. Lemons and Ms. Mena were present for the hearing. **Pet. Ex. 1 at 332**. The Respondent also attended the hearing and attempted to address the court on behalf of Ms. Lemons. **Pet. Ex. 1 at 572, 575-76; Dec. 12 Tr. 186**. Judge Ripken did not allow the Respondent to be heard and reminded him that his appearance had been stricken. **Pet. Ex. 1 at 575**. Judge Ripken revoked the bond for Ms. Lemons and scheduled a further bond review hearing for October 19, 2020, to allow Ms. Lemons time to find another home monitoring company affordable to her and acceptable to the court. **Pet. Ex. 1 at 332 and 573-577**.

On October 19, 2020, the court held a bond review hearing before Judge Richard R. Trunnell. **Pet. Ex. 1 at 336, 590-604**. Ms. Lemons and Ms. Mena were present for the hearing. **Pet. Ex. 1 at 336**. The Respondent attended the hearing and again attempted to address the court from the gallery. **Pet. Ex. 1 at 601-03; Dec. 12 Tr. 187-88**. After the hearing concluded, Ms. Mena and Respondent went to a restaurant near the Courthouse. Respondent testified that he was more computer literate than Ms. Mena. He said Ms. Mena dictated a

proposed order for signature by Judge Trunnell. Respondent, using his personal email address rather than his business email address sent the proposed order for Ms. Lemons' home detention monitoring to Judge Trunnell's chambers. **Dec. 13 Tr. at 117 -118, Pet. Ex. 5 at 665-687**. On October 20, 2020, Judge Trunnell sent the Respondent a letter advising him not to contact his chambers regarding Ms. Lemons' matter unless or until his appearance had been reinstated. **Pet. Ex. 1 at 688-89**.

G. **Motions to Reinstate Respondent**

On October 14, 2020, the Respondent filed a motion purportedly on behalf of Ms. Lemons requesting, *inter alia*, that the court "order that Attorney Asher Weinberg be recognized as Attorney for Defendant in this matter[.]" **Pet. Ex. 1 at 298**. The court did not rule on the Respondent's motion. **Pet. Ex. 1**. On October 22, 2020, Ms. Mena filed a motion requesting that the court reinstate the Respondent as attorney for Ms. Lemons. **Pet. Ex. 1 at 348-60**. The State filed an opposition to the motion, and, on November 11, 2020, the court denied the motion. **Pet. Ex. 1 at 405**. Respondent testified at length before this Court on December 13, 2022, regarding his position that his appearance was entered on behalf of Ms. Lemons when he filed his motion requesting that the court "order that Attorney Asher Weinberg be recognized as Attorney for Defendant in this matter[.]" **Pet. Ex. 1 at 298**. During his testimony, he repeatedly challenged Judge Alban's authority to strike his appearance. **Dec. 13 Tr. at 112-116.** That question is not before the Court.

H. **The Respondent's Final Message to Ms. Hirsch Prior to February 2021 Trial**

Ms. Lemons' December 17, 2020 trial date was postponed due to the COVID-19 emergency. **Pet. Ex. 1 at 412**. Ms. Lemons eventually reached a plea agreement with the State and her case was scheduled for a plea hearing on February 5, 2021. Pet. **Ex. 1 at 439.**

On January 30, 2021, the Respondent sent Ms. Hirsch the following text message:

> Thank you for your honesty with the State. You are now guilty of victimizing an innocent woman as the real robber is. I'm sure Glen [Neubauer] convinced you that megan was guilty, even though everyone who saw the video said it looked nothing like megan. But glen tried to cover that up.
> Megan has to take a plea to something she didn't do to stay out of jail.
> Thanks again.
> You can go to court on Friday morning and watch the "justice."
> I'll bet he told you "it's for her own good. She needs the help." Even though you know it wasn't her, and never told him that.
> If the real robber kills her next victim, don't bother feeling guilty.

Pet. Ex. 4 at 664 (all *sic* in original).

Ms. Hirsch provided a copy of the Respondent's text message to Mr. Neubauer, and, on January 31, 2021, the State filed a motion requesting that the court order the Respondent have no contact with Ms. Hirsch or any other State witness. **Pet. Ex. 1 at 418-22**. As the matter of *State v. Lemons* resolved on February 5, 2021, no further hearing was held on the State's motion and the

court did not rule on the motion. **Pet. Ex. 1 at 423, 439**. Ms. Hirsch testified that after receiving the Respondent's text message she felt "hurt" because she "thought [she] was doing the right thing by trying to be honest and helping... just figure out whether or not... Megan was [the robber]." **Dec. 12 Tr. 41**. The Court credits Ms. Hirsch's testimony and finds that the Respondent's text message to Ms. Hirsch was inappropriate, unnecessary and can be considered harassing. Respondent's further contact with Ms. Hirsch after his appearance in the Lemons matter was stricken was without any purpose and shows extremely poor judgment.

On February 5, 2021, Ms. Lemons entered an *Alford* plea to second degree assault and theft. **Pet. Ex. 1 at 439-43**. The court sentenced Ms. Lemons to four years of incarceration with all but 379 days suspended, followed by two years of supervised probation. **Pet. Ex. 1 at 440-43**.

II. THE RESPONDENT'S STATEMENTS CONCERNING JUDGES

Following the *Lemons* case, the Respondent, on three occasions, made statements that impugned the integrity of Judge Alban, Judge J. Michael Wachs, and Judge William C. Mulford, II.[5] Bar counsel asserts that said statements were made with reckless disregard as to their truth or falsity. Respondent does not deny making the statements or that the statements impugned the integrity of Judge Alban, Judge Wachs, and Judge Mulford. Rather, he asserts the statements were true, though he offered no proof of the statements, as documented below. In fact, Respondent

[5] Judge Mulford retired on February 14, 2022, and now sits as a senior judge.

opined that Bar Counsel had the burden of proving by clear and convincing evidence that the statements were false.

First, the Respondent made repeated statements regarding Judge Alban during an August 6, 2021 hearing in *State v. Delvon Harrod, II,* Case No. C-02-CR-18-002457. **Pet. Ex. 6**. Second, the Respondent sent email correspondence to County Administrative Judge Glenn L. Klavans repeating the statements regarding Judge Alban and including additional statements concerning Judge Wachs and Judge Mulford. **Pet. Ex. 7 at 717**. Finally, the Respondent created a flyer, which he attached to the email sent to Judge Klavans and distributed to numerous attorneys that included additional statements regarding Judge Alban and Judge Wachs. **Pet. Ex. 7 at 719**.

A. The August 6, 2021 Hearing

On August 6, 2021, the Respondent appeared before Judge Alban for a bond review hearing on behalf of the defendant in *State v. Harrod*. **Pet. Ex. 6**. During the hearing, the Respondent requested that Judge Alban recuse herself. When Judge Alban asked the Respondent to state the basis for his request, he stated:

> You are a liar, you are biased, you have demonstrated bias, you have stepped into the shoes of the State's Attorney on occasion, you refuse to apply the law when it doesn't suit your purposes or when you don't agree with it. You are complicit in kidnaping and basically you are corrupt for a judge. So, I have to ask you that you recuse yourself.

Pet. Ex. 6 at 707 (all *sic* in original). Judge Alban denied the Respondent's request. **Pet. Ex. 6 at 707-08**.

Later in the hearing, the Respondent repeated his request that Judge Alban recuse herself stating: "I'm renewing my request that you recuse yourself. You are a liar, you are bias, you step into the shoes of the State's Attorneys, you are corrupt, you are complicat[e] in kidnaping, and my client cannot get a fair hearing in front of you." **Pet. Ex. 6 at 709** (all *sic* in original). Judge Alban again denied the Respondent's request. **Pet. Ex. 6 at 709**.

Bar Counsel contends that the Respondent's statements as quoted above were made with reckless disregard as to their truth or falsity and impugned the integrity of Judge Alban. The Respondent contends that his statements regarding Judge Alban's integrity were true. **Dec. 12 Tr. 198-213; Dec. 13 Tr. 8-11**. He claims Judge Alban:

- is a "liar," because she is "an oath breaker," which in his opinion is equivalent to a liar and that she broke her judicial oath to uphold the Constitution when she "completely ignored all controlling law that was presented to her in order to do what she wanted to do...." Including, in the *Lemons* matter, purportedly ignoring the law that requires consideration of certain factors before striking his appearance, **Dec. 12 Tr. 198-99**, and in separate matter ignoring the case law he provided regarding restitution. **Dec. 12 Tr. 203-05**.
- is "biased" because she "completely ignored all of the case law to rule the way [the Assistant State's Attorney] wanted her to rule," refused to allow the Respondent "to call witnesses when the law required her to call witnesses[,]" **Dec. 12 Tr. 206**.
- is "biased" as demonstrated by her denial of a motion to reinstate without a hearing in an unrelated matter, **Dec. 12 Tr. 208**.
- is "biased" because she reported the Respondent

to Bar Counsel but did not report Mr. Neubauer, **Dec.12 Tr. 2018**.

- is "biased" as demonstrated by his belief that "she was talking to other judges about [him] in a negative way[,]" **Dec. 12. Tr. 209**.
- "stepped into the shoes of the State's Attorney on occasion," because as the Respondent testified, in the *Lemons* matter, the Assistant State's Attorney only requested that the Respondent be removed as trial counsel but Judge Alban, *sua sponte*, stuck his appearance from the case entirely. **Dec. 12 Tr. 209**.
- "refuse[d] to apply the law when it [didn't] suit [her] purposes or when [she didn't] agree with it," as evidenced by Judge Alban being an "oath breaker" and purportedly ignoring case law. **Dec. 12 Tr. 210-11**.
- is "complicit in kidnapping," because as the Respondent testified, had he not been removed as counsel from the *Lemons* matter, Judge Ripken would not have ordered that Ms. Lemons be taken into custody because the trial would have proceeded and there would have been no reason to be in front of Judge Ripken. **Dec. 12 Tr. 211- 13**.
- is "corrupt for a judge," which the Respondent testified encompassed all of his prior testimony regarding what Judge Alban allegedly did or failed to do which he contends supports his contention that Judge Alban was "corrupt for a judge" and that his clients could not receive fair hearings in front of her. **Dec. 13 Tr. 8-11**.

The Respondent's explanations represent random statements that are not based on fact. The Court finds that the Respondent's statements regarding Judge Alban were made with reckless disregard as to their truth or falsity. While the Respondent may have a

subjective belief that Judge Alban did not like him, he is not charged with violating any Rule for stating an opinion. The Respondent is charged with making statements with reckless disregard as to their truth or falsity concerning the integrity of a judge. The Court finds that the Respondent's statements that Judge Alban was a "liar," "biased," "demonstrated bias," "stepped into the shoes of the State's Attorney on occasion," "refuse[d] to apply the law when it [didn't] suit [her] purposes or when [she didn't] agree with it," was "complicit in kidnapping," was "corrupt for a judge," and his "clients cannot get a fair hearing in front of [her]" were not opinions and that they were made with reckless disregard as to their truth or falsity and that each of the statements impugned Judge Alban's integrity.

B. <u>The August, 8, 2021 Email</u>

On August 8, 2021, the Respondent sent Administrative Judge Klavans an email stating:

> Good afternoon,
> I am writing to request that a number of the Judges in your courthouse be permanently recused from any case I am named in, due to their corruption which has spread though rot in the judiciary of Anne Arundel Circuit Court.
> Among these are:
> Pam Alban. While on the bench, she has lied, acted as a State's attorney, demonstrated bias towards the state, and is complicit in kidnaping. She also refuses to apply the law when it does not suit her personal beliefs, even thought the law was very clear on the issues at hand. When I asked her to recuse herself at my hearing, on Friday, she stated that she did not see any of that in her actions. That

> is either another lie, or more bias.
> Judge Wachs: His demonstrated bias against the Defense Bar, his hypocrisy, and his refusal to apply the law has caused permanent harm to my some of my clients.
> Judge Mulford: His bias against me, his allowing, along with Pam Alban, State's attorney to lie to the Court, and commit fraud upon the Court, all remove him from the ability to be fair and impartial to me or my clients.
> Additionally, as part of my goal to expose the corruption within your Court, and to try to bring about a political action against them, I shall be distributing the attached flyer, or similar, in front of your courthouse on random morning and lunch times.
> Please help to protect my client's constitutional rights, and what is left of the integrity of the Court in your country.

Pet. Ex. 7 at 717 (all *sic* in original).

The Petitioner contends that the Respondent's statements regarding Judge Alban, Judge Wachs, and Judge Mulford were made with reckless disregard as to their truth or falsity and impugned the integrity of the judges. The Respondent contends that the statements contained in the letter to Judge Klavans were true.

In addition to the previous statements made concerning Judge Alban's integrity, the Respondent claims Judge Alban:

> allowed "[Mr. Neubauer] to lie to the Court [] and commit fraud upon the Court" as demonstrated by the Respondent's testimony that Mr. Neubauer filed a response to the Respondent's motion that did not cite case law and that, according to the Respondent, Mr. Neubauer stated that the

> witnesses in the Lemons matter all changed their positions regarding the identification of Ms. Lemons as the robber after speaking with the Respondent.

Dec. 13 Tr. 55.

The Court finds the Respondent not to be credible, rejects the Respondent's testimony and finds that the Respondent failed to provide any competent evidence that, at the time he made the statements, he had a good faith basis to believe that his statements were true. The Court considers that the Respondent filed a Motion to Strike State's Opposition, in part, for its failure "to cite any cases or authority supporting its position or the Court's ruling," which was denied. **Pet. Ex. 1 at 406**. In finding the Respondent not to be credible, the Court (1) considers the Respondent's testimony regarding his statements about Judge Alban as discussed above, (2) finds that the Respondent failed to provide competent evidence to support the allegations he made against Judge Alban and as such, (3) finds that the statements regarding Judge Alban were not opinions and were made with reckless disregard as to their truth or falsity and impugned the integrity of Judge Alban.

The Respondent claims Judge Wachs:

- "demonstrated bias against the Defense Bar" because "[h]e would not grant bond review motions for defendants," but purportedly granted the State's motions. **Dec. 13 Tr. 13**.
- "demonstrated bias against the Defense Bar" because as the Respondent testified, Judge Wachs "would not allow any defense counsel to stand-in for other defense counsel" but permitted Assistant State's Attorneys and Assistant Attorney's General "to stand-in for others without a problem." **Dec. 13.**

Tr. 15.

- "demonstrated bias against the Defense Bar" as evidenced by the "many discussions by many attorneys since before COVID about his bias against defense bar" which occurred on a defense attorneys' listserv. **Dec. 13 Tr. 13**.
- is "hypocritical" because as the Respondent testified Judge Wachs previously discussed an issue regarding getting the Respondent's client released on pre- trial services in a case pending before Judge Wachs; however, in response to a later email from the Respondent detailing issues with pre-trial services in a case before another judge, Judge Wachs directed the Respondent to file the appropriate motion and serve it upon the assigned Assistant State's Attorney. **Pet. Ex. 9 at 771-72; Dec. 13 Tr. 16-18**.
- "refus[ed] to apply the law [which] has caused permanent harm" to some of the Respondent's clients, **Dec. 13 Tr. 38-43**.

The Court rejects the Respondent's testimony and finds that his statements regarding Judge Wachs were made with reckless disregard as to their truth or falsity. The Court finds that the Respondent's statements that Judge Wachs "demonstrated bias against the Defense Bar," was "hypocritical," and "refus[ed] to apply the law," which caused permanent harm to the Respondent's clients are not statements of opinion but rather were made as factual statements in requesting that Judge Wachs be recused from all the Respondent's future cases. **Pet. Ex. 7 at 717**. The mere fact that Judge Wachs denied bond review motions does not demonstrate bias against the defense bar. Further, the Respondent did not specify any case where Judge Wachs denied a bond review motion for any reason unsupported in law. The Respondent

testified that there were two instances where Judge Wachs refused to apply the law: first, his denial of Ms. Lemons' Petition for Writ of Habeas Corpus and, second, an issue the Respondent could not recall. As to the issue with the habeas petition, the Respondent admitted that he failed to verify whether there was a basis for Judge Wachs to deny the motion testifying "the main thing I was thinking about was the habeas, which it turned out, I admit, I was wrong about...." **Dec. 13 Tr. 39**. As to the second instance, the Respondent could not recall any details, including the name of the client, what harm resulted, what Judge Wachs allegedly did or failed to do that caused the alleged harm, or even when this matter occurred. **Dec.13 Tr. 39-40**. As such, the Court finds that the Respondent's statements concerning Judge Wachs were made with reckless disregard as to their truth or falsity and impugned the integrity of Judge Wachs.

The Respondent claims Judge Mulford:

- is "bias[ed] against [the Respondent]" as demonstrated by the Respondent's testimony that Ms. Mena and another unnamed attorney told the Respondent that during Ms. Lemons' sentencing Judge Mulford "made certain comments, gave certain looks, that made the people believe that he believed I had tampered with the witnesses." **Dec. 13 Tr. 43**.
- is "bias[ed] against [the Respondent] because he allowed "[Mr. Neubauer] to lie to the Court and commit fraud upon the Court" which "remove [Judge Mulford] from the ability to be fair and impartial to [the Respondent] or [his] clients. **Pet. Ex. 7**.
- is "bias[ed] against [the Respondent]" because the Respondent "did believe and do[es] believe that the judges at that point had all been discussing [him]

and the Lemons [*sic*] case...." **Dec. 13 Tr. 46**.

- is "bias[ed]" against [the Respondent]" because the October 20, 2020 letter from Judge Trunnell stated that Judge Trunnell was made aware that the Respondent's appearance was previously stricken in State v. Lemons. **Pet. Ex. 5 at 689; Dec. 13 Tr. 47.**
- "allow[ed] [Mr. Neubauer] to lie to the Court" as demonstrated by the Respondent's testimony that Judge Mulford permitted Mr. Neubauer to read the statement of charges, which purportedly contained false information, during his proffer at Ms. Lemons' plea hearing and stated that multiple witnesses identified Ms. Lemons as the robber.

Dec. 13 Tr. 48-49.

The Court finds the Respondent not to be credible, rejects the Respondent's testimony and finds that his statements regarding Judge Mulford were made with reckless disregard as to their truth or falsity. As to his statements regarding what Judge Mulford allegedly said during sentencing, the Respondent admits that he was not present and did not undertake any further efforts to verify what was said on the record. **Dec. 13 Tr. 43-44; 49**. Additionally, the Respondent testified that as of the time he authored this letter to Judge Klavans, the Respondent's sole basis for believing that judges were discussing him was the letter he received from Judge Trunnell dated October 20, 2020. **Pet. Ex. 5 at 689; Dec. 13. Tr. 47**. The Respondent admitted that he was unaware from where Judge Trunnell obtained the information that the Respondent had been stricken from the case but suspected "it was most likely another judge" even though the hearing sheet striking his appearance was in the court file. **Pet. Ex. 1 at 295; Dec. 13 Tr. 47-48.** When asked what evidence the Respondent had that Judge Mulford knew that Mr.

Neubauer was allegedly lying during his proffer, the Respondent admitted that he had no evidence at the time he made this statement other than his "belief that [Judge Alban and Judge Mulford] had spoken about this case" and that the Respondent believed that Judge Mulford "believed [the Respondent] had tampered with witnesses based on what… [Mr. Neubauer] had said to Judge Alban and written in his reply motion[.]" **Dec. 13 Tr. 49**.

Further, the Court finds that the Respondent's statements that Judge Mulford was "bias[ed] against [the Respondent]" and that he "allow[ed], along with [Judge] Alban, State's attorney to lie to the Court, and commit fraud upon the Court [which] all remove him from the ability to be fair and impartial to [the Respondent] or [the Respondent's] clients" were statements of fact, and not of opinion, and were made with reckless disregard as to their truth or falsity. The Respondent admitted that he did nothing to verify the veracity of his claims before making them. **Dec. 13 Tr. 49.**

C. <u>The August 2021 Flyer</u>

Attached to the Respondent's August 8, 2021 email to Judge Klavans was a PDF of a flyer the Respondent authored. **Pet. Ex. 7 at 719; Dec. 13 Tr. 56**. The flyer included the website URL, "AnneArundel CorruptCourts.com" and featured pictures of Judge Wachs and Judge Alban with an X superimposed over each one with the words "Bias, Lawless, Criminality" underneath each picture. **Pet. Ex. 7 at 719**. On the bottom of the flyer, the Respondent wrote, "Anne Arundel Circuit Court- Where our Constitution Comes to Die[.]" **Pet. Ex. 7 at 719**. The flyer included a QR code, which directs users to a publicly available Change.org petition calling on Governor Hogan to

recall two judges, including Judge Alban, for "violat[ing] their oath of office." **Dec. 13 Tr. 59-60**. The Respondent disseminated the flyer to Judge Klavans, several attorneys, and posted it on the Maryland Criminal Defense Attorneys' Association listserv. **Dec. 13 Tr. 16, 57.**

Bar Counsel contends that the Respondent's statement that Judge Wachs "[r]efuses to apply the law when it is inconvenient," **Pet. Ex. 8 at 719** (all *sic* in original), was made with reckless disregard as to its truth or falsity and impugned the integrity of Judge Wachs. The Respondent contends that the statement is true. The Court rejects the Respondent's testimony and, for the reasons stated above, finds that the statement regarding Judge Wachs was made with reckless disregard as to its truth or falsity.

Under the photograph of Judge Wachs, the Respondent wrote, "[r]efuses to apply the law when it is inconvenient. Refused to consider evidence of actual innocence, to keep innocent woman in custody! The Law required a hearing, Judge Wachs denied the hearing! Applies rules to one side only!" Pet. Ex. 7 at 719 (all *sic* in original). As stated above, the Court rejects the Respondent's testimony regarding Judge Wachs, finds that the Respondent's statements were not of opinion, and finds that the Respondent made the above statement with reckless disregard as to its truth or falsity.

As to Judge Alban, the Respondent wrote that she "[r]efused to apply the law on multiple occasions when the law did not fit with results her the or State's Attorney wanted! Ignores laws and rules she does not like. Deprived innocent woman of a trial and Counsel of her choice, even though the law didn't authorize her to that!" **Pet. Ex. 7 at 791** (all *sic* in original). Similarly, the Court rejects the Respondent's testimony regarding Judge Alban, finds that the Respondent's statements

were not of opinion, and finds that the Respondent made the above statement with reckless disregard as to its truth or falsity.

On August 10, 2021, Judge Klavans sent the Respondent a letter stating, in part:

> The decision to recuse rests with an individual judge, only when that judge's impartiality might reasonably be questioned. As such, I have no authority as County Administrative Judge to act. I continue to have great confidence in the integrity, impartiality, and fairness of every member of this Bench.

Pet. Ex. 8.

MITIGATING FACTORS

The Supreme Court of Maryland recognizes the following mitigating factors:

(1) the absence of a prior attorney discipline;
(2) the absence of a dishonest or selfish motive;
(3) personal or emotional problems;
(4) timely good faith efforts to make restitution or to rectify the misconduct's consequences;
(5) full and free disclosure to Bar Counsel or a cooperative attitude toward the attorney discipline proceedings;
(6) inexperience in the practice of law;
(7) character or reputation;
(8) a physical disability;
(9) a mental disability or chemical dependency, including alcoholism or drug abuse, where:
   (a) there is medical evidence that the attorney is affected by a chemical dependency or mental disability;

(b) the chemical dependency or mental disability caused the misconduct;
(c) the attorney's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
(d) the recovery arrested the misconduct, and the misconduct's recurrence is unlikely.

(10) delay in the attorney discipline proceeding;
(11) the imposition of other penalties or sanctions;
(12) remorse;
(13) remoteness of prior violations of the rules of professional conduct; and
(14) unlikelihood of repetition of the misconduct.

Att'y Griev. Comm'n v. Fineblum, 473 Md. 272,307 (2021) (citing *Att'y Griev. Comm'n v. Slate*, 457 Md. 610, 647 (2018)). The Court finds that the Respondent has no prior discipline. Respondent appeared for the trial without counsel and did not call any character witnesses. He testified that he could not afford to retain counsel and recognized proceeding in proper person would be to his detriment. Two character witnesses he would have called were not available - one was out of the country and the other had a jury trial. Generally, Respondent simply offered conclusory statements to show that most of the mitigation factors apply to him. **Dec. 13 Tr. 163-169**. Regardless of the conclusory nature of Respondent's statements, the Court finds by a preponderance of the evidence that Respondent expressed sincere remorse and that it is unlikely that the behavior that forms the basis of the Petition will be repeated. Further, Respondent credibly testified to the remedial actions he has already taken. He no longer handles Circuit Court cases and/or felonies. He is currently employed by the understaffed St. Mary's County Office of the Public Defender and is

handling District Court cases only. Throughout his testimony, he clearly stated that his actions, though misguided, were based on his belief that Ms. Lemons was wrongly accused and prosecuted. **Dec. 13 Tr. 127-132**. The Court finds that Respondent proved mitigating factors (1), (2), (12), (14) by a preponderance of the evidence.

AGGRAVATING FACTORS

The Supreme Court of Maryland recognizes the following aggravating factors:

(1) prior disciplinary offenses;
(2) a dishonest or selfish motive;
(3) a pattern of misconduct;
(4) multiple violations of the rules of professional conduct;
(5) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the Maryland Rules or orders of the Court of Appeals or the hearing judge;
(6) submission of false evidence, false statements, or other deceptive practices during the attorney disciplinary process;
(7) a refusal to acknowledge the misconduct's wrongful nature;
(8) the victim's vulnerability;
(9) substantial experience in the practice of law;
(10) indifference to making restitution or rectifying the misconduct's consequences;
(11) illegal conduct, including that involving the use of controlled substances; and
(12) likelihood of repetition of the misconduct.

Att'y Griev. Comm'n v. Fineblum, 473 Md. at 308-309 (2021) (citing *Sperling*, 459 Md. at 275).

Bar Counsel alleges the existence of factors (2), (3), (4), (6), (7), (9), and (12). This Court disagrees with Bar Counsel's assessment as to (2), (7), and (12). The Court does not find that Respondent displayed a dishonest or selfish motive when he knowingly assisted his client in violating a court order. Rather, Respondent set up the meeting with Ms. Hirsch to determine if Ms. Hirsch could identify Ms. Lemons. This action was completely inappropriate and violated Rules of Professional Conduct but, the Court does not find that Respondent's actions were dishonest or selfish. Respondent made multiple attempts to engage with Assistant States Attorneys in the case to no avail before he erroneously took the matter in his own hands. Respondent's actions showed extremely poor judgment and it is clear from the record regarding the breadth of his professional experience that he knew or should have known better. Respondent did make affirmative misrepresentations to the court regarding his knowledge of the no contact provision of the court order. Respondent engaged in a sustained course of misconduct throughout his involvement in *Lemons* and the events that occurred after his removal that involved multiple violations of the Rules of Professional Conduct. "A pattern of misconduct can be demonstrated 'by multiple violations over time, or a series of acts with one goal.'" *Att'y Griev. Comm'n v. Taniform*, _ Md. _ (filed December 16, 2022) (citing *Sperling*, 459 Md. at 276). The Respondent facilitated a meeting between a criminal defendant and a victim in June 2020 in violation of a court order, **Dec. 12 Tr. 32**, proceeded to inappropriately contact that same victim with no real purpose through January 2021, **Pet. Ex. 4**, made knowing and intentional misrepresentations to the court on multiple occasions in June 2020, **Pet. Ex. 1 at 200-01; Pet. Ex. 2**, continued to participate in the case despite the court striking his appearance, **Pet. Ex. 1 at**

554-56, 575, 586-87, 599-603; Pet. Ex. 5, and made repeated statements about judges with reckless disregard as to their truth or falsity, **Pet. Ex. 6; Pet. Ex. 7**.

The Respondent testified falsely during the disciplinary proceeding that he was unaware of the no contact order at the time he facilitated the meeting between Ms. Lemons and Ms. Hirsch. As noted, the Court finds the Respondent's testimony to be false for the reasons discussed throughout these Findings of Fact and Conclusions of Law.

When asked whether he would have done anything differently in this matter, the Respondent testified: (1) that he would not have "presume[d] that the State's Attorneys [*sic*] Office had integrity," **Dec. 13 Tr. 65**; (2) that he stopped taking cases in Anne Arundel County and would not have taken Ms. Lemons case, **Dec. 13 Tr. 68;** (3) that he would not have created and disseminated the flyer concerning the judges because he lost "a lot of money, a lot of sleep, a lot of heartache, a lot of emotional damage" and "it's just not worth calling out State's Attorneys and judges... " because "if [he] had not challenged the judges and if [he] had not challenged the impartiality of bar counsel" he would not be involved in this matter, **Dec. 13 Tr. 69, 73**; and (4) that he would not have asked Judge Alban to recuse herself "[b]ecause [he] should have known that she wouldn't [recuse herself]," **Dec. 13 Tr. 69**. His testimony demonstrates that he does not acknowledge or accept responsibility for his misconduct. Bar Counsel asserts that Respondent displayed a complete refusal to acknowledge the wrongful nature of his conduct and failed to demonstrate remorse. The Court disagrees. It is correct that Respondent's remorse appears to be more about what he has suffered as a result of this action in the list above of the reasons he would handle the matter differently. However, the

Court based on the totality of his testimony finds that Respondent does acknowledge the wrongful nature of making false statements regarding the judges and others.

The Respondent has substantial experience in the practice of law having been admitted to the Bar of the Supreme Court of Maryland in 2013 and practicing law previously as a public defender in Washington State, testifying that he has handled "hundreds and hundreds" of criminal cases, **Dec. 12 Tr. 159**, and is "[v]ery experienced in[] criminal cases...." **Dec. 13 Tr. 168**. The Court does not find that there is a substantial likelihood of repetition of the misconduct. Although the primary reason Respondent stated he would not repeat the misconduct is because he does not want to be involved in a future grievance, the Court finds that Respondent understands the serious nature of his misconduct and the peril of exercising such extremely poor judgment in the future. The Court finds that Respondent understands he cannot knowingly and recklessly make false statements to the Court.

CONCLUSIONS OF LAW[6]

This Court finds, by clear and convincing evidence, that the Respondent violated the following Rules of Professional Conduct:

Rule 19-301.1. Competence (1.1)

Rule 1.1 states:

> An attorney shall provide competent representation to a client. Competent representation requires the legal

[6] Additional findings of fact are referenced in these conclusions of law.

> knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

An attorney violates Rule 1.1 when they fail to use "methods and procedures meeting the standard of competent practitioners." *Atty Greiv. Comm'n v. Smith*, 457 Md. 159, 214 (quoting *Att'y Griev. Comm'n v. Mooney*, 359 Md. 56, 74 (2000)). The Respondent knew about the no contact order and violated Rule 1.1 when he assisted his client in violating the no contact order by arranging the meeting with Ms. Hirsch, transporting Ms. Lemons to the meeting, and facilitating communication between Ms. Lemons and Ms. Hirsch on June 5, 2020.

Rule 19-301.2. Scope of Representation and Allocation of Authority between Client and Attorney (1.2)

Rule 1.2 states, in part:

> (d) An attorney shall not counsel a client to engage, or assist a client, in conduct that the attorney knows is criminal or fraudulent, but an attorney may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

The District Court enter an order holding Ms. Lemons without bond and imposing conditions of no contact with the victim pursuant to Maryland Code, Criminal Law Article § 9-304. The no contact conditions were not superseded by an order for home detention as the judge did not alter or strike the conditions in any way and the Respondent assisted Ms.

Lemons in violating the no contact order. As such, the Court concludes that the Respondent violated Rule 1.2(d) when he transported Ms. Lemons to meet with Ms. Hirsch as he assisted Ms. Lemons in violating a court order. *See Att'y Griev. Comm'n v. Coppola*, 419 Md. 370, 388-96 (2011) (concluding attorney violated Rule 1.2(d) when attorney assisted in a criminal or fraudulent act by falsely certifying a signature on estate planning documents filed in the Register of Wills).

Rule 19-303.3. Candor Toward the Tribunal (3.3)

Rule 3.3 states, in part:

> (a) An attorney shall not knowingly:
> (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the attorney[.]

An attorney has a duty to demonstrate candor toward the tribunal, which "stems from the proposition that '[e]very court has the right to rely upon an attorney to assist it in ascertaining the truth of the case before it.'" *Att'y Griev. Comm'n v. Ambe*, 466 Md. 270, 295 (2019) (quoting *Att'y Griev. Comm'n v. Smith*, 442 Md. 14, 34 (2015) (internal citations omitted)). Here, the Respondent violated Rule 3.3(a) in the motions filed on June 18, 2020 and June 25, 2020. In his June 18 motion, the Respondent knowingly and intentionally misrepresented that "Ms. Hirsch will testify that after seeing Ms. Lemons in person, she is 100% positive that Ms. Lemons was NOT the robber[.]" In his June 25 motion, the Respondent knowingly and intentionally misrepresented that Ms. Hirsch "stated with absolute certainty, Ms. Lemons was not the

robber" and that she was "prepared to testify to this." **Pet. Ex. 1 at 201; Pet. Ex. 2**. Each misrepresentation constitutes a violation of Rule 3.3(a)(l).

Rule 19-308.2. Judicial and Legal Officials (8.2)

Rule 8.2 states, in part:

> (a) An attorney shall not make a statement that the attorney knows to be false or with reckless disregard as to its truth or falsity concerning the qualification 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 Supreme Court explains that Rule 8.2 is not intended to protect judges from criticism, it is to protect "the integrity of the judicial system, and the public's confidence therein[.]" *Att'y Griev. Comm'n v. Frost*, 437 Md. 245, 263 (2014). "Assessments by attorneys are relied on in evaluating the professional or personal fitness of individuals being considered for election ... to judicial office . . . Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by an attorney can unfairly undermine public confidence in the administration of justice." Comment [l] to Rule 8.2. "Allegations of corruption tend to discredit the public's trust and confidence in the judiciary and judicial system." *Frost*, 437 Md. at 274.

As a threshold matter, the Supreme Court of Maryland has held that statements "which fall under the purview of Rule 8.2(a)" made with the knowledge that they are false or with reckless disregard as to their truth or falsity are not entitled to protection under the First Amendment. *Frost*, 437 Md. at 261-62.

Here, the Respondent made oral or written statements that were made with reckless disregard as to their truth or falsity in violation of Rule 8.2(a). Specifically, Respondent violated Rule 8.2(a) on the following occasions: (1) his statements on August 6, 2021 on the record during the *State v. Harrod* proceeding, (2) his statements August 8, 2021 contained in the email sent to Judge Klavans, and (3) his statements contained in the flyer that was publicly disseminated. The question of whether to apply a subjective test or an objective test in determining whether a statement was made with reckless disregard as to its truth or falsity has been left open by the Supreme Court. *See Att'y Griev. Comm'n v. Stanalonis,* 445 Md. 129, 144 (2015). That is immaterial here as the Respondent fails either test. While the Respondent testified at trial that he still believes his statements are true, the Court rejects his testimony finding it not credible. The Respondent failed to undertake sufficient efforts to ascertain the veracity of his statements. The Respondent's statements thus fail the subjective test, which "focuses on what the defendant personally knew and thought." *Id.* at 143. Additionally, the Court finds that under an objective test, a reasonably prudent attorney would not have made the statements that the Respondent made on the record in *State v. Harrod*, in an email to an administrative judge, and contained in a flyer that was publicly disseminated with information directing users to a publicly available Change.org petition, which included similar statements.

First, the Respondent's statements during the August 6, 2021 hearing that Judge Alban is "a liar" and "biased," that she "stepped into the shoes of the State's Attorney on occasion," and "refuse[s] to apply the law when it doesn't suit [her] purposes or when [she] do[es]n't agree with it," that she is "complicit in kidnaping" and "corrupt for a judge" violate Rule

8.2(a). *See Frost*, 437 Md. at 274 (holding that an attorney's use of "lawless" and "weak man" "in conjunction with false factual allegations of corrupt activity" violated Rule 8.2(a)). The Respondent's statement regarding Judge Alban impugned her integrity. The statements communicate that Judge Alban does not consider the law when making rulings, assisted in kidnapping, and does not maintain her position as a judge but rather is an arm of the State's Attorney's Office. These statements, read within the context of the Respondent's full statement clearly indicate that the Respondent intended to communicate that Judge Alban is corrupt and violates the law. *See Att'y Griev. Comm'n v. Hermina*, 379 Md. 503, 520-21 (2004) (attorney violated Rule 8.2(a) when he accused a trial judge of having an *ex parte* communication with opposing counsel).

Second, the Respondent's August 8, 2021, letter to Judge Klavans contained statements regarding Judge Alban, Judge Wachs, and Judge Mulford that were made with reckless disregard as to their truth or falsity and impugned the integrity of the judges in violation of Rule 8.2(a). As discussed above, the statements regarding Judge Alban, that "[w]hile on the bench, she has lied, acted as a State's attorney, demonstrated bias towards the state, and is complicit in kidnapping. She also refuses to apply the law when it does not suit her personal beliefs, even thought the law was very clear on the issues at hand. When I asked her to recuse herself at my hearing, on Friday, she stated that she did not see any of that in her actions. That is either another lie, or more bias," **Pet. Ex. 7 at 717** (all *sic* in original), violates Rule 8.2(a).

The Respondent's statement regarding Judge Wachs that "[h]is demonstrated bias against the Defense Bar, his hypocrisy, and his refusal to apply the law has caused permanent harm to my some of my clients," **Pet.**

Ex. 7 at 717 (all *sic* in original), violates Rule 8.2(a). The Respondent admits that the substantial basis for his claim that Judge Wachs refused to apply the law was a result of the Respondent's own failure to comply with the rules governing filing a petition for writ of habeas corpus. *Cf Att'y Griev. Comm'n v. Stanalonis*, 445 Md. 129, 145-46 (2015) (finding credible the attorney's testimony that he believed his statement about opponent was true where attorney proved a 'demonstrable basis' for making an inference, later demonstrated to be false). Additionally, this Court finds that the Respondent's statement, made without a demonstrable basis for believing the statement to be true, is a "'gross departure' from the understanding that a reasonably prudent lawyer in his position would have." *Stanalonis*, 445 Md. at 146. The Respondent testified that Judge Wachs, in a case where the Respondent could not provide a case name, case number, or date, held a criminal defendant based on a probation violation and did not release the defendant on bond to stand trial on new charges in a different jurisdiction. As discussed previously, the Court finds the Respondent not credible, rejects his testimony, and concludes that the Respondent's statement regarding Judge Wachs was made with reckless disregard as to its truth or falsity and violates Rule 8.2(a). The Respondent's statement intends to communicate that Judge Wachs violates the law and is corrupt, which impugns the integrity of Judge Wachs.

The Respondent's statement regarding Judge Mulford, that "[h]is bias his allowing, along with Pam Alban, State's attorney to lie to the Court, and commit fraud upon the Court all remove him from the ability to be fair and impartial to me or my client," **Pet. Ex. 7 at 717** (all *sic* in original), violates Rule 8.2(a). The Respondent's statements clearly intended to show that Mulford violates the law and is not an impartial

arbiter of the law. For the reasons stated in the discussion above concerning Judge Alban and Judge Wachs, the Court similarly concludes that the Respondent's statements were made with reckless disregard as to their truth or falsity, impugned the integrity of Judge Mulford, and as such violates Rule 8.2(a).

Third, the Respondent's statements concerning Judge Wachs and Judge Alban contained in his flyer and the Change.org petition associated with the flyer violate Rule 8.2(a). For the same reasons as discussed above, the Respondent's statement regarding Judge Wachs that he "[r]efuses to apply the law when it is inconvenient. Refused to consider evidence of actual innocence, in order to keep innocent woman in custody! The Law required a hearing, Judge Wachs denied the hearing! Applies rules to one side only![,]" **Pet. Ex. 7 at 719** (all *sic* in original), was made with reckless disregard as to its truth or falsity, impugned the integrity of Judge Wachs, and therefore violates Rule 8.2(a).

Similarly, the Respondent's statement that Judge Alban, "[r]efused to apply the law on multiple occasions when the law did not fit with results her the or State's Attorney wanted! Ignores laws and rules she does not like. Deprived innocent woman of a trial and Counsel of her choice, even though the law didn't authorize her to do that![,]" **Pet. Ex. 7 at 719** (all *sic* in original), was made with reckless disregard as to its truth or falsity, impugned the integrity of Judge Alban, and violates Rule 8.2(a). Additionally, the Respondent's statements in the Change.erg petition that Judge Alban "demonstrates her bias against defendants and for the State's Attorneys Office[,]" "[s]he ignore... controlling law and order to come to decision... which she wants or the State's Attorney wants[,] **Dec. 13 Tr. 60**, were made with reckless disregard as to their truth or falsity,

impugned the integrity of Judge Alban and violate Rule 8.2(a).

Rule 19-308.4. Misconduct (8.4)

Rule 8.4 provides, in part:

> It is professional misconduct for an attorney to:
> (a) violate or attempt to violate the Maryland Attorneys' Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
> (b) commit a criminal act that reflects adversely on the attorney's honesty, trustworthiness or fitness as an attorney in other respects;
> (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
> (d) engage in conduct that is prejudicial to the administration of justice[.]

The Court concludes that the Respondent violated Rule 8.4(a), (c) and (d) as charged. Rule 8.4(a) "is violated if any rule under the MARPC is violated." *Ambe*, 446 Md. at 296.

An attorney violates Rule 8.4(c) when the attorney makes a "false statement knowing that it is untrue." *Att'y Griev. Comm'n v. Smith*, 442 Md. 14, 34 (2015). The facts that support each violation of Rule 3.3, discussed above, constitute violations of Rule 8.4(c).

The Supreme Court of Maryland held in *Attorney Grievance Commission v. Brigerman*, 441 Md. 23, 39 (2014) that "conduct which is likely to impair public confidence in the profession and engender disrespect for the court is conduct prejudicial to the administration of justice" and therefore violates Rule 8.4(d). Where an attorney's conduct "tends to bring the legal profession into disrepute," an attorney violates

Rule 8.4(d). *Att'y Griev. Comm'n v. Basinger*, 441 Md. 703, 712 (citing *Atty Griev. Comm'n v. Reno*, 436 Md. 504, 511 (2014)). Similarly, to Basinger, the Respondent's statements here regarding the court "were neither inartful slips of the tongue nor spoken in the heat of an oral altercation." *Id.* at 713. The Court concludes that the Respondent's conduct, in total, violates Rule 8.4(d) by bringing the legal profession into disrepute.

CONCLUSION

WHEREFORE, it is this 10th day of February, 2023 found by the Circuit Court for Montgomery County for the reasons set forth herein that the Respondent, Asher Newton Weinberg, has violated Maryland Code of Professional Responsibility Rules 1.1; 1.2(d); 3.3(a)(l); 8.2(a); and 8.4(a)(c) and (d).

KATHLEEN M. DUMAIS, JUDGE
Circuit Court for Montgomery
County, MD

APPENDIX E

CONSTITUTIONAL PROVISIONS AND RULES

U.S. Const. amend. I:

> Congress shall make no law respecting an stablishment 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. VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. amend. XIV:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Maryland Rule 19-300.1[6]: Preamble to the Maryland Attorneys' Rules of Professional Conduct:

As a public citizen, an attorney should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, an attorney should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, an attorney should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. An attorney should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all attorneys should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal advice or representation. An attorney should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

Maryland Rule 19-303.7 of the Maryland Attorneys' Rules of Professional Conduct [*Cited as*: MD. RULE 3.7(a)]:

Attorney as Witness

(a) An attorney shall not act as advocate at a trial in which the attorney is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the attorney would work substantial hardship on the client.

Maryland Rule 19-308.2(a) of the Maryland Attorneys' Rules of Professional Conduct [*Cited as*: MD. RULE 8.2(a)]:

Judicial And Legal Officials

An attorney shall not make a statement that the attorney 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.

Maryland Rule 19-308.4(d) of the Maryland Attorneys' Rules of Professional Conduct [*Cited as*: MD. RULE 8.4(d)]:

Misconduct

It is professional misconduct for an attorney to:

* * *

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

* * *