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

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| In the Matter of: | ) | |
| | ) | |
| **JOANNE MARIE DENISON,** | ) | |
| | ) | Commission No. 2013PR00001 |
| Respondent-Appellant, | ) | |
| | ) | |
| No. 6192441. | ) | |

# BRIEF OF ADMINISTRATOR-APPELLEE

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**ORAL ARGUMENT REQUESTED**

## POINTS AND AUTHORITIES

## INTRODUCTION

Respondent was charged, in a one-count disciplinary complaint, with, *inter alia*, making false statements about the integrity of two Cook County Circuit Court judges who had presided over an elderly woman's guardianship proceeding. The Administrator's complaint went to a hearing, which lasted six days and at which Respondent initially represented herself but later was joined by counsel. The Hearing Board found the majority of the charged misconduct to have been proved, and it recommended that Respondent be suspended from the practice of law for three years and until further order of the Court. Respondent filed exceptions.

No question is raised on the pleadings.

## ISSUES PRESENTED FOR REVIEW

1. Whether many of Respondent's claims of error are waived?

2. Whether the Hearing Board's findings of misconduct violate the First Amendment?

## STATEMENT OF FACTS

### 1. Introduction

Respondent was admitted to the Illinois bar in 1986. R. 564.[1] She practiced in the area of patent law. R. 564-65.

### 2. Respondent's Misconduct

An Overview of the Mary Sykes Guardianship Case

On July 17, 2009, Carolyn Toerpe filed a petition in the Circuit Court of Cook County seeking a guardian for her elderly mother, Mary Sykes, based on an allegation that her mother was disabled due to dementia and memory loss. R. 709; Adm. Ex. 1 at 1. Ms. Toerpe's petition

[1] "R. #" refers to the Report of Proceedings. "C. #" refers to the Common Law Record. The Exhibits will be cited as "Adm. Ex. #" and "Resp. Ex. #."

alleged that her mother's personal estate was worth $6,000, that her real estate was worth $400,000, and that her anticipated annual gross income was $13,000. Adm. Ex. 1 at 1. Ms. Toerpe was represented by attorney Harvey Waller. Adm. Ex. 1 at 1.

Judge Maureen Connors appointed Cynthia Farenga guardian *ad litem* (GAL) in the case on July 24, 2009. R. 709; Adm. Ex. 1 at 2. Ms. Farenga, an Illinois lawyer since 1979, had worked for the Cook County Public Guardian's Office before opening her own firm and focusing on elder law and guardianship issues. R. 1104-05. As GAL, Ms. Farenga was to represent Mary Sykes' best interests, not necessarily Mary Sykes' wishes. R. 1106.

The court appointed Adam Stern as an additional GAL in the case on August 26, 2009, because Ms. Farenga was going to miss a hearing date in the case. R. 1107-08; Adm. Ex. 1 at 3. Mr. Stern had been a lawyer since 1994, had worked for the Cook County Public Guardian's Office for approximately seven years, and had been a GAL in hundreds of cases involving the estates of elderly persons since 2002. R. 1330-32. Ms. Farenga and Mr. Stern agreed to both remain GAL's on the Mary Sykes case, divide the work, and divide the fee that a single GAL would earn for the matter. R. 1109.

Mary Sykes was served in the guardianship case on August 31, 2009, by a sheriff's deputy. Adm. Ex. 1 at 9-10.

In November 2009, Gloria Sykes, Mary Sykes' other daughter, filed what she called a counter-petition for a guardian for Mary Sykes, alleging that Mary Sykes was disabled due to dementia. R. 710-11, 788, 894; Adm. Ex. 1 at 4. Gloria Sykes amended the counter-petition later in November 2009. R. 711; Adm. Ex. 1 at 5. Gloria Sykes was represented by counsel. Adm. Exs. 4, 5. The amended counter-petition asked that Gloria Sykes be appointed as guardian of Mary Sykes' person and Kathleen Bakken, one of Mary Sykes' nieces, be appointed as

guardian of Mary Sykes' estate. R. 1116; Adm. Ex. 1 at 5. In both counter-petitions, Gloria Sykes listed no value for her mother's personal estate,[2] a $332,000 value for her real estate, and an anticipated annual gross income of $13,000. Adm. Ex. 1 at 4, 5.

Gloria Sykes hired a doctor, Dr. Mark Amdur, who concluded that Mary Sykes was incapable of making personal or financial decisions for herself. R. 896. Gloria Sykes testified that she was close to her mother and had lived with her for a time, and that Ms. Toerpe had exploited Mary Sykes and willfully deprived her of property and assets. R. 794-97, 801. Gloria Sykes testified that she had discussions with Respondent in November 2009 and thereafter in which she told Respondent that, in her opinion, there was corruption in the Cook County probate court. R. 830-37.

Also in November 2009, Respondent attempted to file an appearance for Gloria Sykes in the Mary Sykes guardianship case. R. 565-66; Adm. Ex. 1 at 6. There was a hearing on the matter before Judge Connors. R. 567-71; Adm. Ex. 1 at 7-8. Respondent was disqualified from representing Gloria Sykes because Respondent had notarized both Gloria Sykes' and Mary Sykes' signatures on an apportionment agreement assigning to Gloria Sykes settlement monies in a civil case (the *Lumberman's* case) concerning mold damage to a home in which both Gloria Sykes and Mary Sykes had an interest. R. 567-71; Adm. Ex. 1 at 7-8. The *Lumberman's* case had settled for $1.3 million in October 2008 in favor of the Sykeses, and, pursuant to the apportionment agreement, approximately $700,000 of that sum had been distributed Gloria Sykes. R. 591-92, 899, 1122. Respondent had represented Gloria Sykes in connection with the *Lumberman's* case, although Respondent had not appeared in court in the case. R. 586-88.

In early December 2009, there was a hearing at which Gloria Sykes; Mary Sykes' sister,

[2] Gloria Sykes and other relatives later asserted that Mary Sykes had owned hundreds of thousands of dollars in gold coins that had gone missing during the guardianship case. R. 952, 1180-81, 1268-69, 1347, 1600-02. Adam Stern testified that he investigated the claim and never found any proof that the coins existed. R. 1359-60.

Yolanda Bakken; and Yolanda Bakken's daughter, Kathleen Bakken, were able to question Ms. Toerpe about her care plan for Mary Sykes. R. 568-71; Adm. Ex. 1 at 8. Ms. Farenga testified that Respondent was present at the hearing and gave Gloria Sykes a list of questions to ask witnesses. R. 1118-19. The court adjudicated Mary Sykes disabled on December 10, 2009, and made Ms. Toerpe her plenary guardian. *See* R. 893, 914, 1255.

Peter Schmiedel began representing Ms. Toerpe and Mary Sykes' estate in the guardianship case in early 2010. R. 891, 897. Mr. Schmiedel had been licensed to practice law in 1974 and had worked for a number of years for the Cook County Public Guardian's Office litigating on behalf of neglected children and disabled adults. R. 889-90. Mr. Schmiedel assisted Ms. Toerpe in making decisions for her mother. R. 892-93. Because Ms. Toerpe was Mary Sykes' plenary guardian, she made all personal and financial decisions for her mother. R. 893.

Cook County Circuit Court Judge Jane Stuart took over the Mary Sykes guardianship case in late 2010. R. 1255. Judge Stuart determined that Mary Sykes had been incapable of signing away her right to the settlement monies in the *Lumberman's* case, and she voided the apportionment agreement that gave the settlement monies to Gloria Sykes. R. 1258-59.

Judge Stuart testified that, although Gloria Sykes had been paid the settlement money from the *Lumberman's* case, she claimed not to know where the money was. R. 1260-61. Judge Stuart testified that, at one hearing, Gloria Sykes "was all over the place in terms of what she was saying" about the money, so Judge Stuart had deputies bring Gloria Sykes into the hallway to see if she could gather her thoughts. R. 1262. After three or four minutes, Gloria Sykes returned to the courtroom and disclosed that she had deposited the funds into a bank account in Indiana. R. 903-04, 1262. Judge Stuart ordered that the remaining settlement funds, which totaled

approximately $150,000, be frozen until further order. R. 1262-63.

Mr. Schmiedel testified that Gloria Sykes had challenged the probate court's jurisdiction on grounds that Mary Sykes' sisters had not been given written notice of the proceeding, but her argument was rejected because the sisters had appeared in court numerous times prior to the date on which Mary Sykes had been adjudicated disabled. R. 914. Mr. Schmiedel testified that Gloria Sykes appealed seven orders of the circuit court in the guardianship proceedings. R. 912-13.

Respondent Writes about the Mary Sykes Case on her Blog

In November 2011, Respondent began writing about the Mary Sykes case on an Internet web log, a "blog," that she created entitled www.marygsykes.com. R. 601. The blog asserted generally that Mary Sykes' rights were being violated in connection with her guardianship proceeding. *See* Adm. Ex. 18. Respondent and others posted information on the blog over the coming years. *See* Adm. Exs. 18-49. Respondent testified that her knowledge and skill as an attorney were required to author entries on her blog. R. 720-22. However, she claimed that she blogged as a private person, not as an attorney. R. 694.

On April 19, 2012, Respondent wrote the following on www.marygsykes.com:

> Kend [sic] Ditkowsky and I have been caught up in all of this because we have been working tirelessly on this blog and to inform others of this situation – and those attorneys who will churn fees at hundreds of dollars per hour – want us silenced. They apparently have a lot of clout in Probate and even with the ARDC . . . .
>
> * * * *
>
> And I would like to note (JMD) that if you follow the money trail, it leads directly to the Plenary Guardian, the GALS's [sic] Adam Stern and Cynthia Farenga, and the Guardian's attorney's [sic] Harvey Waller and Peter Schmeidel/Dorothy Soehlig!

C. 24, 992; Adm. Ex. 22 at 4-5.

On April 25, 2012, Respondent wrote the following post on her blog:

> As in the Sykes case, currently the GAL is adding other attorneys the case to outlawyer the daughter and churn the feeding freenzy [sic] – all with court connected lawyers.

C. 24, 992; Adm. Ex. 22 at 9.

Peter Schmiedel denied "churning" fees in the Mary Sykes matter. R. 930. He also denied being connected to the court or the judge in the proceedings. R. 932. He testified that as of Respondent's January 2014 disciplinary hearing, the only money he had received from Mary Sykes' estate was $12,599 in attorney's fees that the court awarded him in 2010 and some modest fees for work selling a house in which Mary Sykes had an interest and for work for Mary Sykes' trust. R. 929-30. R. 929. Mr. Schmiedel estimated that he had accrued approximately $200,000 in uncompensated time in the Mary Sykes case. R. 929. Mr. Schmiedel also testified that Mary Sykes had no money other than her potential interest in the approximately $150,000 from the *Lumberman's* case that had been frozen by the court. R. 939.

Cynthia Farenga denied that she, the other GAL or the judge was involved in fee churning in the Mary Sykes case. R. 1138-60, 1164-69. She testified that she had received $16,000 in fees during the case, although she had worked "several hundred hours" in the case. R. 1126, 1129-30. She did not think she would be paid additional funds because Mary Sykes needed whatever money she had left. R. 1126-27. She stated that the court would have to approve any fee payout from Mary Sykes' estate. R. 1130.

Adam Stern denied that he ever churned fees in any case. R. 1338. He had received no fees from Mary Sykes' guardianship estate, but he had received $16,000 in fees from her trust. R. 1340-41. He did not think that he would receive what he was owed in the case, because Mary Sykes needed the remaining funds in the estate. R. 1341. Further, he had paid out more than

$16,000 in expenses and fees to associates in connection with the Mary Sykes proceeding, so he had lost money working on the matter. R. 1342.

On April 28, 2012, Respondent wrote the following post on her blog:

> Amazingly over six (6) months what was found is a clear pattern to exclude, snub, snob and ignore any pleading that Gloria filed, while on the otherhand [sic], anything offered either orally or by mere hint of suggestion by the tortfeasors (GAL's Adam Stern – AS, Cynthia Farenga – CF, the plenary guardian's attorney Peter Schmeidel and company – PS) was grated [sic] without findings, no hearing, no discussion, and often without any written Motion of Notice of Motion – a situation prohibited by Local Rule 2.1 which says all Motions must be in writing and the movant must provide proper notice to adverse parties.
>
> Isn't this the classic case of corruption?
>
> * * * *
>
> The judge in the Probate Court declared in August of 2011 she did not have to follow court rules of Illinois Statutes pertaining to Civil Procedure in Court – she was exempt. Then she grants this privilege to the court officer miscreants – and now it is clear for the world to see that is a continuing pattern, ala Dorothy Brown who has finally provided some meager form of computerization to the Circuit Courts.
>
> Why aren't the Circuit Courts of Cook County computerized when the federal courts have been computerized since 200? [sic]. 1) a thousand incompetent and computer illiterate patronage workers would have to be fired in a single day (although Dorothy Brown COULD keep them on as historical imagers pushing papers thru scanners, that's what I would do until they died or passed over to the eternal world of the civil servant); and 2) politically connected judges and their puppet attorneys (the GAL's) would be exposed for what they are: money grubbing, family strife churning leeches that create nothing but pain and misery in a family while swiping free parking money out of a well funded estate.

C. 24-25, 992; Adm. Ex. 22 at 11.

Judge Stuart testified that she made sure that Gloria Sykes got notice of accountings in the case and that she heard Gloria Sykes' responses to relevant issues, but the judge stated that

she would not allow Gloria Sykes to "go back over" issues that had been decided in the case, including the issue of the court's jurisdiction. R. 1264. Judge Stuart denied that she had engaged in any corruption in the Mary Sykes case. R. 1280-81.

Mr. Stern testified that he had not participated in any conspiracy to ignore Gloria Sykes' pleadings in the case. R. 1342, 1343-45. Ms. Farenga denied that she or the other GAL or the judge was involved in corruption in the Mary Sykes case. R. 1138-60, 1164-69.

Respondent stated that she had seen the judge in the Mary Sykes case roll her eyes at Gloria Sykes, cut off Gloria Sykes in mid-sentence, tell her to be quiet, and strike her pleadings without Gloria Sykes' knowledge or consent. R. 1940. Respondent also stated that there had been numerous court orders entered in the case without briefing schedules or after Gloria Sykes' briefs were struck. R. 1964-65. Respondent further testified that the judge granted a temporary restraining order against Gloria Sykes in contravention of the Rules of Civil Procedure. R. 1940-41.

Yolanda Bakken stated that the judge would insult Gloria Sykes by not paying close attention to her when she spoke and not asking her to "explain this or that." R. 1653-54. Kathleen Bakken testified that the court often ignored what Gloria Sykes or her attorneys had to say at hearings. R. 1694.

Respondent testified that when she wrote that the judge had stated that she was exempt from the law, she meant that the judge had supposedly testified in Ken Ditkowsky's disciplinary hearing that "a 2-1401 pleading was not required to attack the Lumberman's judgment." R. 1945-54. She stated that she made the post on her blog because she thought people would "want to know whether or not a 2-1401 proceeding is required in probate or not." R. 1954. Respondent testified that when she used the term "corruption" on her blog, she meant "deviation

from the law, morals or ethics." R. 1943.

On May 24, 2012, Respondent wrote the following post on her blog:

> Again, the entire case was railroaded, the file was peppered with packs of lies, and these lies were rubber stamped by AS, CF and the Probate Court in a "done deal."
>
> Scary.

C. 25, 992; Adm. Ex. 23 at 7.

Judge Stuart testified that she did not cover up any illegal acts by anyone in the Mary Sykes case or "rubber stamp" orders prepared by the GAL's. R. 1272-79.

Respondent stated that it was her opinion that "the entire case was railroaded," and that her opinion was based in part on statements from one of Gloria Sykes' former attorneys, Jay Dolgin. R. 1960. Respondent stated that Mr. Dolgin had used the term "railroaded" and told her that Judge Connors had denied him discovery at one point. R. 2072-74. Respondent also noted that the judge had said that Ms. Toerpe's healthcare plan for Mary Sykes was "markedly superior to Gloria's healthcare plan," even though the two plans "were essentially the same." R. 2075.

On June 1, 2012, Respondent wrote the following post on her blog:

> Not to beat the making of waffles to death (pun intended), but from this transcript [of a July 8, 2011 hearing in the Mary Sykes case], it is clear the judge is talking to the miscreant attys in the hallway, Scott and Gloria always see them coming from behind the judge's private areas, and it is clear that the court is being spoonfed BS law by atty miscreants rather than having to actually read cases and make decisions based upon briefing schedules.

C. 25, 992; Adm. Ex. 34 at 23.

Mr. Schmiedel testified that there were no *ex parte* communications between the judge and either him or the GAL's. R. 940-43. Ms. Farenga denied any *ex parte* communications with the judge. R. 1138-60, 1164-69. Judge Stuart testified that she did not allow the GAL's into her

chambers to "spoon feed BS law" to her so that she could avoid reading cases for her rulings. R. 1272-79.

Respondent stated that she had seen the "miscreant" attorneys in the Mary Sykes case in the judges' private areas of the courthouse. R. 1963-64. Respondent stated that when she used the term "miscreants" on her blog, she could be referring to the GAL's, judges or other court personnel. R. 653.

On July 7, 2012, Respondent wrote the following post on her blog:

> I am an attorney running a blog on http://www.marygsykes.com/ which appears to be a very corrupt case, with corruption reaching to the highest levels, including the ARDC . . . .
>
> * * * *
>
> So just let me know if you are on the side of cleaning up the courts or if you are a SOP patronage worker that fears every day to be thrown under the bus for whistleblowing. You get a choice today. I think [Cook County Circuit Court Chief] Judge [Timothy] Evans made his choice. Too bad it's now permanently on the internet tagged under "corruption."

C. 25-26, 992-93; Adm. Ex. 25 at 1-2.

On July 28, 2012, Respondent wrote the following on her blog:

> While the above case has a long, long history, much of which is documented on a blog to be found at www.marygsykes.com, the reality of the situation is that this probate proceeding boils down to garden variety theft, embezzlement, malpractice and malfeasance by attorneys and the court. . . .
>
> * * * *
>
> Please look at the attached and all the information I will fax you shortly. This is a case that could be bigger than Greylord – what is being done to deprive grandma and grandpa of their civil rights and how the Probate court (routinely) operates.

C. 26-27, 993; Adm. Ex. 25 at 12-13.

Respondent's blog also included a "Table of Torts," wherein Respondent posted a list of "wrongful actions" by persons involved in the Mary Sykes case. Adm. Ex. 34 at 36-44. Some representative posts by Respondent stated:

> CT [Carolyn Toerpe], CF [Cynthia Farenga], AS [Adam Stern], PS [Peter Schmiedel] and HW [Harvey Waller] stand to benefit handsomely by declaring Mary incompetent, evicting Gloria, selling her home – all against her wishes. The court does not stop this greed and evil.
>
> * * * *
>
> In scary shades of Greylord revisited, JD notices that CF and AS are walking the hallways in the judges' private areas BEHIND the court room (12/21/11 status) . . . But unescorted trips to the judges' private is a sure fire indicator of corruption. . . .
>
> * * * *
>
> Additional torts. It should be noted that because the Probate case involving Mary is without subject matter jurisdiction, the court and the GAL's actions were ultra vires or without any authority. Hence, Judge Stuart's chaining of Gloria to tell all about her bank accounts was false imprisonment. Further, AS, CF, and CT sent numerous pleadings by USPS and via the internet, and those would constitute mail fraud, wire fraud (Comcast is a wired service) and cyber fraud. Thanks to KD pointing this out.

C. 25-26, 992-93; *see* Adm. Ex. 34 at 42, 44.

Mr. Schmiedel denied that he or the GAL's were fraudulently taking money from Mary Sykes' estate. R. 928. Mr. Schmiedel further denied committing any torts during his work on the Mary Sykes case. R. 938. He testified that there was no good faith basis to allege corruption, bribery or falsified orders in connection with the Mary Sykes case. R. 947-49, 951-52, 958. Ms. Farenga denied that she or the other GAL or the judge was involved in corruption, tortious conduct or theft in the Mary Sykes case. R. 1138-60, 1164-69.

Judge Stuart testified that no other judge had told her how to rule in any case, and she did

not think that Mary Sykes had been exploited by the GAL's, Carolyn Toerpe or Peter Schmiedel. R. 1269-70. Judge Stuart denied that she had financially benefited from the Mary Sykes case or that she was part of a scheme to financially exploit Mary Sykes. R. 1271, 1277. She had not accepted any bribes in order to make rulings in the case and would report anyone who offered her a bribe. R. 1271-72. She did not cover up any illegal acts by anyone in the Mary Sykes case. R. 1272-79.

Mr. Stern testified that he had never gone into the judges' private courthouse area to discuss the Mary Sykes matter with any judge. R. 1348-49. He denied that he was involved in a scheme to financially exploit Mary Sykes and or in any Greylord-type conspiracy in the case. R. 1339, 1342, 1343-45. He stated that he had not committed any torts or crimes in connection with the Mary Sykes matter and had never altered court order or fabricated documents in connection with the Mary Sykes matter. R. 1342-43, 1346-48.

Respondent testified that when she stated that the Mary Sykes case "appears to be a very corrupt case," she was referring to "the highly unusual procedures that Gloria and Mary's family members had complained about in the Sykes case." R. 1974-75. When she stated that the corruption was "reaching the highest level," she was referring to the fact that ARDC complaints filed by Ken Ditkowsky and others had not, in her opinion, been met with "appropriate responses" by the ARDC. R. 1975.

Respondent testified that when she stated that Chief Judge Evans' choice was "tagged under 'corruption,'" she meant to make the public aware that Judge Evans had refused her request to allow blogging in the circuit court. R. 1978-80. Respondent did not believe that she called Chief Judge Evans corrupt in her July 7, 2012, blog entry. R. 2201. She believed that the tag "corruption" on the Judge Evans blog statements meant that, if Judge Evans allowed

attorneys to blog in the courtroom, he would be helping to eliminate corruption in the courts. R. 2201-02. Respondent stated that she used tags like "corruption" to "drive traffic to" her blog. R. 2207-08.

Respondent stated that when she wrote that the GAL's and others stood to "benefit handsomely" by having Mary Sykes declared incompetent, she meant that the GAL's would get substantial fees that would come from the sale of Mary Sykes' and/or Gloria Sykes' homes. R. 1988-89. She testified that when she wrote that the Mary Sykes case boiled down to "garden variety" theft, she believed that if the court did not have jurisdiction in the case, then its actions would give rise to civil liability for theft, embezzlement and malpractice. R. 2007-12. Respondent testified that when she wrote that the Mary Sykes case could be "bigger than Greylord," she was referring to the fact that the corruption she alleged to be happening in the Mary Sykes case occurred in courts higher than simply traffic courts. R. 2012-13.

Respondent stated that when she stated "in scary shades of Greylord revisited," she was referring to "the highly unusual activities in the Sykes case" that had been reported to her. R. 1993. Respondent stated that "there were basically highly unusual activities going on in the court system in Greylord." R. 1994. Respondent thought that there were "some parallels" between the Mary Sykes proceeding and the Greylord scandal because "apparently people complained for many, many years before anything was done about the highly unusual activities in the lower courts" during Greylord. R. 1995. She testified that she referenced Greylord as "basically an informational exercise." R. 1995.

On August 21, 2012, Respondent wrote the following post on her blog:

> Going back to last Thursday, I believe 3 orders were drafted up on those 3 issues 1) the Motion to Dismiss (and Gloria asked the judge to add in the grounds and she did – numerous Motion [sic] to Dismiss had been denied; 2) a motion to enter and continue Dr.

> Shaw's testimony; and 3) I believe Amanda wanted the judge to issue another order firmly barring all of Gloria's evidence and testimony.
>
> Orders one and two are linked below:
>
> * * * *
>
> Nothing like the time honored true fashion of if you don't like what the order said when the parties agreed, just get the judge behind closed doors and get her to alter it. And do it messily and have two "entered" stamps on it.
>
> Even a grammar school child can forge a parental note with more skill and care than the minimal amount which was taken in this matter to cover up the tracks of their torts by these bumbling miscreants!

C. 27, 993; Adm. Ex. 26 at 18.

Adam Stern testified that he had never altered court orders or fabricated documents in connection with the Mary Sykes matter. R. 1348.

Respondent stated that, at one point in the Mary Sykes case, a court order was shown to Gloria Sykes for approval; she approved it; Judge Stuart then "locked [them] out of the courtroom, told [them] to come back on Monday"; and on Monday the order had been changed. R. 1962. Respondent stated that the order had been one denying Gloria Sykes' motion to dismiss for lack of jurisdiction and that it had been altered to "basically blame" Judge Connors. R. 2015-17, 2057-58. As it appears in the record, the order in question reads: "The emergency motion to dismiss/nonsuit for lack of Sodini jurisdiction is denied ~~as for the reasons stated on the record~~ as Mary Sykes was adjudicated in 2009, by a different judge, and this issue has been raised previously." Resp. Ex. F.

General Testimony about Respondent's Blog

Respondent stated that her blog had an audience of approximately 40,000 and that it was

not password protected until summer 2013. R. 629. She stated that she password protected the blog after her car was vandalized and she received threatening phone calls. R. 629-30. She stated that someone whose identity she could not furnish informed her that the vandalism and threats were the result of Respondent "naming names" on her blog. R. 630-32.

Respondent stated that she had gone to the Federal Bureau of Investigation's Chicago office "with a lady called Barbara" and, on another occasion with a woman called Marci and "put together a package for her" showing criminal activity in probate proceedings. R. 2096-97. According to Respondent, the FBI told her that it did not want her "driving over [there] anymore," so it gave her "a special email and everything." R. 2098. She stated that the FBI told her not to drive to its office any longer because:

> [T]here was damage to my car. It would have been maybe March of 2012, and one of the things – and I worked very late. I was coming home and it was two o'clock in the morning. And I was following an IDOT truck. It was I think February. It was cold.
>
> And somehow I got boxed in between these two cars, and I thought that was really odd; and then all of a sudden, somebody threw an object in my windshield on the right-hand side and it was very heavy and it just completely cracked the right-hand side. And I thought at the time it's really odd, but I didn't think anything about it.
>
> And then what happened was a couple of days later I started getting threatening phone calls . . . . just a deep gravelly voice, you know, like take down the blog, or, you know, just is this JoAnne Denison. You know, that type of thing.
>
> But I learned that if I was really nasty to them they stopped it, and then I did some blog posts about it.

R. 2098-99. Respondent stated that she wanted the FBI to conduct criminal investigations, but that "a lot of the probate victims are not good witnesses" and "don't want their names used or dates or anything." R. 2101-02.

Respondent testified that, to her knowledge, she never placed an entry on her blog that was untrue. R. 2058. She stated that she attempted to verify information by reviewing court records and talking to people with knowledge about the relevant incidents. R. 2062-68. She believed that her blog had caused judges to be more attuned to the rights of persons connected with guardianship proceedings. R. 2135-36.

Kathleen Bakken denied that she ever told Respondent that the judge in the Mary Sykes case was corrupt or was fixing cases or taking money for cases or was involved in criminal activity. R. 1698-99, 1703-04, 1707. She also denied telling Respondent that the GAL's in the Mary Sykes case were taking money from the estate or overcharging or engaging in criminal activity. R. 1700, 1707. She did believe that the GAL's did not report relevant events to the court, but she had no evidence that the GAL's took any money from the estate. R. 1700-01, 1707. She stated that she "wouldn't know" whether the GAL's had "been paid excessively" in the case and that she never told Respondent that she knew they had been paid excessively. R. 1708.

When Yolanda Bakken was asked whether she had any proof that the GAL's had stolen from Mary Sykes' estate she stated, "Well, somebody's got to be paying them, otherwise, do you put every day in toward doing this and not get paid?" R. 1604. When she was asked whether she believed the GAL's were overcharging Mary Sykes' estate, she stated, "Well, how would I know?" R. 1642-43.

Kathleen Bakken testified that, in her opinion, the Mary Sykes case "seemed like it was a done deal from the beginning" and that evidence tending to refute the need for a guardianship or tending to show that Carolyn Toerpe was not an acceptable guardian was ignored. R. 1718. She stated that she had discussed those issues with Respondent although she did not use the term

"railroading." R. 1718-21. Kathleen Bakken also testified that Respondent "writes what she wants on her blog," and while she might have suggested something to write about, she never told Respondent "please write this on your blog." R. 1739-40.

### 3. Evidence in Mitigation

Beverly Cooper had a cable television community affairs program in the Chicago area. R. 871-72. Respondent had been on her television program many times. R. 876. Ms. Cooper had known Respondent for approximately three years and she believed Respondent was a person of integrity who performed work for persons without pay. R. 876-79.

Ken Cooper, a manufacturer of bronze plaques, also produced a blog called ProbateSharks.com. R. 881. He is married to Beverly Cooper and had known Respondent for approximately three years. R. 882. He believed Respondent was honest, hard-working, dedicated and had helped many people, most of them without charge. R. 883-84.

### 4. Evidence in Aggravation

Cynthia Farenga believed that Respondent's actions harmed Mary Sykes by depleting money to which Mary Sykes was entitled and lengthening and complicating the guardianship proceeding. R. 1169-71. Ms. Farenga also believed that Respondent's blog had a detrimental effect on her personally, in that she had been sued[3] by Respondent and had to notify her malpractice carrier, and she had been damaged emotionally and with regard to her reputation. R. 1171-75.

Peter Schmiedel testified that Respondent's allegations of wrongdoing were lies and were

[3] Respondent and Kenneth Ditkowsky sued Ms. Farenga, Mr. Schmiedel, Mr. Stern and ARDC Administrator Jerome Larkin on January 20, 2014, alleging violations of their civil rights. Adm. Ex. 51. The case was dismissed on April 21, 2014, and Respondent and Mr. Ditkowsky appealed. The United States Court of Appeals affirmed the dismissal, noting that while the defendants did not request sanctions, "frivolous litigation will not be tolerated," and "plaintiffs must understand that that they cannot move their campaign of vilification from the Internet to the courthouse and expect the judiciary to be unconcerned." *Ditkowsky v. Stern*, No. 14-1911 (7th Cir. Oct. 28, 2014). Respondent later sued Mr. Larkin and others claiming that use of passages from her blog in her disciplinary case violated her copyright. That suit was also dismissed. *Denison v. Larkin*, No. 14 C 1470 (N.D. Ill. Aug. 13, 2014).

offensive to him, and he found it reprehensible that Respondent was proud of the fact that she was calling people corrupt on the Internet. R. 949, 960. He believed that Respondent's actions injured his reputation, and he noted that he did not have an effective means of countering Respondent's lies. R. 949, 960. He testified that Respondent's lies cost time and money to Mary Sykes' estate and the lawyers and resulted in unnecessary court time and satellite litigation. R. 961-62. Mr. Schmiedel had recently been sued by Respondent and Mr. Ditkowsky in a federal suit alleging civil rights violations, and he notified his malpractice carrier of the suit. R. 964-68.

Adam Stern believed that Respondent had attempted to permanently link his name with corruption on the Internet and that Respondent's blog had a negative effect on his reputation. R. 1346, 1352-53. He further believed that Respondent's blog was an attempt to deflect away from the real issues in the Mary Sykes case, one of which was determining to whom the *Lumberman's* settlement funds belonged. R. 1351-52. He stated that he had been required to notify his malpractice carrier about the federal civil rights suit that Respondent and Ken Ditkowsky filed against him. R. 1353.

Judge Stuart testified that the contentious litigation regarding the apportionment of the *Lumberman's* monies had delayed benefits to Mary Sykes. R. 1279. Judge Stuart also testified that she was named as a defendant in a lawsuit filed by Gloria Sykes alleging violations of the Americans with Disabilities Act, which suit was eventually dismissed. R. 1279-80. Judge Stuart further testified that a blog entry stating that she was involved in Greylord-type of activities would injure her reputation. R. 1280.

Ricky Krakow, an officer with the Naperville Police Department, testified that, on June 22, 2013, at approximately 6:50 p.m., he responded to a call of an unwanted subject at Sunrise Assisted Living facility in Naperville, where Mary Sykes resided. R. 1384. Ms. Toerpe told

Officer Krakow that Gloria Sykes was at the facility in violation of a court order restricting her access to Mary Sykes. R. 1384-85. Respondent and two other people, Scott and Doris Evans, were with Gloria Sykes at Sunrise. R. 1386. When Officer Krakow arrived at Sunrise, Gloria Sykes told him that there was no such court order. R. 1387. Officer Krakow learned that persons entering Sunrise were required to sign in, and he saw that the sign-in sheet did not list Gloria Sykes' name. R. 1388-89. He learned that Gloria Sykes had signed the name "Shaggy" on the sign-in sheet. R. 1390-94. A Sunrise employee told Officer Krakow that Gloria Sykes had identified herself as "Carol." R. 1390, 1405-07. He also learned that Scott Evans had taken photographs and Respondent had taken videos while they were there. R. 1394-95. Mr. Evans deleted the photographs at Officer Krakow's request. R. 1395. Office Krakow stated that, while he was speaking to Gloria Sykes at Sunrise, Respondent repeatedly interrupted "almost as if kind of leading Gloria's answers." R. 1396. Although no charges were filed, Sunrise asked Officer Krakow to insure that Respondent, Gloria Sykes and the Evanses be barred from the property, and Officer Krakow gave those individuals a verbal trespass warning. R. 1397-98. Respondent deleted the video she had taken after Officer Krakow informed her that Sunrise policy prohibited photographs and video being taken on the property. R. 1400.

In June 2013, Respondent wrote on her blog:

> Apparently what is going on is: Judges get campaign contributions from whomever benefits from the system – the probate attorneys, doctors that declare everyone incompetent (Rabin, Amdur, Shaw and others), then there are the "secret" lists of GAL's, tied-in service providers – case managers, case supervisors, nurses, nursing homes, etc. * * * *.
>
> The judge declares a person with a bank account and a paid up home incompetent. The person is placed in a nursing home where they will quickly die. * * * *. If anyone in the family squawks, the senior is placed in a locked down facility and isolated. The family member is discredited and deemed "irrational",

> "troublesome", whatever, to ban them from investigating. If the senior squawks, they are shot up with psychotropic drugs so they are not trouble at the facility or an embarrassment. * * * *.
>
> The campaign funding can be done directly to a big wig politician or thru your local alderman. The campaign contributions are passed up the system into the hands of others as a "fee". * * * *.
>
> In Chicago, it's all apparently also tied into the zoning board. The senior is declared incompetent, placed in a nursing home, tied in realtors, friends of the zoning board get into the deal and sell the home as "estate sale" and for a discount. The probate court will approve a court order for as little as 60% of the appraised value. That goes to a straw man and the deal is flipped down the road for a good VIG.[4]
>
> * * * *.
>
> Okay so we have 2 degrees of separation between the Chicago Zoning Board and Alderman Mell and the Sykes home. What about [Judge] Stuart, any link there?
>
> And according to [website URL], Stuart's name is on the title of the home to the Obama estate. * * * *. She literally owns the butt of the president. How convenient.

Adm. Ex. 46 at 39-40; R. 768-70.

On March 9, 2014, Respondent wrote on her blog:

> It used to be a regular occurrence, the fires at the OPG or Office of the Public Guardian; but then a few people they forgot to warn on Friday afternoon died in those fires, so they don't set them anymore to destroy records.

R. 2154-55, 2160. Respondent stated that the basis for her claim that the Office of the Public Guardian purposely set fires to destroy files and wound up killing persons caught in one fire was her conversations with "some older attorneys" whose names she did not remember and "the probate victims." R. 2156-61. She did not seek information from the police department, the fire

[4] "Vig" is apparently short for vigorish, interest paid to a loan shark. Wikipedia, *Vigorish* http://en.wikipedia.org/wiki/Vigorish (last visited Feb. 23, 2015).

department or the law firm which had brought a civil suit based on the fire.[5] R. 2164.

Although Respondent was disqualified from representing Gloria Sykes in the guardianship proceeding in November 2009, she provided Gloria Sykes with legal services totaling over $100,000 in fees in the guardianship case through May 2011. R. 593-95; Adm. Ex. 15 at 76, 92. According to Respondent, she helped Gloria Sykes "as a friend" after her disqualification and did not expect to be paid for the services she billed. R. 596-97. However, in June 2012, after Gloria Sykes filed for bankruptcy, Respondent filed an objection to Gloria Sykes' bankruptcy plan alleging that Gloria Sykes owed her $110,624.29 in legal fees for services rendered in various matters, including the guardianship case, between September 3, 2008, and May 18, 2011. Adm. Ex. 15 at 28-76.

On January 20, 2014, Respondent filed a civil rights suit in federal court against Adam Stern, Cynthia Farenga, Peter Schmiedel and others asking for $1 million in damages. R. 761-67; Adm. Ex. 51.

Respondent stated that she viewed various Internet real estate websites to see whether there had been "questionable mortgage activity" with regard to property owned by judges. R. 2114. She believed she had found information regarding Ms. Farenga's mortgage amount warranting further investigation. R. 2124. Respondent did not find any "suspect mortgage issues" with regard to Judge Connors or Judge Stuart. R. 2126.

**5. The Report and Recommendation of the Hearing Board**

The Hearing Board found that Respondent's statements on her blog accusing Judges Maureen Connors and Jane Stuart of corruption in connection with the Mary Sykes guardianship matter violated of Rule of Professional Conduct 8.2(a), which prohibits a lawyer from making a

[5] The fire to which Respondent referred in her blog post (*see* R. 2154-64) was apparently the October 17, 2003 fire at the Cook County Administration Building in which six people were killed. *See* Monica Davey, *Smoke and Panic on Stairs In Chicago High-Rise Fire*, N.Y. Times, Oct. 19, 2003.

statement that the lawyer knows is false or with reckless disregard for its truth or falsity concerning the qualifications or integrity of a judge. C. 2947-54. It further found that Respondent's statements that the judges and the GAL's were involved in corruption were false, in violation of Rule 8.4(c). C. 2947-54. The Board also found that Respondent's false statements were prejudicial to the administration of justice, in violation of Rule 8.4(d). C. 2955-58. The Board concluded that posts on Respondent's blog did not violate Rule 8.4(g), which prohibits lawyers from presenting or threatening to present criminal charges to gain an advantage in a civil matter. C. 2960-63. The Board dismissed, pursuant to *In re Karavidas*, 2013 IL 115767 ¶ 86, charges that Respondent had engaged in conduct tending to defeat the administration of justice. C. 2963.

The Hearing Board considered in aggravation the "scope and breadth" of Respondent's blog and the "relentlessness of her unfounded accusations of corruption by individual judges and lawyers." C. 2973. It also considered the harm caused by Respondent's actions, her failure to understand the nature of her actions, her repeated failure to follow rules and orders during the prehearing proceedings of her disciplinary case, her "tendency to inappropriately personalize matters," and its conclusion that Respondent "does not understand certain basic elements of practicing law." C. 2973-75. It considered in mitigation that Respondent has no prior discipline, that she presented favorable character testimony, and that she did not appear to have acted with a self-serving motive. C. 2976. It recommended that Respondent be suspended from the practice of law for three years and until further order of the Court. C. 2977.

## ARGUMENT

### I.
### THE MAJORITY OF RESPONDENT'S CLAIMS OF ERROR ARE WAIVED

Respondent seemingly attempts to raise claims regarding evidentiary rulings by the Hearing Board. *See* Resp. Brief at 11-13. These claims should be deemed waived. First of all, they appear in the section of Respondent's brief entitled "(4) The facts and Background," rather than the brief's argument section. Resp. Brief at 6-13. More importantly, however, the claims are devoid of either citations to the record or citations to authority. *See* Resp. Brief at 11-13.

Commission Rule 302(f)(5) states that the argument section of parties' briefs before the Review Board "shall contain the contentions of the party and the reasons therefor, with citation of the authorities and the pages of the record relied on." Rule 302(f)(5) also provides, "Points not argued are waived and shall not be raised in the reply brief or oral argument." This Board has stated, "If an appellant fails to present a developed argument with supporting citations to authority, the Review Board may treat those arguments as waived." *In re Romanski*, 03 CH 90 (Review Bd., Oct. 21, 2005) at 8, *recommendation adopted*, No. M.R. 20589 (Jan. 13, 2006). *See also In re Hartman*, 98 CH 75 (Review Bd., Dec. 30, 1999) at 7, *approved and confirmed*, No. M.R. 16608 (March 22, 2000) (similar holding); *McCarthy v. Denkovski*, 301 Ill. App. 3d 69, 75, 703 N.E.2d 408 (1st Dist. 1998) ("A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and coherent arguments presented; arguments inadequately presented on appeal are waived."); *Elder v. Bryant*, 324 Ill. App. 3d 526, 533, 755 N.E.2d 515 (4th Dist. 2001) ("'A reviewing court . . . is not simply a depository into which the appealing party may dump the burden of argument and research.'"), *quoting People v. Hood*, 210 Ill. App. 3d 743, 746, 569 N.E.2d 228 (4th Dist. 1991); *Rockwell Holding Co. v. Dept. of Revenue*, 312

Ill. App. 3d 1120, 1131-32, 728 N.E.2d 519 (1st Dist. 2000) ("A reviewing court . . . deserves the benefit of cohesive legal argument and is not a dumping ground for argument and research."). To the extent that the claims on pages 11-13 of Respondent's brief may be considered arguments seeking relief, they should be deemed waived.

The same is essentially true for the claims appearing on pages 25-29 of Respondent's brief, entitled "The troubling record of proceedings on Appeal." While these claims do appear in the argument section of Respondent's brief, they contain no citations to the record and only the most fleeting citations to any authority. *See* Resp. Brief at 25-29. As with her earlier claims, Respondent has simply dumped a number of unsupported assertions onto the pages of her brief and apparently seeks to have the undersigned or this Board shoulder the "burden of argument and research." *Elder*, 324 Ill. App. 3d at 533. These claims, too, should be deemed waived.

## II.
## THE HEARING BOARD CORRECTLY FOUND THAT RESPONDENT VIOLATED RULES OF PROFESSIONAL CONDUCT 8.2(a) AND 8.4(c)

Respondent contends that the First Amendment precludes discipline for the things she wrote on her blog. Resp. Brief at 13-25. Respondent's claim has no merit.

### A. The Standard of Review

Questions of law, such as whether circumstances shown by undisputed facts constitute misconduct and what interpretation is to be given to rules, are reviewed by this Board under a *de novo* standard. *In re Morelli*, 01 CH 120 (Review Bd., March 2, 2005) at 10, *approved and confirmed*, No. M.R. 20136 (May 20, 2005); *In re Thomas*, 2012 IL 113035 ¶ 56; *In re Jakubowski*, 93 CH 455 (Review Bd., May 10, 1996) at 13, *approved and confirmed*, No. M.R. 12728 (Sept. 24, 1996); *see also In re Winthrop*, 219 Ill. 2d 526, 544, 848 N.E.2d 961 (2006).

## B. Respondent Violated Rules of Professional Conduct 8.4(c) and 8.2(a)

Rule of Professional Conduct 8.4(c) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule of Professional Conduct 8.2(a) states, "A lawyer shall not make a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge." Rule 8.2(a) requires disciplinary authorities to prove that the lawyer made a statement about a judge's qualifications or integrity either knowing it was false or with reckless disregard as to its truth or falsity. *See Pilli v. Va. State Bar*, 611 S.E.2d 389, 391 (Va. 2005); *see also* Restatement of the Law (Third), The Law Governing Lawyers, §114 (2001), at 197. Whether a lawyer acted with reckless disregard is determined under an objective standard. *See Model Rules of Professional Conduct* 592-93 (7th ed. ABA 2011) (collecting cases). One court has described the standard as whether the lawyer had an objectively reasonable factual basis for making the statements in question. *Fla. Bar v. Ray*, 797 So. 2d 556 (Fla. 2001), *cert. denied*, 535 U.S. 930 (2002).

Several legal concepts inform a Rule 8.2(a) analysis. First, judges are presumed to be impartial. *In re Ducey*, 01 SH 118 (Review Bd., Sept. 8, 2006) at 11, *Administrator's petition for leave to file exceptions as to sanction allowed*, No. M.R. 21234 (Sept. 18, 2007); *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 263, 807 N.E.2d 439 (2004); *In re Marriage of O'Brien*, 393 Ill. App. 3d 364, 373, 912 N.E.2d 729 (2d Dist. 2009). Judges are also presumed to consider only competent evidence in making rulings, *People v. Williams*, 385 Ill. App. 3d 359, 370, 895 N.E.2d 961 (1st Dist. 2008), and, in bench trials, they are presumed to know and properly apply the law. *People v. Salinas*, 383 N.E.2d 481, 500, 891 N.E.2d 884 (1st Dist. 2008).

Second, the mere fact that a judge has ruled against a party is insufficient to establish

bias. *See People v. Patterson*, 192 Ill. 2d 93, 131-32, 735 N.E.2d 616 (2000), *citing Liteky v. U.S.*, 510 U.S. 540, 555 (1994); *Raintree*, 209 Ill. 2d at 263. Nor is bias established by the fact that a judge is paid a salary by the government. *U.S. v. Bell*, 79 F. Supp. 2d 1169, 1173 (E.D. Cal. 1999).

Third, judges cannot be asked to testify about their mental processes in coming to decisions. This Board recognized that rule in *In re Hynes*, 00 CH 51 (Review Bd., August 8, 2002) at 9, *recommendation adopted*, No. M.R. 18360 (Nov. 26, 2002), where it cited the United States Supreme Court case holding that a trial judge's testimony was "obviously incompetent" to prove whether he had considered certain matters in connection with an earlier ruling. *Fayerweather v. Ritch*, 195 U.S. 276, 307 (1904). The United States Supreme Court in that case explained:

> A judgement is a solemn record. Parties have a right to rely upon it. It should not lightly be disturbed, and ought never to be overthrown or limited by the oral testimony of a judge or juror of what he had in mind at the time of the decision.

*Fayerweather*, 195 U.S. at 307. The United States District Court for the Northern District of Illinois has similarly stated:

> Courts have refused to allow a judge to testify regarding his mental processes for several reasons, including unfair prejudice to the opposing party, the difficulty inherent in accurately re-creating a mental process, the appearance of impropriety generated by a testifying judge and the solemnity of the record of a decision.

*Georgou v. Fritzhall*, No. 93 C 997, 1995 WL 248002 (N.D. Ill. April 26, 1995) at *4. The Illinois Appellate Court has likewise held that a judge could not testify about his "true intent" when ordering a bond revoked. *People v. Denny*, 238 Ill. App. 3d 819, 823, 605 N.E.2d 600 (4th Dist. 1992).

In this case, Respondent accused Circuit Court Judges Maureen Connors and Jane Stuart

of having purposely decided matters based not on the merits of the matters, but based on an intent to enrich themselves and/or Mary Sykes' GAL's with Mary's assets. It is plain that such statements – charging that the judges intentionally abandoned their judicial roles – are allegations of deliberate corruption and impugn the integrity of Judges Connors and Stuart. *See In re Hoffman*, 08 SH 65 (Review Bd., June 23, 2010) at 13, *recommendation adopted*, No. M.R. 24030 (Sept. 22, 2010) (attorney's allegation that judge made decisions in case based on "personal vendetta" rather than law and facts "attacked [judge's] honesty and integrity" within meaning of Rule 8.2(a)).

Respondent's allegations of deliberate corruption also ran directly counter to the legal presumptions that Judges Connors and Stuart discharged their professional duties in an honest and impartial manner. In that regard Respondent's statements can be considered presumptively false. *In re Bilal*, 2011PR00106 (Review Bd., Dec. 13, 2013) at 10, *recommendation adopted*, No. M.R. 26545 (May 16, 2014); *see also U.S. v. Nolen*, 472 F.3d 362, 371-73 (5th Cir. 2006) (attorney's allegation that magistrate judge lied about basis for ruling was appropriately deemed presumptively false for purposes of determining whether attorney made statement about magistrate's integrity with reckless disregard for its truth or falsity; no impermissible shifting of burden occurred by requiring attorney to show basis for good faith belief in truth of his assertion).

Judges Connors and Stuart were presumed to have acted properly in the Mary Sykes case, and Respondent had no legally or factually sufficient basis for alleging that they acted corruptly. That Respondent disagreed with the judges' rulings does not provide her with a reasonable basis to allege that the judges acted corruptly. This is especially true in light of the fact that, despite numerous appeals taken in the case, no court had ever found any errors or improper activities by

the judges in the case. R. 912-14. Additionally, Judge Stuart testified, credibly according to the Hearing Board (C 2950), that she did not foster or protect any financial or physical exploitation of Mary Sykes. R. 1269-79.

Respondent's allegations that Judge Stuart was abrupt or disrespectful to Gloria Sykes would not establish bias or corruption, either. *See Jacobs v. Union Pacific R.R. Co.*, 291 Ill. App. 3d 239, 245, 683 N.E.2d 176 (5th Dist. 1997) (no bias against a railroad was found based on trial judge's "intemperate" statements about railroad in earlier litigation; judge had stated in that earlier case that he had "no great love" for railroad, that the railroad "has not been too clean in [his] courtroom," and that railroad was a "whore"); *Berg and Associates, Inc. v. Nelsen Steel & Wire Co.*, 221 Ill. App. 3d 526, 542-43, 580 N.E.2d 1198 (1st Dist. 1991) (trial judge's repeated comments suggesting impatience with defense counsel were found not to establish prejudice in light of record as a whole); *People v. Thomas*, 199 Ill. App. 3d 79, 92, 556 N.E.2d 1246 (2d Dist. 1990) (trial judge's comment, upon denying drunken driving defendant's motion to suppress evidence, that he had "serious reservations" about credibility and veracity of defendant and his brother did not establish prejudice); *In re Marriage of Westcott*, 163 Ill. App. 3d 168, 178, 516 N.E.2d 566 (1st Dist. 1987) (comments by judge in marriage dissolution proceedings that wife lacked credibility, had dissipated assets, had lied, had obstructed justice, and had engaged in contemptuous behavior were based on record incidents and did not give rise to finding of bias or predisposition against wife).

The Hearing Board did not err in finding that Respondent violated Rules 8.2(a) and 8.4(c) on grounds that she had no objectively reasonable basis for her statements that the judges presiding over the Mary Sykes case were acting in a corrupt manner and that those statements were false.

### C. Respondent's Statements Are Not Protected by the First Amendment

Respondent also argues that the Hearing Board should not have found misconduct based on her statements about Judges Maureen Connors and Jane Stuart because her statements were protected by the First Amendment. Resp. Brief at 13-25. Again, Respondent's claim is without merit.

Illinois attorneys have been unsuccessful in their attempts to avoid discipline for making false or defamatory statements about judges based upon the First Amendment. For example, in *In re Betts*, 90 SH 49 (Review Bd., June 16, 1993), *approved and confirmed*, No. M.R. 9296 (Sept. 27, 1993), this Board held that the respondent's false allegations that an attorney and a judge cooperated in post-dating an order because they were prejudiced against the respondent were not protected by the First Amendment. The Board noted, "A lawyer does not enjoy the same freedoms as a private citizen when it comes to professional discipline." *Betts*, at 15, *citing In re Sarelas*, 50 Ill. 2d 87, 277 N.E.2d 313 (1971); *In re Sawyer*, 360 U.S. 622, 646-47 (1959) (Stewart, J., concurring). *See also Attorney Grievance Comm'n v. Alison*, 565 A.2d 660, 665-66 (Md. 1989) (attorney's offensive and profane language to court clerks not protected by First Amendment because lawyers "are bound by rules of conduct significantly more demanding than the requirements of law applicable to other members of society") *citing Cantwell v. Connecticut*, 310 U.S. 296, 309-10 (1940) ("Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument.").

Similarly, in *In re Hoffman*, 08 SH 65 (Review Bd., June 23, 2010) at 13, *recommendation adopted*, No. M.R. 24030 (Sept. 22, 2010), the attorney made false statements about the integrity of a circuit court judge and an administrative law judge, asserting that they

made decisions in his cases based on biases against him or because they were paid by the State. This Board rejected his claim that his statements were protected by the First Amendment, noting a passage from another, similar disciplinary case:

> "While statements of opinion are constitutionally protected (*Owen v. Carr*, 113 Ill. 2d 273, 280, 497 N.E.2d 1145, 100 Ill. Dec. 783 (1986)) and attorneys can legitimately criticize a judge and disagree with his or her rulings, attorneys cannot cross the line and unjustly impugn the character or integrity of a judge without having any basis for doing so. *See In re Sawyer*, 360 U.S. 622, 631-32, 634-36, 79 S.Ct. 1376, 3 L.Ed.2d 1473, 1480-83 (1959); *People ex rel. Chicago Bar Association v. Metzen*, 291 Ill. 55, 58, 125 N.E. 734 (1919). This is true even of statements which might appear to be matters of opinion, where those statements imply a factual basis and where there is no support for that factual basis. [*Matter of*] *Palmisano*, 70 F.3d at 487."

*Hoffman*, Review Bd. at 18, *quoting In re Kozel*, 96 CH 50 (Review Bd., Dec. 30, 1999), *petitions for leave to file exceptions allowed*, No. M.R. 16530 (June 30, 2000).

The reason that allegations such as the ones Respondent leveled against Judges Connors and Stuart warrant discipline was succinctly described by the Seventh Circuit in the case cited by the *Hoffman* and *Kozel* Review Boards:

> Some judges are dishonest; their identification and removal is a matter of high priority in order to promote a justified public confidence in the judicial system. Indiscriminate accusations of dishonesty, by contrast, do not help cleanse the judicial system of miscreants yet do impair its 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.
>
> Courts therefore may require attorneys to speak with greater care and civility than is the norm in political campaigns. * * * *. Judges should hesitate to insulate themselves from the slings and arrows that they insist other public officials face * * * but * * * the Constitution does not give attorneys the same freedom as participants in political debate. * * * * *. Even a statement cast in the form of an opinion ("I think that Judge X is dishonest") implies a factual basis, and the lack of support for that implied factual assertion may be a proper basis for a penalty.

*Matter of Palmisano*, 70 F.3d 483, 487 (7th Cir. 1995).

The lawyer whose appeal was heard in the Seventh Circuit case quoted above was another Illinois attorney who claimed that the First Amendment insulated him from professional discipline for making false statements about judges after adverse rulings and in retaliation for perceived personal grievances. *In re Palmisano*, 92 CH 109 (Review Bd., Feb. 17, 1994) at 4-5, *approved and confirmed* No. M.R. 10116 (May 19, 1994). In *Palmisano*, this Board stressed that the Constitution does not protect false statements made with knowledge of their falsity or reckless disregard for the truth. *Palmisano*, Review Bd. at 4-5.

In *In re Martin-Trigona*, 55 Ill. 2d 301, 302 N.E.2d 68 (1973), the Illinois Supreme Court held that a bar applicant's First Amendment rights did not preclude it from prohibiting his admission based on profane and defamatory communications sent by the applicant to the members of the Character and Fitness Committee and others. The applicant had, for example, written a letter about an attorney who had served him with a notice of forfeiture in a real estate transaction. The attorney suffered from a mild case of cerebral palsy, and the applicant had referred to him as a "palsied lunatic" and described him as "shaking and tottering and drooling like an idiot." *Martin-Trigona*, 55 Ill. 2d at 310. The Court stated, "The question presented is not the scope of petitioner's rights under the first amendment but whether his propensity to unreasonably react against anyone whom he believes opposes him reveals a lack of responsibility, which renders him unfit to practice law." *Martin-Trigona*, 55 Ill. 2d at 308. *See also In re Harrison*, 06 CH 36 (Review Bd., Oct. 14, 2008) at 5, *approved and confirmed*, No. M.R. 22839 (March 16, 2009) ("[T]he established law [is] that the First Amendment does not protect false statements or those made with reckless disregard for the truth [and] [i]t is equally well-established that, when it comes to ethical obligations, lawyers do not enjoy the same First

Amendment freedoms as private citizens."); *In re Mann*, 06 CH 38 (Review Bd., March 29, 2010) at 10-14, *recommendation adopted*, No. M.R. 23935 (Sept. 20, 2010) (attorney's false statements of corruption by Seventh Circuit judges not protected by First Amendment); *In re Gerstein*, 99 SH 1 (Review Bd., Aug. 12, 2002) at 9-13, *recommendation adopted*, No. M.R. 18377 (Nov. 26, 2002) (attorney had no First Amendment right to direct verbal abuse at others).

Accordingly, Respondent gains no ground in citing cases involving the free speech rights of non-attorney citizens. *See* Resp. Brief at 14, 17-23 (*citing U.S. v. Alvarez*, 132 S. Ct. 2537 (2012) (concerning whether citizen could be criminally convicted for falsely claiming to have received Congressional Medal of Honor); *Brown v. Entertainment Merchants Ass'n*, 131 S. Ct. 2729 (2011) (concerning video game makers' free speech rights); *Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656 (2004) (concerning free speech rights of adult Internet users and website operators); *Snyder v. Phelps*, 562 U.S. 443 (2011) (concerning church members' free speech rights); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010) (concerning corporations' free speech rights); *McCutcheon v. F.E.C.*, 134 S.Ct. 1434 (2014) (concerning First Amendment rights of political campaign donors). That the cases come from the United States Supreme Court does not render them talismanic in light of the fact that they do not concern speech by attorneys.[6]

Nor do the other U.S. Supreme Court cases that Respondent cites compel a conclusion that she should not be disciplined for her false statements about Judges Connors and Stuart. Resp. Brief at 14. The case of *Peel v. Atty Registration and Disc. Comm'n of Ill.*, 496 U.S. 91 (1990), determined that an attorney's truthful advertising was protected by the First Amendment's commercial speech doctrine. The advertising, concerning the attorney's certification as a trial specialist, was neither actually nor inherently misleading. *Bates v. State*

[6] Notably, even "the press may not circulate knowing or reckless falsehoods damaging to private reputation without subjecting itself to liability for damages, including punitive damages, or even criminal prosecution." *Branzburg v. Hayes*, 408 U.S. 665, 684 (1972).

*Bar of Arizona*, 433 U.S. 350 (1977), likewise concerned the issue of an attorney's truthful and non-misleading advertising. Similarly, *In re Primus*, 436 U.S. 412 (1978), concerned the First Amendment rights of a lawyer who had written a solicitation letter on behalf of the American Civil Liberties Union to a woman who might have been in need of legal services.

In *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991), a criminal defense attorney held a press conference to criticize police and prosecutors after his client was indicted and stories damaging to his client's fair trial rights appeared in the media. The attorney was disciplined by Nevada bar authorities for making a public statement that he knew or should have known had a substantial likelihood of materially prejudicing an adjudicative proceeding. The Supreme Court held that the Nevada rule was void for vagueness. There was no allegation that the defense attorney's statements were false. *Gentile*, 501 U.S. at 1033-34, 1048-51. Importantly, Justice O'Connor stated in a concurring opinion, "Lawyers are officers of the court and, as such, may legitimately be subject to ethical precepts that keep them from engaging in what otherwise might be constitutionally protected speech." *Gentile*, 501 U.S. at 1081-82 (O'Connor, J., concurring in part).

*In re Sawyer*, 360 U.S. 622, 626-36 (1959), held that an attorney's public comments about the unfairness of a legislative act and evidentiary rules, and the aggressiveness of government prosecutors in a trial, did not impugn the integrity of the judge presiding over the trial. Importantly, the Court noted that even if the attorney's comments could be construed to imply that the judge was wrong on the law, the attorney "did not say that [the judge] was corrupt or venal or stupid or incompetent." *Sawyer*, 360 U.S. at 635.

Another relevant case is *Garrison v. State of Louisiana*, 379 U.S. 64, 77-79 (1964). There, the Supreme Court reversed a prosecuting attorney's criminal conviction for defamation,

which was based on his comments about the local judiciary. The Court held that the Louisiana statute improperly allowed a conviction based on mere negligence as to the truth of the statements, rather than reckless disregard for the truth. The Court stressed that "the knowingly false statement and the false statement made with reckless disregard of the truth, do not enjoy constitutional protection." *Garrison*, 379 U.S. at 75.

Thus, neither Illinois disciplinary precedent nor precedent from the United States Supreme Court insulates Respondent's outrageous and false statements from disciplinary scrutiny. This Board should reject Respondent's First Amendment claim.

## CONCLUSION

For the foregoing reasons, the Administrator respectfully requests that this Board affirm the Hearing Board's findings of misconduct and that it recommend to the Illinois Supreme Court that Respondent be suspended from the practice of law for three years and until further order of the Court.

Respectfully submitted,

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