CASE NO: 26-______

In The
Supreme Court of the United States

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IN RE VAN IRION,

Petitioner,

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On Petition for a Writ of Certiorari to the
U. S. Court of Appeals for the Sixth Circuit

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PETITION FOR WRIT OF CERTIORARI

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July 28, 2026

QUESTIONS PRESENTED

(1) Can a Trial Judge Serve as Sole Accuser, Presiding Judge, Sole Ultimate Fact-Finder, and Sentencing Judge, Regarding Out-of-Court Facts?

(2) Can a Trial Judge Add Eleven New Factual Accusations and Assert Five New Disciplinary Authorities Based Upon the Forced Disclosure of Privileged Documents and Defendant's Involuntary Deposition Testimony?

(3) Can the District Court and the Circuit Court Completely Ignore Undisputed Exculpatory Evidence?

(4) Can a District Judge Rule on the Truthfulness of Facts Alleged in a 28 U.S.C. §144 Affidavit of Disqualification?

(5) Can a Circuit Court Refuse to Allow Oral Argument Properly and Timely Demanded by an Attorney on Review of Five-Year Suspension?

PARTIES TO THE PROCEEDING

Pursuant to this Court's Rule 20(3)(a), the Petitioner hereby identifies himself, below, but he is prevented from identifying any party "against whom relief is sought," other than the lower courts themselves because the lower courts have denied Petitioner's right to confront his accusers by repeatedly refusing to identify ANY accuser or any other opposing parties, save the presiding judge himself, who refuses to acknowledge that he is the sole opposing party. No opposition brief was filed with the Circuit Court because no other party was ever identified and because the court-ordered prosecutor declined to defend this action on appeal.

Petitioner appearing here and before the United States Court of Appeals for the Sixth Circuit is: Tennessee licensed attorney Van R. Irion. Irion is a multi-published, peer-reviewed medical researcher and is also admitted to practice before the 6th Circuit and this Court. Irion has practiced in good standing in the State of Tennessee for over 20 years.

Because his only accuser is the presiding trial Judge in the underlying matter, Travis McDonough, and because McDonough repeatedly refused to identify any other party, no "opposing party" has ever existed.

RELATED PROCEEDINGS

United States District Court (E.D. Tenn.):

- In Re Van R. Irion, No. 1:24-dm-007, entered 8/24/2025
- Whiting v. City of Athens, et al No. 3:20-cv-054, entered 4/29/2022
- Whiting v. City of Athens, et al No. 3:23-cv-002 6/14/2024

United States Court of Appeals (6^{th} Cir.):

- In Re Van R. Irion, No. 25-5874; entered 4/29/2026; Appeal of 2:24-cv-007

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PETITION FOR A WRIT OF CERTIORARI

The Petitioners respectfully petition this Court for a writ of certiorari directed to the U.S. Court of Appeals for the Sixth Circuit to review the opinion and judgment of the Sixth Circuit Court of Appeals.

This Court's jurisdiction is necessary because the Circuit Court's decision has so far departed from the accepted and usual course of judicial proceedings, and has sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

<u>The actions of both lower courts represent decisions of first impression, authorizing a sole judge to act as fact-accuser, presiding judge, sole ultimate finder of fact, and sentencing judge.</u>

This case represents the first time a judge has personally made factual accusations about actions taken outside of court, and then acted as sole ultimate fact finder on said disputed facts.

OPINIONS BELOW

This Petition arises primarily from the U.S. Court of Appeals for the Sixth Circuit's order denying Petitioner's unopposed appeal of the Tennessee Eastern District Court's five-plus year suspension of Petitioner from practicing before said District. Said order is reproduced at App. A, 2a-10a.

The order of the District Court for the Eastern District of Tennessee is reproduced at App.B, 11a-143a.

JURISDICTION

This Court has jurisdiction to GRANT this Petition under 28 U.S.C. §2101(c), and this Court's Rule 10.

The order of the 6th Circuit Court of Appeals was entered by said Court on April 29, 2026. This Petition is timely filed under because it is being filed within 90 days of the entry of the order of the 6th Circuit Court of Appeals.

The Appellate Court had subject matter jurisdiction over the underlying matter pursuant to 28 U.S.C. §1291.

STATEMENT OF THE CASE

The Petitioner attorney here is being punished in retaliation for publicly accusing a Chief District Judge of violating Federal Criminal law in the administration of his Court for criminal purposes.

During his prosecution of attorney Irion the Chief District Judge of the Eastern District of Tennessee not only ignored numerous due process rights, and refused to follow statutorily-required procedures, he actually committed Federal felonies on at least two occasions by twice destroying initiating documents of Record and scrubbing meta-data from the Court's computers in this matter, without a court order or grounds asserted, all after he was accused of retaliation by the Petitioner-attorney. His actions thereby permanently destroyed evidence regarding the timing of his initial OSC and eliminated the Petitioner's ability to prove the allegations of retaliation.

The same judge cited his own allegations to determine that his suspicions, with nothing more, created a prima facie case for the crime fraud exception to the attorney-client and work product privileges. That exception was never asserted by the court-appointed prosecutor, but was instead asserted by the accusing/presiding judge himself. The Court and the Circuit Court also erroneously placed the burden of proof regarding that exception on the wrong party: the defending attorney.

The initial Order to Show Cause was a four page, poorly drafted document that asserted zero actual facts and provided notice of the Court's assertion of only two Rules of attorney conduct. *See* Appx. at 144a-150a (citing only TN R. Prof. Cond. 3.3, FRCP Rule 11, and a Tennessee BPR opinion that had been voided by said BPR years earlier).

Nine months later, after the accused attorney had been forced to provide privileged client materials and had been involuntarily deposed, the Court sua sponte amended its OSC in violation of this Court's decision in *Ruffalo*, using said privileged materials and testimony provided by the accused to claim eleven new factual allegations, and assert violations of four new Rules of conduct for the first time. 390 U.S. 544 (1968). *Compare* Initial OSC Appx. C 144a *with* Amd. OSC. Appx. D 151a.

Only one Rule noticed in the initial OSC was cited as violated by the ultimate judgment. *Id.* That Rule, Tennessee Rule of Professional Conduct 3.3, requires a showing of "knowing" misrepresentation, yet the judgement found only one instance of knowing misrepresentation in its judgment, and still found numerous violations under a lower standard. That one instance also requires the fact-finder to ignore Record exculpatory evidence and presume, with no evidence asserted, that underlying circumstances had not changed in over two years.

The presiding judge also refused to take as true Petitioner's allegations in a 28 U.S.C. §144 recusal affidavit, instead determining that dozens of facts asserted were "few" and had no evidentiary support. Said affidavit included allegations against the presiding judge, accusing him of committing Federal criminal felonies in the administration of his Court.

Prior to the 28 U.S.C. §144, and prior to said judge's filing of the disciplinary allegations against

Petitioner, Petitioner had filed documents with the 6th Circuit accusing said judge of illegally assigning himself and other judges to several cases for the purpose of altering litigation outcomes to protect local government entities. Said filings included statistical analysis of judicial assignments that mathematically eliminate any reasonable possibility that said assignments had not been intentionally altered by said judge. This same evidence was later included in a judicial complaint to the 6th Circuit, which was similarly ignored.

The disciplinary action at issue in this Petition is nothing short of a naked retaliation against an attorney attempting to report massive corruption within the Tennessee Eastern District Court and the 6th Circuit.

REASONS FOR GRANTING THE PETITION

It is not often that licensed officers of this Court openly accuse Federal court personnel of violating Federal criminal statutes in order to usurp justice. Should this Court refuse to take any action on this petition, it would indicate to said officers and the public in general that the Federal Judicial system can no longer fulfill its primary purpose for existence.

Question I: Can a Trial Judge Serve as Sole Accuser, Presiding Judge, Sole Ultimate Fact-Finder, and Sentencing Judge, Regarding Facts Not Witnessed by Said Judge?

No third-party complaint was ever filed against the Petitioner. Instead, the instant matter began with an Order to Show Cause (hereinafter "OSC") entered sua sponte by Judge McDonough, with no third party complainant ever being identified. *See* R.1 PageID#9-12,[1] Appx. 144a-150a.

[1] The first Record document in this matter begins on PageID#9, which is itself highly unusual and suspicious. PageID#s 1-4 and later 5-8 were scrubbed from the Court's Record with no notice or explanation on McDonough's later-admitted instructions. Judge McDonough later admitted to the 6th Circuit Chief Judge that McDonough ordered meta-data scrubbed from Court computers. This is just one example of illegal manipulation and destruction of Court documents of Record in clear violation of 18 U.S.C. §1506 and USAOC regulatory standards. Note that no order of expungement was ever entered and no grounds were ever made part of the record explaining this illegal destruction of documents in the Court Record.

While this, in and of itself, may not be unique, what is literally a matter of first impression is that the sole fact-accuser, Judge McDonough, then assigned himself as presiding judge over his own out-of-court factual accusations. He then personally ordered discovery, ruled on all contested legal questions, acted as ultimate fact-finder, and assigned punishment for the factual accusations he personally asserted and personally ruled to be true.

It is common, and necessary, to allow judges to rule on their own contempt charges when certain actions are taken before them in open court. However, such situations, without exception, require the actions being punished to be based upon unconditional and undisputed statements or actions taken in open court. Common examples include refusing to testify without assertion of any legal grounds for such refusal; refusal to produce evidence without any assertion of legal grounds for such refusal; openly defying a court order after all appeals have been exhausted; and actions or statements that reflect open contempt for the authority of the court. This case is not any of these.

In the instant matter Judge McDonough assigned himself as presiding judge, after personally drafting the factual allegations himself. The instant OSC does not assert any facts that would fall within a judges' authority to enter a finding of contempt based upon uncontested facts. To the contrary, the unamended OSC never actually asserts any facts capable of being admitted or denied. Instead the OSC speculates that the defendant attorney "may have" written certain documents, speculates about writing styles, speculates about what might have happened during service of process months prior and outside the court, and speculatively assigns scienter (knowing misrepresentation) to the defendant attorney based upon representations made in a case that had been closed years earlier.

This last item is based upon the accusing judge's personal recollection of the previous, unrelated, lawsuit. None of these facts were actually asserted in the OSC, but were instead asserted as possibilities, recollections, and opinions of the accusing judge. More importantly, none of these speculations qualify as undisputed and unconditional facts upon which a judge can enter a contempt ruling without further evidence and without an independent tribunal.

Yet, over Petitioner's numerous objections, McDonough acted as accuser, alleged victim, judge, jury, and executioner. The 6th Circuit also completely ignored this issue. *See* 6th Op. Appx. A 2a.

Rather than admit that McDonough's actions reflect a gross overreach of judicial power, or addressing the underlying crimes McDonough's unprecedented actions likely indicate, the 6th Circuit instead cites this Court's decision in *Withrow v. Larkin*, asserting that "a tribunal may combine 'investigative and adjudicative functions' without necessarily offending" the right to a fair tribunal. *See Id.*, *citing* 421 U.S. 35, 58 (1975).

Nowhere in *Withrow*, or any other case the Petitioner can find, has this Court ever stated or implied that a judge may make a complaint personally asserting factual allegations about contested facts, and then act as the sole ultimate fact-finder confirming his own accusations. In *Withrow* this Court determined that under certain circumstances tribunals, consisting of numerous individuals, may determine facts where some of those individuals were involved in the investigation of said facts. The 6th Circuit has now taken that very reasonable, nuanced, and detailed opinion of this Court, and turned it into a one-sentence ruling that Judge McDonough can make factual accusations about out-of-court facts and scienter conclusions, and then conclude that his own accusations are true.

The Petitioner here had no independent grand jury, and had no opportunity to cross examine his accuser. Instead, his accuser was the judge and jury.

If the 6th Circuit's assertion of law on this point is determined to be correct by this Court (or is ignored by this Court), then District Judges are essentially kings, and the rule of law no longer has any meaning or purpose. This first issue, alone, should be determinative of this entire matter, and this Court should reverse all rulings below without need for anything further being considered.

Question II: Can a Trial Judge Add Eleven New Factual Accusations and Assert Five New Disciplinary Authorities Based Upon the Forced Disclosure of Privileged Documents and Defendant's Involuntary Deposition Testimony?

It is well-established that amending charges after the forced testimony of the accused is a due process violation. *In re Ruffalo*, 390 U.S. 544, 551(1968)(*citing In re Gault*, 387 U.S. 1, 33 (1967).

> "These are adversary proceedings of a quasi-criminal nature. The charge must be known before the proceedings commence. They become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start afresh." *In re Ruffalo*, 390 U.S. 544, 551(1968)(*citing In re Gault*, 387 U.S. 1, 33 (1967).

The Supreme Court's opinion in *Ruffalo* reversed the 6th Circuit, and quoted as correct this Court's dissenting Judge, "Such procedural violation of due process would never pass muster in any normal civil or criminal litigation*." Id., citing In re Ruffalo*, 370 F.2d at 462.

In the instant case the "fact-finder" (and accuser, and presiding judge) entered an "amended show-cause order" on April 23, 2025, after Irion and his client had both responded to the Court's discovery orders, and three weeks after Irion had been deposed by Prosecuting Counsel. *See* Amd. OSC, Appx. D 151a. The amended OSC converted a four-page OSC with zero actual factual allegations into a six-page OSC with eleven factual allegations.[2] *Compare* Appx. C *with* Appx. D.

The original OSC implied three separate violations. *See* Appx. C. The amended OSC dismissed the second implied violation, solely due to

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[2] The Petitioner was repeatedly admonished by McDonough for "refusing" to admit or deny factual allegations in the initial OSC. *See* Appx. B. 11a. However, the Petitioner had done nothing more than properly responding by correctly pointing out that the initial OSC did not contain any actual factual assertions, but instead contained only poorly drafted non-factual speculations and statements of opinion about what might have occurred, and that speculative statements of opinion cannot properly be admitted or denied. *See* Appx. C.

undisputed evidence proving that accusation to be completely false. *See* Appx. B and D. Yet despite reducing the implied violations by one-third, the amended OSC increased the factual allegations from zero to eleven. *See* Appx. D.

The amended OSC also asserts, for the very first time, violations of Tennessee Rules of Professional Conduct 1.1, 1.2(d), 1.3, 3.1, 3.4, and 8.4. *See* Appx. D. The original OSC cited only TRCP 3.3, FRCP 11, and a Tennessee BPR opinion that the BPR had itself voided years earlier. *See* Appx. C, 144a-150a, R.1 (third version) at PageID# 9-12.

The third accusation in the initial OSC accused Petitioner of "ghostwriting." *Id.* However, that accusation cited zero actual authority, save the previously-mentioned voided Tennessee BPR decision. *Id.* Nothing prior to the amended OSC, filed almost nine months later and after court-ordered discovery, gave the Petitioner any indication what authority or rules Petitioner might have violated regarding the vague assertion of "ghost writing." Yet the final order suspending the Petitioner for five-plus years, spends significant time discussing the "ghost writing" allegations and using them to support the unusually long suspension. *See* Appx. B.

The 6th Circuit dismissed all of these concerns by asserting that the defendant attorney was not prejudiced because "though the amended order cited additional rules of professional conduct that Irion allegedly violate, it contained the same factual claims as did the first order: that Irion had misrepresented Whiting's relationship with the trust, and that he had ghostwritten some of Whiting's filings while Whiting was nominally proceeding pro se." There are several problems with the Circuit Court's terse dismissal of these serious due process violations.

First, the previous OSC's assertion of "ghost writing" cited only the Tennessee BPR opinion which the BPR had voided years earlier. Petitioner had literally zero operative authority connected to the "ghost writing" accusations until the post-discovery re-draft of McDonough's OSC. Also, Petitioner made several attempts to discover when and why the TNBPR had voided its earlier "ghost writing" opinion, but was unable to obtain any answer to that question. This is one of the two “factual accusations” the 6th Circuit assert “hadn't changed” in the final OSC. Yet these allegations are still asserted in support of McDonough's imposition of a five year suspension plus two year probation. *See* Appx. B.

Next, the Circuit Court's assertion that the amended OSC contained “the same factual claims as did the first order,” is simply wrong. The initial operative OSC literally contained zero factual allegations in a form legally capable of admission or denial. Therefore, all eleven of the factual allegations contained in the amended OSC had never been presented as factual allegations until after the Petitioner had been forced to provide testimony and privileged documents.

Next, the amended OSC accused the Petitioner of intentionally misrepresenting his client's status as trustee on two different occasions, years apart, in two different lawsuits. Accuser McDonough's final order factually found insufficient evidence of the first instance of alleged intentional misrepresentation but found “clear and convincing” evidence of the second instance. This fact alone demonstrates that the 6th Circuit's half-a-sentence dismissal of the *Ruffalo* violations ignores the importance of accurate and complete notice regarding charging documents. "Such procedural violation of due process would never pass muster in any normal civil or criminal litigation." *In re Ruffalo*, 370 F.2d at 462.

The Circuit Court's conclusion that the pre-discovery notice "contained the same factual claims as did the first order: that Irion had misrepresented Whiting's relationship with the trust," is directly contradicted by McDonough's judgment that comes to two diametrically opposed rulings on what the Circuit Courts asserts is one factual allegation. The pre-discovery factual "accusations" simply did not reflect the scope or detail of the accusations eventually relied upon by McDonough in his final order.

Additionally, the next section of this Petition further explains that both the Circuit Court and the accuser/presiding judge/ultimate fact-finder, both ignored exculpatory evidence that completely precludes a finding of intentional misrepresentation in either the first, or the second count occurring years later in an unrelated matter.

Question III: Can the District Court and the Circuit Court Completely Ignore Undisputed Exculpatory Evidence?

On July 13, 2021 the board of ARD Property Management voted to allow attorney Irion to make any changes to its trust documents that Irion deemed necessary to support the *ARD v. City of Athens* litigation. *See* Minutes of ARD Bd. Appx. E., 159a. That vote included blanket ratification (backdating) of any past changes Irion deemed necessary. It also allowed Irion to make changes to said organization without further approval of ARD. Therefore, any alterations that would have been necessary to satisfy the Court of Mr. Whiting's status with ARD, during either the first or second unrelated lawsuits, could have been made by Irion at any time.

That vote of the ARD Board was memorialized at the time the vote was held, and evidence of same was presented to the District Court during the instant disciplinary litigation. *Id.*, *identified in Record as* R110-30, Min. of ARD.

While Petitioner's client correctly admitted during the trial of the *ARD v. City of Athens* litigation that he had been unaware until that time of certain requirements to be made a trustee, and therefore had not been properly made a trustee at that time, the fact that these technical details could have been corrected at any point without further action of the ARD Board negated any motive for him, or his attorney, to lie about the matter. Both McDonough and the Circuit Court correctly point out that both Whiting and the Petitioner here openly admitted the error and never denied same. This is why. No intentional misrepresentation was evidenced because the evidence showed that neither Whiting nor his attorney had any reason to misrepresent a fact over which they had complete control.

This first lawsuit is the one in which judge McDonough found insufficient evidence to find intentional misrepresentation. *See* Appx. B. However, approximately two years later the defendant attorney filed a motion to recuse Judge McDonough in an unrelated matter where McDonough had announced in a written motion that Mr. Whiting could not be trusted on the witness stand, based solely upon McDonough's personal and inaccurate recollection of these exact issues from the previous unrelated lawsuit.[3] In that motion to recuse the Petitioner included a very brief summary of the previous litigation simply to give context to McDonough's inexcusable statement in the later unrelated lawsuit.

Yet McDonough now cites the intervening period of time in support of his conclusion that the defendant attorney certainly could not still be unaware of content of the ARD documents regarding trustees. *See* Appx. B. Therefore, McDonough found clear and convincing evidence that Petitioner's summary of matter, at that time completely irrelevant to the later lawsuit except as context, was an intentional misrepresentation by the Petitioner.

Setting aside the fact that the Petitioner had no motive to misrepresent irrelevant facts in an unrelated lawsuit, the critical point here is that neither McDonough, nor anyone else, ever asked

[3] This is one of the unrelated lawsuits in which McDonough assigned himself in violation of Local Rules of judicial assignment, in order to protect local government agencies from constitutional law.

whether the representation made in the later lawsuit was still inaccurate, or had been corrected in the interim. There is no evidence whatsoever before any Court that remotely indicates that the representation made by the defendant attorney was inaccurate at the time said representation was made.

Despite this undisputed lack of evidence, lack of motive, lack of relevance, unfettered ability to correct the initial erroneous assertion, and passage of over two years between the incidents with zero inquiry into whether a change had been made, both Courts found clear and convincing evidence of intentional misrepresentation in the later representation. No evidence that it was still wrong, just a presumption that it was.

Question IV: Can a District Judge Rule on the Truthfulness of Facts Alleged in a 28 U.S.C. §144 Affidavit of Disqualification?

For the first time a Circuit Court, the 6th, has ruled that allegations of criminal actions taken by a Chief District Judge in administration of his Court and across numerous unrelated lawsuits, made to support criminal motives, all supported by direct and statistical evidence of same, and taken as true, "would fail to cause an objective observer to question his impartiality, because they were all consistent with established procedures of the court." *See* Appx. A. While the 6th Circuit couched this decision in terms of a factual finding, there can be no question that it actually represents a legal finding that judges can pass on the truth of factual allegations in 28 U.S.C. §144 affidavits.

It is well-established pursuant to 28 U.S.C. §144 that a judge subject to an affidavit of disqualification is statutorily prohibited from taking any further action, save reviewing the affidavit for minimum statutory requirements. *Berger v. United States*, 255 U.S. 22, (1921) ; *Lewis v. United States*, 14 F.2d 369, (8th Cir. 1926)(Judge accused of bias could pass on legal sufficiency of affidavit only, but not upon truth of its statements, and if affidavit was found statutorily sufficient he could proceed no further in the case.). All circuits, save the 6th, appear to agree that if the formal statutory requirements such as good-faith certificate and timeliness are met by a §144 affidavit, the presiding judge is statutorily required to recuse. *See e.g.*

Simmons v. United States, 89 F.2d 591, (5th Cir.1937), *Morris v. United States*, 26 F.2d 444 (8th Cir. 1928); *Cuddy v. Otis*, 33 F.2d 577 (8th Cir. 1929) ; *Morse v. Lewis*, 54 F.2d 1027 (4th Cir.); *Peacock Records, Inc. v. Checker Records, Inc.*, 430 F.2d 85 (7th Cir. 1970), *Hanger v. United States*, 398 F.2d 91 (8th Cir. 1968); *United States v. Montecalvo*, 545 F.2d 684 (9th Cir. 1976); *United States v. Bray*, 546 F.2d 851 (10th Cir. 1976); *United States v. Haldeman*, 559 F.2d 31 (D.C. Cir. 1976).

Unfortunately, in the instant case Judge McDonough refused to follow this simple to understand mandate and instead ignored Federal law. His Order denies the motion by repeatedly asserting that there is "no evidence" supporting the affidavit. *See* Dist. Ct. Record at R.24. This alone conclusively establishes that Judge McDonough applied an erroneous legal standard, and therefore abused his discretion.

In his order McDonough intentionally misrepresents Petitioner's factual allegations and evidence as "subjective beliefs." *Id.* However, the Petitioner pointed out to the 6th Circuit that review of the entire §144 affidavit Petitioner filed with his motion reveals at least 82 clear statements of undeniably OBJECTIVE facts, that no educated person could conclude are "subjective."

In the instant case the factual allegations include assertions that Judge McDonough has, with unlawful intent, violated Federal laws by ordering the Clerk of the Court to alter the District Court's ECF records in order to obscure other unlawful activities. The allegations include a quote of the U.S. Administrative Office of the Courts' "Guide to Judicial Policy" violated by McDonough's admitted administrative/non-judicial activities. Yet Judge McDonough states in his order that Irion's allegations, "would not cause a reasonable observer to question the undersigned's impartiality." *See* Dist. Ct. Record at R.24 at PageID#201. To repeat, judge McDonough has concluded that no reasonable person could possibly conclude that a judge who is actually committing Federal crimes against a party, may be biased against that party.

The Circuit Court's conclusion that McDonough's administrative activities, made in clear violation of U.S.A.O.C. Guidelines "were all consistent with established procedures of the court," is an obvious lie. That Guideline clearly establishes that Federal Judges may not remove documents from a Court's Record without first entering a Court order establishing the fact that the Record was altered and giving the grounds necessitating said alterations. Also, Petitioner's §144 affidavit quotes and discusses the Eastern District's Local Rules regarding judge assignments and establishes that the non-random assignment of judges, as is mathematically proven in said affidavit, is a direct violation of that Court's own Local Rules. Far from being "consistent with established procedures of the court", they are established to be the opposite.

Rather than follow the very clear law, McDonough instead ruled that he was not guilty of the allegations made against him. This act, alone, supports those allegations. Judge McDonough's actions here shock the conscious. More importantly, if left uncorrected his actions destroy a necessary check on judicial power that Congress clearly mandated. Left uncorrected, Congress should just go home and stop pretending that it is a check on judicial power.

The 6^{th} Circuit is protecting Chief District Judge McDonough in his illegal activities. The Circuit Court intentionally mischaracterized McDonough's ruling, which was clear: that the facts asserted against him were untrue. Therefore, the order up for review constitutes a new standard: in the 6^{th} Circuit, judges can pass on the truth of factual allegations in 28 U.S.C. §144 affidavits.

Question V: Can a Circuit Court Refuse to Allow Oral Argument that has been Timely Demanded and is Unopposed on Review of a Five-Plus Year Attorney Suspension?

The Sole named Party in this matter, Petitioner here, has accused the Clerk of the 6^{th} Circuit of criminal activity in the administration of that Court. *See* SCOTUS Pet. Writ Mand., case#25-785. In the instant appeal Petitioner demanded oral argument before that Court, explaining: "Due to the issues presented to the U.S. Supreme Court regarding this Court's Clerk unauthorized entry of orders and failure to notify judges, set forth in Appellant's Petition, Supreme Court case number 25-785, the Appellant demands oral argument for the purpose of ensuring that the Judges of this

Court actually review this brief." (Br. of Appellant, Doc.19 at p.9).

Said demand was unopposed. Yet the Circuit Court denied said demand without substantive explanation.

This sua sponte denial of oral argument not only denied Petitioner his right to unopposed argument regarding the highly unusual circumstances presented here, it again denied Petitioner his right to have any opposing party or accuser be identified, and most importantly it denied Petitioner his right to ensure that any actual Article III judge was ever made aware of the facts and arguments in this matter.

To be clear: the Petitioner here accuses the 6th Circuit Court Clerk of hiding cases from Article III judges, of authoring substantive orders in the name of said judges, and of criminally usurping the constitutional authority of the 6th Circuit Court. Despite evidence of these allegations being presented to the Circuit Court and this Court, and being asserted as grounds for face-to-face access to Article III judges, Petitioner right to access the

Court has been denied without addressing these concerns in any way.

This practice is being abused, and is clearly unconstitutional. It must be stopped.

CONCLUSION

For the reasons discussed herein, the Petitioner respectfully requests that this Petition for Certiorari be **GRANTED**.

Respectfully submitted,

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APPENDIX

APPENDIX

Part A

No. 25-5874
**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

In re: VAN R. IRION, Respondent - Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN TENNESSEE

Before: KETHLEDGE, WHITE, and LARSEN, Circuit Judges.

OPINION KETHLEDGE, Circuit Judge. The district court sanctioned attorney Van Irion after it found that he had violated several rules of professional conduct. Irion appeals the district court's order imposing sanctions. We reject his arguments and affirm.

I. In 2020, Irion began to represent two clients—Glenn Whiting and ARD Property Management—in a suit against the city of Athens, Tennessee, and two city officials. Whiting claimed that the officials had retaliated against him by condemning a building owned by ARD Property Management—a trust for which, he initially said, he served as the "executor." Throughout the litigation, Irion represented that Whiting was either a "beneficiary," a "trustee," or both, of the ARD trust—which, Irion argued, entitled Whiting to compensatory damages for costs incurred because of the building's condemnation. At trial, Whiting failed to present any evidence that he was a trustee or a beneficiary. Meanwhile, the defendants introduced trust documents which showed that Whiting was not a beneficiary, and that he could become a trustee only at the discretion of the board of trustees. The district court thereafter entered judgment as a matter of law in favor of the defendants on the issue of compensatory damages.

In 2023, Irion began to represent Whiting in another suit against the city of Athens and several city officials before the same magistrate and district judges. Irion eventually withdrew from representing Whiting, saying that he could no longer effectively represent Whiting due to the "clear bias" displayed by the district judge. Whiting proceeded pro se. Yet Irion secretly continued to draft and edit filings for

Whiting, which Whiting then submitted under his own name.

In August 2024, the district judge who presided over the two earlier suits (and others filed by Irion) ordered him to show cause why he should not be sanctioned for misrepresenting, among other things, Whiting's status as a trustee in the first suit, and for ghostwriting Whiting's filings in the second suit after he had withdrawn. The judge appointed an attorney to investigate "allegations of misconduct" and to "prosecute any disciplinary proceedings." Irion moved for the judge to recuse himself from the disciplinary proceeding, which he declined to do. After several months of discovery, including Irion's deposition, the court entered an amended order to show cause. In response, Irion admitted that he had repeatedly and incorrectly represented that Whiting was a trustee or beneficiary of the ARD trust, but said he had not done so intentionally, and that he had relied on Whiting's representations.

Irion waived his right to a hearing. The court thereafter issued an exhaustive, 80-page opinion, in which it found that Irion had violated several rules of professional conduct in both suits. The court therefore suspended Irion from practice in the

Eastern District of Tennessee for five years, to be followed by a two-year probationary period, and ordered him to write a letter of apology to the affected defendants and their attorneys. It also ordered Irion to reimburse the court for the expense of the disciplinary proceeding. This appeal followed.

II. "Federal courts have the inherent authority to discipline attorneys practicing before them and to set standards for their conduct." Berger v. Cuyahoga Cnty. Bar Ass'n, 983 F.2d 718, 724 (6th Cir. 1993). The District Court for the Eastern District of Tennessee has formalized this authority under its local rules. See Theard v. United States, 354 U.S. 278, 281-83 (1957). The rules adopt the Tennessee Supreme Court's rules of professional conduct as the "minimum standards" for members of the court's bar; they provide that the court may discipline those who violate that standard; and they prescribe procedures for disciplinary proceedings. E.D. Tenn. L.R. 83.6, 83.7.

We review the district court's imposition of sanctions under this authority for an abuse of discretion. Jones v. Illinois Cent. R. Co., 617 F.3d 843, 850 (6th Cir. 2010).

A. Irion argues that the district judge denied him due process in three ways. First, Irion contends that the judge, by failing to recuse, denied him his right to a fair tribunal. A judge denies a party that right if the judge presides over a case where the objective "probability" of actual bias on his part is unacceptably high. Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 887 (2009). Here, Irion says that an objective observer would have concluded that the judge could not be impartial after Irion had accused him of manipulating case assignments to ensure that he presided over Irion's earlier suits; of filing the order to show cause to retaliate against Irion for his complaints about that alleged manipulation in an en banc petition; and of improperly removing from the docket the initial order to show cause. But "not every attack on a judge disqualifies him from sitting." Id. at 880 (citation modified). And Irion's allegations were not comparable to the kinds of extreme attacks—for instance, "highly personal aspersions"—that have been held to prevent the average judge from remaining neutral. See Mayberry v. Pennsylvania, 400 U.S. 455, 466 (1971).

Second, Irion contends that the judge denied him his right to a fair tribunal because the judge both initiated the disciplinary proceeding and presided over it. But a tribunal may combine "investigative and adjudicative functions" without necessarily offending that right. See Withrow v. Larkin, 421 U.S. 35, 58 (1975). And Irion has not shown that the procedures used in the disciplinary proceeding—or his prior relationship with the judge—made the judge "so psychologically wedded" to the allegations made in the order to show cause that he could not be fair. Id. at 57. On the contrary, the record shows that the judge, after he had received evidence, withdrew or declined to find established several of his initial allegations. Irion therefore cannot make out a violation of his right to a fair tribunal.

Third, Irion contends that he failed to receive fair notice of the charges against him, because the judge amended the order to show cause after Irion had been deposed and had produced evidence in discovery. True, under some circumstances, a tribunal can violate a defendant's right to fair notice by amending the charges against him after the proceeding has begun. In re Ruffalo, 390 U.S. 544, 551 (1968). But such a violation occurs only if the amendment prejudices the defendant. See Zauderer v. Off. of Disciplinary Couns. of Sup. Ct. of Ohio, 471 U.S. 626, 654, 654 n.18 (1985). Here, though the amended order cited additional rules of professional conduct that Irion allegedly violated, it contained the same factual claims as did the first order: that Irion had misrepresented Whiting's relationship with the trust, and that he had ghostwritten some of Whiting's filings while Whiting was nominally proceeding pro se. Irion fails to develop any argument as to how he was prejudiced by the amended order, so he has not shown a violation of his right to fair notice.

B. Irion raises four more arguments. First, he argues the judge abused his discretion by failing to recuse himself under 28 U.S.C. § 144. That provision requires a judge to do so when an objective observer with knowledge of all the facts would question the judge's impartiality. See Alemarah v. Gen. Motors, LLC, 980 F.3d 1083, 1086 (6th Cir. 2020). Here, Irion asserts that the judge failed to credit his allegations that there was less than a 1-in-500 chance that the case assignments in his two earlier suits had been random, and that others of his cases had also been assigned to the judge; that the Bates stamps on documents in those other cases were retroactively changed after a new judge was assigned to the case; and that the first two versions of the order to show cause had been removed from the docket in the disciplinary proceeding. The judge, however, reasonably concluded that these allegations—even taken as true—would fail to cause an objective observer to question his impartiality, because they were all consistent with established procedures of the court.

Second, Irion argues that the district court ordered him and Whiting to produce what he says were privileged materials. But a party who asserts that material is privileged from disclosure must establish that entitlement. See In re Columbia/HCA Healthcare Corp. Billing Pracs. Litig., 293 F.3d 289, 294 (6th Cir. 2002). Here, both in the district court and on appeal, Irion made only a conclusory assertion that either the attorney-client or work-product privileges applied to an unspecified group of documents. He therefore has not established an entitlement to either privilege.

Third, Irion argues that the district court erroneously found that he had misrepresented the trust documents in a motion in the second case. In that motion, Irion asserted that the trust documents showed that Whiting eventually "would become" a trustee. But those documents instead showed that the board of trustees could, in its discretion, either "fill" a trustee vacancy, or decline to fill it. The district court therefore did not err in finding that Irion had misrepresented the documents.

Finally, Irion asserts that the court's order to write a letter of apology was unconstitutional. He fails to develop any argument or cite any authority in support of this assertion, however, so he has forfeited the issue. See United States v. Stewart, 628 F.3d 246, 256 (6th Cir. 2010). The district court's order is affirmed.

APPENDIX
Part B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
IN RE: Van R. Irion, BPR # 024519
Case No. 1:24-dm-7
Chief District Judge
Travis R. McDonough
Chief Magistrate Judge
Christopher H. Steger

MEMORANDUM OPINION AND ORDER

This Order is the result of a protracted disciplinary inquiry into the actions of attorney Van Irion ("Respondent"), particularly his conduct in two prior cases. As explained herein, Respondent has intentionally misled not only this Court, but also the Court of Appeals for the Sixth Circuit, and he has engaged in conduct falling short of applicable minimum competency standards. Additionally, throughout this disciplinary proceeding, Respondent has busied himself with filings that are difficult to construe as anything other than frivolous attempts to frustrate the resolution of the misconduct allegations against him. The Court will **FIND** by clear and convincing evidence that Respondent violated the Rules of Professional Conduct as adopted by the Supreme Court of Tennessee and as applied by this Court through Local Rules 83.6 and 83.7.

I. LAW AND PROCEDURE

"Justice Cardozo once observed [that] [m]embership in the bar is a privilege burdened with conditions. An attorney is received into that ancient fellowship for something more than private gain. He becomes an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice." *See In re Snyder*, 472 U.S. 634, 644 (1985) (internal quotations omitted) (quoting *People ex rel. Karlin v. Culkin*, 248 N.Y. 465, 470–471, 162 N.E. 487, 489 (1928)). An attorney bears such a burden because she also wields significant power as an officer of the court. *See id.* But an attorney wields this power subject to the court's supervision. *See Ex parte Garland*, 71 U.S. 333, 378 (1866) ("From [an] entry [of admission] the parties become officers of the court, and are responsible to it for professional misconduct."). A court must require "members of the bar to conduct themselves in a manner compatible with the role of courts in the administration of justice." *See Snyder*, 472 U.S. at 644–45. "[C]onduct contrary to professional standards [] shows an unfitness to discharge continuing obligations to clients or the courts," and it is "inimical to the administration of justice." *Id.* at 645. Accordingly, "[c]ourts have long recognized an inherent authority to suspend or disbar lawyers." *Id.* at 643 (citations omitted). Chief Justice John Marshall cautioned that a court must exercise this disciplinary authority "with great moderation and judgment," as it impacts an attorney's ability to practice and earn a living. *See Ex parte Burr*, 22 U.S. 529, 530 (1824). The right to practice cannot "be lightly or capriciously taken." *Id.* Therefore, a court must afford due process to attorneys charged with misconduct. *See Garland*, 71 U.S. at 378 (explaining that attorneys can only be disciplined "for misconduct ascertained and declared by the judgment of the court after opportunity to be heard has been afforded"); *In re Cook*, 551 F.3d 542, 549 (6th Cir. 2009) (explaining that an "attorney facing disbarment" is entitled to procedural due process) (quoting *Theard v. United States*, 354 U.S. 278, 282 (1957)).

"Attorney disciplinary proceedings are not civil actions and not criminal prosecutions." *In re*

Moncier, 550 F. Supp. 2d 768, 772 (E.D. Tenn. 2008), *aff'd sub nom. In re Moncier*, 329 F. App'x 636 (6th Cir. 2009) (citation omitted). A disciplinary proceeding is unique in nature, as "it is an investigation into the lawyer's conduct to determine whether the lawyer may continue to practice a profession that is imbued with the public interest and trust." *See In re Landstreet*, 490 F. App'x 698, 702 (6th Cir. 2012) (citation and internal quotations omitted). Such proceedings are typically categorized as "quasi-criminal." *See Moncier*, 550 F. Supp. 2d at 773; *Cook*, 551 F.3d at 549 (explaining that disbarment involves "adversary proceedings of a quasi-criminal nature") (quoting *In re Ruffalo*, 390 U.S. 544, 551 (1968)); *In re Justice*, No. 20-5479, 2021 WL 3808965, at *3 (6th Cir. Aug. 26, 2021) ("We have recognized that attorney discipline proceedings are quasi-criminal . . ."). To meet the requirements of due process in this setting, courts must provide an attorney (1) notice of the charged misconduct and (2) "ample opportunity to show cause" why he should not be subject to discipline. *See Cook*, 551 F.3d at 549; *Landstreet*, 490 F. App'x at 702; *Justice*, 2021 WL 3808965 at *3. In the context of state-court disciplinary proceedings, the Sixth Circuit has established that a court satisfies these requirements when an attorney is "given an opportunity to respond to the allegations set forth in the complaint, testify at length in her own defense, [and to] present other witnesses and evidence to support her version of events." *See In re Squire*, 617 F.3d 461, 467 (6th Cir. 2010) (quoting *Cook*, 551 F.3d at 550) (internal quotation omitted).

The Eastern District of Tennessee has adopted disciplinary procedures in accordance with these due-process requirements. Local Rule 83.6 provides that:

> The minimum standards of professional conduct before this Court include the Rules of Professional Conduct adopted by the Supreme Court of Tennessee insofar as they relate to matters within the jurisdiction of this Court. Such rules are not exhaustive of the ethical standards the Court expects attorneys to meet. The Court has the obligation and responsibility to interpret and apply the RPC and other rules and standards of conduct without being bound by the decisions of Tennessee courts, other courts, or agencies.[1]

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[1] "The Court gives considerable weight to the opinions of the Tennessee state courts in regard to the interpretation of the Tennessee Rules of Professional Conduct, but it is ultimately the responsibility of this Court

Local Rule 83.7(a) further elaborates that "[t]he Court may impose discipline on any member of its bar who has violated the Rules of Professional Conduct as adopted by the Supreme Court of Tennessee, or has engaged in unethical conduct tending to bring the Court or the bar into disrepute." The Court may initiate a disciplinary proceeding addressing such conduct "by the issuance of an order to show cause signed by the Chief Judge." E.D. Tenn. L.R. 83.7(b); *Moncier*, 550 F. Supp. 2d at 774 (explaining that "an action can be initiated by the Chief Judge upon his own initiative"). The Court shall hold a hearing when the attorney under investigation requests it or when the Court determines that a hearing is necessary for the proper disposition of the charges. *See* E.D. Tenn. L.R. 83.7(i).

Violations of "the Rules of Professional Conduct or rule or orders of the Court or the respondent's engagement in unethical conduct tending to bring the Court or the bar into disrepute

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and this Court alone to determine whether the Tennessee Rules of Professional Conduct were violated by Respondent such that he is subject to disciplinary action in this Court." *In re Moncier*, 550 F. Supp. 2d 768, 770 n.2 (E.D. Tenn. 2008), *aff'd sub nom. In re Moncier*, 329 F. App'x 636 (6th Cir. 2009).

[must] be proven by clear and convincing evidence." *Id.* Such evidence will "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions [is] 'highly probable.'" *Florida v. Georgia*, 592 U.S. 433, 439 (2021) (quoting *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984)).

The Court has applied this standard to all factual findings that follow. These facts establish that the Court cannot place the requisite trust in Respondent's word or the quality of his work. He has clearly demonstrated that the Court cannot depend on him to be "an instrument or agency to advance the ends of justice." *See Snyder*, 472 U.S. at 644.

II. FACTUAL BACKGROUND

This matter concerns alleged misconduct by Respondent in two prior cases: (1) *Whiting v. Trew, et al.*, Case No. 3:20-cv-54 (hereinafter "3:20-cv-54" or "*Trew*") and (2) *Whiting v. City of Athens, et al.*, Case No. 3:23-cv-2 (hereinafter "3:23-cv-2" or "*Athens*"). The Court will review the relevant facts from both cases before proceeding to the procedural history of the instant disciplinary action.

A. The *Trew* Litigation

i. The Relevant Claims

Respondent, on behalf of Glenn Whiting and ARD Properties[2] (hereinafter "ARD"), filed the complaint initiating *Trew* on February 6, 2020. (*See* Doc. 1 in 3:20-cv-54.) ARD was a "common-law irrevocable trust, created for the purpose of holding commercial real estate." (Doc. 178, at 2 in Case No. 3:20-cv-54.) Respondent was the sole lawyer for both plaintiffs. (*See* Doc. 1, at 19 in Case No. 3:20-cv-54.)

The conflict in *Trew* centered "around a property at 213 Pope Avenue, Athens, Tennessee." (Doc. 178, at 1 in Case No. 3:20-cv-54.) Pursuant to 42 U.S.C. § 1983, Whiting and ARD alleged that an employee for the City of Athens, Tennessee (hereinafter "the City"), "signed an order requiring plaintiff ARD Properties to make major repairs to" the Pope Avenue building accompanied by a threat to demolish the building in the absence of such repairs. (*See* Doc. 1, at 12 in Case No. 3:20-cv-54.) They alleged that this was retaliation against Whiting for his public criticism of city officials. (*See* Doc. 1, at 3–12 in Case No. 3:20-cv-54.) Whiting and

[2] The legal name for ARD Properties is "ARD Property Management." (*See* Doc. 119 in Case No. 3:20-cv-54.) The plaintiffs did not use ARD's correct name for nearly a year and a half after filing the complaint. (*See id.*)

ARD sought actual and punitive damages in addition to other relief.[3] (*See id.* at 17–18.)

ii. Discovery and Damages

The damages associated with the Pope Avenue building became a contentious aspect of the case due to the unclear nature of Whiting's relationship with ARD. Donald and Carol Ammerman purchased the Pope Avenue property in December 2003 and conveyed it to ARD in January 2004. (*See* Doc. 178, at 2 in Case No. 3:20-cv-54.) ARD was still the record owner of the Pope Avenue property at the time of the suit. (*See id.*) Whiting and ARD initially alleged that Whiting was an "executor" of ARD. (Doc. 1, at 2 in Case No. 3:20-cv-54.)

The parties to the suit began to contest what this meant when Whiting refused to answer deposition questions seeking information about ARD. (*See* Doc. 34-3, at 10 in Case No. 3:20-cv-54; *see generally* Doc. 33; Doc. 34 in Case No. 3:20-cv-54.) Whiting "pled the Fifth" when asked about his relationship with ARD and "refused to answer any

[3] The plaintiffs later amended the complaint to also allege that the defendants deprived them of due process. (*See* Doc. 56, at 21.)

questions about his sources of income, the trustees of ARD Properties . . . and his association with the ARD Properties trust . . . ." (*See* Doc. 41, at 6; Doc. 34-4 in Case No. 3:20-cv-54.) Respondent moved for a protective order to prevent the defendants from discovering such information from the plaintiffs. (*See* Doc. 33 in Case No. 3:20-cv-54.) In response, the defendants asserted that discovery concerning ownership of the Pope Avenue property was relevant to the question of damages because the plaintiffs were "blaming the Defendants for their inability to complete repairs" and the defendants could "defend this allegation by arguing that the Plaintiffs lack the capital to perform the referenced repairs." (Doc. 41, at 6 in Case No. 3:20-cv-54.) On November 3, 2020, Magistrate Judge Debra Poplin denied Respondent's motion for a protective order and found that Whiting's relationship to ARD was relevant to the suit because if he had "no ownership interests in any of the real property at issue, he may [have] lack[ed] standing to pursue the [] lawsuit individually." (Doc. 44, at 19 in Case No. 3:20-cv-54.)

Roughly two months later—after Respondent filed an amended complaint (Doc. 56 in Case No. 3:20-cv-54)—Respondent filed another motion for a protective order (Doc. 61 in Case No. 3:20-cv-54), and the defendants filed a motion to compel (Doc. 65 in Case No. 3:20-cv-54). Again, Respondent asserted that the information concerning the plaintiffs' finances was not relevant to the case, particularly since Whiting had disclaimed any damages "related to lost rental income from any building." (*See* Doc. 61, at 1 in Case No. 3:20-cv-54.) By contrast, the defendants argued that the plaintiffs' income remained relevant because it affected their ability to make repairs to the Pope Avenue building. (*See* Doc. 65, at 11 in Case No. 3:20-cv-54.) The defendants also argued that Whiting's relationship with ARD remained relevant because, if he had no ownership interest in the properties at issue, "he may lack standing to pursue the lawsuit individually." (*Id.* at 13.) In response, Respondent submitted the following on behalf of the plaintiffs:

> The Pope [Avenue] building is owned by ARD Properties. The defendants already have documents that verify this fact. The only outstanding questions are what connection does Mr. Whiting have with ARD Properties, and were the defendants aware of said connection at the time they took their adverse actions against ARD. ARD Properties is a trust that is controlled by the Whiting and Ammerman families. *Connie*

Ammerman, Glenn Whiting's wife, is a trustee for ARD Properties. Defendants already have documents reflecting this fact. *Mr. Whiting is a beneficiary of the ARD Properties trust. Plaintiffs must, and will, provide evidence supporting this fact. Production of this evidence has been withheld pending this Court's ruling on the instant motion and cross motion.* Beyond establishing this one fact, no further documentation regarding the activities of ARD nor its trustees or other beneficiaries is remotely relevant to this lawsuit.[4] [5]

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[4] This was Respondent's first representation on the record in *Trew* that Whiting was a beneficiary—one year into the litigation. Respondent did not allege that Whiting was a beneficiary of ARD in the complaint or amended complaints. (*See* Docs. 1, 56, 159 in Case No. 3:20-cv-54.) It took another six months for Respondent to first assert that Whiting was a trustee. (*See* Doc. 147, at 14–15 in Case No. 3:20-cv-54.)

[5] In the order disposing of the motion for a protective order and the motion to compel, Magistrate Judge Poplin stated that "[i]t is entirely unclear . . . why Plaintiffs have withheld such evidence in this case, but the Court admonishes Plaintiffs that the withholding of any relevant evidence may lead to sanctions pursuant to Rule 37." (*See* Doc. 112, at 30 n.11 in Case no. 3:20-cv-54.)

(Doc. 78, at 5–6 in Case No. 3:20-cv-54 (emphasis added).)

iii. The Defendants' Motion for Summary Judgment

While these discovery disputes progressed, the defendants raised similar arguments in their motion for summary judgment filed on March 29, 2021. (*See* Doc. 84.) Relying on the language of the documents that created ARD, the defendants asserted that:

> Plaintiff Glenn Whiting is not a trustee of ARD Property Management. At all times relevant, the sole trustees of ARD Property Management were Donald R. Ammerman and his daughter, Connie Ammerman. Neither trustee authorized the filing of the instant lawsuit. ARD Property Management is the recorded owner of the Pope Avenue Property.

(Doc. 85, at 4–5 in Case No. 3:20-cv-54 (internal citations and footnotes omitted).) The defendants argued that, because "Whiting had no legal interest in the Pope Avenue Property," he could not "show a concrete harm." (*Id.* at 29.) They also argued that "[a]ny financial damages as a result of the condemnation are the property interest of the trust," for which Whiting was not a trustee.[6] (*See id.*)

On April 26, 2021, almost a month after the defendants filed the motion for summary judgment, Respondent emailed a draft declaration to Whiting, in which Whiting would have averred that he had been "a *beneficiary* of ARD Properties since the trust was created."[7] (*See* Doc. 98-1, at 2, 5 (emphasis added).) The draft said nothing of Whiting being a *trustee*. (*See id.* at 4–6.) This declaration was not filed at the time,[8] and

[6] Although the relationship between these issues has been confused at times, Whiting's standing to bring a First Amendment retaliation claim and his ability to recover compensatory damages were distinct. The discussion at the final pretrial conference effectively outlines the difference between the two. (*See* Doc. 93.) Whiting could pursue nominal damages on his own behalf, meaning he had standing to bring his First Amendment retaliation claims, but he could only recover compensatory damages to the Pope Avenue building as the trustee or beneficiary of ARD.

[7] The draft also called for Whiting to aver that he had served as "manager" of the Pope Avenue building. (*See* Doc. 98-1, at 5.)

[8] Outside Connie Ammerman's declaration that Respondent filed and drafted (*see* Doc. 149, at 63–64 in Case No. 3:20-cv-54; Doc. 98-2), Respondent never produced any evidence that

Respondent has offered no evidence that he communicated with Whiting about it again until September 20, 2021, the same day he eventually filed his opposition to the motion for summary judgment. (*See* Doc. 147 in Case No. 3:20-cv-54; Doc. 98-4.)

On July 19, 2021, roughly four months after the defendants moved for summary judgment and nearly a year and a half into the suit, the plaintiffs filed a motion to correct ARD's name on the complaint. (*See* Doc. 119 in Case No. 3:20-cv-54.) The plaintiffs had incorrectly designated ARD as "ARD Properties" even though its name was "ARD Property Management." (*See id.* at 1.) Respondent did not notice this until the defendants used the correct name in their motion for summary judgment.[9] (*See id.*) The defendants opposed the plaintiffs' motion because, they argued, the plaintiffs "were in possession of the documents allegedly creating the trust ARD Property

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Whiting was a beneficiary. This is notable, considering that Respondent represented that he had such evidence and would produce it. (*See* Doc. 78, at 5–6 in Case No. 3:20-cv-54.)

[9] ARD's legal name is listed in bold on the first page of the documents creating the trust. (*See* Doc. 86, at 186 in Case No. 3:20-cv-54.)

Management as early as April of 2020 when they were produced to Defendants, five months before the deadline for amendment of pleadings contained within the original scheduling order." (*See* Doc. 124, at 8 in Case No. 3:20-cv-54.) The Court ultimately granted the plaintiffs' motion (*see* Doc. 158 in Case No. 3:20-cv-54), and they filed a second amended complaint.[10] (*See* Doc. 159 in Case No. 3:20-cv-54.)

On September 20, 2021, at 11:56 PM, Respondent filed the plaintiffs' response in opposition to the defendants' motion for summary judgment. (*See* Doc. 147 in Case No. 3:20- cv-54.) For the very first time, Respondent represented to the Court:

> Glenn Whiting has been a *trustee* of ARD Property Management since 2015. The trust documents disclosed to the defendants early in discovery show that when either of the initial trustees dies, Glenn Whiting immediately becomes the substitute *trustee*. This happened in 2015.

[10] Again, Respondent only alleged that Whiting was an "executor" for ARD. (*See* Doc. 159, at 2 in Case No. 3:20-cv-54.) The term "executor" does not even appear in the trust documents. (*See* Doc. 86, at 186–95 in Case No. 3:20-cv-54.)

(Doc. 147, at 14–15 in Case No. 3:20-cv-54 (citations omitted) (emphasis added).) Respondent then boldly stated:

> To summarize the defendants' position, they admit that ARD has been harmed sufficiently to deter an ordinary person; and that Whiting participated in protected speech; but that Whiting hasn't been harmed because he is not a trustee of ARD, and ARD did not participate in protected speech. *Yet, because Whiting has been a trustee since 2015* (*and the defendants would have known that had they reviewed the Trust documents*) both of defendants' arguments fail.[11] [12]

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[11] Respondent made this assertion after Magistrate Judge Debra Poplin explained that "[i]n Defendants' motion for Summary Judgment, the legal documents for ARD Property Management show that Plaintiff Glenn Whiting is not a trustee of that entity" when disposing of the plaintiffs' motion for a protective order (Doc. 61 in Case No. 3:20-cv-54) and the defendants' motion to compel (Doc. 65 in Case No. 3:20-cv-54). (*See* Doc. 112 at 30 in Case No. 3:20-cv-54.)

[12] Throughout the present disciplinary matter, Respondent has asserted that neither Whiting nor Respondent reviewed the trust documents thoroughly after the Court's ruling on the motion for summary judgment in *Trew*. (*See* Doc. 7, at 7; Doc. 34, at 6–7; Doc. 41, at 8.) Yet, in opposing that same motion,

(*Id.* at 15 (emphasis added).)

Earlier that same day, at 2:57 PM, Respondent emailed Whiting a draft declaration calling for Whiting to aver that he had "served as a *trustee* for ARD Property Management since the death of [his] mother-in-law in 2015." (*See* Doc. 98-4, at 2, 5 (emphasis added).) The declaration also called for Whiting to aver that "[a]s a trustee of ARD Property Management, I have authorized all legal work performed on this litigation and all documents filed on behalf of ARD." (*See id.* at 5.) Whiting signed the declaration, and Respondent filed it the next day as a supplement to the response in opposition to the motion for summary judgment. (*See* Doc. 149, at 1–2 in Case No. 3:20-cv-54.) According to Respondent's deposition testimony, his efforts to verify Whiting's trustee status consisted of reading only a portion of the page describing Whiting's relationship with ARD. [13] There is no

Respondent proudly laid claim to exactly such a meaningful review of the same documents.

[13] In his deposition taken in this disciplinary proceeding, Respondent vaguely stated that he went through the trust documents (*see* Doc. 110, at 50), but that he did not "read through all of the trust documents." (*See id.* at 60.) He expounded that his "client told [Respondent] that he was a

persuasive evidence Respondent took any other meaningful action to confirm his representation that Whiting was a trustee.

The Court denied the defendants' motion for summary judgment on Whiting's First Amendment retaliation claim. In doing so, it found:

> Where a trust owns property, the trustee holds legal title and, in that sense, owns the property, holding it for the benefit of the beneficiary who owns the equitable title. The trust documents name Whiting as a potential successor trustee in the event of the death of original trustees Donald or Carol Ammerman. Carol Ammerman passed away in 2015. Whiting averred that he has served as a trustee for ARD Properties since that time. Connie Ammerman also averred that Whiting is, and was at all

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trustee and that was good enough." (*Id.*) He also stated that it was Whiting who showed him the page that said "[w]hen these people die, I'm a trustee." (*Id.*) However, the page Respondent is
referring to also describes the prerequisites associated with Whiting's assumption of a trustee role. (*See* Doc. 86, at 189 in Case No. 3:20-cv-54.) Respondent later explained that he read certain portions of the page, but not all of it. (*See* Doc. 110, at 76–77.)

> time[s] relevant to his claims, a beneficiary of the Trust. Because Whiting has shown a factual dispute as to whether he held legal title to the Pope Avenue building as a trustee, he has satisfied his burden to show standing at this stage in the litigation[.]

(Doc. 178, at 20–21 in Case No. 3:20-cv-54 (cleaned up) (citations and internal quotations omitted).) The Court also explained that:

> Even if Whiting was not a trustee of the Pope Avenue property, he can still establish standing because the chilling effect on Whiting's exercise of his constitutional rights is, itself, an injury sufficient to confer standing as long as it is "distinct and palpable." Surely, when an individual's close family members hold ownership interests in a structure, and that structure is condemned in retaliation for his exercise of constitutional rights, the chilling-effect injury is concrete and palpable—the government did not merely threaten abstract hypothetical action, but took clear action injuring the family members' ownership interests. Therefore, the chilling effect in this case is a sufficiently concrete injury to confer standing as to Whiting's claims. To find otherwise would

> create the absurd result that if the government would like to retaliate without legal consequence against an individual for exercising his constitutional rights, it can do so simply by injuring the individual's close family and loved ones, rather than the individual himself.[14]

(*Id.* at 21–22 (citations omitted).) The Court granted summary judgment to the defendants on ARD's First Amendment claims because there was no evidence that ARD "itself, rather than Whiting[,] engaged in any protected activity." (*Id.* at 18–19.) Thus, Whiting remained a party to the suit, and ARD did not.[15] (*Id.* at 26.) While the Court's order resolved the issue of Whiting's standing to bring suit, it did not resolve Whiting's ability to recover compensatory damages for the repairs to the Pope Avenue building.

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[14] While this holding meant that Whiting retained standing to pursue his First Amendment claims regardless of his legal relationship to ARD (*i.e.*, to at least recover nominal damages), it did not mean he could recover compensatory damages related to the Pope venue building without showing he was a beneficiary or trustee. (*See supra* Note 6.)

[15] The Court's order also left the City of Athens as the only remaining defendant. (*See* Doc. 178, at 13 in Case No. 3:20-cv-54.)

iv. Pretrial Rulings

The defendants filed a motion in limine seeking to exclude any reference or evidence of Whiting's status as a trustee for ARD because "Whiting [was] not a trustee based upon the operative trust documents produced." (*See* Doc. 169, at 2–3 in Case No. 3:20-cv-54.) The defendants explained that:

> Although Whiting [was] identified as a potential successor trustee, his appointment [was] not automatic. Rather the trust documents indicate that upon the death of a trustee, the Trust has the option to either fill the vacancy so created, or reduce the number of Trustees. The appointment of a new trustee further required a special meeting with appropriate minutes signed by all trustees.
>
> There is no evidence that such a meeting ever occurred and despite discovery requests Plaintiffs have not provided any evidence supporting that Whiting was ever made a trustee. The two actual trustees of ARD Property Management deposed, Connie Ammerman and Donald Ammerman, both denied that Glenn Whiting was ever a trustee.

(*Id.* at 3 (internal emphasis, quotations, and citations omitted).)

The Court heard further argument on the motion at the final pretrial conference held on December 28, 2021. (*See* Doc. 182 in Case No. 3:20-cv-54.) Counsel for the City of Athens argued that the Court should exclude any evidence of damages because the alleged damages to the Pope Avenue building belonged to ARD and Whiting could not recover those damages if he held no legal relationship with the trust. (*See* Doc. 93, at 6–7.) Essentially, he argued that the only party with standing to recover compensatory damages associated with the Pope Avenue property—ARD—was dismissed at summary judgment. (*See id.* at 12, 15.) He stressed that the trust documents did not name Whiting as a trustee or beneficiary. (*See id.* at 16–17, 23–24.) In response, Respondent represented that Whiting was both a beneficiary and a trustee of ARD, meaning his damages were the same as ARD's. (*See id.* at 7, 9.) When the Court asked Respondent to describe Whiting's relationship to ARD, Respondent stated, "Well, *he is a beneficiary*, and *he is a trustee*." (*Id.* at 17 (emphasis added).)

The Court denied the defendants' motion in limine. (*See* Doc. 184, at 3–4 in Case No. 3:20-cv-54.) In doing so, it highlighted that the trust documents identified Whiting as a potential successor trustee (*id.* at 3), that Whiting averred he was a trustee (*id.* at 4),[16] and that ARD trustee Connie Ammerman averred that Whiting was a beneficiary (*id.*).[17] It explained that:

> [J]ust because no minutes or documents were produced demonstrating that Whiting was appointed as a trustee does not mean that such an appointment did not, in fact, happen. There is an issue of fact as to whether the Board of Trustees allowed for Whiting's pre-acceptance as a successor trustee under the terms of the trust instrument, in which case, Whiting would have automatically become a trustee upon notification of Carol

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[16] The Court was, of course, unaware that Respondent first sent Whiting the declaration in which he claimed, for the first time, to be a trustee on the same day he signed it. (*See* Doc. 98-4; Doc.149, at 1–2 in Case No. 3:20-cv-54; Doc. 184, at 4 in Case No. 3:20-cv-54.) The Court was also unaware that there was no other evidence of meaningful conversations between the two on this topic.

[17] The Court referred to the July 13, 2021 declaration that Respondent drafted for Connie Ammerman and later filed on September 21, 2021, as a supplement to the plaintiffs' Response to the defendants' motion for summary judgment. (*See* Doc. 98-2; Doc. 149 in Case No. 3:20-cv-54; Doc. 184, at 4 in Case No. 3:20-cv-54.)

> Ammerman's death, consistent with his averments.

(*Id.*) Thus, the Court's acceptance of Respondent's representations that Whiting was a beneficiary and trustee resulted in the issue being presented to the jury.

v. Trial

The case proceeded to trial. "Whiting's only theory for compensatory damages at trial rested on the alleged increased cost of necessary additional repairs to the Pope Avenue Building after the City's order of condemnation, which prevented him, at least in practicality, from repairing the building." (Doc. 227, at 2 in Case No. 3:20-cv-54.) On the first day of trial, Whiting testified that he paid half the purchase price for the Pope Avenue property and that:

> Although my name was not on the trust, my wife was, and it was on the original trust that said that when my mother-in-law or father-in-law died, I took their position on that trust. And so -- and she passed away quite a few years ago, I guess about seven -- seven years ago, and so my name original- -- you know, I just took over the trust at that

point . . . . (Doc. 202, at 29–32 in Case No. 3:20-cv-54.)

However, Whiting's testimony soon changed. On cross-examination, he testified that ARD never took any "formal action" to make him a trustee. (*Id.* at 120.) Counsel for the City then offered ARD's trust documents into evidence, and, after reviewing them on the witness stand, Whiting admitted that the documents in fact did not identify him as a trustee. (*See id.* at 133–34.) Whiting had believed his appointment as trustee was automatic following the death of his mother-in-law, Carol Ammerman, but testified that he had never read the trust documents until that very moment at trial. (*See id.*)

Nevertheless, Respondent persisted in arguing that Whiting was a beneficiary and a trustee. On the second day of trial in discussions outside the presence of the jury, the Court asked Respondent if he had any evidence that Whiting was a beneficiary of ARD. (Doc. 94, at 7.) Respondent stated that Connie Ammerman, Whiting's wife and ARD trustee, was going to testify that Whiting was a beneficiary. (*Id.*) The Court then observed that "I thought you had focused on the theory that [Whiting] was a trustee and that's why he can seek damages, not that he's a beneficiary and therefore he can seek damages." (*Id.* at 8.) Respondent answered, "He's both, your Honor." (*Id.*) Respondent also claimed that the plaintiffs had always asserted that Whiting was a beneficiary and trustee.[18] (*Id.* at 9.) Further, he acknowledged that Whiting's status as a beneficiary or trustee was related "to the damages issue."[19] (*Id.*) Respondent asserted:

> He thought he was a trustee. And according to the document, he may not be. And, I mean, I guess, Your Honor, this might boil down to what's the default under the law when a trust is set up and the trust ends up not following – not doing the details of entering the minutes. I mean, that's really

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[18] This was untrue. Respondent merely alleged that Whiting was an "executor" for ARD in the complaint and amended complaints. (*See* Doc. 1, at 2; Doc. 56, at 2; Doc. 159, at 2 in Case No.3:20-cv-54.) As noted herein, Respondent's description of Whiting's role evolved as necessary.

[19] In the present disciplinary matter, Respondent has repeatedly asserted that any misrepresentations as to Whiting's relationship with ARD were irrelevant to the *Trew* case (*see* Doc. 7, at 6–7, 9; Doc. 34, at 6–7; Doc. 41, at 8), despite this previous acknowledgment that Whiting's status as a trustee or beneficiary did affect the damages he could recover.

what it boils down to, is, no one entered the minute, "Hey, yeah, when Connie died -- or Carol died, he became the trustee." That's a one-page minute. It's a technicality. (*Id.* at 10.)

The Court corrected Respondent, stating that, "Well, it's not a technicality when your client testified yesterday that he's not a trustee." (*Id.*) After further discussion, Respondent partially conceded that he could not show Whiting was a beneficiary or trustee, stating that he would "like to preserve the argument for appeal," but could not "see an argument that [he could] straight-faced make to the Court" regarding the compensatory-damages theory.[20] (*See id.* at 26– 27.)

The Court granted the City's motion for judgment as a matter of law on the issue of compensatory damages after hearing argument from the parties. (*See* Doc. 227 in Case No. 3:20- cv-54.) The Court found that no reasonable jury could find Whiting to be a trustee for ARD, as the "only

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[20] Respondent did not, however, make any assertions as to Whiting's trustee or beneficiary status on appeal. (*See* Doc. 38 in 6th Cir. Case No. 22-5448; Doc. 50-2, at 1 n.1 in 6th Cir. Case No.22-5448.)

admissible evidence Whiting ever had that he was a trustee was his own personal assertion that he was a trustee, without any basis in fact or law." (*Id.* at 7.) The Court also found that no reasonable jury could have found that Whiting was a beneficiary, as he "presented no evidence at trial that Donald Ammerman [the settlor] manifested an intention to give him a beneficial interest at the time the trust was created[.]" (*Id.* at 11–12.) Despite Respondent's representations to the contrary, he ultimately failed to present any competent evidence that reasonably suggested Whiting was an ARD beneficiary or trustee after the issue was extensively litigated in discovery, at summary judgment, and at trial.[21]

Despite the uncertainty caused by Respondent's representations regarding Whiting's status with ARD throughout *Trew*, it is clear that,

[21] In Respondent's motion to recuse filed in *Athens* (*see infra* Section II.B.i), Respondent again asserted that ARD's trust documents "stated that Whiting would become a trustee upon the death of any of the then-current trustees." (*See* Doc. 91, at 6 in Case No. 3:23-cv-2.) Respondent acknowledged that administrative action was necessary to make Whiting an ARD trustee (*see* Doc. 91, at 6 in Case No. 3:23-cv-2), but this does not rectify the blatant inaccuracy of Respondent's initial statement.

at all times relevant to that litigation, Whiting was neither a beneficiary nor a trustee. (*See* Doc. 227 in Case No. 3:20-cv-54.) Whiting was a *potential successor trustee* to the first trustees—Donald and Carol Ammerman. (*See* Doc. 86, at 189; Doc. 227, at 2 in Case No. 3:20-cv-54.) Although Carol Ammerman died prior to the events at issue in *Trew* (*See* Doc. 227, at 2 in Case No. 3:20-cv-54), Whiting did not automatically succeed Ammerman as trustee upon her death. (*See* Doc. 86, at 189; Doc. 227, at 3 in Case No.3:20-cv-54.) The relevant page of the trust documents includes the following provisions regarding succession procedures:

> Any such death, resignation or removal from office of any Trustee shall immediately be noted in the Minutes of this REIT, along with the decision of the Board of Trustees of ***ARD Property Management*** to either fill the vacancy so created, or to reduce the number of Trustees. Should the Board of Trustees of ***ARD Property Management*** vote to fill such vacancy, the Successor Trustee shall be immediately notified . . . of their conditional appointment to the Board of Trustees of ***ARD Property Management*** as Trustee. Acceptance of such appointment shall at all times be by

> Special Meeting called for such purpose and with an appropriate Minute signed by the accepting Trustee. . . .
>
> The Board of Trustees of ***ARD Property Management*** may, in its discretion, by appropriate Minute, allow for the preacceptance of the position of Trustee by any Successor Trustee. The effect of any such pre-acceptance shall at all times be to make the appointment of such Successor Trustee automatic upon receipt by such Successor Trustee of written notice of the death, resignation, or removal from office of the Trustee they are named to succeed. No further action of the Board of Trustees of ***ARD Property Management*** shall at any time be necessary to enable such Trustee to exercise full powers of Trustee of ***ARD Property Management***. An appropriate Minute, however, shall be made reflecting that such has taken place, as soon thereafter as conveniently possible.

(Doc. 86, at 189 in Case No. 3:20-cv-54 (emphases in original).) It is unequivocally clear from this plain text that a successor trustee *would not necessarily become a trustee* following the "death, resignation or removal from office" of the person he is nominated to succeed. (*See id.*) Instead, the two paragraphs above set out two available paths of succession, each of which requires board approval and the satisfaction of specific procedural requirements. In the first path, following the "death, resignation or removal from office" of the former trustee, the board may decide to "*either* fill the vacancy so created, or to reduce the number of Trustees"; should the board decide to fill the vacancy, that triggers a process beginning with the "conditional appointment" of the successor. (*Id.* (emphasis added).) In the second path, the Board may "allow for the preacceptance of the position of Trustee" by a successor, which does "make the appointment of such Successor Trustee automatic upon receipt by such Successor Trustee of written notice of the death, resignation, or removal from office of the Trustee they are named to succeed." (*Id.*) Whiting's nomination took neither path—the Board did not opt to fill the vacancy left by Carol Ammerman after her death, and it had not initiated a "preacceptance" of Whiting prior to her death; thus, under the plain text of the trust documents, Whiting never became a trustee.

B. The *Athens* Litigation

i. The Relevant Claims

Respondent filed the complaint initiating *Athens* on January 3, 2023. (*See* Doc. 1 in Case No. 3:23-cv-2.) Again, only Respondent represented Whiting, who alleged that various City of Athens employees "intentionally deprived Whiting of his" First Amendment rights at a July 4th picnic held for city employees. (*See id.*) Whiting also brought various state-law claims.[22] (*See id.* at 11–13.) On May 5, 2023, Whiting sought leave to amend his complaint. (Doc. 44 in Case No. 3:23-cv-2.) Whiting intended to add a new defendant and claims against the existing defendants in the case. (*See id.*) Magistrate Judge Poplin denied Whiting's motion, as she found that the new allegations did not arise out of the same occurrence or series of occurrences in accordance with Rule 20(a)(2). (*See* Doc. 63 in Case No. 3:23-cv-2.) Whiting objected to this decision (Doc. 69 in Case No. 3:23-cv-2), and the Court overruled his objection. (*See* Doc. 81 in Case No. 3:23-cv-2.)

[22] For a more complete recounting of the facts in *Athens*, see Docs. 211 and 279 in 3:23-cv-2.Here, the Court will include only facts relevant to this proceeding.

Respondent filed two new complaints on Whiting's behalf on June 22, 2023, bringing the claims he intended to add when seeking to amend the complaint in 3:23-cv-2. (*See* Doc. 1 in 3:23-cv-220; Doc. 1 in 3:23-cv-221.) These complaints also alleged First Amendment claims against the City and its officials, and Magistrate Judge Debra Poplin found Cases 3:23-cv-2, 3:23-cv-220, and 3:23-cv-221 related for case-assignment purposes. (*See* Doc. 3 in 3:23-cv-220; Doc. 3 in 3:23-cv-221.) Accordingly, Magistrate Judge Poplin and the undersigned were assigned to each case pursuant to the Court's Local Rules. (*See id.*) Respondent and Whiting took issue with this, and Respondent objected to the case assignments. (*See* Doc. 9 in Case No. 3:23-cv-220; Doc. 10 in Case No. 3:23-cv-221.) He argued that it was improper to assign cases on this basis, as he asserted that knowledge of other cases could lead to improper rulings. (*See* Doc. 9, at 3 in Case No. 3:23-cv-220.) Respondent also claimed that the undersigned had already improperly considered facts from *Trew* (*see id.* at 4), after the Court noted the following when overruling Whiting's objection to Magistrate Judge Poplin's order denying him leave to amend his complaint:

> This Court and its jurors (not to mention some of these same defendants) have been burned before by Whiting's sophistry. *See* Doc. 227, at 7 in Case No. 3:20-cv-54 (summarizing litigation before this Court wherein Whiting, represented by the same counsel as in this case, misrepresented his legal interest in property at issue, resulting in a jury trial on the issue before Whiting finally admitted the mistake on the witness stand). Future attempts to deceive the Court will not be tolerated.

(Doc. 81, at 9 n.6 in Case No. 3:23-cv-2.) The Court offered this observation after it found that Whiting misrepresented the contents of Magistrate Judge Poplin's order denying Whiting leave to amend. (*See id.*) The Court overruled Whiting's objection to the case assignments (*see* Doc. 14 in Case No. 3:23-cv-220; Doc. 11 in Case No. 3:23-cv-221),[23] and Whiting filed a motion to recuse the

[23] Respondent persisted in raising these arguments regarding the Court's case-assignment procedures in the present disciplinary matter, (*see* Doc. 12, at 20–22), even after the Sixth Circuit held that "a judge is not required to recuse simply because he has presided over another case involving the

undersigned in all three cases. (*See* Doc. 91 in 3:23-cv-2; Doc. 15 in 3:23-cv-220; Doc. 12 in 3:23-cv-221.)

In the motions to recuse, Respondent asserted for a second time that the undersigned's reference to his past conduct was improper. (*See, e.g.*, Doc. 91 in Case No. 3:23-cv-2.) The Court denied the motions, explaining that the Court "merely expressed displeasure with Whiting's misleading summary of Magistrate Judge Poplin's order and warned that it would not tolerate future deceptive behavior." (*See, e.g.*, Doc. 103, at 4 in Case No. 3:23-cv-2.) "The Court's reference to Whiting's actions in a prior case was only meant to provide context for its concern that, given his misstatement of Magistrate Judge Poplin's findings, similar behavior may persist in the instant case absent reprimand." (*Id.*) It found that Whiting had not been subject to "deep-seated antagonism warranting recusal."[24] (*Id.* at 5 (cleaned up).)

same party." *Whiting v. City of Athens*, No. 23-6082, 2024 WL 3537651, at *3 (6th Cir. July 25, 2024).

[24] The Sixth Circuit affirmed this on appeal, stating that the "court's remarks to counsel rel[ied] on no extrajudicial source, and they [were] not so extreme as to display clear inability to render fair judgment." *See Whiting v. City of Athens*, No. 23-

Respondent subsequently filed a motion for leave to appeal the Court's order denying his motion to recuse. (*See* Doc. 112 in Case No. 3:23-cv-2; Doc. 25 in Case No. 3:23-cv-220; Doc. 26 in 3:23-cv-221.) He reiterated for the third time that the Court considered "facts not properly before it" when overruling his objections to Magistrate Judge Poplin's order. (*See, e.g.*, Doc. 112, at 2–5 in Case No. 3:23-cv-2.) The Court denied the motion, finding that the proposed appeal met none of the statutory requirements for the certification of an interlocutory appeal. (*See* Doc. 123 in Case No. 3:23-cv-2.)

ii. Respondent's Withdrawal

One week after the Court denied the motion for leave to appeal, Respondent filed a motion to stay the case. (*See* Doc. 124 in Case No. 3:23-cv-2.) Respondent represented that he was facing various health issues and explained that a two-month stay would likely be sufficient to allow for his recovery. (*See id.*) The Court granted the motion to stay. (*See* Doc. 126 in Case No. 3:23-cv-2.) The Court also ordered Whiting to "remain informed of counsel's health issues on a regular basis and to secure

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6082, 2024 WL 3537651, at *3 (6th Cir. July 25, 2024) (citation and internal quotations omitted).

replacement counsel if present counsel will be unable to resume his obligations by [the time the stay is lifted]." (*Id.* at 1.) Respondent was ordered to "keep his client updated regarding his health situation and ability to resume his obligations in a timely fashion." (*Id.* at 1–2.)

On January 16, 2024, the day after the stay was lifted, Respondent filed a motion to withdraw as Whiting's attorney. (*See* Doc. 127 in Case No. 3:23-cv-2.) He stated:

> Grounds for this motion are that: Chief Judge Travis McDonough has made it clear that neither the plaintiff nor [Respondent] can expect to receive unbiased or effective due process as long as Judge McDonough presides over any matters where Mr. Whiting is a party, or where [Respondent] represents any party; [Respondent] will be representing plaintiff Whiting before the 6th Circuit in a closely related lawsuit that McDonough dismissed pursuant to Rule 12 (See Case #3:23-CV-220; 6th Cir. Case #23-6082); in said appeal [Respondent] intends to file a motion and brief with the 6th Circuit in said appeal requesting expedited review of McDonough's refusal to recuse himself in said

> related matter; based upon Judge McDonough's treatment of [Respondent] to date in this and other matters, for psychological and physical health reasons, [Respondent] is unable to practice before Judge McDonough, and has been advised to withdraw for said health reasons.

(*Id.* at 1 (emphasis in original).) Respondent also certified that he discussed the motion with Whiting, and that:

> Whiting [] indicated that he does not oppose this motion, and intends to proceed with this litigation pro se, unless and until Judge McDonough is recused from this matter, because Whiting believes that hiring another attorney while McDonough presides over this matter would be a waste of resources due to the clear bias of McDonough against Whiting.

(*Id.* at 2.) The Court denied the motion, as Respondent failed to comply with the Court's requirements for withdrawal set forth in Local Rule 83.4(g). (*See* Doc. 128 in Case No. 3:23-cv-2.) The Court also found that Respondent failed to adequately explain the basis for his motion. (*Id.*) The Court explained that, "despite the health reasons [Respondent] proffered two months ago to secure a temporary stay, he now appears to rely on the Court's decisions from August 2023 (Doc. 103) and before as the real reasons why he wishes to withdraw." (*Id.* at 3.) It noted that Respondent's admission that he could represent Whiting in other litigation pending before the Sixth Circuit confirmed this conclusion. (*See id.*) The Court held "serious concerns about granting a motion to withdraw based primarily on [Respondent's] argument that the Court is biased and incapable of providing due process," as the Court did not want to encourage or condone such conduct. (*See id.*) The Court stated that it would consider a renewed motion to withdraw provided that Respondent complied with the Court's procedural requirements and substantiated the facts asserted about his health. (*See id.*) It advised Respondent that it would "take every precaution to protect [Respondent's] personal health information and is particularly interested in any evidence that a doctor has advised him to withdraw from only this case, presided over by the undersigned, while clearing him to participate in other litigation." (*Id.* at 4.)

Rather than providing such evidence, Respondent filed a second motion to withdraw that was nearly identical to the first, this time adding that:

> [D]ue to the clear bias displayed thus far by Judge McDonough against [Respondent], plaintiff Whiting has come to the conclusion that [Respondent] can no longer effectively represent Whiting before Judge McDonough. Whiting, therefore, has informed [Respondent] that as long as Judge McDonough is presiding over the above-identified matter, Whiting will not engage [Respondent] to represent him in this matter.

(*See* Doc. 129 in Case No. 3:23-cv-2.) The Court granted Respondent's motion to withdraw on February 13, 2024, noting that, although Respondent did "nothing to remedy the substantive deficiencies in his first motion," it appeared undisputed that Whiting dismissed Respondent as counsel. (*See* Doc. 138 in Case No. 3:23-cv-2.)

iii. Respondent's Conduct Post-Withdrawal

Respondent represented to the Court that he would no longer act as Whiting's counsel in the matter. In both motions to withdraw, Respondent stated that he was unable to practice before the undersigned. (*See* Doc. 127, at 1; Doc. 129, at 1 in Case No. 3:23-cv-2.) In his second motion to withdraw, Respondent stated that "Whiting [] has informed [Respondent] that as long as Judge McDonough is presiding over the above-identified matter, Whiting will not engage [Respondent] to represent him in this matter." (Doc. 129, at 1–2 in Case No. 3:23-cv-2.) These assertions were false, as confirmed by the actions Respondent took within days of making the assertions.

On February 18, 2024, Whiting emailed Respondent a draft response to the defendant's status report for depositions[25] and asked Respondent to "Please look over." (*See* Doc. 98-5.) The following day, Respondent returned the draft with changes.[26] (*See* Doc. 98-6.) Whiting filed the updated version in *Athens* on February 20, 2024. (*See* Doc. 148 in Case No. 3:23-cv-2.)

On April 3, 2024, Respondent sent two emails to Whiting titled "Notes on Meeting." (*See* Docs. 98-7, 98-8.) Each email references a motion to reschedule the pretrial conference ("File motion to

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[25] This refers to a status report the defendants filed in which they detailed their efforts to schedule depositions. (*See* Doc. 147 in Case No. 3:23-cv-2.)

[26] Respondent's changes to the draft appear minor. Nonetheless, he reviewed the draft for Whiting and made alterations.

reschedule PT conf."), a reply to the defendants' opposition to Whiting's motion for an extension of time to file deposition transcripts as a supplement to the parties' joint appendix[27] ("Reply to D's Opp. re. Mtn. ext. time re depo transcripts"), a motion in limine ("MIL"), a response to defendants Seth Sumner and Bo Perkinson's motion for summary judgment ("SS BP MSJ response"), and a response to defendant Jameson Sliger's motion for summary judgment ("Sliger MSJ response").[28] (*See* Docs. 98-7, 98-8.) Attached to the second email was a Word document styled as a "MOTION FOR EXTENSION OF TIME FOR PRETRIAL CONFERENCE." (*See* Doc. 98-8, at 4.) The properties to the document show that Respondent created it and was the last person to modify it before sending it to Whiting. (*See id.* at 7.) Whiting filed a motion with similar contents in *Athens* on April 9, 2024. (*See* Doc. 174 in Case No. 3:23-cv-2.)

After sending these two emails on April 3, 2024, Respondent sent Whiting an email titled

[27] See Docs. 169, 170, and 171 in Case No. 3:23-cv-2.

[28] Respondent worked on drafts of each of these eventual filings. (*See* Docs. 98-8, 98-9, 98-11,98-14, 98-18; Docs. 173, 174, 175, 186 in Case No. 3:23-cv-2.)

"Draft MIL" on the same day. (*See* Doc. 98-9.) Attached to the email was a Word document styled as "PLAINTIFF'S MOTION IN LIMINE." (*See id.* at 4.) The properties to the document show it was last modified by Respondent. (*See id.* at 7.) Whiting filed a nearly identical motion in limine in *Athens* on April 9, 2024. (*See* Doc. 173 in Case No. 3:23-cv-2.)

On April 4, 2024, Respondent sent an email to Whiting titled "Reply re ext time." (*See* Doc. 98-11.) Attached to the email was a Word document titled "PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR EXTENSION OF TIME TO FILE SUPPLEMENT TO THE JOINT APPENDIX." (*See id.* at 4.) Plaintiff filed a brief with similar contents in *Athens* on April 9, 2024. (*See* Doc. 175 in Case No. 3:23-cv-2.) The document argued, "To oppose such motion is absurd and only done because Plaintiff is Pro Se." (*Id.* at 1.)

On April 18, 2024, Whiting emailed Respondent a Word document titled "summary judgenment" (sic) and stated, "Just my thoughts," in the body of the email. (*See* Doc. 98-12.) The attached Word document contained Whiting's observations regarding the defendants' pending motions for summary judgment. (*See id.* at 4.) Whiting added more observations to an updated version he emailed to Respondent on April 24, 2024.[29] (*See* Doc. 98-13.)

On April 25, 2024, Respondent sent an email to Whiting titled "Sliger draft opposition." (*See* Doc. 98-14.) In the email, he stated:

Glenn,

Attached is my draft opposition re Sliger. I'm using this one as a template for Perkinson and Sumner also. Working on that right now. I need you to review and gather all citations you can. I've highlighted [sic] citations to be filled in and other information I need you to provide. I need you to attempt to finish this yourself. I will go over it with you and we can discuss, *but it needs to be in your words*. I'll forward the SS BP opposition as soon as it is done.

Van

(*Id.* at 2 (emphasis added).) The document attached was a draft response to defendant Jameson Sliger's

[29] This outline was roughly three pages with around one page dedicated to short bullet points presumably identifying facts Whiting felt was relevant to summary judgment. (*See* Doc. 98-13, at 4–6.) The rest of the outline contained quotes and annotations from a deposition. (*See id.* at 4–5.)

motion for summary judgment.[30] (*See id.* at 4–14.) Later that day, Respondent sent Whiting an updated draft after adding more material. (*See* Docs. 98-15, 98-16, 98-17.) In the email providing the updated draft, Respondent stated, "OK. The draft is attached. Please work from this version. Make changes, and save under another name." (*See* Doc. 98-17, at 2.)

On April 26, 2024, Respondent sent Whiting the draft response to Sumner and Perkinson's motion for summary judgment that he referenced in the "Sliger draft opposition" email.[31] (*See* Doc. 98-18.)

Next, Whiting made edits to these drafts and sent them back to Respondent. (*See* Docs. 98-19, 98-20, 98-21, 98-22.) Respondent then compiled the separate drafts for each response to the motions for summary judgment into an "Omnibus" draft. (*See* Doc. 98-24.) Whiting edited the omnibus draft and sent it back to Respondent to finalize. (*See* Docs. 98-25, 98-26.) Respondent made his final edits on April

[30] For Sliger's motion for summary judgment, see Docs. 163 and 164 in Case No. 3:23-cv-2.

[31] For Sumner and Perkinson's motion for summary judgment, see Docs. 167 and 168 in Case No. 3:23-cv-2.

29, 2024, and sent the draft back to Whiting. (*See* Doc. 98-27.) Whiting filed the omnibus response to the defendants' motions for summary judgment in *Athens* on May 1, 2024. (*See* Doc. 186 in Case No. 3:23-cv-2.) The version Whiting filed largely matches the contents of the initial drafts Respondent provided. (*Compare* Docs. 98-17, 98-18 in Case No. 1:24-dm-7 *with* Doc. 186 in Case No. 3:23-cv-2.) It was markedly different from Whiting's initial outline that he sent to Respondent. (*See* Doc. 98-13.)

Some of the defendants in *Athens* caught on to Whiting's undisclosed assistance after the response to the motions for summary judgment was filed, noting that it "appear[ed] to have been drafted by multiple individuals, with various sections switching in vocabulary, tone, and point of view." (*See* Doc. 189, at 3 in Case No. 3:23-cv-2.) The Court took notice soon thereafter, and on May 9, 2024, it entered an order directing Whiting and Respondent to "take all actions necessary to preserve any documents, materials, data, and communications related to the response brief (Doc. 186), in whatever form or format they exist and whether or not Plaintiff may assert a claim of privilege or work-product protection." (*See* Doc. 192, at 2 in Case No. 3:23-cv-2.)

On May 20, 2024, in the wake of this order to preserve litigation materials, Respondent filed an "emergency" motion in his appeal before the Sixth Circuit originating from Case No.3:23-cv-220. (*See* Doc. 16-1 in 6th Cir. Case No. 23-6082.) Respondent argued that the order represented "further evidence of bias and vindictive behavior on the part of [the undersigned]." (*See id.* at 4.) In response to the implication that Whiting received help in drafting the response to the motions for summary judgment, Respondent wrote that "**[f]or all [he] knows Whiting copied portions of documents prepared for unrelated matters years earlier**." (*See id.*) Respondent casuistically noted that "**pro se filings often steal liberally from and modify filings found online from many sources**." (*Id.* at 4 n.2.) These misstatements, of course, came only three weeks after Respondent had emailed the very filing at issue to Whiting. (*See* Doc. 98-27.) He concluded that he would no longer practice law after the emergency motion was filed, and that any future communication regarding the matter would be through his attorney.[32] (*See* Doc.16-1, at 6 in 6th Cir. Case No. 23-6082.)

C. The Present Disciplinary Inquiry

i. Initial Show-Cause Order and Response

The Court initiated the present disciplinary matter via a show-cause order pursuant to Local Rule 83.7(b) on August 8, 2024. (*See* Doc. 1.) The order required Respondent to explain why he should not be disciplined for (1) misrepresentations to the Court regarding Glenn Whiting's status as a trustee in *Trew* (*see id.* at 1–2); (2) misrepresentations to the Court regarding the service of defendant Ty Gable in *Athens* (*see id.* at 2–3); and (3) preparing a response to the defendants' motions for summary judgment in *Athens* after he withdrew from representation and the plaintiff was proceeding pro se, *i.e.*, "ghostwriting" (*see id.* at 3).

On August 15, 2024, the Court appointed attorney Lance Pope and his firm, Patrick, Beard,

[32] Respondent would continue representing Whiting in Case Nos. 23-6082 and 24-5919 before the Sixth Circuit after stating that Doc. 16-1 in Case No. 23-6082 would be the final motion of his legal career. (*See also* Doc. 110, at 183, 185 (Respondent explaining that he "continue[s] to this day to be doing work for Mr. Whiting" and that he is "still litigating for [Whiting] in state court cases . . .").)

Schulman & Jacoway, PC, to investigate and prosecute the allegations of Respondent's misconduct. (*See* Doc. 2.)

Respondent filed a response to the show-cause order on September 23, 2024. (*See* Doc. 7.) Regarding the misrepresentation of Whiting's status as a trustee, Respondent claimed that (1) he relied on his client's statements, (2) he saw allegedly favorable language in the trust documents but not the language indicating Whiting was not a trustee,[33] and (3) the misrepresentations were not material. (*Id.* at 6–10.) He denied the allegations regarding service of Ty Gable. (*Id.*, at 11–13.) Regarding the ghostwriting, Respondent refused to admit or deny the allegation as Local Rule 83.7(e)(2) required, arguing that the allegation was merely the undersigned's opinion and not a factual allegation. (*Id.* at 13–17.) He further suggested that Whiting might have used the work product Respondent had previously supplied him to cobble together the response to the motion for summary

[33] All relevant language appears on the same page. (*See* Doc. 86, at 189 in Case No. 3:20-cv-54.)

judgment.[34] *Id.* at 15–16.) Respondent asserted, "Also, Whiting has stated that he has a non-lawyer friend who helped him draft and put together the accused document, along with other filings." (*Id.* at 16.)

ii. Motion to Recuse

On October 18, 2024, Respondent filed a motion requesting that the undersigned and Chief Magistrate Judge Christopher H. Steger recuse from this matter.[35] (*See* Doc. 12.) Respondent raised arguments concerning (1) the Court's case-assignment procedures (*see* Doc.12, at 20–22; Doc. 24, at 4–6); (2) alterations to the record on ECF (*see* Doc. 12, at 23–25; Doc.24, at 8–9); (3) his due-process rights in the present proceedings (*see* Doc.

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[34] This mirrors Respondent's misrepresentation to the Sixth Circuit months prior regarding the very same offending document in his motion for emergency injunctive relief against the undersigned: "For all Irion knows Whiting copied portions of documents prepared for unrelated matters years earlier." (*See* Doc. 16-1, at 4 in 6th Cir. Case No. 23-6082; *supra* Section II.B.iii.)

[35] On August 28, 2024, the Court appointed Chief Magistrate Judge Steger to "handle any matters routinely considered by a magistrate judge pursuant to 28 U.S.C. § 636(b), the rules of this Court, or further order of the presiding Chief District Judge." (*See* Doc. 3.)

12, at 2, 25; Doc. 24, at 12); and (4) the perceived intent of the undersigned to retaliate against him (*see* Doc. 12, at 25–27; Doc. 24, at 13–15). Respondent also took issue with fact that Chief Magistrate Judge Steger and the undersigned previously worked at the same law firm, and he alleged that Chief Magistrate Judge Steger should recuse because the undersigned appointed him to the bench.[36] (*See* Doc. 12, at 2, 8, 28; Doc. 25, at 3.) The Court denied Respondent's motion to recuse in two orders (Docs. 24, 25), with the judges explaining their decisions not to recuse.

iii. Motion to Unseal

Respondent filed a motion to unseal these proceedings on October 28, 2024. (*See* Doc.13.) Chief Magistrate Judge Steger denied the motion, explaining that disciplinary proceedings are conducted under seal pursuant to Local Rule 83.7(b) and that there was no reason to deviate from this rule in the present matter. (*See* Doc. 17.)

iv. Discovery

[36] Chief Magistrate Judge Steger's federal judicial service began almost five months before the undersigned received his commission.

Pursuant to the Court's order requiring Respondent and Pope to apply for leave to conduct discovery (Doc. 8), each party filed motions in the fall of 2024. (Docs. 9, 20.) The Court granted Pope's motion for certain discovery from Respondent, Whiting, and other sources (Doc. 11) and granted in part and denied in part Respondent's motion for discovery. (Docs. 30, 45.) Respondent received Pope's discovery requests on October 21, 2024. (*See* Doc. 36, at 1.)

a. Crime-Fraud Exception

On November 12, 2024, Respondent filed a motion for a protective order against Pope's discovery of communications and materials sent between Respondent and Whiting. (*See* Doc.19.) Respondent argued that the attorney-client privilege and the work-product doctrine barred some of Pope's requests for production contained in the subpoena he served upon Whiting. (*See id.*) Chief Magistrate Judge Steger denied the motion, finding that Respondent should have raised any objections to Pope's subpoena within the 14-day deadline outlined by Federal Rule of Civil Procedure 45(d)(2)(B) (*see* Doc. 29, at 4–5) and that the crime-fraud exception applied to the discovery Pope sought (*see id.*). Respondent objected to Chief Magistrate Judge

Steger's ruling (*see* Doc. 33), and the Court overruled his objection (*see* Doc. 44), deciding that Chief Magistrate Judge Steger properly applied the crime-fraud exception and Rule 45. (*See id.* at 4– 9.) On January 27, 2025, the Court ordered Whiting to produce the discovery sought in compliance with Pope's subpoena. (*See id.* at 11.)

b. Respondent's Pursuit of Discovery from the Court

On November 15, 2024, Respondent filed a motion for leave to seek written discovery from the Court. (*See* Doc. 20.) Respondent specifically requested that the undersigned or "an agent of the Court" respond to his requests.[37] (*See id.*) Chief Magistrate Judge Steger denied Respondent leave to

[37] Not only was Respondent seeking discovery from the undersigned (the presiding judge in this matter), but many of Respondent's requests also focused on the Court's case-assignment procedures or alleged alterations to the record on ECF. (*See* Doc. 20-1.) These topics had no bearing on the present matter, and his contentions regarding case assignment were addressed in previous litigation. (*See supra* Section II.B.i); *Whiting v. City of Athens*, No. 23-6082, 2024 WL 3537651, at *3 (6th Cir. July 25, 2024). Respondent also filed a complaint of judicial misconduct regarding the alleged alterations on ECF, but the complaint was dismissed. (*See* Doc. 30-1, at 4–6 in M.D. Tenn. Case No. 3:25-cv-1.)

propound any discovery (1) pertaining to the Court's case-assignment procedures (*see* Doc. 30, at 3–4) or (2) directed at the undersigned specifically (*see id.* at 4). But Respondent was granted leave to seek discovery that was "within the scope of information related to the attorney disciplinary action against [Respondent]" and directed Pope to furnish responses to certain discovery requests he explicitly identified in the order. (*See id.* at 5–6.) Respondent objected to Chief Magistrate Judge Steger's order (*see* Doc. 35), and the Court overruled his objection (*see* Doc. 45).

c. Respondent's Request that the Presiding Judge Sanction Himself

On January 2, 2025, Respondent filed a motion seeking Rule 11 sanctions against the undersigned. (*See* Doc. 34.) Respondent argued that the undersigned should sanction himself because (1) the Court had not complied with the Local Rules concerning disciplinary proceedings (*see id.* at 4–5); (2) the Court's show-cause order in this matter contradicted a previous order in *Trew* (*see id.* at 6–8); and (3) the Court failed to address the alleged problems with its ECF dockets (*see id.* at 8–10). The Court denied the motion, explaining that Rule 11 does not apply to a presiding judge (*see* Doc. 50, at

2), that the Court had complied with its Local Rules (*see id.* at 2–3), and that it had addressed Respondent's other contentions in previous orders (*see id.* at 3).

d. First Order Compelling Discovery from Respondent

On January 14, 2025, Pope filed a motion to compel Respondent's discovery responses. (*See* Doc. 36.) On January 30, 2025, Chief Magistrate Judge Steger heard argument on the motion. (*See* Doc. 46.) Respondent and Pope ultimately "agreed that Respondent would respond by February 13, 2025, to the Interrogatories, Request for Production of Documents, and Requests for Admission served to him on October 21, 2024," and the Court ordered him to do so. (*See* Doc. 47.)

e. Respondent's Motion for Interlocutory Appeal on Crime-Fraud Exception

On February 6, 2025—despite the discovery order and his agreement to provide discovery responses by February 13, 2025—Respondent moved for leave to file an interlocutory appeal of the Court's order denying his motion for a protective order. (*See* Docs. 47, 51, 52.) The Court denied

Respondent leave to appeal.[38] (*See* Doc. 61.) Respondent then filed a motion for reconsideration of the Court's order denying him leave to appeal (*see* Doc. 64), and the Court denied that motion as well (*see* Doc. 72). Nevertheless, he continued to ignore his discovery obligations.

f. Pope's Efforts to Obtain Discovery from Whiting

On February 14, 2025, Pope filed a motion to compel Whiting's compliance with, first, the subpoena to him seeking the production of discovery materials and, second, the Court's prior order directing Whiting to comply with the subpoena.[39] (*See* Doc. 55.) On February 20, 2025, Pope filed a motion to authorize alternative service on Glenn Whiting. (*See* Doc. 56.) Pope represented that the process server he engaged had made several attempts to serve a deposition subpoena[40] on Whiting but was unsuccessful. (*See id.*)

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[38] Respondent also sought a stay of discovery that the Court denied. (*See* Doc. 61, at 9.)

[39] Pope was referring to the Court's order in Doc. 44.

[40] This deposition subpoena was distinct from the subpoena seeking the production of discoverymaterials that Pope had already served on Whiting.

On March 3, 2025, Chief Magistrate Judge Steger set a discovery hearing for March 13, 2025 (*see* Doc. 65) and entered orders directing Whiting to appear at the hearing. (*See* Doc. 66, 67.) Chief Magistrate Judge Steger also directed the United States Marshal's Service (hereinafter "USMS") to serve the order on Whiting, as he concluded that Whiting was actively evading service. (*See* Doc. 66, at 2; Doc. 67, at 1.)

Respondent filed a motion to continue the March 13, 2025 hearing. (*See* Doc. 71.) Respondent and his counsel stated that they could not attend the hearing and argued that Respondent had a right to attend such hearing to object to any discussion of material protected by attorney-client privilege.[41] (*See* Doc. 71, at 4–5.) Respondent argued that any disclosure of the information Pope sought in his discovery requests at the hearing would irreparably harm Respondent and Whiting, citing the pending motion for reconsideration on the Court's order denying an interlocutory

[41] Respondent's counsel represented that he was participating in a mediation on March 13, 2025. (*See* Doc. 71, at 1.)

appeal.[42] Chief Magistrate Judge Steger denied the motion to continue. (*See* Doc. 73.) He explained that the Court had addressed Respondent's arguments regarding attorney-client privilege and the work-product doctrine multiple times. (*See id.* at 4–5.) Further, he established that the purpose of the hearing was to enforce the Court's previous orders, not to rehash Respondent's arguments. (*See id.* at 6.) He also explained that Respondent's counsel did not represent Whiting, as he was a non-party witness. (*See id.* at 4.) Chief Magistrate Judge Steger ultimately provided Respondent's counsel with a Zoom link to the hearing and stated Respondent's counsel would be afforded an opportunity to speak.[43] (*See id.* at 5.)

The hearing proceeded as scheduled on March 13, 2025. (*See* Doc. 75.) Chief Magistrate Judge

[42] The Court resolved the motion for reconsideration shortly after Respondent filed the motion to continue but before the March 13, 2025 hearing. (*See* Doc. 72.)

[43] Chief Magistrate Judge Steger also noted that he "participated in hundreds of mediations, and has observed that there are periods of time during a mediation when attorneys are free to make phone calls and work on other matters. . . . [Respondent's counsel] should be able to carve out time for [the hearing] despite his other commitment." (Doc. 73, at 5–6.)

Steger ordered Whiting to produce his laptop and cellphone to ensure the production of materials responsive to Pope's discovery requests. (*See* Doc. 77.) Whiting partially complied with the Court's orders regarding his production on March 18, 2025, when he produced documents responsive to Pope's discovery requests.[4447](*See* Doc. 80.)

Following the hearing, Pope filed a new motion to compel after Whiting defied Chief Magistrate Steger's order detailing the materials Whiting needed to produce. (*See* Doc. 78.) Respondent filed a response to this motion, as he objected to the scope of Whiting's ordered production and took issue with Chief Magistrate Judge Steger's hearing. (*See* Doc. 79.) Chief Magistrate Judge Steger ultimately held that Pope's motion to compel was moot following Whiting and Respondent's production of documents relevant to this proceeding. (*See* Doc. 102.)

g. Second Order Compelling Discovery from Respondent

[44] Whiting never fully complied with the Court's orders. (*See* Doc. 77.) He never produced his laptop or mobile phone. (*See* Doc. 78.)

On March 4, 2025—still having received no discovery from Respondent, Pope filed another motion to compel. (*See* Doc. 68, at 1–2; Doc. 47.) The Court offered the following recap of discovery in response to Pope's motion:

> Despite his agreement [to respond to Pope's requests] and the Court's order, Respondent chose a different path. On February 6, 2025 (barely a week after Chief Magistrate Judge Steger's order [establishing the February 13, 2025 deadline]), Respondent filed a motion for certification of an interlocutory appeal of the Court's prior denial of a protective order that would have relieved him of certain discovery obligations. (*See* Doc. 51; Doc. 52, at 1.) Then, on February 10, 2025, Respondent filed a motion requesting an extension of time to respond to Pope's discovery, arguing that his pending motion for the certification of an interlocutory appeal justified a stay of discovery. (*See* Doc. 53.) On February 25, 2025, the Court denied Respondent's motion for certification of an interlocutory appeal and his motion seeking a stay of discovery. (*See* Doc. 61, at 9.) Still, Respondent did not respond to Pope's

discovery requests, so Pope filed a second motion to compel on March 4, 2025, asking again (as he did in the January motion (*see* Doc. 36)) that outstanding requests for admission be deemed admitted. (*See* Doc. 68.) On March 17, 2025, over a month after the date by which Respondent agreed to comply with Pope's discovery requests, Respondent finally served written responses but still did not comply with Chief Magistrate Judge Steger's January 31, 2025 order (Doc. 47). (*See* Docs. 81, 81-1.) Respondent filed no response to Pope's motion. *See* E.D. Tenn. L.R. 7.1(a).

Pope first sought leave to serve Respondent with discovery on October 8, 2024. (*See* Doc. 9.) The Court granted Pope leave to conduct all discovery he identified in his motion on October 11, 2024. (Doc. 11.) Since then, the Court has devoted substantial time and effort to resolving the discovery disputes Respondent has spurred. (*See* Docs. 29–30, 43–45, 47, 61, 72.) The Court previously encouraged Respondent "to give serious consideration to the choices he and his

> counsel make," as "[t]hose choices should reflect respect for the serious and sober nature of this proceeding." (Doc. 24, at 18.) Rather than cooperating, Respondent has complicated and frustrated the discovery process. The Court has entered four orders disposing of Respondent's assertions of attorney-client and work-product privileges (including his requests for an appeal and for reconsideration), spanning roughly four months. (*See* Docs. 29, 44, 61, 72.) Despite the Court's holdings, Respondent continues to refuse production of documents and written responses based on the same assertions. (*See* Doc. 81-1.) The time to move forward has long passed. The Court will not tolerate further delay as a result of Respondent's choices.

(Doc. 82, at 1–3.) Because Respondent had not produced any documents responsive to Pope's discovery requests and refused to answer several questions in Pope's written discovery, the Court granted Pope's motion. (*See id.* at 3.) The Court ordered Respondent to produce the responsive materials by March 28, 2025. (*See id.*)

Respondent finally produced materials responsive to Pope's discovery requests on March

27, 2025, providing electronic files from his computer in a digital folder entitled "TNED witch hunt." (*See* Doc. 83.)

v. Amended Response and Amended Show-Cause Order

In the foregoing order compelling Respondent to produce documents, the Court noted that it had reviewed Whiting's March 18, 2025 production (which included emails evidencing Respondent's work on Whiting's "pro se" filings after he withdrew as Whiting's counsel in *Athens*) and Respondent's written discovery responses (which disclaimed any such work after Respondent's withdrawal). (Doc. 81-1, at 12–13; Doc. 82, at 4.) As a result, the Court expressed concern "about the substance of Respondent's response to the Court's show-cause order." (*See* Doc. 82, at 4 (citing Doc. 7).) The Court ordered Respondent to file an amended response to the Court's show-cause order. (*See id.*) The Court invited Respondent to correct any inaccuracies in his original response and advised Respondent that it would "consider the substance of the amendment, or lack thereof, as appropriate in its resolution of these proceedings." (*See id.*)

Respondent filed an amended response to the Court's show-cause order on March 28, 2025, but that amended response again failed to comply with the Local Rules; specifically, Respondent persisted in refusing to admit or deny "whether he drafted documents for his ostensibly pro se former client." (*See* Doc. 86; Doc. 91, at 2.) Even after the Court had drawn

Respondent's attention to the troublesome materials in Whiting's production (Doc. 82, at 4), and

even after Respondent had finally produced similarly inculpatory evidence (Docs. 84, 98, 101), Respondent continued to suggest that Whiting might have crafted the filings based on drafts Respondent supplied him prior to his withdrawal as counsel:

> The Respondent yet again states, that he has supplied Mr. Whiting with dozens, if not hundreds, of legal filings over a decade that included the legal issues and arguments outlined in Whiting's filing. The Respondent again states that he had begun preparing a response to a motion for summary judgment that was filed before the Respondent withdrawing and that he supplied that draft to Whiting, as was Whiting's right to demand work product produced before the

> withdrawal. The Respondent also states that he is informed that Whiting received assistance from a non-attorney third party whom Irion has never met or communicated with, in preparing the filings the Court cites.

(Doc. 86, at 7.) In a departure from his original response, Respondent explicitly requested a hearing in accordance with Local Rule 83.7(e)(4). (*See id.* at 7.)

Following Respondent's continued non-compliance with the Local Rules, on April 23, 2025, the Court entered an amended show-cause order. (*See* Doc. 91.) Therein, the Court detailed eleven specific factual allegations of misconduct, citing the Rules of Professional Conduct at issue and evidence of Respondent's suspected misconduct:

Factual Allegation No. 1: Respondent prepared and filed an affidavit

misrepresenting that Glenn Whiting was a trustee of a trust called ARD Property

Management.

 Source/Example: Doc. 149 in Case No. 3:20-cv-54 in *Whiting et al. v. Trew,*

et al., Case No. 3:20-cv-54.

 Professional Standards at Issue: Tennessee Rules of Professional Conduct 1.1, 1.3, 3.1, 3.3, 3.4, and 8.4 and Federal Rule of Civil Procedure 11. **Factual Allegation No. 2: In written materials submitted to the Court, Respondent misrepresented Glenn Whiting's status as a trustee.**

 Source/Example: Doc. 147, at 11–12, 14–15, 18 in *Whiting et al. v. Trew, et al.*, Case No. 3:20-cv-54.

 Professional Standards at Issue: Tennessee Rules of Professional Conduct 1.1, 1.3, 3.1, 3.3, 3.4, and 8.4 and Federal Rule of Civil Procedure 11.

Factual Allegation No. 3: In communication with the Court, Respondent misrepresented Glenn Whiting's status as a trustee.

 Source/Example: Final Pretrial Conference Transcript in *Whiting et al. v. Trew, et al.*, Case No. 3:20-cv-54.

 Professional Standards at Issue: Tennessee Rules of Professional Conduct 1.1, 1.3, 3.1, 3.3, 3.4, and 8.4 and Federal Rule of Civil Procedure 11.

Factual Allegation No. 4: At trial, Respondent offered witness testimony that misrepresented Glenn Whiting's status as a trustee.

 Source/Example: Doc. 202, at 30–32 in *Whiting et al. v. Trew, et al.*, Case No. 3:20-cv-54.

 Professional Standards at Issue: Tennessee Rules of Professional Conduct 1.1, 1.3, 3.1, 3.3, 3.4, and 8.4 and Federal Rule of Civil Procedure 11.

Factual Allegation No. 5: In other filings with the Court, Respondent misrepresented the contents of the trust documents.

 Source/Example: Doc. 91, at 6 in *Whiting v. City of Athens, et al.*, Case No. 3:23-cv-2.

 Professional Standards at Issue: Tennessee Rules of Professional Conduct 3.3 and 8.4(c) and Federal Rule of Civil Procedure 11.

Factual Allegation No. 6: In written materials submitted to the Court, Respondent misrepresented Glenn Whiting's status as a beneficiary.

 Source/Example: Doc. 78, at 5 in *Whiting et al. v. Trew, et al.*, Case No. 3:20- cv-54.

 Professional Standards at Issue: Tennessee Rules of Professional Conduct 1.1, 1.3, 3.1, 3.3, 3.4, and 8.4 and Federal Rule of Civil Procedure 11.

Factual Allegation No. 7: Respondent prepared Glenn Whiting's response to the defendants' motions for summary judgment while Whiting was proceeding pro se.

 Source/Example: Doc. 186 in *Whiting v. City of Athens, et al.*, Case No. 3:23-cv-2.

- Professional Standards at Issue: Tennessee Rules of Professional Conduct 1.2(d) and 8.4(c).

Factual Allegation No. 8: Respondent prepared Glenn Whiting's response to the defendants' status report for depositions while Whiting was proceeding pro se.

- Source/Example: Doc. 148 in *Whiting v. City of Athens, et al.*, Case No. 3:23-cv-2.
- Professional Standards at Issue: Tennessee Rules of Professional Conduct 1.2(d) and 8.4(c).

Factual Allegation No. 9: Respondent prepared Glenn Whiting's motion in limine while Whiting was proceeding pro se.

- Source/Example: Doc. 173 in *Whiting v. City of Athens, et al.*, Case No.3:23-cv-2.
- Professional Standards at Issue: Tennessee Rules of Professional Conduct 1.2(d) and 8.4(c).

Factual Allegation No. 10: Respondent prepared Glenn Whiting's motion to continue the final pretrial conference while Whiting was proceeding pro se.

- Source/Example: Doc. 174 in *Whiting v. City of Athens, et al.*, Case No. 3:23-cv-2.
- Professional Standards at Issue: Tennessee Rules of Professional Conduct 1.2(d) and 8.4(c).

Factual Allegation No. 11: Respondent prepared Glenn Whiting's reply brief in support of a motion for an extension of time to file a supplement to the joint appendix for summary judgment while Whiting was proceeding pro se.

□ Source/Example: Doc. 175 in *Whiting v. City of Athens, et al.*, Case No. 3:23-cv-2.

Professional Standards at Issue: Tennessee Rules of Professional Conduct 1.2(d) and 8.4(c).

(*See id.* at 2–5.) The first six allegations concern his misrepresentations about Whiting's status as a trustee or beneficiary of ARD in *Trew*. (*See id.* at 2–4.) The remaining five allegations concern Respondent's misrepresentations relating to his efforts to assist his ostensibly pro se client after Respondent withdrew from representation in *Athens*.[45] (*See id.* at 4–5.) The Court ordered Respondent to (1) file an amended response to the updated show-cause order; (2) admit or deny each of the eleven factual allegations in the updated show-cause order pursuant to Local Rule 83.7(e)(2); and

[45] The Court omitted any factual allegations of misconduct pertaining to service in *Trew*, as it found that the evidence adduced on that topic demonstrated that Respondent's conduct did not warrant discipline. (*See* Doc. 91, at 5.)

(3) include any evidence relevant to the allegations with his response pursuant to Local Rule 83.8(e)(3). (*See id.* at 5–6.) The Court advised Respondent that if he failed to comply with the Local Rules again, the factual allegations in the show-cause order would be deemed admitted and he would forfeit the right to present any evidence not submitted with his response. (*See id.*) Lastly, the Court continued the final hearing in this matter to ensure Respondent was provided twenty-one days to respond and twenty-one days' notice as to his rights at the hearing in accordance with Local Rule 83.7(i). (*See id.* at 6.)

Respondent filed his response to the amended show-cause order on May 14, 2025. (*See* Doc. 99.) Regarding the first six allegations, he admitted that he had presented inaccurate documents and testimony to the Court in *Trew*, but he denied any misconduct, asserting that he had relied on the statements of his clients. (*See id.* at 4–6.) Respondent refused to admit or deny the remaining five factual allegations based on misrepresentations relating to ghostwriting in *Athens*. He claimed that he lacked personal knowledge sufficient to admit or deny the allegations, despite having recently produced his own email correspondence demonstrating his post-withdrawal work for Whiting. (*See id.* at 6.) The Court entered an order deeming factual allegations 7, 8, 9, 10, and 11 in the Court's amended show-cause order admitted consistent with the Court's prior warning to Respondent.[4649](*See* Doc. 104.)

vi. Respondent's Constitutional Challenge

On May 14, 2025, Respondent filed a motion requesting that the Court declare its Local Rules unconstitutional. (*See* Doc. 100.) Again, he took issue with the undersigned's decision to preside over this matter and the court's case-assignment procedures. (*See id.* at 2.) Respondent also asserted that Local Rule 83.6 was unconstitutionally vague.

[46] Thus, it is conclusively established that Respondent helped prepare the following documents for Whiting while Whiting was proceeding pro se: (1) Whiting's response to the defendants' motion for summary judgment (Doc. 186 in *Athens*); (2) Whiting's response to the defendants' status report for depositions (Doc. 148 in *Athens*); (3) Whiting's motion in limine (Doc. 173 in *Athens*); (4) Whiting's motion to continue the final pretrial conference (Doc. 174 in *Athens*); and(5) Whiting's reply brief in support of a motion for an extension of time to file a supplement to the joint appendix for summary judgment (Doc. 175 in *Athens*). (Docs. 91, 104.) These findings are also clearly in accord with the relevant evidence. (*See supra* Section II.B.iii.)

(*See id.* at 1–2.) The Court denied this motion on May 19, 2025. (*See* Doc. 105.)

vii. Respondent's Waiver of a Hearing

On May 20, 2025, two days prior to the final hearing, Respondent filed a notice waiving his right to a hearing and explaining that he "will await the Court's ruling based on the admissible evidence and the record before it."[47] (*See* Doc. 107.) The Court canceled the final hearing the next day. (*See* Doc. 111.)

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[47] On the same day, Respondent filed a notice informing the Court that he had named the undersigned and "two Court staffers as defendants" in his suit in the Middle District of Tennessee. (*See* Doc. 106.) To the extent Respondent submitted this notice to suggest that the undersigned should recuse from this matter, initiating separate litigation against a presiding judge does not necessitate recusal. *See United States v. Houston*, No. CRIM.A. 3:13-10-DCR, 2014 WL 813975, at *11 (E.D. Tenn. Mar. 3, 2014) ("[R]ecusal is not required just because one of the parties has initiated litigation against the presiding judge.") (citing *Callihan v. Eastern Ky. Prod. Credit Ass'n*, No. 89–5578, 1990 WL 12186, at *2 (6th Cir. Feb.13, 1990) and *In re Taylor*, 417 F.3d 649, 652 (7th Cir. 2005)); *see also Hopson v. Gray*, No. 5:21-CV-704, 2021 WL 4894311, at *4 (N.D. Ohio Oct. 20, 2021) (same); *United States v. Wright*, No. 2:16-CR-59, 2023 WL 7313262, at *2 (S.D. Ohio Jan. 9, 2023) (same), *aff'd*, No. 23-3114, 2023 WL 7286605 (6th Cir. Sept. 20, 2023), *cert. denied*, 144 S. Ct. 521, 217 L. Ed. 2d 273 (2023).

ANALYSIS OF RESPONDENT'S CONDUCT

With the foregoing factual background in mind, the Court has carefully considered the implications of Respondent's conduct in *Trew*, *Athens*, and the instant proceeding. The Court finds by clear and convincing evidence that Respondent has violated his ethical obligations. The following analysis addresses these violations in detail.

A. RESPONDENT'S MISCONDUCT IN *TREW*

The relevant questions arising from Respondent's conduct in *Trew* are (1) what he understood about Whiting's status with respect to the trust, and when he understood it; and (2) regardless of any gaps or deficiencies in Respondent's understanding, how he conducted himself with respect to his client's status under the relevant ethical rules. The Court will first review Respondent's representations about his conduct and then discuss the relevant evidence.

i. Show-Cause Order and Response

In the original order initiating this matter, the Court ordered Respondent to show cause why he should not be disciplined for misrepresenting Whiting's status as a trustee in *Trew*. (*See* Doc. 1, at 1–2.) Respondent asserted that, in preparing the declaration for Whiting (Doc. 98-4), he had relied on Whiting's statement that he was a trustee. (*See* Doc. 7, at 6, 8.) Respondent stated that Whiting's entire family believed he was a trustee, and that Whiting had been acting as a trustee when Respondent prepared the declaration. (*See* Doc. 7, at 6.) Respondent also argued that the Court's summary judgment order (Doc. 178 in Case No. 3:20-cv-54) rendered Whiting's status as a trustee irrelevant in *Trew*. (*See* Doc. 7, at 6–7.) Specifically, Respondent stated that "upon reading [the undersigned's] ruling in December [2021], both the Respondent and Mr. Whiting justifiably believed that the standing issue had been decided and that whether Whiting was officially a trustee or not, did not matter." (*Id.* at 7 (emphasis omitted).) He explained that he did not review the trust documents thoroughly due to the Court's ruling.[48] (*See id.*) Respondent further argued that, "[a]t the time Whiting signed the declaration, both Respondent and Whiting believed

[48] In response to Pope's interrogatory requests in this matter, Respondent also stated that he was unaware of the portion of the trust documents outlining the requirements for approval of a new trustee until Whiting was presented with them at trial. (*See* Doc. 81-1, at 8.) Respondent reiterated this in his April 2, 2025 deposition. (*See* Doc. 110, at 49–50.)

it to be true. . . . [A]nd most importantly, [the undersigned's] ruling in said case had established that the fact at issue was irrelevant to the case."[49] (*Id.* at 9.) Regarding his inaccurate representation of ARD's trust documents in *Athens* (*see supra* Note 21), Respondent asserted that the documents "actually state that Whiting would become a trustee upon the death of any of the then-current trustees." [50] *See* Doc. 7, at 9.)

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[49] Respondent reiterated his argument regarding the relevance of the inaccurate representations he made to the Court in *Trew* throughout the present matter. (*See* Doc. 34, at 6–7; Doc. 41, at 8.) Most notably, Respondent argued that the undersigned is represented "his own factual findings and conclusions of law," such that the undersigned should impose Rule 11 sanctions upon himself. (*See* Doc. 34, at 6–8.) Respondent's argument pertaining to the relevance of his inaccurate submissions is misleading and directly contradicted by the record in *Trew.* Several of Respondent's inaccurate representations occurred before the Court's summary judgment ruling, meaning that the ruling could not have rendered those representations irrelevant. (*See supra* Section II.A.) The Court also dispelled Respondent's contention in a previous order. (*See* Doc. 45, at 9–13.)

[50] The page Respondent cited does not state this, as it establishes that Whiting's appointment as an acting trustee rested within the discretion of ARD's board of trustees and that certain prerequisites had to be completed prior to

Respondent has since admitted that his representations to the Court regarding Whiting's relationship with ARD were inaccurate. In his response to the amended show-cause order (Doc. 91), Respondent acknowledges that he offered inaccurate information but contends that he did not intend to mislead the Court. (*See* Doc. 99, at 4–6.) Respondent also asserts that he relied on the representations of his client, Whiting, when offering inaccurate information to the Court.[5154](*See id.*) Respondent claims that the trustees of ARD told him that Whiting was a trustee. (Doc. 110, at 80.) He asserts that he did not read the portion of ARD's trust documents outlining Whiting's relationship with the trust until Whiting was presented with them at trial. (*See id.* at 49–50.) Respondent also asserts that he and Whiting were "completely shocked" by the contents of the trust documents after reading them at trial. (*See id.* at 72.) Respondent himself acknowledges that his conduct was "negligence, maybe." (*Id.* at 113.)

Whiting's appointment. (*See* Doc. 86, at 189 in Case No. 3:20-cv-54.)

[51] Respondent has not offered any competent evidence to corroborate this assertion, as discussed supra in Section II.C.v.

As Respondent now admits, his representations to the Court concerning Whiting's status as a trustee and beneficiary of ARD were inaccurate. (*See* Doc. 99, at 4-6.) Therefore, the Court must determine what led to these inaccuracies. If there is clear and convincing evidence that Respondent knowingly misled the Court about Whiting's status as a trustee or beneficiary of ARD, then the following Tennessee Rules of Professional Conduct ("TRPC") are implicated:

TRPC 3.3(a)(1): A lawyer shall not knowingly make a false statement of fact or law to a tribunal.

TRPC. 3.3(b): A lawyer shall not offer evidence the lawyer knows to be false[.]

TRPC 3.3(c): A lawyer shall not affirm the validity of, or otherwise use, any evidence the lawyer knows to be false.

TRPC 3.3(g): A lawyer who, prior to conclusion of the proceeding, comes to know that the lawyer has offered false tangible or documentary evidence shall withdraw or disaffirm such evidence without further disclosure of information protected by RPC 1.6.

TRPC 3.4(b): A lawyer shall not falsify evidence, counsel or assist a witness to offer false or misleading testimony[.]

TRPC 8.4(c): It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

TRPC 8.4(d): It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

TRPC 3.3 prohibits an attorney from knowingly offering a false statement or evidence to the Court. It also requires that an attorney disaffirm any evidence when he comes to know that it is false. A violation of TRPC 3.3 would inherently violate both TRPC 8.4(c) and (d), which prohibit dishonest conduct generally and conduct prejudicial to the administration of justice. *See* Ann. Mod. Rules Prof. Cond. *Misconduct* § 8.4 (explaining that Model Rule "Rule 8.4(c) is also implicated when a lawyer misleads or lies to a tribunal [in violation of Model Rule 3.3]" and that "[l]ying or misleading a court can violate [Model Rule] Rule 8.4(d)"). TRPC 3.4(b) specifically prevents an attorney from falsifying evidence or assisting or advising a witness to offer false or misleading testimony.

Whether Respondent breached these rules turns on whether he knew the statements and testimony regarding Whiting's status as a trustee or beneficiary were false. TRPC 1.0(f) defines knowledge as "actual awareness of the fact in question," and provides that a "person's knowledge may be inferred from circumstances."

If Respondent did not know the statements and testimony regarding Whiting's relationship to ARD were false, the following rules are potentially implicated:

TRPC 1.1: A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

TRPC 1.3: A lawyer shall act with reasonable diligence and promptness in representing a client.

TRPC 3.1: A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless after reasonable inquiry the lawyer has a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

TRPC 8.4(d): It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

TRPC 1.1 establishes that competent representation requires "thoroughness" and "preparation" reasonably necessary for representation. Comment 5 to TRPC 1.1 provides that:

Competent handling of a particular matter includes *inquiry into and analysis of the factual and legal elements of the problem*, and the use of methods and procedures meeting the standards of competent practitioners. It also *includes adequate preparation*. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence.

(emphasis added). TRPC 1.3 requires "reasonable diligence," and this inherently requires "an adequate level of preparation and investigation for each particular representation." *See* Ann. Mod. Rules Prof. Cond. *Diligence* § 1.3 (explaining that

Model Rule 1.3 "requires an adequate level of preparation and investigation for each particular representation"). TRPC 3.1 requires a "reasonable inquiry" into the law and facts supporting an argument. The American Bar Association ("ABA") advises that Model Rule of Professional Conduct 3.1[52] parallels and can be analyzed in tandem with Rule 11 of the Federal Rules of Civil Procedure," as Rule 11 also requires a reasonable inquiry into the facts and law relevant to a claim. *See* Ann. Mod. Rules Prof. Cond. *Meritorious Claims and Contentions* § 3.1; Fed. R. Civ. P. 11(b). The ABA also notes that "[n]egligent or incompetent representation can violate [Model] Rule 8.4(d)."[53][56]Ann. Mod. Rules Prof. Cond. *Misconduct* § 8.4. Essentially, under TRPCs 1.1, 1.3, 3.1, and 8.4(d), an attorney is required to conduct an objectively reasonable investigation into the facts and law supporting a contention he presents to the Court. *See* TRPC 1.0(h) (defining "reasonable" and "reasonably" when "used in relation to conduct by a lawyer" as "the conduct of a reasonably prudent and competent lawyer").

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[52] The language in TRPC 3.1 tracks that of the Model Rule.
[53] The language in TRPC 8.4(d) matches the Model Rule.

ii. Evidence of Respondent's Knowledge

There is substantial evidence that Respondent knew full well he was presenting false statements to the Court.

First, Respondent's repeated references to the trust documents (*see supra* Section II.A) amounted to representations that he had read them, contrary to his representations in the present matter. (*See, e.g.*, Doc. 99, at 4–6; Doc. 110, at 49–50.) When an attorney makes representations related to a document—and Respondent did just that (*see supra* Section II.A)—any court would understand that the attorney had read and understood the document. *Cf. Park v. Kim*, 91 F.4th 610, 615 (2d Cir. 2024) (holding that Rule 11 requires "that attorneys read, and thereby confirm the existence and validity of, the legal authorities on which they rely"); *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443, 464 (S.D.N.Y. 2023) (holding that an attorney violated Rule 11 by not reading the cases he cited in briefing). Thus, Respondent's present position—that he did not read the document closely—is contrary to his prior representations to the Court.

Second, it is extremely unlikely that Respondent could have read what he asserts is the favorable portion of the trust documents without necessarily stumbling upon the language establishing that Whiting was not a trustee. Respondent invokes the final paragraph of the page designating Whiting as a potential successor trustee and says he "could reasonably assume that the Trustees had voted to pre-accept Whiting as a Successor Trustee." (Doc. 7, at 8.) But he also states one page later that, somewhere:

> The trust documents actually do state that Whiting would become a trustee upon the death of any of the then-current trustees. . . . As discussed above, both Respondent and Whiting had seen that language in the trust documents.

Unfortunately, the trust documents also include the language that requires a vote. Neither Respondent nor Whiting had seen that language until the April 2021 trial. (Doc. 7, at 9 (citing Doc. 86, at 189 in Case No. 3:20-cv-54).) Even the most cursory of glances at the relevant page of the trust documents would have informed Respondent that no one, including Whiting, could become a trustee without board action, either before or after a vacancy occurred on ARD's board. The three lines above and the three lines below Whiting's listing as a potential successor trustee literally collar his name with references to necessary board action. (*See* Doc. 86, at 189 in Case No. 3:20-cv-54).) Indeed, most of the ink on the page that contains these provisions is devoted to explaining the process for how to fill the vacancy—whether existing or anticipated—*if* the Board chooses to do so. (*See id.*) At all points, there is no question that action is required, and nothing is automatic.

At his deposition in this proceeding, Respondent described his assessment of the trust document as follows:

> I did not read through all of the trust documents. My client told me that he was a trustee and that was good enough. And he showed me the page where it said, When these people die, I'm a trustee. And one of them had died, so I was good with that.

(Doc. 110, at 60.) But there is not a single suggestion in the trust document that the succession of a trustee takes place automatically when a vacancy occurs. To believe Respondent's version of events, one must choose to accept that he read none of the substantive language of the page and, instead, focused exclusively on the fact that Whiting's name was printed on blank lines provided on the page—lines that are scarcely more than an inch from language that undermines Respondent's assertions. And one must choose to believe this despite the context of the litigation that was occurring. The defendants specifically discussed this portion of the documents before trial. (*See, e.g.*, Doc. 169, at 2–3 in Case No. 3:20-cv-54.) Further, Magistrate Judge Poplin cited the trust documents in an order and stated that "the legal documents for ARD . . . show that Plaintiff Glenn Whiting is not a trustee of that entity." (Doc. 112, at 30 in Case No. 3:20-cv-54.) Finally, one must ignore Respondent's scolding of the defendants for not reading the page closely enough because, according to him, if they had, they would have seen that Whiting's rise to trustee happened "immediately," "by operation of the trust formation documents," and without the need for board action. (Doc. 147, at 11-12, 15 in Case No. 3:20-cv-54.) But Respondent's prior pronouncements do not create language in the trust document that was never there, as he finally admitted in this proceeding. (*See* Doc. 99, at 4-6 (acknowledging it was "incorrect" to assert that Whiting was a trustee or beneficiary).) He finally acknowledged as much because there is no way to read the trust documents and come to a different conclusion.

Third, as the evidence stands, the Court finds it extremely difficult to credit Respondent's very general assertion that he relied on client representations that Whiting was a trustee or beneficiary.[54] Respondent has produced virtually no evidence of the particulars of such statements. (*See* Doc. 99, at 7.) He offers virtually no substance of any of the conversations with Whiting that served as the basis for Respondent's alleged belief. (*See* Doc. 110.) He offers no substance of any factual investigation into the matter. (*See, e.g.*, Doc. 81-1, at 5; Doc. 110, at 49–50.) His factual assertions about what he discussed with Whiting are exceedingly vague, seemingly intentionally so. He claims that his investigation consisted of discussions with Whiting and other trustees about topics including "the history of the trust at issue"; "the building owned by the trust"; "the client's acts managing said building"; and "the conversations client had with the former trustee about client taking over."[5558](Doc. 81-

[54] Respondent contends that he relied on the representations of Whiting in response to all six of the factual allegations in the amended show-cause order. (*See* Doc. 99, at 4–6.) Respondent does not disclose what representations he relied upon.

[55] Respondent also claims that the ARD trustees "identified the other trustees." (*See* Doc. 110, at 80.) The Court can only

1, at 5.) None of these claimed topics of conversation meets the issue at hand: whether Whiting was ever installed as a trustee, an issue directly tied to what kind of damages, if any, he could recover at trial. Furthermore, given how contentious the beneficiary/trustee issue was at the time, it is extremely unlikely that any lawyer would not have bothered to get to the bottom of Whiting's exact status as the issue first arose much earlier in 2021. So, if Whiting had been a trustee, there is little doubt Respondent would have discovered it no later than the spring or summer of 2021. This is the time when a competent attorney would have had a serious conversation with his client about Whiting's status. And, tellingly, after the defendants in *Trew* argued that Whiting was not a *trustee*, Respondent's initial reaction was to draft a declaration for Whiting that he was a *beneficiary*. (*See* Doc. 98-1.) That is not the action of a lawyer

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assume that Respondent is attempting to suggest that each trustee he spoke to named the other trustee(s), but that is not clear. Giving Respondent the benefit of the doubt, the Court presumes Respondent is attempting to offer evidence that he spoke with at least one other trustee who identified Whiting as a trustee. This is a very generous interpretation of Respondent's assertion.

who actually has reason to believe Whiting was trustee.

Fourth, Respondent affirmatively represented to the Court that he had evidence of Whiting's beneficiary status and that he would present it to the Court. In briefing his motion for a protective order, Respondent stated:

> Mr. Whiting is a beneficiary of the ARD Properties trust. Plaintiffs must, and will, provide evidence supporting this fact. Production of this evidence has been withheld pending this Court's ruling on the instant motion and cross motion.

(*See* Doc. 78, at 5–6 in Case No. 3:20-cv-54.) And, at trial, Respondent stated that Whiting's wife would testify that Whiting was a beneficiary. (Doc. 94, at 7.) Yet, Respondent never offered any such evidence. (*See* Doc. 227, at 11–12 in Case No. 3:20-cv-54.) Respondent's claimed failure to fully read the trust documents does not explain why he never presented the evidence he purportedly held that demonstrated Whiting's beneficiary status. It is much more likely that he had never cultivated any such evidence.

Last, Respondent has shown a propensity to lie to the Court. He has also shown that he does not take these proceedings seriously. As the facts and analysis in Sections II.B and III.B of this Order clearly demonstrate, Respondent misrepresented several facts to the Court in other instances and made misstatements under the penalty of perjury in discovery documents. Respondent also attempted to mislead the Court as to the importance of the inaccurate representations in *Trew*. (*See supra* Note 49.) He behaves in a manner that no reasonable attorney would dare even consider.[56] This strongly suggests that the Court should lend little credibility to his account of events.

iii. Evidence of Respondent's Lack of Knowledge

Despite the evidence described above, the Court will not, on a clear-and-convincing evidence standard, conclude that Respondent knowingly misrepresented facts concerning Whiting's status with ARD in *Trew*. While the evidence outlined above forcefully discredits Respondent's account, other evidence points to Respondent's incompetence as the reason for his misrepresentations to the Court.

[56] Sections II.B and II.C of this Order are littered with examples displaying Respondent's inappropriate behavior.

Respondent's failure to use ARD's correct legal name until the defendants did so suggests that Respondent did not closely read even the first page of the trust document. (*See* Doc. 119, at 1; Doc. 86, at 186 in Case No. 3:20-cv-54.) ARD's proper name was immaterial to the legal issues of *Trew*, meaning Respondent had no incentive to knowingly misrepresent ARD's name to the Court. Accordingly, Respondent's use of an incorrect name—despite the fact that the correct name is listed in bold on the first page of the trust documents (*see* Doc. 86, at 186 in Case No. 3:20-cv-54)—suggests Respondent did not read the documents, at least in the beginning.[57]

Additionally, Respondent's use of the term "executor" for Whiting in the complaint and amended complaints (*see* Doc. 1, at 2; Doc. 56, at 2; Doc. 159, at 2 in Case No. 3:20-cv-54), when it does not appear anywhere in the trust documents (*see* Doc. 86, at 186–95 in Case No. 3:20-cv-54), suggests

[57] Given the foregoing discussion, to say that the Court is affording the Respondent the benefit of the doubt would be a great understatement. The truth is that there is no reason to believe any lawyer—even Respondent—would not have read the trust documents once Whiting's status became such a contentious issue in *Trew*.

Respondent did not read the trust documents. As the Sixth Circuit observed, it is unclear what the term even means in the context of these documents. (*See* Doc. 50-2, at 2 n.2 in 6th Cir. Case No. 22-5448.)

Respondent's inconsistency regarding Whiting's status also arguably fits with his contention that he was entirely unaware of Whiting's actual relationship with ARD—even if it also suggests Respondent knowingly misrepresented Whiting's status—as Respondent appears to have simply claimed Whiting was a "beneficiary" or "trustee" as needed without knowing whether such assertions were true. Respondent's shifting positions indicate that he used whatever designation that best furthered his arguments in the moment. Respondent initially deemed Whiting an "executor." (*See* Doc. 1, at 2 in Case No. 3:20-cv-54.) Respondent did not represent that Whiting was a beneficiary or trustee in *Trew* until the defendants put Whiting's status at issue. (*See supra* Section II.A.) In fact, Respondent fought aggressively against discovery into such facts. Whiting "invoked the Fifth Amendment and refused to answer deposition questions about his sources of income, tax returns, employment, and the composition and relationship with any trust at issue." (Doc. 44, at 19 in Case No. 3:20-cv-54.) Respondent moved for a protective order, which the Court denied. (*See id.* at 20.) Instead of complying with the Court's decision, Respondent filed an amended complaint,[58][61]in which he claimed to excise references to a certain damage theory and argued that, in the absence of this damage theory, discovery into the trust was unwarranted. (*See* Doc. 61 in Case No. 3:20-cv-54.) When, as a result, another discovery dispute arose, Respondent—for the very first time—asserted that Whiting was a beneficiary of the trust, citing no evidentiary support. (*See* Doc. 78, at 5 in Case No. 3:20-cv-54 ("Mr. Whiting is a beneficiary of the ARD Properties trust."). Magistrate Judge Poplin summarized Respondent's position as follows:

> With respect to the ownership of the Pope Avenue Building, Plaintiffs state that Plaintiff ARD Properties owns it and that Plaintiff ARD Properties is a trust controlled by the Whiting and Ammerman families. Plaintiffs state that Connie Ammerman is the

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[58] Even this amended complaint continued to identify Whiting as the "executor" of the trust, not a beneficiary or a trustee. (*See* Doc. 56, at 2 in Case No. 3:20-cv-54.)

> trustee for ARD Properties and that Defendants already have documents reflecting such. They further state that Plaintiff Whiting is a beneficiary of the ARD Properties trust and that Plaintiffs will provide evidence supporting this fact.

(Doc. 112, at 11 in Case No. 3:20-cv-54.) At this point in the summer of 2021, Respondent had made no claim that Whiting was a trustee. Even a draft declaration Respondent presented to Whiting (never filed) had Whiting claiming to be a "beneficiary" and a "manager," but not a "trustee"; the declaration identified only Whiting's wife as a trustee. (Doc. 98-1, at 5.) By September, Respondent in fact filed a comparable declaration, with important changes: Whiting identified himself as a "trustee" instead of a "beneficiary;" he did not mention his wife as a trustee; and he asserted that, as a longstanding trustee, he had "authorized all legal work performed on this litigation and all documents filed on behalf of ARD." (Doc. 149, at 2 in Case No. 3:20-cv-54.) Respondent classified Whiting as an "executor" (Doc. 1, at 2; Doc. 56, at 2 in Case No. 3:20-cv-54) until he needed Whiting to be a "beneficiary," (Doc. 78, at 5 in Case No.3:20-cv-54) and as a "beneficiary" until he needed him to be a "trustee." (Doc. 147, at 11–12, 15 in Case No. 3:20-cv-54.) Such plasticity—along with the dearth of any particular evidence of due diligence—suggests only reactive evidence creation, without any tether to the facts.[5962]

Further, while there is ample evidence to discredit Respondent's account, there is no direct evidence that demonstrates that Respondent subjectively had knowledge of Whiting's relationship with ARD. Having witnessed Respondent's approach to the practice of law for some time, the Court cannot confidently conclude that Respondent knew that his representations in *Trew* were wrong absent such affirmative evidence. But there is no doubt whatsoever that Respondent utterly failed to investigate the facts: he admits he didn't read the trust documents, and even his assertions about factual investigation suggest only the most superficial of inquiries.

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[59] Respondent has demonstrated a willingness to make allegations absent any diligence or knowledge of their accuracy in other instances. For example, in *Athens*, Respondent was willing to name over thirty defendants in the complaint prior to verifying whether they were even present at the event that gave rise to the suit. (*See* Doc. 279, at 15 in Case No. 3:23-cv-2.)

While the evidence supports a finding that Respondent knowingly misled the Court, the Court chooses to exercise its discretion to find only that the evidence clearly and convincingly establishes that Respondent did not adequately investigate the facts in *Trew*. This choice is based on Respondent's own admissions, his changing positions as to Whiting's designation, his lack of knowledge as to ARD's legal name, Respondent's past behavior, and his general approach to the practice of law, as the Court has directly observed.

iv. Inadequate Investigation

Respondent's inadequate investigation in *Trew*—identified in factual allegations 1–4 and 6 of the amended show-cause order—violates TRPCs 1.1, 1.3, 3.1, and 8.4(d). His discovery response in this proceeding provides more specificity than anything else he has offered to date concerning what due diligence he performed prior to filing Whiting's declaration:

> . . . Respondent discussed with his client the history of the trust at issue, the building owned by the trust, the client's acts managing said building, the conversations client had with the former trustee about client taking over, and identified other

> trustees [sic]. Had Respondent or client known about the requirement for a vote at that time, the Respondent and client could have fulfilled any and all further requirements to make client the actual trustee at that time. In other words, this entire issue is much ado about nothing. This is a family trust and literally everyone in the family was in agreement that client take over as trustee. Everyone with a say in choosing a trustee agreed and assumed that client was the new trustee.

(*See* Doc. 81-1, at 5.) These very general statements accomplish nothing toward establishing that Respondent adequately inquired into and analyzed the factual and legal elements of the trustee/beneficiary issue. Talk about the trust's property, how Whiting cared for that property, and past conversations about how Whiting would eventually take over brought Respondent no closer to knowing whether the trust's board took the necessary action to make Whiting a trustee or whether he was ever a beneficiary. That is not surprising, because, as an initial matter, Respondent has admitted that he did not read the relevant portion of the trust documents. (*See* Doc. 7, at 7; Doc. 110, at 49–50.) As a result, he asserts that he did not understand that installing Whiting as a trustee required board action. In these circumstances, it is no wonder that he failed to ask questions about whether Whiting had actually been installed as a trustee or made a beneficiary. Respondent had such an absence of understanding of the issue that he was incapable of engaging in the factual inquiries that would have allowed him to perform an intelligent legal analysis any court would presume he had completed prior to making the representations at hand.

Yet he was willing to lead the Court to believe that—whatever actions were necessary— Whiting had, in fact, been made a trustee. And, despite no basis in the trust documents, he led the Court to believe that Whiting was a beneficiary. As a result, Respondent offered inaccurate representations to the Court in the instances identified by Factual Allegations Nos. 1–4 and 6 (Doc. 91, at 2–4).[60]

[60] The Court notes that Factual Allegation 4 is distinguishable from the others listed because Respondent did not make the inaccurate representation himself. However, Respondent's failure to adequately investigate the facts surrounding Whiting's relationship with ARD led to Whiting's inaccurate testimony, as Respondent would have known that Whiting was

Respondent's lack of investigative effort violates TRPCs 1.1, 1.3, 3.1, and 8.4(d). In *King v. Whitmer*, the Sixth Circuit found that the plaintiffs failed to adequately inquire as to the facts supporting their claims when their "own exhibits [] refuted rather than supported" their claims. *See* 71 F.4th 511, 522 (6th Cir. 2023). The court also found that "an adequate prefiling inquiry under Rule 11 includes reading every document one plans to file." *Id.* (citing *Garr v. U.S. Healthcare, Inc.*, 22 F.3d 1274, 1278, 1281 (3d Cir. 1994)). The Court finds this reasoning helpful to the interpretation of the TRPCs at issue here, as they require an objectively reasonable inquiry into the facts supporting a contention just as Rule 11 does. *See* Ann. Mod. Rules Prof. Cond. *Meritorious Claims and Contentions* § 3.1; Fed. R. Civ. P. 11(b). A reasonable inquiry in Respondent's circumstance would have included a thorough reading of ARD's trust documents. *Cf. Garr*, 22 F.3d at 1281

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not a trustee when Whiting testified to the contrary. Further, the issue would have likely been decided before trial had Respondent conducted a reasonable investigation and provided accurate information to the Court. Thus, the Court finds that Respondent's role in offering Whiting's inaccurate testimony renders any distinction immaterial to the Court's analysis.

(explaining that the court was "at a total loss to understand how attorneys can urge that they have made a reasonable inquiry into the facts and the law of a case when their complaint is predicated on . . . statements in documents which they have not bothered to read"). A reasonable inquiry would have also included some verification of Whiting's beneficiary status, rather than claimed blind reliance on Whiting's and Connie Ammerman's conclusory assertions. To the extent Respondent relied on such representations, it was entirely unreasonable in this circumstance. *Cf. Blue v. U.S. Dep't of Army*, 914 F.2d 525, 543 (4th Cir. 1990) ("[C]ounsel cannot simply rely on a client's patently incredible testimony when any reasonable investigation of the factual bases for the client's claims or examination of materials obtained in discovery would reveal the paucity and implausibility of the evidence."). Essentially, Respondent was aware of and had possession of ARD's trust documents during most (or possibly all) of the litigation in *Trew*, and despite the consistent relevance of the trust documents (with the defendants and Respondent citing the documents in briefing and the Court referring to them in orders), Respondent inaccurately represented their contents and his client's relationship with ARD because he did not thoroughly read the documents until presented with them at trial.[61]

Additionally, Respondent neglected to investigate whether Whiting was a beneficiary and whether there was any competent evidence demonstrating this. These shortcomings constitute clear violations of TRPCs 1.1, 1.3, 3.1, and 8.4(d).

v. Misrepresentations after Trew

While most of the factual allegations in the Court's show-cause order address Respondent's conduct within *Trew*, the fifth factual allegation concerns a representation made after *Trew* concluded. (*See* Doc. 91, at 3.) The Court has chosen to conclude that Respondent did not knowingly misrepresent facts to the Court while *Trew* was ongoing, but the

[61] Again, the Court notes that Respondent sent Whiting a draft declaration calling for Whiting to aver that he was a trustee for ARD the *same day* he filed a response to the defendants' motion for summary judgment. (*See* Doc. 147 in Case No. 3:20-cv-54; Doc. 98-4.) This by no means suggests the existence of a reasonable inquiry into whether Whiting was in fact a trustee. Respondent has offered no substance as to how he arrived at the language of the declaration, other than the intentionally vague and general assertions discussed above.

circumstances surrounding the fifth factual allegation are different. When Respondent stated that ARD's trust documents provided "that Whiting would become a trustee upon the death of any of the then-current trustees," *Trew* had concluded. (*See* Doc. 91, at 6 in Case No. 3:23-cv-2; Doc.236 in Case No. 3:20-cv-54.) The Court had discerned Whiting's relationship to ARD, and the language of the trust documents clearly established that Whiting was not automatically appointed as an acting trustee after the death of a current trustee. (*See* Doc. 86, at 189; Doc. 227, at 6–12 in Case No. 3:20-cv-54.) Thus, Respondent was no doubt aware of Whiting's relationship to ARD at the time he represented that the trust documents stated that "Whiting would become a trustee upon the death of any of the then-current trustees." (Doc. 91, at 6 in Case No. 3:23-cv-2.) This description of the trust documents was incorrect, as confirmed by Respondent's decision not to make any contrary arguments on appeal. (*See* Doc. 86, at 189; Doc. 227, at 6–12 in Case No. 3:20-cv-54; Doc. 50-2, at 1 n.1 in 6th Cir. Case No. 22-5448.) As such, and in consideration of the significant evidence of deception discussed above, there is clear and convincing evidence that Respondent violated TRPC 3.3(a)(1) by making this representation to the Court. The Court recognizes that, given the context of this misrepresentation (*see supra* Note 21), it is of less importance than the other alleged misrepresentations, but nonetheless, it still breaches TRPC 3.3.[6265]

vi. Conclusion

Consistent with the findings and analysis above, the Court finds, by clear and convincing evidence, that Respondent violated TRPCs 1.1, 1.3, 3.1, and 8.4(d) in the instances identified in Factual Allegations Nos. 1–4 and 6 in its amended show-cause order (*see* Doc. 91, at 2–3). The Court declines to conclude that Respondent knowingly misrepresented facts in these instances. The Court finds, by clear and convincing evidence, that Respondent knowingly misrepresented the contents of ARD's trust documents to the Court as asserted in Factual Allegation No. 5, in violation of TRPCs 3.3, 8.4(c), and 8.4(d). The Court will discuss the appropriate discipline for Respondent's misconduct in Section V of this Order.

B. RESPONDENT'S MISCONDUCT IN *ATHENS*

[62] This violation of TRPC 3.3 inherently runs afoul of TRPCs 8.4(c) and (d).

i. Response to Show-Cause Order

In the order initiating this matter, the Court ordered Respondent to show cause why he should not be disciplined for drafting Whiting's response to the defendants' motions for summary judgment in *Athens* (Doc. 186 in Case No. 3:23-cv-2) after withdrawing as counsel. (*See* Doc. 1, at 3.) In response, and consistent with his misrepresentation to the Sixth Circuit (*see supra* Section II.B.iii; Doc. 16-1 in 6th Cir. Case No. 23-6082), Respondent suggested that Whiting could have drafted the response in opposition to the motions for summary judgment using the "tens of thousands of pages of work product" he shared with Whiting during the time he represented him. (*See* Doc. 7, at 15–16.) He asserted:

> Respondent has represented Mr. Whiting and his family members for over a decade. [footnote omitted] That representation includes dozens of matters in state and federal civil courts, criminal courts, administrative proceedings, contract drafting, and other matters. Respondent recorded well over one thousand hours representing Whiting before Judge McDonough alone. Respondent has provided Whiting with

> hundreds of legal documents drafted by the Respondent. This represents literally tens of thousands of pages of work product, shared with Whiting over the years. Many of those shared documents were in Word format.
>
> Often Respondent would send draft documents to Whiting for his review and modification, to be returned to Respondent for final drafting. *This includes documents setting forth precedents and arguments regarding every issue put forth by Mr. Whiting in his accused document.* This also include[es] draft responses to an early motion to dismiss filed by the defendants in the 3:23-cv-002 case.

(*See id.* (emphasis in original).) Respondent persisted in this assertion (*see* Doc. 41, at 9–10) until he provided responses to Pope's written discovery. In those responses, Respondent stated:

> . . . Respondent states that he started working on a response to defendant Sliger's motion for summary judgment filed in the *fall of 2023*. That motion raised most of the issues that would be raised by all defendants. Respondent had a draft completed before the end of 2023 that addressed most of the issues.

> That draft was forwarded to client on February 13, 2024, as part of the documents client had a right to possess as work product. It is respondent's understanding that client took that draft as a template and worked with another individual to respond to the other defendants' motions for summary judgment.[63][66]

(Doc. 81-1, at 12–13 (emphasis added).) The problem with these assertions is twofold: first, Sliger did not file for summary judgment until *March 25, 2024*, more than a month after Respondent's withdrawal (*see* Doc. 162 in Case No. 3:23-cv-2), and, second, the rest of Respondent's chronology regarding Whiting's response at summary judgment is an outright misrepresentation, as clearly confirmed in the above-described emails and drafts Respondent sent to Whiting. (*See supra* Section II.B.) Respondent offered this account under the penalty of perjury (*see* Doc. 81-1, at 13) and stood by it in his first

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[63] Respondent confirmed this account in his deposition, stating that he "had started drafting . . .an opposition to a motion for summary judgment" before he withdrew and sent it to Whiting. (Doc. 110, at 183–84; *see also id.* at 226–27, 266.)

amended response to the Court's show cause order (*see* Doc. 86, at 7).

Respondent changed his story again after the Court issued the amended show-cause order (Doc. 91). He now retreats to a claim that he lacks "personal knowledge sufficient to admit or deny" whether he prepared these filings for Whiting in *Athens* after he withdrew from representation.[64] (*See* Doc. 99, at 6.) This response does not comply with the Court's Local Rules, and the Court has deemed these allegations admitted after it warned Respondent that it would do so if he failed to admit or deny them as required. (*See* Doc. 104.) Given the clear and convincing evidence establishing his unethical conduct, the Court does not need to rely on these admissions to reach its decision.

ii. **Ghostwriting**

"Ghostwriting" occurs when an attorney helps draft pleadings for a pro se party and such assistance remains undisclosed. *See* Lindsay E.

[64] Respondent was given three opportunities to tell the truth regarding his actions in *Athens*. Rather than capitalizing on this and owning up to his mistakes, he persisted in conduct consistent with what led to this proceeding in the first place.

Hogan, *The Ethics of Ghostwriting: The American Bar Association's Formal Opinion 07-446 and Its Effect on Ghostwriting Practices in the American Legal Community*, 21 Geo. J. Legal Ethics 765, 765–66 (2008) ("Ghostwriting is the practice whereby an attorney drafts court documents for a pro se litigant, but the court papers do not reveal that the attorney assisted in the document preparation."). Various state ethics committees and courts have reached differing conclusions on the ethics of ghostwriting. *See Undisclosed Legal Assistance To Pro Se Litigants*, ABA Formal Op. 07-446 ("State and local ethics committees have reached divergent conclusions on this topic."); *In re Smith*, No. 12-11603, 2013 WL 1092059 at *14–21 (outlining different views on ghostwriting). The ABA has found that "there is no prohibition in the Model Rules of Professional Conduct against undisclosed assistance to pro se litigants, as long as the lawyer does not do so in a manner that violates rules that otherwise would apply to the lawyer's conduct."[65] ABA Formal Op. 07-446. However, most federal courts have condemned the practice more generally. *See Smith*, 2013 WL 1092059 at *14–16 (providing a

[65] This is quite different than the case before the Court.

brief overview of different federal courts' positions on ghostwriting); *In re Schuchardt*, No. 3:18-MC-39-PLR-HBG, 2019 WL 8016697 (E.D. Tenn. Aug. 30, 2019), *report and recommendation adopted*, No. 3:18-MC-39, 2019 WL 6716992 (E.D. Tenn. Dec. 10, 2019) (finding that an attorney's ghostwriting of bankruptcy forms violated TRPC 8.4(c)); *Duran v. Carris*, 238 F.3d 1268, 1272–73 (10th Cir. 2001) (condemning ghostwriting and collecting cases); *Middlebrooks v. City of Macon-Bibb Cnty.*, No. 5:23-CV-00083-TES, 2024 WL 555884, at *3 (M.D. Ga. Feb. 12, 2024), *aff'd*, No. 24-10705, 2025 WL 753377 (11th Cir. Mar.10, 2025) (expressing its concerns associated with ghostwriting); *Senatus v. Lopez*, No. 20-60818-CV, 2021 WL 5310591, at *2 (S.D. Fla. Aug. 19, 2021), *report and recommendation adopted*, No. 20-60818-CV, 2021 WL 5299867 (S.D. Fla. Nov. 15, 2021) ("An attorney ghostwriting for a pro se litigant is improper because it affords the litigant the benefit of the court's liberal construction of pro se pleadings while also shielding the attorney from responsibility for his counsel."); *Gutierrez v. City of Carson*, No. LACV1007627JAKCWX, 2012 WL 13005846, at *4 (C.D. Cal. Sept. 14, 2012) (condemning ghostwriting); *Ostevoll v. Ostevoll*, No. C-1-99-961, 2000 WL 1611123, at *9 (S.D. Ohio Aug.

16, 2000) (condemning ghostwriting); *Nolt v. Knowles*, No. 3:20-CV-00962, 2022 WL 22895859, at *1 (M.D. Tenn. Dec. 5, 2022) (expressing concerns about ghostwriting). These courts have generally objected to ghostwriting on the following basis:

> [N]ondisclosure of attorney representation unfairly causes a more lenient standard to be applied to a pro se litigant who is not really pro se, [] it violates the attorney's duty of candor to the court, and [] it violates the attorney's obligations under Rule 11 of the Federal Rules of Civil Procedure to sign pleadings and to certify that the claims and defenses raised in those pleadings are not frivolous.

Smith, 2013 WL 1092059 at *14. The Tennessee Board of Professional Responsibility currently takes no position on the ethics of ghostwriting.[66] See TENN. BD. PRO. RESP.,

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[66] The Board had previously held that an attorney "may not engage in extensive undisclosed participation in litigation in behalf of a pro se litigant as doing so permits and enables the false appearance of being without substantial professional assistance." TENN. BD. PRO. RESP., FORMAL ETHICS OPINION 2007-F-153 (2007), https://www.tbpr.org/ethic_opinions/2007-f-153. However, this

Formal Ethics Opinions, https://www.tbpr.org/for-legal-professionals/formal-ethics-opinions, (last visited July 19, 2025).

Here, the evidence clearly and convincingly establishes that Respondent ghostwrote Docs. 173 and 186 [67] or Whiting in *Athens*. In addition to the emails plainly evidencing Respondent's actions (*see supra* Section II.B.iii), Whiting's communications with the Court in both *Athens* and the present matter confirm that he could not produce Doc. 173 and Doc. 186 in *Athens* absent Respondent's ghostwriting efforts.[68] Respondent's filings in

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formal ethics opinion was vacated while the present matter was ongoing.

[67] These documents are addressed in Factual Allegations 7 and 9. (*See* Doc. 91, at 4.)

[68] For example, in Whiting's deposition taken for the present matter, Pope presented Whiting with his "Omnibus Response in Opposition to Defendants' Motions For Summary Judgment," or Doc. 186 in 3:23-cv-2. (*See* Doc. 109, at 232.) Pope asked Whiting if he knew "what the word 'omnibus' means." (*See id.*) Whiting explained that "It's basically a response – your legal response to a motion that they filed for the summary judgment. So it's basically giving my reasons why I don't think it should be granted." (*Id.*) When used as an adjective, Merriam- Webster defines "omnibus" as "of, relating to, or providing for many things at once" or "containing or

Athens, *Trew*, and Case Nos. 3:23-cv-220 and 3:23-cv-221 are strikingly similar to Whiting's response to the defendants' motions for summary judgment in *Athens*. (*See* Doc. 61, at 6–8 (comparing the response in *Athens* to Respondent's other filings).) As such, the evidence clearly and convincingly demonstrates that Respondent ghostwrote Doc. 173 and Doc. 186 in *Athens*.

The Court need not adopt any particular approach to ghostwriting, as it finds that Respondent's ghostwriting of Docs. 173 and 186 in *Athens* violates TRPC 8.4(c) under any standard. ABA Formal Opinion 07-446—which takes a more lenient approach to ghostwriting than those adopted by most federal courts—states that "[w]hether it is dishonest for the lawyer to provide undisclosed assistance to a pro se litigant turns on whether the court would be misled by failure to disclose such assistance." The ABA explains that "there is no prohibition in the Model Rules of Professional

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including many items." *Omnibus*,MERRIAM-WEBSTER, https://www.merriamwebster. com/dictionary/omnibus, (last visited July 19, 2025). Whiting did not even comprehend the title of the motion he acted as though he drafted and prepared on his own.

Conduct against undisclosed assistance to pro se litigants, as long as the lawyer does not do so in a manner that violates rules that otherwise would apply to the lawyer's conduct." *Id.* Here, Respondent's ghostwriting efforts took place after he noisily and pointedly represented that he was no longer acting as Whiting's attorney, which means such efforts were tied to a misrepresentation to the Court.[69] *See supra* Section II.B.) Further, Whiting represented that he was proceeding pro se in every filing that Respondent helped prepare, including those he ghostwrote. (*See* Doc. 148, at 1, 9; Doc. 173, at 1; Doc. 174, at 2; Doc. 175, at 2–3; Doc. 186, at 16–17.) The Court was certainly misled as to Whiting's pro se status. Thus, even under the ABA's approach, Respondent's ghostwriting violated TRPC 8.4(c).[7073]

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[69] The goal, consistent with Respondent's standards of practice and his contempt for the authority of this Court (and others) seems to have been to continue to conduct litigation, but to conduct it free of the ethical standards Respondent had already demonstrated he could not satisfy.

[70] While the ABA's opinion applies Model Rule 8.4(c) and not TRPC 8.4(c), the Court finds that the identical language of the rules renders this distinction immaterial here.

Respondent's ghostwriting is analogous to that seen in *Smith* and *Schuchardt*. In *Smith*, the court found an attorney violated TRPC 8.4(c) when she ghostwrote bankruptcy forms that represented that the "Debtor is not represented by counsel." 2013 WL 1092059 at *18. In *Schuchardt*, the court found that an attorney violated TRPC 8.4(c) when he ghostwrote bankruptcy forms because (1) he did so in violation of an agreed order, and (2) he "checked boxes" on some of the forms that stated the filers were not represented by counsel. 2019 WL 8016697 at *16. Here, the filings Respondent ghostwrote for Whiting stated that he was not represented by counsel and Respondent drafted these documents for Whiting after withdrawing his representation and making representations about discontinuing work for Whiting on the case. (*See* Doc. 129; Doc. 173, at 1; Doc. 186, at 16–17 in Case No. 3:23-cv-2.) Such behavior is analogous to the unethical actions in *Smith* and *Schuchardt*, and the Court finds that these cases further solidify that Respondent violated TRPC 8.4(c) by ghostwriting for Whiting.

iii. Misrepresentations and Fraudulent Conduct

Even if ghostwriting, without more, were an acceptable practice before this Court, Respondent's deception of the Court violated ethical standards. In the amended show-cause order, the Court observed that Respondent's suspected misconduct in *Athens* implicated TRPCs 1.2, 3.3, and 8.4. (*See* Doc. 91, at 4–5.) These rules establish the following:

TRPC 1.2(d): A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows or reasonably should know is criminal or but a lawyer 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.

TRPC 3.3(a)(1): A lawyer shall not knowingly make a false statement of fact or law to a tribunal.

TRPC 3.3(e): If a lawyer knows that the lawyer's client intends to perpetrate a fraud upon the tribunal or otherwise commit an offense against the administration of justice in connection with the proceeding, including improper conduct toward a juror or a member of the jury pool, or comes to know, prior to the conclusion of the proceeding, that the client has, during the course of the lawyer's representation, perpetrated such a crime or fraud, the lawyer shall advise the client to refrain from, or to disclose or otherwise rectify, the crime or fraud and shall discuss with the client the consequences of the client's failure to do so.

TRPC 8.4(c): It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

TRPC 8.4(d): It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

Comment 10 to TRPC 1.2 provides that "a lawyer is required to avoid assisting [a] client [in conduct that the lawyer should reasonably know is fraudulent], for example, *by drafting or delivering documents* that the lawyer *knows are fraudulent* . . . ." (emphasis added). TRPC 3.3(e) prohibits similar conduct, as it states "[i]f a lawyer knows that the lawyer's client intends to perpetrate a fraud upon the tribunal or otherwise commit an offense against the administration of justice in connection with the proceeding . . . the lawyer shall advise the client to refrain from . . . the crime or fraud . . . ." TRPC 1.0(d) defines "Fraud" or "fraudulent" as denoting:

> [A]n intentionally false or misleading statement of material fact, an intentional omission from a statement of fact of such

> additional information as would be necessary to make the statements made not materially misleading, and such other *conduct by a person intended to deceive a person or tribunal with respect to a material issue in a proceeding* or other matter.

(emphasis added). TRPC 3.3(a) prohibits a lawyer from knowingly making a false statement of fact or law to a court. *See Smith*, 2013 WL 1092059 at *14 ("TRPC 3.3(a)(1) states that a lawyer shall not knowingly make a false statement of fact or law to a tribunal.") Comment 3 to TRPC 3.3 explains that "[t]here are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation." TRPC 8.4(c) also prohibits an attorney from lying to the Court. *See* Ann. Mod. Rules Prof. Cond. *Misconduct* § 8.4 (explaining that Model "Rule 8.4(c) is also implicated when a lawyer misleads or lies to a tribunal"). Further, "[c]onduct that is deceitful can violate [TRPC] 8.4(d)." *See id.* (discussing Model Rule 8.4(d)).

The Court finds by clear and convincing evidence that Respondent's efforts to assist Whiting in *Athens* after he withdrew from representation, assured the Court that he was no longer engaged by Whiting on the matter, and represented that

Whiting would proceed pro se violate TRPCs 1.2(d), 3.3(a), 3.3(e), 8.4(c), and 8.4(d).

Respondent represented to the Court that he would no longer act as Whiting's attorney in *Athens* and continued to offer legal assistance to Whiting after making this representation. In his second motion to withdraw, Respondent stated that Whiting informed him "that as long as [the undersigned] is presiding over [*Athens*], Whiting will not engage [Respondent] to represent him in this matter." (*See* Doc. 129, at 1–2 in Case No. 3:23-cv-2.) He also stated that Whiting intended "to proceed with [the] litigation pro se." (*Id.* at 2.) Finally, Respondent and Whiting requested that the Court grant the motion and "allow [Respondent] to withdraw from representation of plaintiff Whiting in [Athens]." (*Id.*) Thus, Respondent's motion to withdraw and the statements contained therein represented to the Court that Respondent would no longer act on Whiting's behalf or assist Whiting in the suit if the motion was granted. But Respondent's communications with Whiting after withdrawal demonstrate that Respondent did just that.[71][74](*See supra* Section II.B.iii.)

Accordingly, Respondent affirmatively misrepresented to the Court that he would no longer represent Whiting in *Athens* in violation of TRPCs 3.3(a), 8.4(c), and 8.4(d).

Respondent's conduct after he made this misrepresentation to the Court violates TRPCs 1.2(d), 3.3(e), 8.4(c), and 8.4(d). The filings Whiting prepared with Respondent's assistance were "fraudulent" under TRPC 1.0(d), as they were intended to deceive the Court and opposing parties by representing that Whiting prepared them pro se. In Doc. 148 in *Athens*, Whiting represented that he "let [Respondent] go" and signed it as a pro se party. (*See* Doc. 148, at 1, 9 in Case No. 3:23-cv-2.) In Doc. 173, Whiting represented that he was proceeding pro se. (*See* Doc. 173, at 1 in Case No. 3:23-cv-2.) In Doc. 174, Whiting signed the filing as a pro se party. (*See* Doc. 174, at 2 in Case No. 3:23-cv-2.) In Doc. 175, Whiting represented that Respondent had ceased acting as Whiting's attorney in the matter

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[71] And he knew he needed to conceal his work from the Court in order to avoid being caught in the lie. (*See* Doc. 98-14, at 2 (informing Whiting that the work needed to be in his words).)

and signed the filing as a pro se party. (*See* Doc. 175, at 2–3 in Case No. 3:23-cv-2.) Finally, in Doc. 186, Whiting classified himself as a pro se plaintiff. (*See* Doc. 186, at 16–17 in Case No. 3:23-cv-2.) Respondent helped Whiting prepare all of these filings. (*See supra* Section II.B.iii.) They were meant to mislead the court and opposing parties as to Whiting's pro se status. Whiting's pro se status was material to the proceedings in *Athens*, as Courts often apply more lenient standards to pro se litigants than represented parties. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) ("A document filed pro se is to be liberally construed . . . ." (internal quotations omitted)) (citation omitted); *Elliott v. Warden, Dayton Corr. Inst.,* No. 24-3766, 2025 WL 692351, at *3 (6th Cir. Jan. 23, 2025) (stating that pro se pleadings are to be construed liberally) (citation omitted); *Christenberry v. White*, No. 20-6349, 2021 WL 5983815, at *2 (6th Cir. July 2, 2021) (concluding that a pro se party should not "'be held to the high standards to which members of the bar aspire or should aspire'") (*quoting WSM, Inc. v. Tenn. Sales Co.*, 709 F.2d 1084, 1088 (6th Cir. 1983)); TRPC 1.0(o) (defining "material" as "something that a reasonable person would consider important in assessing or determining how to act in a matter"); see also Smith, 2013 WL 1092059 at *22 (finding that "attorney participation in the preparation of a bankruptcy proceeding is a material fact"). Indeed, Respondent helped draft a document that Whiting filed which argued that Whiting's adversaries' position was "absurd" and was "only done because [Whiting] is Pro Se."[72] (Doc. 175, at 1 in Case No. 3:23-cv-2.) Respondent actively participated in this fraudulent conduct and did not counsel Whiting to refrain from such conduct in violation of TRPCs 1.2(d), 3.3(e), 8.4(c), and 8.4(d).

iv. Conclusion

Consistent with the analysis and findings above, the Court finds by clear and convincing evidence that Respondent violated TRPC 8.4(c) by ghostwriting Whiting's motion in limine (Doc. 173 in Case No. 3:23-cv-2) and Whiting's response to the defendants' motions for summary judgment (Doc. 186 in Case No. 3:23-cv-2) in Athens as asserted in Factual Allegations 7 and 9 (Doc. 91, at 4).[73] The

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[72] The evidence does not clearly show who inserted this language. For the purposes of this decision, the Court will assume that Whiting, not Respondent, did so.

[73] The Court notes that this conduct could also be a violation of TRPCs 1.2(d), 3.3(a)(1), and 8.4(d). However, the Court finds that ghostwriting is most directly addressed by TRPC 8.4(c).

Court also finds by clear and convincing evidence that Respondent's misrepresentations concerning his withdrawal in Athens violated TRPCs 3.3(a)(1), 8.4(c), and 8.4(d) as asserted in Factual Allegations 7–11 (id. at 4–5). Respondent's efforts to assist Whiting after these misrepresentations violated TRPCs 1.2(d), 3.3(e), 8.4(c), and 8.4(d) as asserted in Factual Allegations 7–11.

IV. DISCIPLINE

To determine the appropriate discipline for Respondent's misconduct, the Court will consider mitigating factors, aggravating factors, and previous disciplinary action taken by this Court. *See In re Justice*, No. 1:11-MC-3, 2012 WL 2374677, at *29–30 (E.D. Tenn. June 22, 2012), aff'd, 525 F. App'x 291 (6th Cir. 2013) (considering such factors when determining appropriate discipline for misconduct).

A. Mitigating Factors

Respondent has acknowledged under oath that his conduct in Trew was possibly negligent. (See Doc. 110, at 113.) He also now admits that the information he offered to the Court in Trew was

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See Schuchardt, 2019 WL 8016697 at *16 (applying TRPC 8.4(c) when considering the ethical implications of an attorney's ghostwriting).

inaccurate. (See Doc. 99, at 4–6.) Outside of these concessions, Respondent has not mitigated the effects of his conduct or acknowledged his wrongdoing in any way. Although these modest gestures came only after Respondent was confronted with compelling evidence of his misconduct, the Court recognizes the possibility of a very slight improvement in Respondent's attitude toward his ethical obligations. These gestures are not, however, as meaningful as an honest acceptance of responsibility and sincere remorse.

Additionally, although Respondent presented no such evidence, it is the Court's impression that he has never had the benefit of a meaningful professional mentor in private practice. (Doc. 110, at 18 (confirming Respondent has been a solo practitioner since entering private practice).) This lack of exposure to more experienced attorneys' guidance and enlightenment concerning courts' authority and the importance of respect and trustworthiness has likely resulted in Respondent's deficient approach to the practice of law. This lack of mentorship cannot excuse Respondent's conduct, but it might provide a partial explanation for it.

B. Aggravating Factors

Respondent's ethical violations are serious. Ultimately, such behavior destroys the Court's ability to trust attorneys. Fair and aggressive advocacy that is so critical to our system of justice can best exist only when the Court is rightly confident in the attorneys' dedication to the principle that they must endeavor to never mislead the Court. The breach of this fundamental underpinning of our adversarial system creates great inefficiencies, as demonstrated herein, as the Court is forced to doubt and inquire when it should be able to simply trust in the honor and professionalism of counsel. Our system would slow to a crawl—if it could function at all—if every lawyer behaved as Respondent has behaved.

Furthermore, Respondent's behavior during the pendency of the present matter shows that he did not take the proceedings seriously. During this proceeding,[74] Respondent:

- Made further misrepresentations to this Court (*see supra* Section II.C);
- Baselessly demanded discovery directly from the undersigned (*see* Docs. 20, 30);

[74] This list is not exhaustive.

Refused to follow the rules of this Court (*see* Docs. 7, 82, 86, 91, 99, 104);

- Violated the orders of this Court (*see* Doc. 82; Doc. 91; Doc. 104, at 3);
- Avoided and prolonged discovery (*see* Doc. 82);
- Moved to have the undersigned sanction himself under Rule 11 (*see* Doc. 34); and
- Accused the undersigned of "adulterating the trial court record" in another matter (*see* Doc. 12, at 2).

In other proceedings, Respondent:

- Moved the Sixth Circuit to stay this disciplinary proceeding and to appoint a special master to "investigate the record-keeping and judge assignment [procedures]" in this Court (*see* Doc. 7-1, at 3 in 6th Cir. Case No. 24-5918); and
- Sued the Sixth Circuit's Clerk of Court and other employees for their work on an appeal of the undersigned's decision in an unrelated case, accusing them of, among other things, using "burner phones" (*see* Doc. 1 in E.D. Tenn. Case No.3:25-cv-63).

Such behavior is consistent with Respondent's unprofessional approach and attitude toward the courts that necessitated this proceeding in the first place. Respondent has been afforded every opportunity to climb out of the ethical hole his prior behavior created (*see supra* Note 64); instead, he spent the pendency of this proceeding digging even deeper. He deserves significant and meaningful disciplinary sanctions.

C. Previous Disciplinary Matters in this Court

Respondent's misconduct is unprecedented in this District. In *Schuchardt*, an attorney was suspended from practice for two years after ghostwriting bankruptcy forms. *See* 2019 WL 8016697, at *16, *22. Here, Respondent ghostwrote more substantive documents for his ostensibly pro se client in *Athens*, and he also knowingly misrepresented other material facts to the Court. (*See supra* Sections II.B, III.B.) Further, Respondent committed several additional ethical violations in *Trew*, which wasted significant resources of the Court, a jury, and other parties. (*See supra* Section III.A.)

In *Moncier*, an attorney was suspended five years (with an additional two-year probationary period) after threating to abandon a client and disobeying a judge's order. *See* 550 F. Supp. 2d. at 805, 812–13. Much like in the present case, the attorney in *Moncier* "bombard[ed] the Court with frivolous motions and filings . . ., disobeyed [orders] of [the] Court, [submitted false information], and place[d] an unnecessary burden on the Court's time and resources." *See id.* at 811. However, a review of the record in *Moncier* (Case No. 1:08-mc-9) shows that Respondent's behavior in this matter exceeded that seen in *Moncier* and that Respondent committed more ethical violations. *See* 550 F. Supp. 2d.at 800–05.

In *Justice*, the offending attorney was suspended for six months after he submitted a false fee petition. *See* 2012 WL 2374677 at *29, *31. Like Respondent, the attorney showed no remorse or meaningful acceptance of responsibility.[75] *See id.* at

[75] An attorney's acceptance of responsibility is an important factor in determining the appropriate discipline for misconduct. *See Matter of Cottingham*, 423 P.3d 818, 829 (2018) (explaining that the presumptive sanction in the state of Washington "for intentionally obstructing a disciplinary proceeding is disbarment"); *see also Bd. of Pro. Resp., Wyoming State Bar v. Pearce*, 467 P.3d 158, 165 (Wyo. 2020) (citing cases in Oregon and Washington in which attorneys were disbarred for their efforts to thwart or disrupt disciplinary proceedings). In *In re Bell*, the Court only issued a public reprimand and ordered the offending attorney to offer ten ethics lectures after he knowingly made a false statement

*30. However, again, Respondent's ethical violations are of greater quantity and of more serious quality those committed by the attorney in *Justice*. *See* 2012 WL 2374677 at *21.

D. Sanctions Against Respondent

After considering the relevant factors listed above, the Court hereby **SUSPENDS** Respondent from any practice of law in this District for **five years with a two-year probationary period to follow**.[76] Prior to the commencement of

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of fact to a court and failed to conduct a reasonable inquiry as to the basis for his assertions. *See* 713 F.Supp.2d 717, at 721–22. Notably, the attorney "exhibited heartfelt and genuine remorse" for his conduct. *See id.* at 723–24. An attorney's willingness to acknowledge his mistakes demonstrates that he understands the obligations and privileges that come with membership in the bar. *See Snyder*, 472 U.S. at 644. Further, such acceptance preserves the Court's time and resources when it takes appropriate action to address an attorney's mistakes.

[76] Although Respondent's conduct was more egregious than that addressed in *Moncier*, the Court finds that discipline of equal severity will suffice "to protect the public[,] . . . the integrity and standards of the [C]ourt[,] . . . to correct the unethical and unprofessional behavior of Respondent[,] . . . and . . . to deter other members of the bar of this court from similar unethical and unprofessional conduct." 550 F. Supp. 2d. at 810.

Respondent's probationary period, Respondent must apply for re-admission to practice before this Court, and such application must meet any requirements outlined by the Court's Local Rules and this Order. *See* E.D. Tenn. L.R. 83.7(l). Respondent's re-admission is contingent upon such application. *See id.* ("Reinstatement shall be had only upon a petition by the disciplined member.") Following the Court's written confirmation that Respondent's submission is an adequate application, his probationary period will commence. During the probationary period, Respondent **SHALL** only be permitted to practice before this Court if he is supervised by an attorney appointed or approved by the Court. Respondent may submit his application for re-admission following the first three years of his suspension. However, if the Court grants Respondent's early application, the remainder of his original period of suspension will be added to his probationary period.

Respondent is **ASSESSED** the costs incurred by the Court in this proceeding, including attorneys' fees paid to Patrick, Beard, Schulman, and Jacoway, PC, court-reporting costs, amounts paid to outside vendors, and any other costs borne by the Court. A subsequent order will detail these costs.

Respondent's liability for attorney's fees in *Athens*, Case No. 3:23-cv-220, and Case No. 3:23-cv-221 (*see* Doc. 279 in Case No. 3:23-cv-2; Doc. 57 in Case No. 3:23-cv-220; Doc. 44 in Case No. 3:23-cv-221) shall take priority over his liability to the Court in this matter.

Respondent is **ORDERED** to draft a letter of apology addressed to each of the following defendants and attorneys in *Athens* and *Trew*:

- Chris Trew;
- Seth Sumner;
- Bo Perkinson;
- Brandon Ainsworth;
- Jameson Sliger;
- Deb Cardin;
- Tom Garland;
- Rod Walker;
- Seth Walker;
- Dan Pilkington;
- Emily Taylor;
- Keith Grant;
- Laura Rufolo;
- Brian Bibb; and
- Mitchell Bryant.

The letter of apology shall respectfully acknowledge the findings herein of Respondent's ethical violations and express remorse for his behavior's impact on the defendants and their attorneys. Respondent shall submit the substance of his draft letter of apology to the Court on or before August 25, 2025, via CM/ECF for pre-approval. The Court retains discretion to approve, disapprove, or require changes to Respondent's draft letter. Once the letter's substance is approved by written order, Respondent shall personally sign each individually addressed copy and ensure that it is promptly delivered to each attorney listed and counsel of record for each defendant listed.

Respondent is **ORDERED** to successfully complete twelve hours of continuing legal education approved by the Tennessee Commission of Continuing Legal Education focused on any or all of the rules of professional conduct that Respondent has violated.

V. CONFIDENTIALITY

Now that this proceeding has drawn to a close, the Court finds it appropriate to lift the seal on this matter. The Court finds that Respondent and his client, Glenn Whiting, will not be prejudiced by the publication of any documents produced in this matter. Such material does not appear to pertain to any ongoing litigation and primarily consists of communications relevant to the misconduct addressed in this Order. Further, Respondent and Whiting have offered no valid reasons why such material should be kept confidential.[7780]In accordance with the public's strong interest in knowing of attorney misconduct and the deterrent effect of the publication of this decision, the Clerk will be **ORDERED** to unseal this case. However, consistent with the Sixth Circuit's order of July 15, 2025, Documents 112 and 113 shall remained sealed until further order.

VI. CONCLUSION

Because the undersigned did not exercise his discretion pursuant to Local Rule 83.7(h) to appoint another judge or judicial officer to issue a recommendation, this Order is effective immediately. Any request to maintain any portion of the record under seal shall be filed by 12:00 PM ET on August 11, 2025. The Clerk is hereby **DIRECTED** to:

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[77] As noted above, Respondent has sought to have the record unsealed. (*See* Doc. 13.) Whiting has offered no valid objections to his evidence production on the grounds of privilege and has only produced materials relevant to this proceeding. (*See* Docs. 77, 80, 87, 108.)

- Unseal this matter at 12:00 PM ET on August 12, 2025, with the exception of Documents 112 and 113;
- Once the case is unsealed, provide a certified copy of this Order to the Board of Professional Responsibility of the Supreme Court of Tennessee and the Clerk of the United States Court of Appeals for the Sixth Circuit;
- Immediately provide a copy of this Order to Glenn Whiting by email and United States mail;
- Terminate Respondent as counsel in Case No. 3:25-cv-63 immediately;
- Take all other appropriate action to ensure that Respondent cannot represent clients before this Court; and
- Preserve his ability to file in this matter (Case No. 1:24-dm-7).

SO ORDERED.

/s/ ***Travis R. McDonough***
TRAVIS R. MCDONOUGH
CHIEF UNITED STATES DISTRICT JUDGE

APPENDIX
Part C
Initial Order to Show Cause
(version 3; begins on PageID#9)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

IN RE: Van R. Irion, BPR # 024519
800 S. Gay St., Ste. 700
Knoxville, TN 37929

Case#1:24-dm-07
Chief District Judge Travis R. McDonough

SHOW CAUSE ORDER

The Court has reason to conclude that attorney Van R. Irion has made misrepresentations to the Court in violation of Tenn. Sup. Ct. R. 8, RPC 3.3, Fed. R. Civ. P. 11, and Local Rule 83.7. Accordingly, the Court hereby orders attorney Van R. Irion to show cause as to why he should not be suspended from the practice of law or otherwise disciplined in the United States District Court, Eastern District Court of Tennessee. The Court may impose discipline on any member of its bar who has violated the Rules of Professional Conduct, as adopted by the Supreme Court of Tennessee, or has engaged in unethical conduct tending to bring the Court or the bar into disrepute. E.D. Tenn. L.R. 83.7(a).

Rule of Professional Conduct 3.3 prohibits an attorney from knowingly making a false statement of fact or law to a tribunal and from affirming the validity of, or otherwise using, any evidence the lawyer knows to be false. Tenn. Sup. Ct. R. 8, RPC 3.3. Additionally, "[b]y presenting to the court a pleading, written motion, or other paper . . . an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief ... the factual contentions have evidentiary support ...." Fed. R. Civ. P. 11(b).

In *Whiting et al. v. Trew et. al.*, Mr. Irion prepared and filed for his client, Glenn Whiting, a declaration that falsely stated his client was a trustee of a trust that owned the relevant property. (Doc. 149 in Case No. 3:20-cv-54.) Mr. Irion did so in the context of his opposition to a summary judgment motion. Based on that declaration, the Court denied the motion for summary judgment against Mr. Irion's client. (Doc. 178, at 21 in Case No. 3:20-cv-

54.) In fact, however, the trust document stated that Mr. Whiting was merely a potential successor trustee and that his status as a trustee was dependent upon an election by the then-existing board. (Doc. 86, at 186- 200 in Case No. 3:20-cv-54.) At trial, long after the Court had relied on the declaration at issue, Mr. Whiting testified that he had not read the Trust documents until that very moment at trial. (Doc. 202, at 133-32 in Case No. 3:20-cv-54.) Ultimately, Mr. Whiting acknowledged that, under the governing documents, he was not currently and had never become a trustee for the trust. (*Id.* at 134.) In *Whiting v. City of Athens, et al.*, Mr. Irion continued to misrepresent the contents of the trust documents by claiming they "stated that Whiting would become a trustee upon the death of any of the then-current trustees." (Doc. 91, at 6-7 in Case No. 3:23-cv-2.) These misrepresentations constitute violations of RPC 3.3 and Fed. R. Civ. P. 11.

In *Whiting v. City of Athens, et al.*, Mr. Irion filed a return of service for Ty Gables alleging that he served Mr. Gables at his usual place of abode under Rule(e)(2)(B) by leaving a copy with his mother. (Doc. 71 in Case No. 3:23-cv-2.) However, the return for Mr. Gables did not include both pages of Form AO 440; did not show what address service was attempted at; and did not indicate the date service was effected, the name of the person service was effected on, or the date the process server executed his affidavit. (*Id.*) Defendant Gables alleges he was never served. (Doc. 86, at 2-3 in Case No. 3:23-cv-2.) Comparing the ECF stamp present on the summons with the prior ECF filing in Document 9, the Proof of Service page appears to be for Defendant Enoch Dixon, not Defendant Ty Gables. (*See* Doc. 9, at 36 and Doc. 71, at 3 in Case No. 3:23-cv-2.) The evidence thus gives the impression that Mr. Irion was untruthful about serving Defendant Gables, which would again violate RPC 3.3 and Fed. R. Civ. P. 11.

Finally, Mr. Irion moved to withdraw from his representation of Mr. Whiting on the grounds that "Chief Judge Travis McDonough has made it clear that neither the plaintiff nor Mr. Irion can expect to receive an unbiased or effective due process as long as Judge McDonough presides over any matters where Mr. Whiting is a party, or where Mr. Irion represents a party." (Doc. 129, at 1 in Case No. 3:23-

cv-2.)[1] On February 13, 2024, Mr. Irion was permitted to withdraw his representation. (Doc. 138 in Case No. 3:23-cv-2.) Thereafter, Mr. Whiting filed a response to Defendants' summary judgment motions that appear to have been drafted by Mr. Irion. (Docs. 186, 192 in Case No. 3:23-cv-2.) This response reflects Mr. Irion's style of writing and does not resemble other filings Mr. Whiting drafted pro se. In Tennessee, "an attorney may not prepare pleadings and other legal documents to assist a pro se litigant in the conduct of his or her litigation where doing so creates the false impression that the litigant is without substantial legal assistance." *Formal Ethics Opinion 2007-F-153,* Board of Professional Responsibility of the Supreme Court of Tennessee (March 23, 2007).[2] Accordingly, if Mr. Irion prepared these responses for Mr. Whiting, Mr. Irion again violated the Rules of Professional Procedure regarding dishonesty and misrepresentation.

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[1] The Sixth Circuit affirmed the undersigned's denial of the motion to recuse. *Whiting v. City of Athens, et al.*, No. 3:23-cv-220, Doc. 54 at 8 (E.D. Tenn. July 30, 2024).

[2] Available at https://www.tbpr.org/ethic_opinions/2007-f-153. Last visited: August 4, 2024.

In consideration of the foregoing examples and Mr. Irion's broader pattern of conduct demonstrating repeated misrepresentations to the Court, the Court finds there is sufficient evidence that Mr. Irion has potentially violated the Court's Local Rules, the Tennessee Rules of Professional Conduct, and Federal Rule of Civil Procedure 11. Accordingly, Mr. Irion is hereby **ORDERED** to **SHOW CAUSE** as to why he should not be suspended from the practice of law or otherwise disciplined in the United States District Court for the Eastern District of Tennessee. Mr. Irion shall have twenty-one days from the date of the entry of this Order in which to respond. Mr. Irion's response should address the allegations detailed in this Show Cause Order regarding his conduct before the Court.

The Clerk is **DIRECTED** to send a copy of this Order by certified mail to Mr. Irion at his current address in the Court's records (listed above) and to enclose a copy of E.D. Tenn. L.R. 83.7.

All records related to this proceeding will be filed **UNDER SEAL** on CM/ECF. Attorney Van R. Irion will have access to the electronic file and shall file his response and other responsive documents in CM/ECF.

SO ORDERED.

/s/ *Travis R. McDonough*
TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE

APPENDIX
Part D
Post-Discovery Amended OSC Entered 4/23/25

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

IN RE: Van R. Irion, BPR # 024519
800 S. Gay St., Ste. 700
Knoxville, TN 37929

Filed Under Seal
Case No. 1:24-dm-7
Chief District Judge
Travis R. McDonough
Chief Magistrate Judge
Christopher H. Steger

ORDER

This matter is before the Court following Respondent Van Irion's amended response to the Court's show-cause order (Doc. 86).

On March 25, 2025, the Court granted Attorney Lance Pope's successive motion to compel because Respondent failed to comply with the Court's discovery orders. (*See* Doc. 82, at 1–3.) The Court also ordered Respondent to file an amended response to the Court's show-cause order, as "the

Court ha[d] reason for concern about the substance of Respondent's response to the Court's show-cause order,"1 and the "response [did] not comply with Local Rule 83.7(e)(2) and (3)."2 (*Id.* at 4.) The Court's order specifically pointed to Respondent's failure to "admit or deny that Respondent prepared drafts of Whiting's response to the motions for summary judgment in Case No. 3:23-cv-2 after Whiting was ostensibly proceeding pro se in that case." (*See* Doc. 82,

at 4.) Respondent filed an amended response on March 25, 2025. (*See* Doc. 86.) Again, he

refused to comply with Local Rule 83.7(e)(2) by admitting or denying whether he drafted

documents for his ostensibly pro se former client, arguing that the show-cause order merely

"asserts opinions." (*See id.* 5–6.) Furthermore, the response did not identify any documents or

evidence relevant to the alleged misconduct in the Court's show-cause order, violating Local

Rule 83.7 (e)(3). (*See* Doc. 86.)

Considering both Respondent's continued refusal to comply with Local Rule 83.7(e) and

the materials provided to the Court during this proceeding, Respondent is hereby **ORDERED** to show cause why he should not be suspended from the practice of law or otherwise disciplined in the United States District Court, Eastern District Court of Tennessee, for the following actions:

Factual Allegation No. 1: Respondent prepared and filed an affidavit misrepresenting that Glenn Whiting was a trustee of a trust called ARD Property Management.

 Source/Example: Doc. 149 in Case No. 3:20-cv-54 in *Whiting et al. v. Trew, et al.*, Case No. 3:20-cv-54.

 Professional Standards at Issue: Tennessee Rules of Professional Conduct 1.1, 1.3, 3.1, 3.3, 3.4, and 8.4 and Federal Rule of Civil Procedure 11.

Factual Allegation No. 2: In written materials submitted to the Court, Respondent misrepresented Glenn Whiting's status as a trustee.

 Source/Example: Doc. 147, at 11–12, 14–15, 18 in *Whiting et al. v. Trew, et al.*, Case No. 3:20-cv-54.

Professional Standards at Issue: Tennessee Rules of Professional Conduct 1.1,

1.3, 3.1, 3.3, 3.4, and 8.4 and Federal Rule of Civil Procedure 11.

Factual Allegation No. 3: In communication with the Court, Respondent

misrepresented Glenn Whiting's status as a trustee.

 Source/Example: Final Pretrial Conference Transcript in *Whiting et al. v. Trew, et al.*, Case No. 3:20-cv-54.

 Professional Standards at Issue: Tennessee Rules of Professional Conduct 1.1, 1.3, 3.1, 3.3, 3.4, and 8.4 and Federal Rule of Civil Procedure 11.

Factual Allegation No. 4: At trial, Respondent offered witness testimony that misrepresented Glenn Whiting's status as a trustee.

 Source/Example: Doc. 202, at 30–32 in *Whiting et al. v. Trew, et al.*, Case No. 3:20-cv-54.

 Professional Standards at Issue: Tennessee Rules of Professional Conduct 1.1, 1.3, 3.1, 3.3, 3.4, and 8.4 and Federal Rule of Civil Procedure 11.

Factual Allegation No. 5: In other filings with the Court, Respondent misrepresented the contents of the trust documents.

 Source/Example: Doc. 91, at 6 in *Whiting v. City of Athens, et al.*, Case No. 3:23-cv-2.

 Professional Standards at Issue: Tennessee Rules of Professional Conduct 1.1,

1.3, 3.1, 3.3 and 8.4 and Federal Rule of Civil Procedure 11.

Factual Allegation No. 6: In written materials submitted to the Court, Respondent misrepresented Glenn Whiting's status as a beneficiary.

Source/Example: Doc. 78, at 5 in *Whiting et al. v. Trew, et al.*, Case No. 3:20- cv-54.

 Professional Standards at Issue: Tennessee Rules of Professional Conduct 1.1, 1.3, 3.1, 3.3, 3.4, and 8.4 and Federal Rule of Civil Procedure 11.

Factual Allegation No. 7: Respondent prepared Glenn Whiting's response to the defendants' motions for summary judgment while Whiting was proceeding pro se.

 Source/Example: Doc. 186 in *Whiting v. City of Athens, et al.*, Case No. 3:23- cv-2.

 Professional Standards at Issue: Tennessee Rules of Professional Conduct 1.2, 3.3, and 8.4.

Factual Allegation No. 8: Respondent prepared Glenn Whiting's response to the defendants' status report for depositions while Whiting was proceeding pro se.

 Source/Example: Doc. 148 in *Whiting v. City of Athens, et al.*, Case No. 3:23- cv-2.

 Professional Standards at Issue: Tennessee Rules of Professional Conduct 1.2, 3.3, and 8.4.

Factual Allegation No. 9: Respondent prepared Glenn Whiting's motion in limine while Whiting was proceeding pro se.

□ Source/Example: Doc. 173 in *Whiting v. City of Athens, et al.*, Case No. 3:23-cv-2.

□ Professional Standards at Issue: Tennessee Rules of Professional Conduct 1.2, 3.3, and 8.4.

Factual Allegation No. 10: Respondent prepared Glenn Whiting's motion to continue the final pretrial conference while Whiting was proceeding pro se.

□ Source/Example: Doc. 174 in *Whiting v. City of Athens, et al.*, Case No. 3:23-cv-2.

□ Professional Standards at Issue: Tennessee Rules of Professional Conduct 1.2, 3.3, and 8.4.

Factual Allegation No. 11: Respondent prepared Glenn Whiting's reply brief in support of a motion for an extension of time to file a supplement to the joint appendix for summary judgment while Whiting was proceeding pro se.

□ Source/Example: Doc. 175 in *Whiting v. City of Athens, et al.*, Case No. 3:23-cv-2.

□ Professional Standards at Issue: Tennessee Rules of Professional Conduct 1.2, 3.3, and 8.4.

The Court notes that in its original show-cause order, it also raised a possible misrepresentation concerning service in *Whiting v. City of Athens, et al.*, Case No. 3:23-cv-2. (*See* Doc. 1, at 2–3.) Based on the evidence produced to date, the Court **FINDS** that no discipline is warranted for Respondent's conduct relating to the service issue.

Respondent **SHALL** respond to this amended show-cause order in compliance with Local Rule 83.7 on or before **May 14, 2025**. Respondent **SHALL** either admit or deny each of the factual allegations listed above pursuant to Local Rule 83.7(e)(2) and is hereby **ON NOTICE** that the Court will consider any allegation that he fails to specifically admit or deny **ADMITTED**. Respondent **SHALL** also include in his response all documents or evidence relevant to the charges of misconduct listed above. Respondent is **ON NOTICE** that he will forfeit his right to present evidence not submitted in compliance with this order and Local Rule 83.7(e)(3).

Additionally, because Respondent now demands a hearing in his amended response to the original show-cause order (*see* Doc. 86, at 9), the Court provides the following notice to Respondent. Respondent is advised that the hearing is **CONTINUED**, and will now take place on **May 22, 2025, at 9:00 AM ET** in **Courtroom 3 in the Solomon**

Federal Building and U.S. Courthouse, 900 Georgia Avenue, Chattanooga, Tennessee. Respondent is also advised that he has the right to be represented by counsel, to present witnesses and other evidence, and to confront and cross-examine adverse witnesses.

Respondent and Attorney Lance Pope are hereby **ORDERED** to provide a final witness list for the hearing on or before **May 5, 2025**.

SO ORDERED.

/s/ *Travis R. McDonough*
TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE

APPENDIX
Part E
ARD Property Management
Minutes of Board Meeting
July 13, 2021

Minutes of Meeting of the Trustees of ARD Property Management

A meeting of the Trustees of ARD Property Management was held on July 13, 2021.

Present at the meeting were the following people: Connie Ammerman, Trustee; Glenn Whiting, Trustee; and Van Irion, attorney for the trust.

1. Upon agreement of the trustee, the trust took the following action:

   All joint and individual acts of Glenn Whiting, manager of the building located at 213 Pope Avenue, in Athens, Tennessee, which were taken on behalf of ARD Property Management for purposes of filing and prosecuting the lawsuit, case number 3:20-cv-54, are approved, <u>ratified</u>, and adopted as acts of the trust.

Further, all joint and individual acts of Van Irion, attorney for ARD Property Management, which were taken on behalf of ARD Property Management for purposes of filing and prosecuting the lawsuit, case number 3:20-cv-54, are approved, ratified, and adopted as acts of the trust.

There being no further business, the meeting was adjourned.

Dated: July 13, 2021

s/Connie Ammerman
Connie Ammerman
Trustee, ARD Property Management

APPENDIX
Part F
Statutory Provision Involved

18 U.S.C. § 1506, "Theft or alteration of record or process; false bail" provides:

> "Whoever feloniously steals, takes away, alters, falsifies, or otherwise avoids any record, writ, process, or other proceeding, in any court of the United States, whereby any judgment is reversed, made void, or does not take effect; or
>
> Whoever acknowledges, or procures to be acknowledged in any such court, any recognizance, bail, or judgment, in the name of any other person not privy or consenting to the same—
>
> Shall be fined under this title or imprisoned not more than five years, or both."