In re Alison H. Motta
Attorney-Respondent

Commission No. 2021PR00091

Synopsis of Hearing Board Report and Recommendation
(March 2023)

Based upon Respondent's handling of one criminal matter in the United States District Court for the Northern District of Illinois and another criminal matter in Nebraska state court, the Administrator brought a two-count complaint against Respondent, charging her with engaging in conduct intended to disrupt a tribunal; making an extrajudicial statement that she knew or reasonably should have known would be disseminated by means of public communication and would pose a serious and imminent threat to the fairness of an adjudicative proceeding; using means in representing a client that have no substantial purpose other than to embarrass, delay, or burden a third person; and engaging in conduct that is prejudicial to the administration of justice.

The Hearing Board found that she had committed some, but not all, of the charged misconduct. Taking into account the significant mitigation and minimal aggravation in the matter, the Hearing Board recommended a 90-day suspension, stayed in its entirety by a one-year period of probation, with conditions including that Respondent successfully complete the ARDC Professionalism Seminar within the first six months of probation.

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

In the Matter of:

ALISON H. MOTTA,

Attorney-Respondent,

No. 6284365.

Commission No. 2021PR00091

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

Based upon Respondent's handling of one criminal matter in the United States District Court for the Northern District of Illinois and another criminal matter in Nebraska state court, the Administrator brought a two-count complaint against Respondent, charging her with engaging in conduct intended to disrupt a tribunal; making an extrajudicial statement that she knew or reasonably should have known would be disseminated by means of public communication and would pose a serious and imminent threat to the fairness of an adjudicative proceeding; using means in representing a client that have no substantial purpose other than to embarrass, delay, or burden a third person; and engaging in conduct that is prejudicial to the administration of justice. The Hearing Board found that she committed some, but not all, of the charged misconduct, and recommended a 90-day suspension, stayed in its entirety by a one-year period of probation, with conditions including that Respondent successfully complete the ARDC Professionalism seminar within the first six months of probation.

INTRODUCTION

The hearing in this matter was held remotely by videoconference on August 23, 2022, before a panel of the Hearing Board consisting of Brigid A. Duffield, Chair; Gary M. Vanek; and John McCarron. Peter L. Rotskoff and Matthew D. Lango represented the Administrator. Respondent was present and represented by James A. Doppke.

PLEADINGS AND MISCONDUCT ALLEGED

On November 17, 2021, the Administrator filed a two-count Complaint against Respondent, alleging that she engaged in conduct intended to disrupt a tribunal; made an extrajudicial statement that she knew or reasonably should have known would be disseminated by means of public communication and would pose a serious and imminent threat to the fairness of an adjudicative proceeding; used means in representing a client that have no substantial purpose other than to embarrass, delay, or burden a third person; and engaged in conduct that is prejudicial to the administration of justice, in violation of Rules 3.5(d), 3.6(a), 4.4(a), and 8.4(d) of the Illinois Rules of Professional Conduct (2010), and, as to Count II, the corresponding Nebraska Rules of Professional Conduct.[1]

In her Answer, Respondent admitted almost all of the factual allegations in the Complaint.

EVIDENCE

Administrator's Exhibits 1 through 7, 9, and 10 were admitted by stipulation. Respondent's Exhibits 1 through 3 were admitted by stipulation. At hearing, Respondent testified on her own behalf, and called three character witnesses.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In attorney disciplinary proceedings, the Administrator has the burden of proving the charges of misconduct by clear and convincing evidence. In re Winthrop, 219 Ill. 2d 526, 542, 848

N.E.2d 961 (2006). Clear and convincing evidence requires a high level of certainty, which is greater than a preponderance of the evidence but less stringent than proof beyond a reasonable doubt. In re Santilli, 2012PR00029, M.R. 26572 (May 16, 2014) (Hearing Bd. at 3) (citing People v. Williams, 143 Ill. 2d 477, 484-85, 577 N.E.2d 762 (1991)). In determining whether the Administrator has met that burden, the Hearing Board assesses witness credibility, resolves conflicting testimony, and makes factual findings. In re Edmonds, 2014 IL 117696, ¶ 35; Winthrop, 219 Ill. 2d at 542-43.

I. Count I: The Administrator charged Respondent with engaging in conduct intended to disrupt a tribunal and engaging in conduct prejudicial to the administration of justice

A. Summary

Respondent engaged in conduct intended to disrupt a tribunal and prejudiced the administration of justice by repeatedly reacting audibly and visibly to witness testimony and the judge's evidentiary rulings during a criminal trial in the United States District Court for the Northern District of Illinois.

B. Admitted Facts and Evidence Considered

Respondent was admitted to practice law in Illinois in December 2004. In November 2005, she was admitted to both the General and Trial Bars of the United States District Court for the Northern District of Illinois. During the time of her alleged misconduct, she was a member of the firm Motta & Motta, LLC, in Aurora, Illinois. (Ans. at pars. 1-2.)

In February 2016, Respondent began representing the defendant in the criminal matter of *United States of America v. Vandetta Redwood*, 16CR080, in the United States District Court for the Northern District of Illinois. The indictment alleged that Vandetta Redwood transferred a handgun and ammunition to a juvenile and possessed a handgun within 1000 feet of a school zone. The matter was assigned to Judge Amy St. Eve. (Ans. at pars. 3-7.)

The trial began on January 17, 2017. On January 19, the following exchange occurred between Assistant United States Attorney ("AUSA") Marc Krickbaum, AUSA Adrianna Kastanek, Judge St. Eve, and Respondent:

> AUSA KRICKBAUM: The second issue, Judge, throughout the day yesterday, Ms. Motta, at defense counsel table, was visible in reactions and comments during the course of the trial. It started with the opening and continued through the witnesses, including audible remarks commenting on questions and commenting on testimony, commenting on the veracity of testimony. It is audible, and it is inappropriate.
>
> It is: A, distracting to the jury; but, also, it is improper for Ms. Motta to be essentially making arguments or testifying herself or commenting on testimony in an audible way. She appears to be talking to herself. We ask the Court to direct her to stop.
>
> COURT: I did hear some talking. I did not hear the content of what it is. But I would suggest if you are doing that, to try to stop, for a couple reasons. One, juries generally do not like that. Two, our juror has the headphones, can hear what is coming through the microphones.
>
> So, I will pay more attention today, but –
>
> RESPONDENT: I will, as well. I mean, I don't know what comments –
>
> COURT: Maybe move the microphone away from you that is at your table.
>
> AUSA KASTANEK: And I would just note that we've received reports of non-verbal demonstrative expressions, as well, that are coming from the defense counsel table. So, that's a component of it.
>
> COURT: Again, I will watch.
>
> I will tell you, juries do not like that. I have tried hundreds of cases. I go back and I talk to them, and they really – they do not like when counsel is acting unprofessional or the gestures or – I do not know if you are doing that. I did not see it. But I will watch or pay a little more attention to that.
>
> But my suggestion to you, just from the jury's standpoint, would be control your emotions in the courtroom.

(Ans. at pars. 9, 11.)

On January 23, the following exchange occurred during questioning of a witness by AUSA Kastanek:

Q. Do you remember what he was doing at this part of the fight?

A. Yes.

RESPONDENT: Objection. Hearsay. What he was doing. Does she remember what he was doing at this part of the sight—fight. That would be physical hearsay.

COURT: There is no such thing. Overruled.

(Ans. at par. 12.)

Also on January 23, the following exchange occurred between AUSA Krickbaum, Judge St. Eve, and Respondent:

AUSA KRICKBAUM: Briefly, during Tatyanna's testimony in the point in redirect when Tatyanna was testifying about the "shoot that bitch" quote, the defendant audibly said aloud "that's a lie" or words to that effect. I could hear it very clearly. Obviously, if the defendant is going to testify in the trial, then would be appropriate for her to speak to the jury about what's true and what's not, but she should not be commenting on testimony audibly.

That's the first thing. And then during the initial direct, we have received reports that Ms. Motta continues to make audible comments, commenting on the witness's testimony aloud in ways that are at least audible from the gallery. We continue to think that that is inappropriate and distracting to the jury and –

COURT: Would you please talk to your client that it's not appropriate to comment on testimony of a witness while they're on the stand and in front of the jury?

Ms. Motta, I have noticed you commenting, mumbling under your breath, mumbling under your breath about when I rule on objections.

Control yourself. Let's be professional. That's not appropriate.

RESPONDENT: Well, I do take issue, your Honor, with you saying in front of the jury there's no such, you know, objection. There is non-verbal, you know, hearsay.

COURT: There's – non-verbal hearsay. There's no such thing as physical hearsay –

RESPONDENT: I know, but –

COURT: And I ruled on the – and that was your objection, and I ruled on it. I'm not saying you have to like my rulings. I'm saying you have to respond professionally. You shake your head, you pout, you make auditory comments. It's not appropriate, and I will tell you right now the jury doesn't like that kind of behavior.

RESPONDENT: Well, it's unhelpful when the judge –

THE COURT: Please. Ms. Motta, you are crossing a line right now. I don't think you want to cross that line. So let's be professional.

I give you the opportunity to be heard. The government doesn't like some of my rulings. You don't like some of my rulings. Welcome to litigation. But let's be professional in the courtroom.

And I'll tell you right now for about the 10th time, the jury doesn't like that kind of unprofessional conduct. So take a deep breath and get yourself under control.

We'll pick up in 10 minutes.

(Ans. at par. 13.)

On January 24, the following exchange occurred between AUSA Kastanek, Judge St. Eve, and Respondent:

RESPONDENT: Objection, your Honor. Relevance. This is irrelevant to what the witness knew or didn't know and there's – we're not disputing that that was the only people in the – obviously, who was in the grand jury room. We actually acknowledged that yesterday, that we're not saying there were law enforcement in the room

THE COURT: What is your response?

AUSA KASTANEK: It is relevant to some of the cross-examination that the jury heard yesterday.

THE COURT: Overruled. The answer may stand.

RESPONDENT: Fucking bullshit.

(Ans. at par. 14.)

After a short recess, Judge St. Eve admonished Respondent about her foregoing comment:

THE COURT: Before we pick back up with the witness, Ms. Motta, I'm not quite sure what will stop your unprofessional behavior. When I overruled one of your last objections, you sat down, you rolled your eyes and you said, that's fucking bullshit. It was picked up on the audio. I listened to it to make sure that's what you really said. That is so unacceptable and so unprofessional, and I will deal with you after this trial. But I'm just putting you on notice, once again, I would control yourself and control your unprofessional reactions. That is completely unacceptable.

> Bring the witness back in.
>
> RESPONDENT: I don't know how sensitive the microphones are, so I apologize. However, it is important to explain I made our evidentiary objections –
>
> THE COURT: Whatever the reason you disagree, to say that's F'ing bullshit in a federal court because you disagree with the judge's ruling in front of the jury is completely unacceptable.
>
> RESPONDENT: I was not –
>
> THE COURT: The record will reflect. Control yourself.

(Ans. at par. 15.)

On January 25, during the government's closing argument, Respondent took cell phone photographs of video images presented to the jury. Respondent's taking of cell phone photographs of video images violated United States District Court Northern District of Illinois, Local Rule ("LR") 83.1(c), which states in part:

> (c) No Cameras or Recorders. Except as provided for in an Order of the Court, direction of the Chief Judge, or the United States Marshal, the taking of photographs, video, radio and television broadcasting, or taping in the court environs during the progress of or in connection with any judicial proceeding, whether or not court is actually in session, is prohibited.

After closing arguments were completed, Judge St. Eve questioned Respondent about taking photographs in her courtroom. Respondent admitted taking cell phone photographs during the prosecutor's closing argument. (Ans. at pars. 16-19.)

The trial ended on January 26 with a verdict of not guilty for Respondent's client. After the trial concluded, Respondent was escorted by United States Marshalls to the United States Marshall Service lock-up, where Respondent received a citation for failing to comply with signs and directions posted outside the courtroom in violation of LR 83.1(c), which prohibits the taking of photographs in the court environs. Respondent was charged in *United States v. Alison H. Motta*,

with violating 41 CFR 102-74.385, which requires persons in and on federal property to comply with posted signs. (Ans. at pars. 20-21.)

On April 10, 2017, Respondent entered a six-month diversionary program with the United States Attorney's Office for the Northern District of Illinois, which required that Respondent not violate any federal, state, or local law during the six-month deferral, nor receive a federal violation notice or ticket for a petty or misdemeanor offense. On October 2, 2017, United States Magistrate Judge Susan E. Cox dismissed Respondent's citation with prejudice after she complied with the conditions of deferral. (Ans. at pars. 22-23.)

Meanwhile, shortly after the Redwood trial concluded, Judge St. Eve submitted a complaint to the Executive Committee of the United States District Court for the Northern District of Illinois ("Executive Committee"), alleging that Respondent was "continuously disrespectful and rude" during the two-week trial, and "even swore on the record about one of [the judge's] rulings and improperly took pictures in the courtroom during the government's closing argument." Judge St. Eve alleged that Respondent's conduct during the trial was "consistently difficult, despite multiple warnings." (Ans. at par. 24; Adm. Ex. 2 at 1.)

In her complaint, the judge alleged that, throughout the trial, Respondent continually rolled her eyes, mumbled under her breath, and made audible comments about witness testimony and evidentiary rulings, even after the judge admonished her to stop. The judge alleged that Respondent's "bad behavior" culminated with Respondent rolling her eyes and saying "Fucking bullshit" after the judge overruled one of her objections. (Ans. at pars. 25-26; Adm. Ex. 2 at 2-4.) The judge also complained that Respondent improperly took photos in the courtroom with her cell phone. (Adm. Ex. 2 at 4-5.)

On May 8, 2017, the Executive Committee issued an order in which it found that Respondent's reactions to witness testimony and to the trial judge's decisions disrupted the trial and prejudiced the administration of justice. The Executive Committee stated:

> Not only are witnesses thrown off balance when the opposing lawyer visibly reacts to testimony (such as by rolling her eyes), a lawyer's outright defiance of a trial judge's decision endangers the judge's control of the courtroom. This is especially true when that defiance is demonstrated in front of the jury, because it poses a risk that the jury will disregard the judge's instructions.

(Adm. Ex. 3 at 2.) The Executive Committee further found that "the misconduct occurred so many times, and after so many warnings, that the Executive Committee must find that Ms. Motta intended to disrupt the trial." (Id.)

The Executive Committee concluded that Respondent violated Illinois Rule of Professional Conduct 3.5(d) by engaging in conduct intended to disrupt a tribunal, and violated Illinois Rule of Professional Conduct 8.4 by engaging in conduct that is prejudicial to the administration of justice. It ordered that Respondent be suspended from the General Bar of the Court for 90 days, after which she would be automatically reinstated, and suspended from the Trial Bar for one year, after which time she could petition the Executive Committee for reinstatement to the Trial Bar. (Ans. at pars. 28-30; Adm. Ex. 3 at 2-3.)

Respondent successfully completed both her 90-day suspension from the Northern District's General Bar and her one-year suspension from the Trial Bar. On February 20, 2019, Respondent filed a petition to be reinstated to the Trial Bar. The petition was granted shortly thereafter. Respondent has actively participated in both the General and Trial Bars since then, without incident or discipline. (Ans. at par. 30.)

Respondent's Testimony at Hearing

During her testimony at her disciplinary hearing, Respondent acknowledged that, at times, she reacted out of frustration to what was going on in the courtroom by rolling her eyes and maybe

making a comment. (Tr. 138-39.) She acknowledged that "there were definitely times that … [she] came off less than respectful," but that much of the audible and physical reaction coming from the defense table was her trying to control her client or talking to her co-counsel.[2] (Tr. 139.)

Respondent further acknowledged that she said "Fucking bullshit," but explained that she said it to her co-counsel or intern quietly, under her breath, and did not think it would get picked up by the microphone. She did not intend for anyone in the courtroom to hear it, other than her co-counsel or intern. (Tr. 146-47.)

With respect to the photo she took in court, Respondent explained that the prosecution had broken down a video, which was a key piece of evidence, into 15 or 30 or more still frames, each of which was identified by a series of numbers at the bottom of the frame. During closing argument, the prosecutor showed the frames to the jury and described what each frame purportedly showed. Respondent was going to write down the numbers of the frames, but decided to take a photo because she did not think the defense team had enough time to write down all of the numbers, and she wanted to pull up the same images for the jury in her closing argument. (Tr. 150-51.)

Respondent testified that she could have asked the prosecution to identify the images for the record, but it is her practice not to interrupt at closing, and it did not cross her mind that there was any issue with taking a photo. She was probably aware of the local rule prohibiting the taking of photos in the courtroom, but it was not "even remotely" on her mind. If it had been, she would not have done it. She did not intend to use the photo for anything else other than her own closing. (Tr. 152-55.)

When Judge St. Eve stated that she was informed that someone had taken a photo and asked who had taken the photo, Respondent stood up and said it was she who had taken the photo. The judge asked why, and Respondent explained. The judge told her to delete the photo, and

Respondent did. The judge asked to see Respondent's phone to confirm she had deleted the photos, and Respondent showed it to her. (Tr. 157.)

C. Analysis and Conclusions

Rule 3.5(d)

A lawyer shall not engage in conduct intended to disrupt a tribunal. Ill. R. Prof'l Conduct 3.5(d). Based on Respondent's admissions of fact in her Answer as well as her testimony at hearing, we find that she violated Rule 3.5(d), in that she repeatedly interrupted the Redwood proceedings by audibly and visibly reacting negatively to witness testimony and evidentiary rulings, including using profanity, despite multiple warnings from the judge to control her behavior.

At hearing, Respondent acknowledged most of her conduct, but denied that her intent was to disrupt the tribunal. However, as the Executive Committee found, and as is apparent from her admissions in her Answer as well as her testimony at hearing, Respondent continued to interrupt the proceedings with her utterances and actions even after Judge St. Eve repeatedly warned her to stop. Early on in the trial, Judge St. Eve made it clear to Respondent that her conduct was improper. The fact that Respondent continued to react visibly and audibly to witness testimony and the judge's rulings demonstrates that she acted with an intent to disrupt the tribunal. See In re Lane, 2019PR00074, M.R. 31402 (Jan. 17, 2023) (Hearing Bd. at 8-9) (finding intent to disrupt a tribunal where attorney continued to send improper emails after judge directed her to stop).

Regardless of her growing frustration with the proceedings, Respondent owed a responsibility to her client, the court, and opposing counsel to maintain self-control and decorum even while vigorously advocating for her client. She failed to do so, and therefore crossed the line from legitimate advocacy to inappropriate conduct that intentionally disrupted the tribunal, in violation of Rule 3.5(d).

Rule 8.4(d)

It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. Ill. R. Prof'l Conduct 8.4(d). An attorney prejudices the administration of justice when the attorney's conduct causes additional proceedings or additional work by other attorneys or the court, interferes with a court's interest in the expeditious consideration and disposal of cases, or otherwise undermines the judicial process. In re Haime, 2014PR00153, M.R. 28532 (Mar. 20, 2017) (Hearing Bd. at 16-17); In re Peiss, 2013PR00077, M.R. 27441 (Sept. 21, 2015) (Hearing Bd. at 15). We find that Respondent violated Rule 8.4(d).

Here, the fact that Judge St. Eve had to pause the proceedings on multiple occasions to address Respondent's inappropriate conduct was sufficient to establish actual prejudice to the administration of justice. In addition, Respondent's conduct ultimately resulted in Judge St. Eve bringing a formal complaint about Respondent's actions to the Executive Committee, which then had to expend time and resources to address Respondent's conduct. Moreover, as the Executive Committee noted, Respondent's defiance of Judge St. Eve's rulings and admonitions endangered the judge's control of her courtroom, which, in turn, undermined the judicial process. Also, Respondent's improper taking of photos in the courtroom caused Judge St. Eve to pause the trial again to address Respondent's conduct, and precipitated an additional proceeding to be brought against Respondent. Consequently, we find that the Administrator proved by clear and convincing evidence that Respondent violated Rule 8.4(d) by her conduct during the Redwood trial.

II. Count II: The Administrator charged Respondent with engaging in conduct intended to disrupt a tribunal; making an extrajudicial statement that she knew or reasonably should have known would be disseminated by means of public communication and would threaten the fairness of an adjudicative proceeding; using means in representing a client that have no substantial purpose other than to embarrass, delay, or burden a third person; and engaging in conduct that is prejudicial to the administration of justice

A. Summary

Respondent made an extrajudicial statement that she knew or reasonably should have known would be disseminated by means of public communication and would threaten the fairness of an adjudicative proceeding. She also prejudiced the administration of justice by making statements to local media outlets regarding a criminal matter pending in Nebraska state court, in violation of a protective order, and doing so shortly before the start of trial in the matter. She did not, however, engage in conduct intended to disrupt a tribunal or use means in representing a client that had no substantial purpose other than to embarrass, delay, or burden a third person.

B. Admitted Facts and Evidence Considered

On July 15, 2013, Anthony Garcia was arrested in Illinois, in connection with the 2008 murders of Thomas Hunter and Shirlee Sherman and the 2013 murders of Roger and Mary Brumback in Omaha, Nebraska. He was charged in Nebraska with committing four homicides. The Garcia matters were docketed as *State of Nebraska v. Anthony Garcia* in Douglas County Court as case number CR13-17383 and in the District Court for Douglas County as case number CR13-2322. (Ans. at pars. 32-33.)

On July 19, 2013, Respondent was admitted to the practice of law in the State of Nebraska *pro hac vice*, with Daniel Stockman and Jeffrey Leuschen acting as local counsel. She entered an appearance on behalf of Garcia in both matters. (Ans. at pars. 34-35.)

On June 26, 2015, the District Court in Garcia's case issued a protective order, under seal, regarding an unrelated 2007 homicide identified as the Blanchard homicide. The protective order stated, in part:

> Except as provided upon further order of the Court, … no information or knowledge obtained [by the State or Garcia] from the review [of the Blanchard homicide evidence] may be used, disclosed, or referenced during preparation for trial, during trial, or for any other matter in this prosecution.

The protective order further stated, in part:

> This Protective Order … shall continue until further order of this Court or until the City of Omaha has waived confidentiality in writing.

(Ans. at par. 36; Adm. Ex. 6 at 7, 11.)

On March 23, 2016, Respondent filed a notice to introduce evidence from the Blanchard homicide during Garcia's trial, which was scheduled to begin within a few weeks. On March 25, the District Court held a hearing regarding an unrelated motion in the Garcia case. The court and parties had anticipated that the court would address Respondent's notice, but timing did not allow it to do so. Nor did the court lift the protective order, which remained in full force and effect. (Ans. at pars. 37-39; Adm Ex. 7 at 4, 5.)

Either during or immediately after the March 25 hearing, the Omaha police arrested a suspect in the Blanchard homicide. After the arrest, Respondent made statements to local news media about the Garcia defense's belief that the Blanchard suspect, and not Garcia, was involved in two of the homicides in which Garcia had been charged. (Ans. at pars. 40-41.)

Omaha television news station WOWT quoted Respondent as saying, "By cross-comparing the DNA evidence that they discovered at the Sherman/Hunter scene with the DNA evidence that they discovered at the … Blanchard scene, [the Blanchard suspect]'s DNA was at both scenes. I don't see how they're going to explain the cross-over in the DNA and the existence of both people at both crime scenes." (Ans. at par. 42.)

A few days later, Omaha television news station KMTV quoted Respondent as saying, "This evidence conclusively exonerates Anthony Garcia and shows that it cannot be a coincidence the two manners of killing being signature like and the crossover between the two scenes of the same two suspects." (Ans. at par. 43.) Around the same time, Respondent made statements to the Omaha World-Herald newspaper that the defense team hoped that "'we'll get a call from the County attorney's office that they're dismissing those charges.'" (Adm. Ex. 7 at 5; Adm. Ex. 9 at 3.)

On or about March 30, the prosecutor in the District Court case, CR 13-2322, filed a motion seeking removal of Respondent as *pro hac vice* counsel in the Garcia matter. On the same day, Stockman and Leuschen filed a motion to withdraw as local counsel in the Garcia matter, based upon their belief that Respondent's conduct may have violated of Nebraska Rule of Professional Conduct § 3-503.6, which prohibits a lawyer who is participating in the investigation or litigation of a matter from making "an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of pubic communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter." (Ans. at pars. 46-48.)

The District Court granted Stockman's and Leuschen's motion to withdraw. Respondent then filed a motion for *pro hac vice* admission with new local counsel. In an April 6, 2016 order, the District Court denied Respondent's motion, finding that Respondent's public dissemination of DNA results obtained from evidence in the Blanchard homicide was a direct violation of the Court's protective order. It reasoned that Respondent obtained the Blanchard suspect's DNA evidence from discovery she received in the Garcia case, which was subject to the protective order. She provided the DNA evidence to a defense expert, who compared the Blanchard suspect's DNA

profile to DNA found at the scene of two of the homicides in the Garcia case. She then disclosed the results of the expert's analysis to the news media, which violated the protective order. The court further found that Respondent violated Nebraska Rule of Professional Conduct § 3-503.6 by making statements to multiple local news media within five business days of the scheduled beginning of Garcia's trial, when she knew or should have known the effect her reckless statements would have. (Ans. at pars. 49-53; Adm. Ex. 7 at 5-7.)

Based on Respondent's extrajudicial statements to the media regarding the Garcia case, the Counsel for Discipline of the Nebraska Supreme Court charged her with violating her oath of office as an attorney licensed to practice law *pro hac vice* in the State of Nebraska, as well as Nebraska Rules of Professional Conduct §3-503.6 and §3-508.4(a) and (d). Respondent filed a conditional admission to the misconduct charges, in which she stated that she did not knowingly or intentionally violate the rules, but acknowledged and admitted that her conduct violated the identified rules. Based upon her conditional admissions, the Nebraska Supreme Court found that she violated §3-503.6 and §3-508.4(a), as well as the oath of office for her *pro hac vice* admission. It reprimanded her for her misconduct. (Adm. Ex. 9 at 2-5.)

Respondent's Testimony at Hearing

Respondent testified that, at the time she spoke with the media about the Garcia case, she believed that the protective order did not cover information that the defense team had independently developed on its own, and that, except for the DNA evidence that she provided to her expert, the defense team had independently developed all of the information it had about the Blanchard homicide. (Tr. 96.) Respondent acknowledged, however, that she now understands that the information she discussed with the media stemmed at least in part from the Blanchard homicide evidence, and that she should have been more cautious. (Tr. 96-97.)

Respondent further testified that the county attorney did a media interview where he discussed the Garcia matter, including evidence that he contended supported the case against Garcia. She felt that she could respond to the state's contentions, and in fact had to, in the interest of the defendant. (Tr. 98-100.) But she agrees with the District Court's statement in its April 6, 2016 order that she overstepped the bounds of what she was permitted to say, and she wishes she had said it differently and not provided as much information as she did. She realizes that she "did it all wrong," but did not knowingly violate the protective order. (Tr. 100-101.)

Respondent testified that she never should have said "conclusively exonerates" nor given any details about the DNA evidence, but that her intention and her "whole reason" for giving that information in the interviews was "to counter … the information that the state was putting out there . . . ." (Tr. 101.) She testified that she did not intend to disrupt the Garcia proceeding, to create a distraction in the media, or to harass or embarrass the prosecution by talking to the media. (Tr. 102-103.)

C. Analysis and Conclusions

§3-503.5(a) and Rule 3.5(d)

A lawyer shall not engage in conduct intended to disrupt a tribunal. Neb. R. Prof'l Conduct §3-503.5(a); Ill. R. Prof'l Conduct 3.5(d). We find that the Administrator did not meet his burden of proof on the charge that Respondent violated Rules §3-503.5(a) or 3.5(d), because we find insufficient evidence to support the allegation that Respondent intended to disrupt the proceedings in the Garcia matter.

The Administrator presented only documentary evidence about Respondent's conduct, including the Douglas County District Court's order denying Respondent's *pro hac vice* admission as well as the Nebraska Supreme Court's decision to reprimand Respondent for her conduct in the Garcia matter. Notably, neither court found that Respondent intended to disrupt a tribunal by her

conduct. In fact, the District Court specifically noted that "she surely intended her comments to be a defense to her client." (Adm. Ex. 7 at 9.) And, in the Nebraska disciplinary proceeding, Respondent was not charged with engaging in conduct intended to disrupt a tribunal. We see nothing in the evidence presented by the Administrator that would support a finding that Respondent intended to disrupt a tribunal by her conduct.

Respondent, on the other hand, testified at length about her conduct during the Garcia case, and we found her testimony to be candid, detailed, consistent, unrebutted, and credible. Based upon her testimony, we find that Respondent engaged in a well-intentioned but misguided attempt to protect her client's interests. We accept Respondent's testimony that, at the time she spoke with the media, she believed she was giving information that was not precluded by the protective order. We take no position on whether her interpretation of the protective order was correct or not – and the District Court found that it was not. However, her interpretation, whether right or wrong, bears upon her intent.

In short, we believed Respondent when she testified that she did not intend to disrupt the Garcia proceeding, to create a distraction in the media, or to harass or embarrass the prosecution by talking to the media. While there is no question that her conduct resulted in a disruption of the Garcia proceedings and, as discussed below, violated other rules, we cannot find that it violated Rules §3-503.5(a) and Rule 3.5(d), because we find that the Administrator failed to prove the requisite intent.

§3-504.4(a) and Rule 4.4(a)

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person. Neb. R. Prof'l Conduct §3-504.4(a); Ill. R. Prof'l Conduct 4.4(a). For reasons similar to those underlying our finding that the Administrator

failed to prove a violation of §3-503.5(a) and Rule 3.5(d), we also find that he failed to prove a violation of §3-504.4(a) and Rule 4.4(a).

We find that the evidence does not support the charge that Respondent's actions had no substantial purpose other than to embarrass, delay, or burden a third person. Rather, the evidence clearly establishes that Respondent's primary purpose – or, in her own words, her "whole reason" – for giving the information that she did to local media was to protect her client's interests by countering information that the state had publicly disclosed. See In re Murphy, 2012PR0014, Nov. 30, 2105) (Hearing Bd.) (finding no violation of Rule 4.4(a) where attorney's purpose in making certain statements and filing certain pleadings was to protect her own financial position and obtain fees she believed had been awarded to her); In re Thollander, 2021PR00070 (Hearing Bd. at 13) (reprimand) (finding no violation of Rule 4.4(a) where attorney's primary purpose in continuing to object to judge's ruling and insisting on making a record was to advocate for his client and protect his client from what he believed to be an incorrect evidentiary ruling).

Accordingly, we find that the Administrator did not prove by clear and convincing evidence that Respondent violated Rule 4.4(a).

§3-503.6(a) and Rule 3.6(a)

Both the Nebraska and Illinois Rules of Professional Conduct provide that a lawyer who is participating in the investigation or litigation of a matter "shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and would pose a serious and imminent threat to the fairness of an adjudicative proceeding in the matter." Neb. R. Prof'l Conduct §3-503.6(a); Ill. R. Prof'l Conduct 3.6(a).

Comment 5 to both rules lists "certain subjects that would pose a serious and imminent threat to the fairness of a proceeding, particularly when they refer to a civil matter triable to a jury,

a criminal matter, or any other proceeding that could result in incarceration." These subjects include:

> (3) the performance or results of any examination or test . . . , or the identity or nature of physical evidence expected to be presented;
>
> (4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;
>
> (5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; . . . .

Neb. R. Prof'l Conduct §3-503.6(a), Comment 5; Ill. R. Prof'l Conduct 3.6(a), Comment 5.

As the District Court noted in its April 6, 2016 order, the information that Respondent disclosed to local media fell within at least two and arguably all three of the above-listed subject areas. In her statements to local media, she commented on the results of DNA tests conducted in the Garcia case and commented on the innocence of her client. In addition, the court had not yet ruled on the admissibility of the DNA evidence at issue; therefore, the court found that she made the statements with reckless disregard for whether they would be admitted at trial. (Adm. Ex. 7 at 6.) We agree with the District Court that Respondent's statements to the media encompassed subjects identified in Comment 5 as posing "a serious and imminent threat to the fairness of a proceeding," which, in this case, was a criminal matter involving a quadruple homicide.

The District Court also found that Respondent knew or should have known the effect her statements to the media would have, because, when defense counsel earlier sought a change of venue, they had cited voluminous data from polling and other sources about how media coverage had affected the case. (Adm. Ex. 7 at 7.) That finding, combined with the indisputable fact that Respondent was an experienced criminal attorney, lead us to agree with the District Court and find that Respondent knew, or should have known, that her statements to the media shortly before trial was set to begin "would pose a serious and imminent threat to the fairness of an adjudicative

proceeding in the matter." Neb. R. Prof'l Conduct §3-503.6(a); Ill. R. Prof'l Conduct 3.6(a). We further note that, in her Nebraska disciplinary proceedings, Respondent admitted to engaging in conduct that violated §3-503.6(a).

Accordingly, we find that the Administrator proved by clear and convincing evidence that Respondent made extrajudicial statements that she knew or reasonably should have known would be disseminated by means of public communication and would pose a serious and imminent threat to the fairness of the Garcia trial, in violation of §3-503.6(a) and Rule 3.6(a).

§3-508.4(d) and Rule 8.4(d)

It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. Neb. R. Prof'l Conduct §3-508.4(d); Ill. R. Prof'l Conduct 8.4(d). Attorney misconduct that causes additional proceedings or additional work by other attorneys or the court, has an impact on the representation of a client, undermines the judicial process, or jeopardizes a client's interests is prejudicial to the administration of justice. In re Haime, 2014PR00153 (Hearing Bd. at 16-17) (citing In re Storment, 203 111. 2d 378, 399, 786 N.E.2d 963 (2002); In re Thomas, 2012 IL 113035, ¶¶ 91, 123).

Based on our findings above, we find that the Administrator also proved that Respondent engaged in conduct that was prejudicial to the administration of justice. Her actions resulted in her *pro hac vice* admission being revoked, her local counsel having to file a motion to withdraw, new local counsel having to be appointed, and the District Court having to expend time and effort to address and remediate her actions, all within a week before Garcia's trial was set to commence. Not only did her conduct cause additional work to be done by the court and undermine the judicial process through her violation of the protective order, but it caused a continuance of Garcia's trial, thereby delaying his day in court. Most significantly, it deprived Garcia of his counsel of choice and jeopardized his interests by putting his defense at risk on the eve of trial. Finally, we note that,

in her Nebraska disciplinary proceedings, Respondent admitted to engaging in conduct that violated §3.508.4(d).

Accordingly, we find that the Administrator proved by clear and convincing evidence that Respondent's conduct prejudiced the administration of justice, in violation of §3.508.4(d) and Rule 8.4(d).

EVIDENCE IN MITIGATION AND AGGRAVATION

Respondent's Testimony

Respondent testified that her passion is criminal law, and that she is driven to take cases that involve the underprivileged and minorities, and where she sees injustice. (Tr. 55.) Respondent testified that she helps people with things like tracking down missing or arrested family members for free when they do not have money, and often discounts her fees or takes nominal payment to help people if she believes they have suffered a serious injustice or been targeted because of their race. (Tr. 56.) She also has done *pro bono* work for people who were losing their homes. (Tr. 61.)

Respondent testified at length about her work with a charitable organization she founded called the "Jacktivists." She explained that her passion outside of law is live music, and especially the band My Morning Jacket, which has a tightknit fan base with more affluent people. She helped found the Jacktivists to use the fans' collective resources to raise money for charities, carry out projects such as a school supply drive, and promote petition drives for causes such as voting, gun safety, and the environment. (Tr. 57-60.)

With respect to her conduct in the Garcia matter, Respondent acknowledged that what she said to the media was not appropriate. Since the time of her misconduct in the Garcia matter, she no longer talks to the press at all. (Tr. 98.) In the Nebraska disciplinary matter, she agreed to

stipulated facts and agreed to accept a reprimand from the Nebraska Supreme Court because she knows what she did was wrong and accepts her role in acting improperly. (Tr. 128-29, 169; see also Adm. Ex. 9.)

With respect to the matter before Judge St. Eve, Respondent testified that she understands that she needed to deal with the whole situation better, and needed to exercise better control of her display of frustration, including her comments, facial expressions, and body language. Respondent testified that she has not repeated, and would never repeat, her conduct in the Redwood case. She is now very cautious about her facial expressions and comments. (Tr. 162.) She apologized to Judge St. Eve for her behavior during the Redwood trial. (Tr. 164.) Following her suspension from practicing in the Northern District of Illinois, Respondent took some CLE seminars on communication and civility, and did her own research on how to better handle a situation like the one that arose in Judge St. Eve's courtroom. (Tr. 165-67.)

Character Testimony

Walter T. Kosch is a solo practitioner who has been licensed to practice law in Illinois since 1986. He has known Respondent for 18 to 20 years, and they have maintained a close friendship over the years. When Kosch has issues or cases involving criminal law, he will always refer them to Respondent, and Respondent does the same with Kosch when she has cases involving family law or needs help with transactional work. They communicate regularly regarding legal issues. Kosch testified that he would not refer cases to Respondent if he did not trust that she would handle them properly. He has never heard any type of negative comment whatsoever from individuals he referred to Respondent. Kosch testified that he and Respondent practice in the community of LaSalle and Kane County, and that he is familiar with Respondent's reputation in that community. He testified that he has never heard a negative comment about Respondent, and has only heard

positive comments from his fellow attorneys in the bar associations, as well as from judges. He has read the Complaint and Answer, which did not affect his opinion of Respondent's character. Even if the allegations of the Complaint were proven, he would still refer clients to Respondent. (Tr. 108-16.)

Sam L. Amirante served as a judge from 1988 to 2005. Prior to becoming a judge and since leaving the bench, he has practiced primarily in the area of criminal defense. He has known Respondent for between 17 and 20 years. He described her character as "direct and honest." He knows Respondent personally as well as professionally, and opined that, in "every circle" in which he has known of her, her character as a person and as a lawyer is "impeccable" and "beyond reproach." Other than the conduct described in the current disciplinary matter against Respondent, Judge Amirante has never heard anything other than good things about Respondent and her reputation as a lawyer and as a zealous advocate. Her reputation, based on his talking to other lawyers and from his own observation, is that she puts her clients' interests above her own. If the allegations in the Complaint were proved, it would not affect Judge Amirante's opinion of Respondent. (Tr. 176-84.)

Teresa McAdams is an Illinois attorney licensed since 1997 who practices in Kane and Kendall counties, in the areas of criminal defense and family law. She knows Respondent professionally. She has referred cases to Respondent, and has been a witness in one of Respondent's criminal cases. In the case in which she was Respondent's witness, she described Respondent as prepared and organized. McAdams is familiar with Respondent's reputation and character because they work the same courthouse. She opined that Respondent is known as being an aggressive advocate for her clients. McAdams has always known Respondent to be honest. If

the allegations in the Complaint were proven, it would not change McAdams' opinion of Respondent, and she would have no hesitation referring a case to Respondent. (Tr. 187-94.)

Prior Discipline

Respondent has no prior discipline.

SANCTION RECOMMENDATION

A. Summary

Based upon the nature of Respondent's misconduct, and taking into account the extensive mitigating and minimal aggravating factors, the Hearing Board recommends that Respondent be suspended for 90 days, with the suspension stayed in its entirety by a one-year period of probation, with conditions including that Respondent successfully complete the ARDC Professionalism seminar within the first six months of probation.

B. Analysis and Conclusions

In determining the appropriate discipline, we are mindful that the purpose of these proceedings is not to punish, but to safeguard the public, maintain the integrity of the profession, and protect the administration of justice from reproach. In re Edmonds, 2014 IL 117696, ¶ 90. While we strive for consistency and predictability, we recognize that each case is unique and must be decided on its own facts. In re Mulroe, 2011 IL 111378, ¶ 25.

In arriving at our recommendation, we consider those circumstances that may aggravate or mitigate the misconduct. In re Gorecki, 208 Ill. 2d 350, 802 N.E.2d 1194 (2003). In aggravation, we find that Respondent's conduct in both the Redwood and Garcia matters created a risk of harm to her clients. However, we saw no evidence of actual harm to her clients.

We find that there is significant mitigation in this matter. We find that Respondent fully cooperated in this matter, as she did in the Nebraska disciplinary matter and the proceedings in the

Northern District of Illinois. In addition, it is clear from Respondent's testimony that she understands the wrongfulness of her conduct, accepts responsibility for her actions, and is remorseful for her behavior. We found her acceptance of responsibility and expressions of remorse to be sincere.

Moreover, Respondent's testimony regarding her remorse and acceptance of responsibility is supported by extrinsic evidence. The Executive Committee noted that she apologized to Judge St. Eve for her misconduct in the judge's courtroom, and to the Executive Committee for requiring it to expend time in considering the matter. (Adm. Ex. 3 at 1.) Also, she demonstrated her acceptance of responsibility for her actions in the Garcia matter by her cooperation in the Nebraska disciplinary matter, in which she acknowledged that she committed the charged misconduct. (Adm. Ex. 9 at 3-4.)

We have also considered the fact that the Administrator did not bring this disciplinary proceeding until almost five years after Respondent's misconduct in the Redwood matter, and more than five and a half years after her misconduct in the Garcia matter. We find it mitigating that, during the lengthy period of time between Respondent's misconduct and the filing of the Complaint against Respondent, she has conducted herself ethically and no other misconduct charges have been brought against her, which leads us to conclude that Respondent poses no risk to the public or legal profession.

Respondent testified about her charitable, volunteer, and *pro bono* work. Her testimony established that she is deeply involved in her local community as well as her community of music fans, the latter of which she has organized to conduct fundraising, service projects, and issue advocacy, which speaks to her character. In addition to Respondent's own testimony, we heard from three witnesses who testified about Respondent's good character and reputation. We found

all three witnesses to be credible, and we accept their testimony about Respondent's positive attributes, which also persuades us that she poses no risk to the public or legal profession.

The Administrator relied on In re Garza, 2012PR00035, M.R. 26657 (May 16, 2014), and In re Gilsdorf, 2012PR00006, M.R. 26540 (March 14, 2014), in support of his request for a five-month suspension. In Garza, the Court imposed a 90-day suspension on an assistant public defender who engaged in misconduct involving seven clients. Her misconduct included revealing information relating to her representation of a client without the client's consent in three separate client matters. The attorney also failed to communicate plea offers and engaged in conduct intended to disrupt the tribunal in multiple matters. In aggravation, the Hearing Board found that the attorney had no appreciation of her transgressions; instead of accepting responsibility, she rationalized her misconduct and blamed others.

In Gilsdorf, the Court suspended an attorney for five months after he posted on Facebook and YouTube a video given to him by the state's attorney, which he believed showed the police planting drugs on his client, but which actually showed his client delivering drugs to and accepting money from an undercover informant. The attorney's misconduct included revealing information relating to the representation of a client without the client's informed consent, failing to consult with his client, and making improper extrajudicial statements. In aggravation, the Hearing Board found that the attorney had published damning evidence on the internet with little or no thought or discussion with his client about the possible consequences, and that his conduct threatened the fairness of a criminal proceeding and harmed his client.

We find Garza and Gilsdorf to be inapposite to the present matter, in that both matters involve much more egregious and extensive misconduct than is involved in this matter, along with significant aggravation. Consequently, we have looked to other cases for additional guidance as to

an appropriate sanction in this matter. See In re Peshek, 09 CH 89, M.R. 23794 (May 18, 2010) (60-day suspension); In re Harrison, 06 CH 36, M.R. 22839 (March 16, 2009) (censure); In re Ginzkey, 2010PR00006 (Hearing Bd., Oct. 7, 2010) (reprimand).

In Peshek, the Court imposed a 60-day suspension on an assistant public defender who, in three instances, posted information about her clients' identities and confidential information about their cases or her discussions with them on her blog. She also dishonestly failed to disclose to the court that one of her clients had made false statements about the client's drug use during a guilty plea, and made disparaging remarks about a judge on her blog. In mitigation, she had not been previously disciplined, cooperated during her disciplinary proceeding, and expressed remorse for her misconduct.

In Harrison, the attorney was censured for making statements that he knew were false or with reckless disregard as to their truth or falsity concerning the integrity of a judge and a prosecutor, and engaging in conduct that was prejudicial to the administration of justice, based on statements he made in motions to continue a criminal trial and his courtroom behavior. In one motion, he asserted that the proceedings were a "criminal court fiasco" and that they might "necessitate criminal charges for obstruction of justice, malicious prosecution, and/or prosecutorial misconduct as well as conspiracy to do same by Circuit Court of Cook County, Criminal Division . . . ." He signed the motion "Indignantly Submitted." Harrison, 06 CH 36 (Hearing Bd. at 2). He then filed an amended motion that contained similar allegations. When he appeared in court and the judge set a trial date earlier than he requested, he began raising his voice, raised the motion over his head, and said loudly that he would "jam these pleadings down the throat of the record as much as I feel I need to." Id. at 3. The judge held the attorney in direct contempt of court and had the sheriff remove him from the courtroom. The attorney was returned to court an hour later and

apologized, and the judge purged the contempt and dismissed the contempt proceedings. The attorney later withdrew from the case. Mitigating factors included a lack of prior discipline and the fact that this was an isolated incident. In aggravation, the attorney did not express remorse for his actions or recognize the seriousness of his misconduct.

In Ginzkey, a judge held an attorney in direct criminal contempt for intentionally and repeatedly defying the judge's ruling on a motion *in limine* that barred certain evidence from being introduced. In the written order setting forth his adjudication of contempt against the attorney, the judge stated that the attorney's conduct "impeded and interrupted the proceedings, lessened the dignity of the court, and tended to bring the administration of justice into disrepute." Ginzkey, 2010PR00006 (Hearing Bd. at 2). Based on this conduct, the Administrator charged the attorney with engaging in conduct that is prejudicial to the administration of justice. The Hearing Board found that the attorney committed the charged misconduct and issued a reprimand of the attorney.

We find that Respondent's misconduct falls somewhere along the spectrum of the foregoing cases. As we have already noted, we find her conduct to be less egregious and less extensive than the misconduct in Garza and Gilsdorf. On the other end of the spectrum, the misconduct in each of the Harrison and Ginzkey matters was, on balance, less serious than Respondent's, in that each of those matters involved an isolated instance of misconduct in one client matter.

Finally, Peshek is analogous to this matter in that it involved misconduct that affected multiple clients and demonstrated disrespect toward a judge, with similar mitigation. The misconduct in Peshek is arguably worse than in this matter because that attorney publicized confidential information about her clients, engaged in dishonesty to a court, and publicly disparaged a judge. However, the attorney's conduct had no impact on pending judicial

proceedings and did not precipitate additional proceedings or cause tribunals to expend time and resources to address her conduct.

On balance, we find that relevant authority supports a sanction greater than reprimand or censure for Respondent's misconduct in two criminal matters, but less than the five-month suspension requested by the Administrator. In addition to the foregoing authority, we have also considered the reprimand imposed by the Nebraska Supreme Court for the misconduct in the Garcia matter, as well as the 90-day suspension from the General Bar of the United States District Court for the Northern District of Illinois imposed by the Executive Committee for the misconduct in the Redwood matter. Finally, we have taken into account the fact that Respondent's most recent misconduct occurred over six years ago.

Based on the unique circumstances of this matter, we believe that even a short suspension that is not stayed in its entirety by a probationary period is akin to punishment, which is not the purpose of attorney discipline. See Edmonds, 2014 IL 117696, ¶ 90. In arriving at our recommendation, we have considered precedent in which the Court has imposed suspensions stayed entirely by probation. See, e.g., In re Frejlich, 97 CH 8, M.R. 14263 (Jan. 29, 1998); In re Fenelon, 00 CH 39, M.R. 17882 (Jan. 29, 2002); In re Rigazio, 2015PR00024, M.R. 28843 (Sept. 22, 2017) (all imposing short suspensions stayed in their entirety by probation, with conditions similar to those recommended below). Accordingly, we recommend that Respondent be suspended for 90 days, with the suspension stayed in its entirety by a one-year period of probation, subject to the following conditions:

a. Respondent shall successfully complete the ARDC Professionalism Seminar within the first six months of probation;

b. Respondent shall comply with the provisions of Article VII of the Illinois Supreme Court Rules on Admission and Discipline of Attorneys and the Illinois Rules of Professional Conduct, and shall timely cooperate with the

Administrator in providing information regarding any investigation relating to her conduct;

c. At least thirty (30) days prior to the termination of the period of probation, Respondent shall reimburse the Commission for the costs of this proceeding, as defined in Supreme Court Rule 773, and shall reimburse the Commission for any further costs incurred during the period of probation;

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

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

f. Probation shall be revoked if Respondent is found to have violated any of the terms of probation. The 90-day period of suspension shall commence from the date of the determination that any term of probation has been violated.

Respectfully submitted,

Brigid A. Duffield
Gary M. Vanek
John McCarron

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on March 29, 2023.

/s/ Michelle M. Thome
Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

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[1] In Count II of the Complaint, the Administrator charged Respondent with violating both the Illinois and Nebraska Rules of Professional Conduct. Under Rule 8.5 of the Illinois Rules of Professional Conduct, an Illinois lawyer may be subject to the disciplinary authority of both Illinois and another jurisdiction for the same conduct. Under the choice of law provision set forth in Rule 8.5(b), in a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits are to be applied in determining whether misconduct occurred. Accordingly, with respect to the allegations of Count II, the Nebraska Rules would apply in determining whether Respondent

engaged in misconduct. However, the relevant Nebraska Rules are identical to the corresponding Illinois Rules; thus, the analysis is the same regardless of which rules are applied.

[2] The transcript refers several times to Respondent talking to "opposing counsel," but she later clarified that she misspoke and meant co-counsel. Thus, we assume, given the context of this particular testimony, that she meant that she was talking to her co-counsel and not opposing counsel.