In re Nejla K. Lane
Respondent-Appellant
Commission No. 2019PR00074

Synopsis of Review Board Report and Recommendation
(July 2022)

The Administrator brought a one-count complaint against Respondent, charging her with making a false or reckless statement impugning the integrity of a judge; engaging in conduct intended to disrupt a tribunal; and engaging in conduct that was prejudicial to the administration of justice, in violation of Rules 3.5(d), 8.2(a), and 8.4(d) of the Illinois Rules of Professional Conduct. The complaint alleged that Respondent sent three emails to a federal magistrate judge and others that contained false and reckless statements attacking the judge's integrity, which were intended to disrupt the court proceedings, and which prejudiced the administration of justice.

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

Respondent appealed, challenging the Hearing Board's findings of misconduct and sanction recommendation, and asking that this matter be dismissed, or that the sanction be limited to a reprimand or censure.

The Review Board affirmed the Hearing Board's findings, and recommended that Respondent be suspended for nine months, with the suspension stayed after six months by a six-month period of probation, subject to the recommended conditions.

FILED

July 12, 2022

ARDC CLERK

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

In the Matter of:

NEJLA K. LANE,

Respondent-Appellant,

No. 6290003.

Commission No. 2019PR00074

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

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

The complaint alleged that Respondent sent three emails to a federal magistrate judge and others that contained false and reckless statements attacking the judge's integrity, which were intended to disrupt the court proceedings, and which prejudiced the administration of justice.

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

Respondent appealed, challenging the Hearing Board's findings of misconduct and sanction recommendation, and asking that this matter be dismissed, or that the sanction be limited

to a reprimand or censure. The Administrator argues that the Hearing Board's findings should be affirmed and asks this Board to adopt the Hearing Board's recommended sanction.

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

FACTS

Respondent

Respondent has been licensed to practice law in Illinois since 2006. She is also licensed to practice law in Texas and Michigan. She is a solo practitioner, and her law firm – Lane Keyfli Law, Ltd. – focuses on civil, criminal, and immigration matters. She has no prior discipline.

Respondent's Misconduct

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

Respondent's First Email - April 18, 2017

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

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

to the judge through the proposed order box. Respondent's email stated the following, in relevant part:

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

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

Judge Finnegan's Directive to Respondent

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

> As a convenience to parties, I sometimes allow them to communicate by email (to the proposed order box) regarding scheduling issues. I do not, however, allow lawyers to send emails to argue the merits of a motion, to share their feelings about my past rulings, or to talk generally about the case with me. Outside of the settlement context, everything must be filed so that it is part of the record. Therefore, you are not to send any future emails to my proposed order box such as the one sent yesterday. It is improper. I also do not wish to be copied on emails that the lawyers send to each other. If I receive another email of this type, I will enter an order that

> no emails of any kind may be sent to the proposed order box without leave of court.

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

Respondent's Second Email – June 23, 2017

In June 2017, Respondent filed a motion seeking to extend discovery and requesting permission to depose Jay Frank, opposing counsel in the divorce proceeding. The judge denied that motion in a written order. On June 23, the judge's law clerk emailed a copy of that order to Respondent and her opposing counsel, stating it would be uploaded to the docket in two days.

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

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

(Adm. Ex. 2 at 1.)

Respondent's Third Email – June 26, 2017

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

> Dear Allison, ***
>
> Plaintiff's motion is not late just because this court decided not to extend discovery deadlines, to protect the Defendant! I have asked this court numerous times for an extension of all cutoff deadlines, without avail. Take this into account when drafting your flawed order. ***
>
> For anyone to insult me in this degree calls questions this court's sincerity and veracity. How dare you accuse me of not having looked at the [Supreme Court] docket regularly….so refrain from accusing me of such ugly conducts, publicly…. How do you know I did not see the [Supreme Court] order???? Where do you get this information? Ex Parte communications with Defendant's attorney, Scott [Schaefers]? – smearing dirt behind my back?
>
> The more I read this order, again and again, I am sick to my stomach, and I get filled with anger and disgust over this "fraudulent" order by this court! This Court has always treated my client and myself with disrespect!!!! ***
>
> You both, Allison and J. Finnegan, have done me wrong, and depicted me very poorly in your public order. How dare you do that to me?!
>
> What goes around comes around, justice will be done at the end! I wonder how you people sleep at night? Including Scott [Schaefers]!

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

Judge Finnegan's Order

> The next day, the judge issued an order in which she stated:
>
> On 6/23/2017 … and on 6/26/2017 … Attorney Lane sent emails to the proposed order box (also emailed to the Court's law clerk and to opposing counsel) in which she argued the merits of a written Order issued on 6/23/2017 and made several statements that this Court

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

(Adm. Ex. 4 at 1.)

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

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

> [Barry Epstein's] affidavit, in large part, tracks the progress of the docket in this matter, summarizing rulings made by Judge Finnegan and this Court regarding scheduling [and] discovery …. [Epstein] prefaces this chronology with his conclusion that "both judges have consistently ruled against me and blocked my progress at every turn."… It is well established that "rulings by the judge almost never constitute a valid basis for a bias or partiality motion." … Indeed, they will only do so "if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." … No such favoritism or antagonism can be gleaned from the rulings in this case. Even the selected docket entries on the plaintiff's timeline show multiple orders favorable to the plaintiff's litigation position …. [T]he discovery and trial schedules impact preparation for both sides, and so tend to be relatively neutral in their effect. It is therefore difficult for the plaintiff to claim that the schedule was biased against him and in favor of the defendant. The Court notes now, as it has previously, that discovery in this case was open for more than five months, which is typical of a case of this size and complexity.

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

Executive Committee Sanction

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

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

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

Respondent's Testimony and Character Witness

At the disciplinary hearing, Respondent admitted that she sent the three emails to the judge. Respondent testified that it was wrong to send the emails and she regretted having done so. She testified that she believed the judge was biased against her, and was treating her unfairly, based on the judge's actions, which included unfavorable rulings and a short discovery schedule.

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

HEARING BOARD'S FINDINGS AND SANCTION RECOMMENDATION

Misconduct Findings

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

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

(Hearing Bd. Report at 7.)

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

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

Aggravation and Mitigation Findings

In aggravation, the Hearing Board found that Respondent sent an inappropriate email to Barry Epstein's adult daughter, in July 2017, in which Respondent explained that Epstein

was ill and asked the daughter, who was estranged, to contact him. The email stated, in relevant part:

> Between you and your mother – you guys are destroying him…. YOU and your Loving GREEDY mother will take nothing when you go to face GOD or rotten instead in HELL…. So if anything happens to your father - the blood is in both your and your mother's HANDS! I am awaiting that you will make peace with your father, and if NOT I already know who you are!!!

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

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

Recommendation

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

ANALYSIS

Respondent challenges the Hearing Board's findings of misconduct, including that her statements in the emails were false or reckless; that her conduct intentionally disrupted the tribunal; and that her conduct prejudiced the administration of justice. Respondent also argues that her statements in the emails were protected by the First Amendment.

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

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

Rule 8.2(a) provides that a "lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge." The Hearing Board found that Respondent violated Rule 8.2(a). Respondent argues that she subjectively believed her statements were true, because she thought the judge was biased and unfair, and therefore the Hearing Board erred in finding that Respondent violated Rule 8.2(a).

Impugning a judge's integrity violates Rule 8.2(a), unless there is an objectively reasonable basis for the relevant statements. *See In re Denison*, 2013PR00001 (Review Bd., May 28, 2015) at 2-4, *approved and confirmed*, M.R. 27522 (Sept. 21, 2015) (attorney who failed to provide an objective factual basis for statements impugning a judge's integrity violated Rule

8.2(a)). "A reasonable belief must be based on objective facts. Thus, subjective belief, suspicion, speculation, or conjecture does not constitute a reasonable belief." *In re Walker*, 2014PR00132 (Hearing Bd., Dec. 18, 2015) at 21, *affirmed*, (Review Bd., Nov. 4, 2016), *recommendation adopted*, M.R. 28453 (March 20, 2017); *see also In re Amu*, 2011PR00106 (Review Bd., Dec. 13, 2013), *recommendation adopted*, M.R. 26545 (May 16, 2014) (attorney violated Rule 8.2(a) by basing "his statements on his own subjective beliefs that the judges were corrupt rather than on any objective facts."); *In re Hoffman*, 08 SH 65 (Review Bd., June 23, 2010), *petition for leave to file exceptions denied and recommendation adopted*, M.R. 24030 (Sept. 22, 2010) (insinuation in lawyer's statements that judge's rulings were based on personal vendetta rather than on facts and law attacked judge's honesty and integrity violated Rule 8.2(a)). The mere fact that a judge has ruled against a party is insufficient to establish bias on the part of the judge, for disqualification purposes. *See People v. Patterson*, 192 Ill. 2d 93, 131-32 (2000) (*citing Liteky v. U.S.*, 510 U.S. 540, 555 (1994) ("judicial rulings alone almost never constitute a valid basis for a bias or partiality motion"); *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002) ("Allegedly erroneous findings and rulings by the trial court are insufficient reasons to believe that the court has a personal bias for or against a litigant.").

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

- the judge had issued a fraudulent order;
- the judge had engaged in *ex parte* communications with opposing counsel, smearing dirt behind Respondent's back;
- the judge was protecting a criminal and helping that criminal to escape punishment;

- the judge's sincerity and veracity were called into question;
- the judge was not objective;
- the judge was denying justice to Respondent's client;
- and the judge was not giving Respondent a fair chance, was treating Respondent badly, and was protecting the opposing party.

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

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

Another example is in the June 23rd email, in which Respondent falsely accused the judge of protecting a criminal, namely, Jay Frank, who was opposing counsel in the divorce proceeding. Respondent wrote, "[I will] show the world what a corrupt lawyer he is! And the judges who protect this criminal by squeezing the discovery deadlines!!! No no no! This is outrageous order of Judge Finnegan and it will be addressed accordingly! Judges are helping the criminal to escape punishment by forcing to shorten all deadlines!!!" (Adm. Ex. 2 at 1.) When asked what evidence Respondent had to show that Jay Frank was a criminal and corrupt, Respondent testified that Jay Frank "is a good person," and Respondent had "apologized to him." (Tr. 74.) Thus, Respondent admitted that Jay Frank was neither corrupt nor a criminal. Although Respondent had seen an article about Jay Frank, and she thought he had stolen emails from her client, she had no objective factual evidence that he had been convicted of a crime or engaged in corrupt activities. (*See* Tr. 74-77.) Thus, Respondent falsely accused the judge of protecting and assisting a criminal, even though Respondent knew that Jay Frank was not a criminal.

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

> Although Respondent disputes that she knowingly or recklessly made false statements, she had no objective, factual basis for her comments. Subjective belief, suspicion, speculation, or conjecture does not constitute a reasonable belief. *Walker*, 2014PR00132 (Hearing Bd. at 21). Here, Judge Finnegan, who is presumed to be impartial, set forth the factual and legal reasons why she denied Respondent's requests to extend discovery. For Respondent to assert that Judge Finnegan made her rulings to deny justice to Barry Epstein and protect criminal conduct, rather than for the reasons articulated in her orders, was unreasonable and untenable. Respondent was not entitled to decisions in her client's favor, and a judge's rulings alone "almost never constitute a valid basis for a claim of judicial bias or partiality." *See Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). Likewise, there are no objective facts whatsoever to support Respondent's accusations that Judge Finnegan's conduct was "fraudulent" or that she engaged in improper ex parte communications.

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

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

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

The evidence shows that Respondent's emails needlessly interrupted the case in front of the judge, caused the judge to unnecessarily expend time reviewing and addressing Respondent's emails, and diverted the judge's attention away from other matters. Moreover, as the Hearing Board concluded, Respondent's misuse of the judge's proposed order box was, in itself, intentionally disruptive. The proposed order box was limited to very specific purposes, which did not include the submission of emails falsely accusing the judge of misconduct. By sending the emails to the proposed order box, Respondent circumvented the established legal procedures for

filing a motion in the public record, according to the rules of procedure, which would have allowed opposing counsel to respond, and would have allowed the public to review those motions.

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

Moreover, the record shows that Respondent intended to disrupt the proceedings by preventing the judge from filing the order in June. Respondent states in her opening brief, "In point of fact, she composed the emails, in an effort to stop the order from being electronically filed." (Appellant's Br. at 37.) Respondent cites to her testimony at the disciplinary hearing, where she testified, "I am reading the order. They're beating me up; public humiliating me. That's what I was trying to stop." (Tr. at 85.) Respondent's intentional attempt to prevent the judge from filing the order was disruptive. For the foregoing reasons, we affirm the Hearing Board's finding that Respondent violated Rule 3.5(d).

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

Rule 8.4(d) provides that a lawyer shall not "engage in conduct that is prejudicial to the administration of justice." The Hearing Board found that Respondent violated Rule 8.4(d),

by causing the judge to take needless actions in response to Respondent's emails. Respondent argues that her emails did not result in any additional work for the judge, since judges routinely respond to litigant's emails and issue orders, and therefore the Hearing Board erred in its conclusion.

An attorney's "conduct prejudices the administration of justice if it causes judges or other attorneys to perform additional work." *In re Cohn*, 2018PR00109 (Hearing Bd., Oct. 9, 2020) at 11, *affirmed*, (Review Bd., Oct. 9, 2020), *petitions for leave to file exceptions allowed and sanction increased*, M.R. 030545 (Jan. 21, 2021); *see also In re Hoffman*, 08 SH 65 (Review Bd., June 23, 2010), *petition for leave to file exceptions denied and recommendation adopted*, M.R. 24030 (Sept. 22, 2010) (the judge "had to issue orders specifically addressing Respondent's behavior and ordering him to appear. This misconduct … clearly interfered with the effective functioning of the judicial process."); *In re Zurek,* 99 CH 45 (Review Bd., March 28, 2002), at 10, *petition for leave to file exceptions denied,* M.R. 18164 (Sept. 25, 2002) ("Misconduct of this nature [involving false accusations against a judge and opposing counsel] during the course of ongoing litigation clearly interferes with the effective functioning of the judicial process and thereby causes prejudice to the administration of justice.").

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

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

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

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

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

supporting that proposition and ignores the many cases in which attorneys have been disciplined under Rule 8.2(a), in matters unrelated to judges running for office. That argument is not supported by the law.

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

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

> While attorneys do not lose their First Amendment rights by becoming attorneys, as officers of the court they accept the imposition of certain ethical standards intended to maintain faith in the integrity of the judiciary and the profession, even though some of those standards impact their personal rights. *Ditkowsky*, 2012PR00014 (Hearing Bd. at 23-24). For this reason, it has long been recognized that attorneys who make unfounded statements impugning the integrity or competence of a judge are subject to discipline. *Id.* …. [A] long line of cases holds that Rule 8.2(a) does

> not violate the Constitution. In *In re Denison*, for example, the Review Board determined that "[no] ruling of the United States Supreme Court or any other court supports the conclusion that Rules 8.2(a) or 8.4(c) are unconstitutional, or that enforcing the rules in this case violates [Denison's] First Amendment Rights." *In re Denison*, 2013PR00001, M.R. 27522 (Review Bd. at 5).

Cohn, 2018PR00109 (Hearing Bd., at 12-13); *See also In re Mann*, 06 CH 38 (Review Bd., March 29, 2010) at 10-14, *petition for leave to file exceptions denied and recommendation adopted*, M.R. 23935 (Sept. 20, 2010) (attorney's false accusations of corruption by judges were not protected by the First Amendment); *In re Gerstein*, 99 SH 1 (Review Bd., Aug. 12, 2002) at 9-13, *petition for leave to file exceptions denied and recommendation adopted*, M.R. 18377 (Nov. 26, 2002) (First Amendment did not protect attorney's verbal abuse of others); *In re Kozel*, 96 CH 50 (Review Bd., Dec. 30, 1999), at 14, *petitions for leave to file exceptions allowed and sanction increased*, M.R. 16530 (June 30, 2000) (First Amendment does not protect "statements which might appear to be matter of opinion, where those statements imply a factual basis and where there is no support for that factual basis."); *In re Chiang*, 07 CH 67 (Review Bd., Jan. 30, 2009), at 11, *petition for leave to file exceptions denied*, M.R. 23022 (May 18, 2009) ("an attorney cannot unjustly impugn the character or integrity of a judge without having any basis for doing so"); a*ccord Garrison v. Louisiana*, 379 U.S. 64, 75 (1964) ("the knowingly false statement and the false statement made with reckless disregard of the truth, do not enjoy constitutional protection"); *Alvarez v. United States*, 567 U.S. 709, 719 (2012) ("a knowing or reckless falsehood" is not protected by the First Amendment under certain circumstances).

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

SANCTION RECOMMENDATION

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

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

Based upon our review of the record, we agree with the Hearing Board's recommended sanction. Respondent's misconduct was very serious. On three separate occasions, Respondent sent emails that contained false accusations against the judge. As the Hearing Board explained, "unfounded attacks on the judiciary have the potential to damage the reputation of the judge involved and to undermine confidence in the integrity of the entire judicial process."

(Hearing Bd. Report at 11.) Respondent also used aggressive and threatening language in her last email. Significantly, Respondent sent the last two emails after the judge warned Respondent that her first email was improper, and specifically directed Respondent not to submit similar emails to the proposed order box.

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

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

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

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

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

Additionally, throughout the disciplinary process, Respondent has repeatedly continued to lash out at the judge, which also shows that Respondent's misconduct was not an aberration. In the federal case, Judge Durkin, who was familiar with the facts and legal issues of that case, reviewed Respondent's claims of bias, and found that Judge Finnegan had not acted with bias against Respondent. Despite that, Respondent has continued to lambast the judge. In

responding to the Executive Committee, Respondent went so far as to assert to that "Judge Finnegan brings this complaint against me in bad faith, for personal vengeance." (Adm. Ex. 6 at 6.) There is nothing in the record indicating that Respondent had an objective factual basis for making that statement.

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

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

Finally, Respondent argues that discipline in this matter should have been left to Judge Finnegan and the federal court, since that is where the conduct took place, and the judge had

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

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

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

In *Cohn,* the attorney was suspended for six months and until he completed the ARDC Professionalism Seminar. Cohn made false statements concerning a judge's integrity and

used abusive language to opposing counsel. Cohn falsely claimed that the judge was acting out of anger. In that case, as in this one, there was no factual basis for making the statements attacking the judge. In both cases, the conduct involved statements against one judge, in one proceeding. In both cases, the attorneys failed to fully acknowledge their wrongdoing or its impact; failed to express sincere remorse; and attempted to rationalize their misconduct, which included blaming the judge.

In *Sides,* the attorney was suspended for five months, with the suspension stayed after sixty days by a two-year period of probation, subject to conditions. The attorney made false and reckless statements about the integrity of judges in the judicial circuit and about another attorney. The attorney acknowledged wrongdoing and expressed remorse, although he continued to believe that he had been treated unfairly by the judges. The aggravating factors in the instant case are greater than in *Sides*, including that Respondent used threatening language, Respondent disregarded the judge's directive concerning sending additional emails, and Respondent failed to fully acknowledge her wrongdoing and attempted to minimize and defend her conduct.

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

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

CONCLUSION

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

Respectfully submitted,

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

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 Review Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on July 12, 2022.

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

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

In the Matter of: **NEJLA K. LANE,** Respondent-Appellant, No. 6290003.	Commission No. 2019PR00074

PROOF OF SERVICE
OF THE REPORT AND RECOMMENDATION
OF THE REVIEW BOARD

I, Andrea L. Watson, hereby certify that I served a copy of the Report and Recommendation of the Review Board on the parties listed at the addresses shown below by e-mail service on July 12, 2022, at or before 5:00 p.m. At the same time, a copy was sent to Counsel for the Administrator-Appellee by e-mail service.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Michelle M. Thome,
Clerk

/s/ Andrea L. Watson
By: Andrea L. Watson
Senior Deputy Clerk

MAINLIB_#1519974_v1

FILED

July 12, 2022

ARDC CLERK