THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
AD HOC HEARING COMMITTEE

In the Matter of:	:	
	:	
GLENN H. STEPHENS, III,	:	Board Docket No. 17-BD-028
	:	
Respondent.	:	Disciplinary Docket Nos. 2015-D330,
	:	2016-D081, 2016-D234 & 2016-D369
A Temorarily Suspsended	:	
Member of the Bar of the	:	
District of Columbia Court of Appeals:		
(Bar Registration No. 472780)	:	

REPORT AND RECOMMENDATION OF AD HOC HEARING COMMITTEE

* Consult the 'Disciplinary Decisions' tab on the Board on Professional Responsibility's website (www.dcattorneydiscipline.org) for more information about this case.

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I. PROCEDURAL BACKGROUND/SUMMARY OF ALLEGATIONS AND RECOMMENDATIONS

In a four-count Specification[1] the Office of Disciplinary Counsel ("ODC") alleges that in representing himself and various clients in litigation and related proceedings, Respondent abused the judicial system and ignored the proper boundaries of adversarial advocacy which are key components of that system.

Count One of the Specification arises out of Respondent's work as the employee of a contractor which assigned him to the United States Department of Agriculture ("USDA"), and relates to: (1) a defamation suit against a USDA employee that Respondent filed on his own behalf in a Virginia state court (later removed to federal court); (2) an appeal Respondent filed with the United States Merits Systems Protection Board ("MSPB"); and (3) charges of purported ethical misconduct filed by Respondent with ODC and in California against Martin Gold Esq., a USDA attorney ("Mr. Gold") who represented USDA in the MSPB proceeding. Paragraph 40 of the Specification alleges that under both the District of Columbia Rules of Professional Conduct and the Virginia Rules of Professional

[1] The original Specification of Charges in this matter was filed on April 4, 2017. On January 24, 2018, ODC filed an amendment to the original Specification of Charges in order to correct various immaterial typographical errors. On February 5, 2018, ODC filed a motion for leave to amend ¶ 171(b) of the original Specification of Charges in order to set forth more clearly the text of Rule 3.2 of the Pennsylvania Rules of Professional Conduct, which Respondent allegedly violated. That motion was granted by Order dated February 20, 2018, and on February 26, 2018 ODC filed an Amended Specification of Charges which included the amendment to ¶ 171(b). Unless otherwise noted, as used in this Report the term "Specification" means the Amended Specification of Charges that ODC filed on February 26, 2018.

Conduct,[2] Respondent violated Rule 3.1 (bringing proceedings and asserting issues when there was no basis in law or fact for doing so that was not frivolous) and Rule 4.4(a) (using means while representing himself as a client that had no substantial purpose other than to embarrass, delay, or burden a third person). Paragraph 40 of the Specification also alleges that Respondent violated Rules 8.4(d) and 8.4(g) of the District of Columbia Rules of Professional Conduct by, respectively, engaging in conduct that seriously interfered with the administration of justice, and by seeking or threatening to seek disciplinary charges solely to obtain an advantage in a civil matter.

Count Two of the Specification alleges that after Respondent was briefly employed by an attorney named Rosemary Dettling, Respondent harassed her and violated various provisions of the District of Columbia Rules of Professional Conduct while representing former clients of Ms. Dettling − principally while representing Mr. Stephen Hall ("Mr. Hall") in a lawsuit filed by him in the United States District Court for the District of Columbia against Ms. Dettling and other defendants. Paragraph 106 of the Specification alleges that Respondent violated the following provisions of the District of Columbia Rules of Professional Conduct: Rule 3.1 (asserting issues where there was no basis in law or fact for doing so that was not frivolous); Rule 3.2(a) (delaying a proceeding knowing, or when it should

[2] For the reasons set forth in Section III(A) of this Report, which discusses choice of law issues, the Hearing Committee analyzes Respondent's alleged violation of Rules 3.1 and 4.4(a) under the District of Columbia's Rules of Professional Conduct, and not those of the Commonwealth of Virginia.

have been obvious, that Respondent's actions would serve solely to harass or maliciously injure another); Rule 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); Rule 4.4(a) (using means that had no substantial purpose other than to embarrass, delay, or burden a third person); and Rule 8.4(d) (engaging in conduct that seriously interferes with the administration of justice).

Count Three of the Specification arises out of Respondent's representation of a client (Laura Bromley) in a civil claim against Ms. Bromley's employer, a company which was represented in that matter by independent legal counsel. Paragraph 114 of the Specification alleges that Respondent violated Rule 4.2(a) of the District of Columbia Rules of Professional Conduct by communicating or causing another to communicate about the subject of Respondent's representation of Ms. Bromley with a person known by Respondent to be represented by another lawyer in that matter, without the prior consent of that lawyer; and violated Rule 8.4(g) by seeking or threatening to seek criminal charges solely to obtain an advantage in a civil matter.

Count Four of the Specification arises out of Respondent's representation of a client ("Mr. Stevenson") in various civil matters – principally a lawsuit in the United States District Court for the Eastern District of Pennsylvania – against Mr. Stevenson's employer (a local school board). Paragraph 171 of the Specification alleges that in the course of representing Mr. Stevenson, Respondent violated the following provisions of the District of Columbia Rules of Professional Conduct and counterpart provisions of the Pennsylvania Rules of Professional Conduct: Rule 3.1 (asserting issues when there was no basis in law or fact for doing so that was not

frivolous); District of Columbia Rule 3.2(a) (delaying a proceeding knowing, or when it should have been obvious, that Respondent's actions would serve solely to harass or maliciously injure another) and/or Pennsylvania Rule 3.2 (failing to make reasonable efforts to expedite litigation consistent with the interests of the client); Rule 4.2(a) and/or Pennsylvania Rule 4.2 (communicating about the subject of Respondent's representation of Mr. Stevenson with parties known by Respondent to be represented in that matter by another lawyer, without that lawyer's prior consent); Rule 4.4(a) (using means that had no substantial purpose other than to embarrass, delay, or burden a third person); and Rule 8.4(d) (engaging in conduct that seriously interferes with the administration of justice).[3]

The evidentiary hearing of this case was held on March 12-15, 2018.[4] ODC was represented by Julia L. Porter, Esq., Senior Assistant Disciplinary Counsel. Respondent did not file an Answer to the Specification, participate in the hearing, or file a post-hearing brief. During the hearing ODC called four witnesses[5] and

[3] For the reasons set forth in Section III(A) of this Report, the Hearing Committee analyzes most Respondent's alleged misconduct pursuant to the Pennsylvania Rules of Professional Conduct.

[4] Due to a scheduling conflict of one of the Hearing Committee members, there were no proceedings before the Hearing Committee on March 14, 2018, and the hearing resumed on March 15, 2018.

[5] Mr. Gold, the attorney who represented USDA in the MSPB proceeding described in Count One of the Specification, and who is the complainant in that matter (Disciplinary Docket No. 2015-D330); Rosemary Dettling, Esq., the complainant in the matters described in Count Two of the Specification (Disciplinary Docket No. 2016-D081); Tyree P. Jones, Esq., the attorney who represented the employer in the matter described in Count Three of the Specification, and who is the complainant in that matter (Disciplinary Docket No. 2016-D234); and Michael Kristofco, Esq., the attorney who represented the school board in the proceedings described in Count Four of the Specification, and who is the complainant in that matter (Disciplinary Docket No. 2016-D369).

submitted 176 documentary exhibits,[6] all of which were admitted into evidence. After the conclusion of all testimony and closing argument, the Hearing Committee recessed in executive session pursuant to Board Rule 11.11 to determine on a preliminary, non-binding, basis whether ODC had proved a violation of at least one disciplinary rule. Upon resuming proceedings, the Chair announced that the Hearing Committee had made such an affirmative determination. Upon inquiry by the Chair if there were any additional matters in aggravation of sanction that ODC wished to place before the Hearing Committee, ODC stated that Respondent had no record of prior legal ethics violations. Tr. 492:21-494:9.[7]

ODC recommends that Respondent should be disbarred (ODC Br. at 75-78[8]). The Hearing Committee concludes there is clear and convincing evidence that Respondent violated all of the Rules alleged in the Specification, although not necessarily each alleged instance of a Rule violation. Furthermore, for the reasons set forth in Part IV of this Report, the Hearing Committee recommends that Respondent should be suspended for a period of three years pursuant to District of Columbia Court of Appeals Rule XI, § 3(a)(2), and thereafter Respondent should be required to demonstrate fitness to resume the practice of law in accordance with *In re Cater*, 887 A.2d 1, 24 (D.C. 2005).

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[6] All references in this Report to the documents introduced into evidence by ODC during the hearing of this matter are designated with the prefix "DCX ___."

[7] All references in this Report to the transcript of the hearing are designated with the prefix "Tr. ___."

[8] All references in this Report to the post-hearing brief filed by ODC are designated with the prefix "ODC Br. ___."

Part II of this Report contains the Hearing Committee's findings of fact relating to each of the four Counts in the Specification. Section II(A) provides findings of fact relating to the USDA matter (Count One of the Specification), and is divided into two subsections. Subsection II(A)(1) deals with a defamation lawsuit Respondent filed against a USDA employee. Subsection II(A)(2) deals with an MSPB appeal that Respondent pursued, as well as the charges of ethical misconduct Respondent filed against Mr. Gold. Section II(B) provides findings of fact relating to the Dettling matter (Count Two of the Specification). Section II(C) provides findings of fact concerning the Bromley matter (Count Three of the Specification). Section II(D) provides findings of fact relating to the Stevenson matter (Count Four of the Specification). Section II(E) contains findings of fact relating to circumstances that occurred after the date of the Specification that might be taken into consideration in connection with the imposition of a sanction in this matter.

Part III of this Report contains the Hearing Committee's recommended conclusions of law. Part IV of this Report discusses the Hearing Committee's sanction recommendation.

II. FINDINGS OF FACT[9]

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted by examination on February 11, 2002, and assigned

[9] References in this Report to the paragraph numbers of the findings of fact made in this Part II are designated with the prefix "FF ___."

Bar Registration No. 472780. DCX 1. Respondent has not been admitted to practice law in the Commonwealth of Virginia. DCX 176.[10]

2. On April 11, 2017, Respondent was personally served with the original Specification of Charges and the Petition Instituting Formal Disciplinary Proceedings in this matter. DCX 4 at 2.

A. Count One (USDA)

(1) The Defamation Lawsuit

3. Beginning in October of 2013, Respondent, as the employee of a private contractor (Panum LLC) was assigned to work as an Equal Employment Opportunity ("EEO") specialist in the Employment Investigations Division ("EID") of USDA's Office of the Assistant Secretary for Civil Rights. DCX 19 at 1; DCX 12 at 42.

4. At 2:26 P.M. on April 10, 2015, USDA's Food Safety and Inspection Service ("FSIS") sent an e-mail to the division of USDA that processes EEO complaints, asking for the Report of Investigation (commonly referred to as an "ROI")[11] in a particular EEO case. DCX 10 at 8-9; DCX 19 at 2. The e-mail from FSIS (DCX 10 at 9) said that FSIS was not notified when the ROI for the EEO case

[10] In an application for admission *pro hac vice* that Respondent signed on February 3, 2016 and filed on February 24, 2016 with the United States District Court for the Eastern District of Pennsylvania, Respondent listed the District of Columbia as the only jurisdiction in which he was admitted to practice law. DCX 118 at 1.

[11] ODC Br. at 4 ¶ 6.

was issued and had not received a hard copy or a CD-ROM of the ROI, and concluded with the request:

> Please forward the ROI to us immediately, or upload the electronic version into iComplaints. Also, please bring the iComplaints events up to date.

Ms. Tina Quarles ("Ms. Quarles"), a Senior Equal Employment Specialist and Acting Team Lead within EID, was sent a "cc" of the e-mail from FSIS. *Id*. at 8-9.

5. At 2:45 P.M. on the same day as FSIS's e-mail, Ms. Quarles, using her USDA e-mail address ("Tina.Quarles@ascr.usda.gov") sent a responsive e-mail (DCX 15 at 4 ¶ 2; DCX 19 at 2) stating (DCX 10 at 8; DCX 13 at 10):

> This case was processed by [name deleted for privacy reasons] and taken over for review by [Respondent] under [name deleted for privacy reasons] Acting Team Lead. [Respondent] sent case back for modification. I am not sure when the ROI was distributed. [name deleted for privacy reasons] has tried to update iComplaints as much as possible.
>
> The ROI has to be uploaded but it was not located in the cabinet.
>
> [Respondent] provide the ROI and CD.

6. On April 16, 2015, Respondent filed a *pro se* Warrant In Debt civil action against Ms. Quarles in the Small Claims Division of the General District Court for the City of Falls Church, Virginia, Case No. GV 15-54, alleging "defamation per se." DCX 12 at 11; DCX 9 at 2 ¶ 1.

7. On May 10, 2015, the return date for the case identified in the preceding paragraph, Respondent "non-suited" the case. DCX 12 at 12.

8. On May 12, 2015, Respondent was notified that the arrangement for his contract work at USDA would not be renewed. DCX 10 at 5; DCX 12 at 7.

9. On May 21, 2015, Respondent re-filed his claim for "defamation per se" against Ms. Quarles in the same court, as Case No. GV 15-85. DCX 21 at 7; DCX 12 at 12; DCX 19 at 2. According to a "Bill of Particulars" subsequently filed by Respondent (*see* FF 19, *infra*), the allegedly defamatory statement contained in Ms. Quarles' responsive e-mail to FSIS (quoted in FF 5) was:

> "This case was . . . taken over for review by [Respondent] . . . I am not sure when the ROI was distributed."

DCX 10 at 5. The return date for Respondent's re-filed lawsuit against Ms. Quarles was June 10, 2015. DCX 21 at 7.

10. On May 22, 2015, Respondent filed an EEO complaint with USDA. The "EEO Counseling Intake Form" for that complaint (DCX 9 at 15-19), alleged, *inter alia*, that "[b]etween March [2015] and the present" Respondent had been subjected to "bullying by Tina Quarles" (*id*. at 16); that Tina Quarles "has harassed me . . . and . . . misrepresent[ed] my work" (*id*.); and that Ms. Quarles and another USDA employee "have been trying to drive me out of EID or catch or invent mistakes that they could use to justify my removal" (*id*. at 17). Although the EEO Counseling Intake Form advised Respondent he could request anonymity, he checked the box on the first page of the form indicating he did not wish to remain anonymous. *Id*. at 15.

11. On May 25, 2015, Respondent's work at USDA as a contract employee was terminated. DCX 12 at 7.

12. On June 9, 2015, the office of the United States Attorney for the Eastern District of Virginia filed in the United States District Court for the Eastern District of Virginia (Alexandria Division) a Notice of Removal to federal court of Respondent's state court claim against Ms. Quarles. DCX 8. The Notice of Removal stated (*id*. at 2 ¶ 2) that removal was proper pursuant to 28 U.S.C. § 2679(d)(2),[12] and further stated (*id*. at 2 ¶ 4) that the Notice was being filed concurrently with the Clerk of the Falls Church General District Court pursuant to 28 U.S.C. § 1446(d).[13]

13. The Notice of Removal was signed by Ayana N. Free, Esq., the Assistant United States Attorney assigned to the case ("AUSA Free"), and noted the

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[12] 28 U.S.C. § 2679 is commonly known as the "Westfall Act," and "accords federal employees absolute immunity from common-law tort claims arising out of acts they undertake in the course of their official duties." *Osborne v. Haley*, 549 U.S. 225, 229 (2007) (citing 28 U.S.C. § 2679(b)(1)). That case further states:

> When a federal employee is sued for wrongful or negligent conduct, the Act empowers the Attorney General to certify that the employee "was acting within the scope of his office or employment at the time of the incident out of which the claim arose." Upon the Attorney General's certification, the employee is dismissed from the action, and the United States is substituted as defendant in place of the employee.

Id. at 229-30 (quoting 28 U.S. § 2679(d)(1),(2)). When the United States is substituted as the defendant, the plaintiff's claims become subject to the procedures and requirements of the Federal Tort Claims Act ("FTCA") as well as the defense of sovereign immunity. DCX 19 at 6.

[13] 28 U.S.C. § 1446 is the procedural statute generally governing the removal of civil actions to federal court. 28 U.S.C. § 1446(d) states:

> Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

appearance of Brandi A. Peters, Esq., Senior Counsel at USDA ("Ms. Peters"), as "of counsel" in representing the defendant. DCX 8 at 3.[14]

14. In connection with undertaking representation of the United States as the substituted defendant in the removed case, the United States Department of Justice (hereinafter, "DOJ" or the "Government") engaged with its client − USDA − to determine the nature of the facts giving rise to Respondent's claim against Ms. Quarles. DCX 15 at 16.

15. The Notice of Removal was supported by a Certification (DCX 8 at 8) executed on June 6, 2015 by the United States Attorney for the Eastern District of Virginia (Dana Boente) pursuant to the authority conferred by 28 C.F.R. § 15.4 ("Removal and defense of suits"),[15] stating:

> I . . . hereby certify that I am familiar with the allegations made in the warrant of debt filed by the plaintiff, [Respondent], in *[Respondent] v. Tina Quarles*, Case No. GV 15-85 (Falls Church Gen. Dist. Ct.), pending in the Falls Church General District Court. On the basis of the information now available with respect to the claims set forth therein, I hereby find and certify that the named defendant, Tina Quarles, was acting within the scope of her federal office or employment at the time of the incident out of which the plaintiff's claim arose.

[14] Ms. Peters is one of the officials at USDA to whom Respondent later sent a copy of an e-mail criticizing Mr. Gold's work on Respondent's MSPB appeal; *see* n. 34, *infra*.

[15] 28 C.F.R. § 15.4(a) states, "The United States Attorney for the district where the civil action or proceeding is brought . . . is authorized to make the statutory certification that the Federal employee was acting within the scope of his office or employment with the Federal Government at the time of the incident out of which the suit arose." 28 C.F.R. § 15.4(b) further authorizes the United States Attorney for the relevant district to certify that the FTCA is the exclusive remedy applicable to the incident out of which the suit arose.

16. The removed case was docketed in the United States District Court for the Eastern District of Virginia (Alexandria Division), and assigned to the Hon. Leonie M. Brinkema ("Judge Brinkema"). DCX 7 at 1.

17. On June 10, 2015, the return date of Respondent's state court lawsuit against Ms. Quarles (FF 9), AUSA Free appeared in the General District Court for the City of Falls Church, Virginia, and advised the court that Respondent's case had been removed to federal court. DCX 12 at 13.

18. On June 11, 2015, AUSA Free sent Respondent an e-mail stating, *inter alia*, "I am the attorney of record representing the United States in this matter. Please direct any and all future correspondence on the case to me." DCX 16 at 26.

19. On June 15, 2015 (DCX 10 at 1), despite the prior removal of Respondent's claim against Ms. Quarles to federal court, and the language of 28 U.S.C. § 1446(d) (quoted in n. 13, *supra*) that "the State court shall proceed no further unless and until the case is remanded," Respondent filed with the General District Court for Falls Church, Virginia, a "Bill of Particulars" regarding his claim against Ms. Quarles. DCX 10 at 5-16. Respondent's filing was in two parts:[16]

a. The "Bill of Particulars" itself stated (*id*. 5):

> On April 10, 2015 at 2:45 PM, [Ms. Quarles] published via e-mail (see attached), the false statement "This case was . . . taken over for review by Glenn . . . I am not sure when the ROI was distributed" prejudicing me in my profession, imputing that I lacked the skills of my profession, thereby damaging my reputation. This statement was made with

[16] All of the documents discussed in this finding of fact are copies of attachments to a "Notice of Continued Filings in State Court" that DOJ filed in federal district court on June 22, 2015 in the removed proceeding. *See* FF 21, *infra*.

> knowledge that it was false or with reckless disregard of whether or not it was false. One month and one day later, on May 12, 2015, I was informed that my contract would not be renewed.

b. Attached to the "Bill of Particulars" were an "Exhibit List" (*id*. at 6) and seven exhibits identifying USDA as the place where Respondent had been assigned to work (*id*. at 10, 12, 16), and consisting of the following documents:

(1) Exhibit 1, described in the Exhibit List as "Defamatory E-Mail April 10, 2015" (*id*. at 8), is the e-mail from Ms. Quarles quoted in FF 5.

(2) Exhibit 2, described in the Exhibit List as "[redacted name] Corrections E-mail February 23"[17] (*id*. at 10), contains an opening line stating, "Based on my review of the ROI, I recommend the following modifications"; lists five areas of recommended changes; has a "Note" stating "CDs are to be redone with changes; bookmarked and searchable. Original must be un-redacted except for SSN#'s"; and a concluding paragraph beginning with, "Please review the ROI and make all the changes/corrections as requested." All names have been redacted from this document, but because other exhibits filed by DOJ in federal court do not contain redactions of Respondent's name (*e.g.*, *id*. at 15), it may be inferred that Respondent was not mentioned by name in this exhibit.

(3) Exhibit 3, described in the Exhibit List as "Routing Sheet February 27, 2015" (*id*. at 11), is an "Office of Adjudication Routing and Transmittal

[17] *See* FF 21, *infra*, regarding DOJ's redaction of names from this document and the other exhibits filed by Respondent with his "Bill of Particulars."

Form" referring to "EID 2015-325" with the box labeled "Action" checked. Again, all names are redacted from this exhibit.

(4) Exhibit 4, described in the Exhibit List as "[redacted name] Corrections Plaintiff [*i.e.*, Respondent] Received on or about March 3, 2015" (*id*. at 12), is an e-mail stating, "Ms. Moore, Please make the following changes," and listing three areas of desired corrections.

(5) Exhibit 5, described in the Exhibit List as "Plaintiff [*i.e.*, Respondent] Corrections E-mail to Investigator March 9, 2015" (*id*. at 13-14), is a forwarded e-mail originally dated March 6, 2015 from Respondent to persons whose names have been redacted, beginning, "Good morning. In [redacted name]'s absence, I was asked to review the modified version of this 'draft' ROI. These [sic] following changes are still needed for the ROI to go to final." The e-mail then lists eight areas of requested changes. All names other than Respondent's in this exhibit are redacted.

(6) Exhibit 6, described in the Exhibit List as "[redacted name] Plaintiff [*i.e.*, Respondent] E-Mail Exchange March 19, 2015" (*id*. at 15), consists of two e-mails dated March 19, 2015. The first e-mail, at 10:06 A.M., is from Respondent to [redacted name] asking, in pertinent part, "Just following up. Anything else needed with this case?" The second e-mail, at 10:09 A.M., is from [redacted name] to Respondent, stating, "Not on my end. Its ready to go, once u sign off on it."

(7) Exhibit 7, described in the Exhibit List as "Distribution Letter [redacted name] Tina Quarles (signature) March 20, 2015" (*id*. at 16), is a one page cover letter apparently addressed to the attorney for a complainant, and beginning with the sentence, "Please find enclosed the Report of Investigation (ROI) on the above-referenced complaint." No signature page is attached to this exhibit, and all names in the document have been redacted.[18]

20. On June 16, 2015 (DCX 7 at 2), the Government moved to dismiss Respondent's claim due to lack of subject matter jurisdiction (again, over the names of both AUSA Free and Ms. Peters). DOJ's 8-page[19] brief in support of its motion to dismiss (DCX 9) argued: (a) because Ms. Quarles had been acting within the scope of her employment at the time of the events giving rise to Respondent's defamation claim and the United States had been substituted as the defendant in the case, Respondent's lawsuit was now subject to the FTCA but he had failed to meet the

[18] Also filed as an attachment to Respondent's Bill of Particulars was an e-mail (DCX 10 at 7) dated April 13, 2015 addressed to Respondent and various other persons (names redacted), with copies to Ms. Quarles and various other persons (names redacted), stating, *inter alia*, "I have asked that each specialist go in and ensure that the ROIs are uploaded for their respective investigations. * * * WE [sic] need to be proactive to situations." In a pleading Respondent filed in federal court on July 7, 2015 (FF 24, *infra*), Respondent indicates that the author of this e-mail was the Acting Chief of EID, and that it was this e-mail which brought to his attention the allegedly defamatory April 10, 2015 e-mail (FF 5) sent by Ms. Quarles. DCX 12 at 10. However, it would appear that Ms. Quarles likely would have sent a copy of her April 10, 2015 e-mail directly to Respondent because that e-mail ends with the request, "Glenn provide the ROI and CD." FF 5.

[19] E.D. Va. Local Civil Rule 7(F)(3) limits briefs supporting initial motions to 30 pages. DOJ's brief in support of its motion to dismiss was therefore well within the allowed page limit.

non-waivable[20] FTCA jurisdictional requirement in 28 U.S.C. § 2675(a)[21] of first presenting his claim to USDA for adjudication (DCX 9 at 1-2, 5-6); and (b) in any event, under the FTCA (28 U.S.C. § 2680(h))[22] the United States had not waived sovereign immunity with respect to alleged intentional torts such as defamation (DCX 9 at 2, 6-7). As factual context for the court (*id*. at 2 ¶ 2), DOJ attached a copy (*id*. at 15-19) of Respondent's May 22, 2015 EEO complaint (FF 10), relating to his work at USDA and his interactions with Ms. Quarles.

21. On June 22, 2015, AUSA Free filed in the removed federal civil action a "Notice of Continued Filings in State Court," advising the court of the June 15, 2015 filing made by Respondent in the Falls Church General District Court (FF 19), and that Respondent had continued to serve these pleadings and documents on the former defendant, Ms. Quarles. DCX 10 at 1. The Notice further advised the court that the

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[20] *Henderson v. United States*, 785 F.2d 121, 123 (4th Cir. 1986).

[21] 28 U.S.C. § 2675(a) states:

> An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail.

[22] 28 U.S.C. §2680 states, in pertinent part (emphasis added):

> The provisions of this chapter [*i.e.*, Chapter 171, entitled "Tort Claims Procedure"] . . . shall not apply to −
>
> * * *
>
> (h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, *libel, slander*, misrepresentation, deceit, or interference with contract rights[.]

copies of the documents Respondent filed in the Virginia court, which were attached to the Notice as exhibits, were redacted by DOJ because they contained information protected from disclosure by the federal Privacy Act, 5 U.S.C. § 552a.[23] *Id.*

22. On June 22, 2015, AUSA Free sent Respondent an e-mail advising him that the federal court was being notified of Respondent's improper additional state court filings; that Respondent had already been notified in writing (FF 18) on June 11, 2015, to direct all future contacts to AUSA Free; that Respondent nevertheless continued to serve papers on Ms. Quarles; and that the documents Respondent filed with the state court contained information protected from disclosure by the federal Privacy Act, 5 U.S.C. § 552a (discussed in n. 23, *supra*). DCX 16 at 26. Respondent's reply to this e-mail was, "LOL"[24] *Id.*

23. On July 7, 2015, Respondent filed two pleadings in federal court, the first pleading being entitled "Plaintiff's Frst [sic] Motion to Stike [sic]." DCX 11. This motion asked the court to strike from the record the EEO Counseling Intake Form attached as to the Government's motion to dismiss (DCX 9 at 15-19) because it assertedly violated his rights under the federal Privacy Act (a statute which AUSA Free had recently brought to Respondent's attention, as discussed in FF 21-22).

[23] 5 U.S.C. § 552a is a lengthy statute governing the disclosure of information from federal agency records maintained on individuals. 5 U.S.C. § 552a(b) contains the general rule prohibiting the disclosure of "any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains." The general rule of 5 U.S.C. § 552a is, however, subject to various enumerated exceptions, one (5 U.S.C. § 552a(b)(3)) being for "routine use" as that term is described in the statute.

[24] Acronym for "laughing out loud." DCX 16 at 7.

Respondent argued (DCX 11 at 5) that the public filing of the EEO Counseling Intake Form without redaction improperly disclosed his name, e-mail address, home address, and telephone number, as well as information about his work while assigned to USDA. Respondent's own motion, however, disclosed his name, e-mail address, home address (210 East Fairfax, Apartment 302), and the same telephone number and e-mail address he provided in the EEO Counseling Intake Form (*compare* DCX 9 at 15 *with* DCX 11 at 1-2).[25] Respondent had also already made his work at USDA a matter of public record (DCX 10 at 7-16), and he did so again in much greater detail in another pleading he filed on July 7, 2015 (*see* DCX 12 at 5-11). Furthermore, Respondent's EEO Counseling Intake Form explicitly waived anonymity. DCX 9 at 15.

24. The second pleading Respondent filed on July 7, 2015, was entitled "Plaintiff's Second Motion to Strike and Motion Opposing Subtitution [sic] and Dismissal." DCX 12. Respondent's pleading raised one preliminary technical argument (*i.e.*, that the Government's motion to dismiss should be stricken because it was not in a 12-point typeface (*id*. at 4-5)), and three different legal arguments:

a. Because Respondent conceded (*id*. at 16 n. 13), "if the United States were substituted, the government's waiver of sovereign immunity is bound by the FTCA, thereby barring his defamation per se claim," Respondent attacked the validity of DOJ's Westfall Act scope-of-employment certification (*see* FF 15 and n.

[25] Respondent likewise listed his name and the same address, telephone number, and e-mail address in an application for admission to practice *pro hac vice* that he filed with the United States District Court for the Eastern District of Pennsylvania on February 24, 2016. DCX 118 at 1.

12, *supra*). Respondent argued that DOJ was "literally clueless" (*id*. at 18) on June 6, 2015 (the date of United States Attorney Boente's Westfall Act certification (FF 15)) as to the specific incident giving rise to his claim, and that "the record is devoid of facts sufficient to permit a reasoned determination as to whether Ms. Quarles was acting within the scope of her federal employment" (*id*. at 22). Respondent therefore concluded that United States Attorney Boente's Westfall Act certification was "perjured." *Id*. at 24.

b. In the alternative, Respondent argued (*id*. at 23-32) that "as a matter of law" (*id*. at 23) and "[b]ased on the [r]ecord [e]vidence" (*id*.) the court should rule Ms. Quarles' April 10, 2015 e-mail (FF 5) was made outside the scope of her employment. However, as both Judge Brinkema[26] and the court of appeals[27] later ruled, the record demonstrated the opposite.

c. As a second alternative, Respondent suggested (*id*. at 32-33) that if the court were in doubt as to whether Ms. Quarles April 10, 2015 e-mail was made

[26] "Stephens' arguments on this issue again misconstrue the relevant burdens. * * * According to the facts in the record, Quarles' duties as Acting Team Lead for EID entailed monitoring the progress of EEO cases assigned to other EEO Specialists, including those assigned to Stephens. The April 10 e-mail was sent from Quarles' work e-mail, during work hours to respond to a specific request about the status of an EEO case. Therefore, regardless of the contents of her e-mail, sending the e-mail was conduct of the kind she was employed to perform. It also occurred during the authorized time and space limits of her employment and in response to a question generated by another office in her agency." DCX 19 at 12 (internal citations omitted).

[27] "[N]o evidence establishes that the removal certificate was perjured as [Respondent] alleges. To the contrary, the record demonstrates that the United States Attorney had a good faith basis for removing the matter to federal court. * * * [W]e agree with the district court that Quarles was acting within the scope of her employment at the time she made the purportedly defamatory comment . . . ." DCX 24 at 3.

within the scope of her employment (and as noted in the preceding subparagraph (b), the court found no doubt on that issue), the court should order discovery and a hearing on the scope-of-employment issue.

25. On July 9, 2015, Respondent filed an additional pleading entitled "Plaintiff's Motion for Sanctions." DCX 13. Respondent argued that sanctions were warranted against AUSA Free, for two reasons:

a. The filing of Respondent's *un*-redacted EEO Counseling Intake Form in support of the Government's motion to dismiss was a violation of *his* rights under the federal Privacy Act (*id*. at 3-4); but

b. AUSA Free "tampered with th[e] evidence" (*id*. at 5) by *redacting* names and locational information of USDA employees from other documents (*id*. at 8, 10) DOJ filed with the court,[28] even though it was DOJ itself which brought to the court's attention the redaction of USDA employees' names from the filed documents, and the reason for the redaction. *See* DCX 9 at 2 n.2; DCX 10 at 1; *see a1so* DCX 15 at 4 n. 1 (DOJ offer to produce un-redacted documents for *in camera* inspection by the court, thereby indicating that DOJ had not done anything to destroy the documents bearing the redacted names).

26. On July 10, 2015, three days after Respondent's "first" motion to strike (FF 23) was filed, Judge Brinkema denied it. DCX 14. Noting that the issue of redacting Respondent's personal information was governed by Fed. R.

[28] Respondent, however, was familiar with names that had been redacted, and listed them in his pleading (DCX 13 at 5).

Civ. P. 5.2(a),(h) and E.D. Va. Local Civil Rule 7(C) (which adopts the protections of Rule 5.2), the court stated that Rule 5.2(a) protects only "an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial account number," and that pursuant to Rule 5.2(h) "[a] person waives the protection of Rule 5.2(a) as to the person's own information by filing it without redaction and not under seal." The court therefore held that Respondent's name, employment history, personal e-mail address, home address, and home phone number were not protected by Fed. R. Civ. P. 5.2. DCX 14 at 1. Furthermore, the court ruled (*id*. at 2):

> [e]ven if that information were protected, plaintiff waived his right to protection by placing his name, personal e-mail address, home address, and home phone number on the first page of the Motion to Strike, and then filing the motion on the public docket. * * * Moreover, plaintiff elected not to proceed anonymously when offered that opportunity during EEO counseling.

27. On July 20, 2015, the Government filed oppositions to Respondent's Second Motion to Strike (FF 24) and to Respondent's Motion for Sanctions (FF 25). DCX 15 and 16. *Inter alia*, the Government's opposition to Respondent's Second Motion to Strike pointed out that DOJ's use of and reference to his EEO Counseling Intake Form constituted "routine use," and was therefore a permitted exception to the federal Privacy Act (*see* 5 U.S.C. § 552a(b)(3), discussed in n. 23, *supra*). DCX 15 at 20-21.

28. On July 23, 2015, Respondent filed a "Motion In Limine to Exclude or Redact" (DCX 17),[29] seeking reconsideration of Judge Brinkema's July 10, 2015 order denying his "First Motion to Strike." Respondent raised three additional arguments he had not made in his prior motion, arguing that his EEO Counseling Intake Form should be excluded or redacted because: (a) under Fed. R. Ev. 402 the Intake Form lacked probative value on any issue, and under Fed. R. Ev. 403 its probative value was outweighed by the danger of confusing issues in the case (DCX 17 at 2-3); (b) the Intake Form was excludable as the "fruit of a poisonous tree" because it was confidential information that the Government had improperly obtained (*id*. at 3); and (c) the court's order of July 10, 2015 improperly construed Fed. R. Civ. P. 5.2 (*id*. at 6-7). On August 7, 2015, DOJ filed an opposition to Respondent's "Motion In Limine." DCX 18.

29. On August 14, 2015, Judge Brinkema entered a Memorandum Opinion that granted the Government's motion to dismiss and denied all of Respondent's then-pending motions. DCX 19. The court ruled:

a. As DOJ had argued in its motion to dismiss, Respondent failed to meet the jurisdictional prerequisite of the FTCA, 28 U.S.C. § 2675(a) (discussed in n. 21, *supra*), by filing an administrative claim before he filed suit, and even if he had made such a preliminary administrative claim, his defamation suit would be

[29] Despite the removal of Respondent's lawsuit against Ms. Quarles to federal court and the substitution of the United States as the defendant, as well as the court's pointedly captioning its order of July 10, 2015 denying Respondent's "First" Motion to Strike with the "United States of America" designated as the defendant (DCX 14 at 1), Respondent's Motion in Limine continued to name "Tina Quarles" as the defendant.

barred by the "intentional tort proviso" of the FTCA, 28 U.S.C. § 2680(h) (discussed in n. 22, *supra*). DCX 19 at 7-8.

b. With regard to Respondent's arguments that DOJ was "clueless" as to the nature of his claim and that the Westfall Act certification by United States Attorney Boente was "perjured":

> [Respondent] argues that the United States could not have been familiar with the details of his claim because he had not yet filed the Bill of Particulars identifying the alleged defamation. This argument places a higher burden on the government than is required. The certification here "closely tracked" the language of the Westfall Act and is consequently valid under *Osborn*. Osborn v. Haley, 549 U.S. 225, 244 (2007). The government was not required to provide details, explanations, or evidence to meet its initial burden [citing *Maron v. United States*, 126 F.3d 317, 323 (4th Cir. 1997).] *Moreover, the government's failure to do so . . . certainly does not raise an inference of perjury.*
>
> * * *
>
> *[Respondent's] arguments regarding the insufficiency of the certification are simply unsubstantiated attempts to subvert established procedures.*

Id. at 10-11 (internal citations and footnote omitted; emphasis added).

c. With regard to Respondent's arguments that United States Attorney Boente's Westfall Act certification had made an improper determination that Ms. Quarles' April 10, 2015 e-mail was sent within the scope of her employment:

> [Respondent's] arguments on this issue again misconstrue the relevant burdens. * * * [I]t is [Respondent] who has the burden of providing specific evidence that Quarles was not acting within the scope of her employment . . . . According to the facts in the record, Quarles' duties as Acting Team Lead for EID entailed monitoring the progress of EEO cases assigned to other EEO Specialists, including those assigned to [Respondent]. The April 10 e-mail was sent from Quarles' work e-mail, during work hours to respond to a specific request about the status of

> an EEO case. Therefore, regardless of the contents of her e-mail, sending the e-mail was conduct of the kind she was employed to perform.

Id. at 12 (internal citation omitted).

d. Respondent's Motion in Limine (filed July 23, 2015) seeking to exclude or redact his EEO Counseling Intake Form was denied because: (1) the form "provides relevant background information needed to understand the context of his defamation claim" (*id*. at 14); (2) DOJ's use of the form constituted "routine use" for purposes of the Privacy Act exception in 5 U.S.C. § 552a(b)(3) (*id*. at 14-15); (3) as the court had already ruled on July 10, 2015 (FF 26), the personal information Respondent sought to protect from disclosure was not protected by Fed. R. Civ. P. 5.2 (DCX 19 at 15); and (4) Respondent had not demonstrated good cause or a significant interest that would warrant the redaction/exclusion he requested (*id*. at 16).

e. Respondent's motion for sanctions against AUSA Free (discussed in FF 25) was denied as "meritless." *Id*. at 17.

f. Respondent's request (FF 24) to strike the Government's motion to dismiss due to an alleged error in the size of the type font used was denied because the Government's pleading "does appear to comply with the local rules." *Id*. at 18.

30. On August 19, 2015, Respondent filed a notice of appeal to the United States Court of Appeals for the Fourth Circuit ("Fourth Circuit") from Judge Brinkema's August 14, 2015 ruling. DCX 20 at 1.

31. On September 18, 2015, Respondent filed an "Informal Brief" with the Fourth Circuit in support of his appeal. DCX 21. Respondent again asserted − as the "question presented" by the appeal − that the removal of his case to federal court was the product of a "perjured certification" under the Westfall Act (*id*. at 1), and requested oral argument on the appeal (*id*. at 5).

32. On October 1, 2015, DOJ filed a notice with the Fourth Circuit declining to file a responsive appellate brief and asking the court of appeals to affirm Judge Brinkema's decision for the reasons stated therein. DCX 22.

33. On October 28, 2015, Respondent filed a reply to DOJ's notice declining to file a brief with the Fourth Circuit, asserting that DOJ's non-filing evidenced "Boente['s] Admitted Perjury" (capitals in Respondent's argument heading). DCX 23 at 3.

34. On January 13, 2016, without oral argument, the Fourth Circuit affirmed Judge Brinkema in a two-page unpublished per curiam opinion. DCX 24. Reviewing Judge Brinkema's scope-of-employment determination de novo (*id*. at 2), the Fourth Circuit ruled (*id*. at 3, emphasis added):

> . . . *no evidence* establishes that the removal certificate was perjured as [Respondent] alleges. To the contrary, the record demonstrates that the United States Attorney had a good faith basis for removing the matter to federal court. Finally, we agree with the district court that Quarles was acting within the scope of her employment . . . and that suit against the Government was barred by sovereign immunity.

35. On February 1, 2016, Respondent filed a petition for rehearing en banc by the Fourth Circuit. DCX 25. The petition asserted that rehearing was necessary

because it involved a "case of first impression" concerning the validity of the scope-of-employment determination. *Id.* 25 at 1.

36. On March 15, 2016, the Fourth Circuit issued an order denying Respondent's petition for rehearing en banc, no judge having requested a vote on the petition. DCX 26.

(2) The MSPB Proceeding

37. On October 22, 2015 (DCX 27) Respondent filed with the MSPB an "Individual Right of Action" complaint (an "IRA" or "whistleblower" complaint) predicated on alleged retaliation against him for having disclosed an asserted gross waste of government funds. The gross waste of government funds that was the subject of Respondent's IRA complaint was the time Respondent himself spent pursuing his contentions relating to his work as an EEO specialist at USDA (Tr. 321:16-324:2 (Gold)), or, as the MSPB administrative law judge assigned to the case ("ALJ") later ruled (DCX 60 at 5):

> In essence, [Respondent] alleges that he disclosed to [a USDA supervisor] that officials with both the agency and his employer, the Panum Group, had unfairly criticized his work performance, falsely blaming him for delays in the completion of certain pending EEO investigations that were properly attributable to other factors, and that the resulting disputes with his supervisor over the cause and effect of these performance issues constituted "gross waste."

38. On October 26, 2015, Martin Gold, Esq. ("Mr. Gold") entered his appearance as the attorney for USDA in Respondent's MSPB case, providing notice,

inter alia, that all notices, correspondence, and other documents involving the MSPB matter were to be directed to Mr. Gold. DCX 28 at 1.[30]

39. On October 27, 2015, the ALJ entered two initial orders: an "Acknowledgement Order," which "sets the clock running on discovery deadlines, and the time in which the Agency has to file what's called an agency narrative response" (Tr. 331:17-21 (Gold)); and a "Jurisdiction Order." DCX 27. As stated by the ALJ (DCX 60 at 2), the Jurisdiction Order advised Respondent of specific jurisdictional issues Respondent needed to address in connection with his MSPB appeal, by showing that:

a. Respondent had engaged in "whistleblowing activity" by making a protected disclosure as defined in 5 U.S.C. § 2302(b)(8), *i.e.*, information that Respondent reasonably believed was evidence of a violation of law, rule, or regulation, gross mismanagement, a gross waste of funds, abuse of authority, or a substantial and specific damage to public health or safety; and

b. Respondent's allegedly protected "whistleblowing" disclosure was a contributing factor in the agency's decision to take or not take a "personnel action" (*see* 5 U.S.C. §2302(a)(2))[31] against a federal government employee or applicant for federal employment.

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[30] Mr. Gold's notice of appearance also stated that the exhibits identified in Respondent's initial MSPB appeal were not on file with the MSPB, and asked Respondent to have all exhibits included with the official record of the appeal. DCX 28 at 2. Shortly thereafter, Respondent sent Mr. Gold a communication stating that Respondent would provide Mr. Gold with the exhibits if Mr. Gold paid him $100. Tr. 326:9-16 (Gold).

[31] 5 U.S.C. § 2302(a)(2)(A) lists the various types of conduct which constitute a "personnel action."

40. On October 28, 2015, Respondent sent Mr. Gold an e-mail proposing a settlement of Respondent's MSPB appeal. DCX 29.

41. On October 29, 2015, USDA filed with the MSPB a routine (DCX 55 at 3; Tr. 332:17-333:5 (Gold)) request for a stay of all deadlines pending a ruling on the jurisdictional questions outlined in the ALJ's Jurisdiction Order dated October 27, 2015 (FF 39). DCX 30. The stay request also stated that Respondent lacked standing to appeal to the MSPB because Respondent acknowledged he was not a federal employee (*id*. at 1), a position the ALJ later upheld (DCX 60 at 3).[32] *See also* Tr. 322:3-4; 341:21-342:5; 348:2-4 (Gold) (MSPB jurisdiction is dependent on status as an existing federal government employee or job applicant, not a contractor).

42. On the morning of October 29, 2015, Respondent sent Mr. Gold an e-mail asking if information that Respondent had located relating to Mr. Gold's bar membership was accurate. DCX 32 at 1. That evening Respondent sent Mr. Gold a second e-mail, stating, "This is not a threat to gain an advantage in litigation. As soon as you tell me your membership, I will file ethics complaints against you." *Id*. at 2. Coming just one day after Respondent's settlement proposal on October 28, 2015 (FF 40), and on the same day as USDA moved to stay the MSPB proceeding pending a ruling on jurisdiction (FF 41), Mr. Gold perceived Respondent's threatened ethics complaints as intended to coerce a settlement. Tr. 329:6-331:6 (Gold).

[32] The ALJ ruled, "at the time of his alleged whistleblowing activity, and at all relevant times thereafter, [Respondent] was actually working as a contract employee for the Panum Group, a private sector firm." DCX 60 at 3.

43. On October 30, 2015 (DCX 27), the MSPB received from Respondent a pleading dated October 29, 2015 (DCX 31) that opposed USDA's stay request discussed in FF 41, on the ground that USDA failed to show "good cause" for the requested stay. *Id*. at 1-2. Respondent also moved the ALJ to certify an interlocutory appeal to the full MSPB on the issue of "whether otherwise eligible applicants who work for a time as contractors are ineligible for jurisdictional purposes." *Id*. at 2. The proposed interlocutory appeal issue as framed by Respondent therefore conceded a major premise of USDA's position on jurisdiction, *i.e.*, that Respondent was not a federal employee, but only a contractor.[33]

44. On October 30, 2015, at 4:34 A.M., Respondent sent Mr. Gold an e-mail (DCX 33 at 1) with the subject line "Mr. Gold - I filed an ethics complaint for your lack of candor with the MSPB tribunal and your perjury and requested your disbarment," and further stating, "[t]hat ethics complaint and the fact of your perjury will also serve as the basis of a forthcoming motion for sanctions . . . ." Respondent sent copies of this e-mail to four other officials at USDA. *Id*.[34] At 5:16 A.M. on the same day, Respondent sent Mr. Gold another e-mail, stating, "I mailed my ethics

[33] In a letter dated December 5, 2015 to ODC, Respondent stated that his position regarding MSPB jurisdiction was, "the MSPB has jurisdiction because I am a former federal employee and applicant." DCX 44 at 2.

[34] Brandi Peters, Esq. a Senior Counsel with USDA's Office of General Counsel ("OGC") (Tr. 327:13-15 (Gold)) (*see* FF 13, *supra*); Joe Leonard, USDA's Assistant Secretary for Civil Rights (Tr. 350:2-3 (Gold)); Frederick Pfaeffle, an official at USDA's Office of the Secretary ("OSEC") (Tr. 350:4-15 (Gold)); and Carl Ruiz, a manager with USDA's Office of Civil Rights (Tr. 350:16-18 (Gold)).

complaint against you." DCX 33 at 2. Respondent again sent copies of this e-mail to three USDA officials, including Mr. Leonard and Mr. Pfaeffle (*see* n. 34, *supra*).

45. On or about October 30, 2015,[35] Respondent filed with ODC an ethics complaint against Mr. Gold, based on Mr. Gold's alleged violation of Rule 3.3 of the District of Columbia Rules of Professional Conduct, dealing with candor to a tribunal, based principally on alleged misstatements made by Mr. Gold in USDA's October 29, 2015 motion for a stay of the MSPB proceeding (FF 41). DCX 44 at 2-3.

46. On November 9, 2015 (DCX 27) the MSPB received from Respondent a response to the ALJ's Jurisdictional Order of October 27, 2015 (FF 39), and on November 16, 2015 the MSPB received USDA's opposition to the pleading filed by Respondent (DCX 55 at 3).

47. On November 13, 2015, Respondent sent Mr. Gold an e-mail stating, *inter alia*, "I filed an ethics complaint (lack of candor with a tribunal) against you in DC. I was informed you are not a member of the DC Bar, but instead of California. I will file the ethics complaint there." DCX 34.

48. On November 16, 2015, Respondent sent Mr. Gold an e-mail with a subject heading stating, "ASAP I will sue you in DC Court for defamation per se for your various misrepresentations of facts in your brief." The e-mail then stated, "You

[35] This reference to the date of the ethics complaint Respondent filed against Mr. Gold with ODC, and the description of that complaint in this paragraph, are taken from a subsequent letter dated December 5, 2015 from Respondent to ODC. DCX 44 at 2.

need to be taught a lesson about accuracy. Tell the US Attorney's office so they can remove."[36] DCX 35 at 1. Later that evening Respondent sent Mr. Gold another e-mail, asking for details about Mr. Gold's background, stating, *inter alia*, "you fancy yourself an expert on EID" and asking for Mr. Gold's qualifications "as a Daubert Kumho expert witness regarding the workings of EID." *Id*. at 2.

49. On November 17, 2015, Respondent sent Mr. Gold an e-mail with a reference to information from an internet site for the California State Bar, asking, "[p]lease confirm that this is you." DCX 37.

50. Respondent's e-mails to Mr. Gold, and especially Respondent's statement on November 16, 2015 (DCX 35 at 1) that Mr. Gold needed to "be taught a lesson," physically frightened Mr. Gold (Tr. 354:12-357:5 (Gold)) and also led him to learn from other USDA employees who had worked with Respondent about a shared concern over Respondent's emotionally volatile behavior (Tr. 355:12-356:15 (Gold)). Indeed, the level of anger in Respondent's communications and filings even caused Mr. Gold to be apprehensive about appearing and testifying before the Hearing Committee. Tr. 379:19-380:16 (Gold). As Mr. Gold testified (Tr. 355:1-4):

> [T]hese were things that in all my years of practicing I had never seen. And I did family law, and people can get very contentious in family law, and I didn't even see it then.

[36] Respondent's statement about removal appears to be a reference to Respondent's experience in attempting to sue Ms. Quarles, as discussed in subsection II(A)(1) of this Report.

51. On November 17, 2015, USDA filed with the MSPB a motion for sanctions and a protective order against Respondent. DCX 36. The motion stated (*id*. at 1) that after USDA's filing of a routine request for a stay pending a determination on jurisdiction (FF 41), Respondent began sending the threatening e-mails discussed in FF 42, 44, and 47-49. USDA argued that the e-mails were "an effort to bully and intimidate opposing counsel in order to create a chilling effect and disrupt the proceedings" (DCX 36 at 2), and that they "instil[led] a reasonable concern for the safety of the Agency representatives and Agency employees" (*id*. at 4). USDA further argued that these e-mails not only were threatening, but also that the threats ignored the privilege against civil liability usually accorded to statements of counsel made in connection with litigation. *Id*. In support of this contention, and in addition to citing a law review article and the Restatement (Second) of Torts, USDA cited and quoted from a New Jersey case, *Loigman v. Township Committee*, 889 A.2d 426 (N.J. 2006). *Id*. at 4-5. USDA's motion stated (*id*. at 5), "filing complaints against opposing counsel and making personal threats every time there is activity in a case is disruptive and interferes with the orderly administration of the business at hand," but USDA's motion did not claim that statements of counsel made during litigation are afforded any immunity from ethics complaints; the motion cited *Loigman* only for the proposition that "[t]he litigation privilege generally protects an attorney from civil liability arising from words he has uttered in the course of judicial proceedings." *Id*. (alteration in original). USDA asked for the following relief: (1) a stay of all proceedings pending a ruling on jurisdiction, as USDA previously

requested (FF 41); (2) an order requiring Respondent to secure independent legal counsel; and (3) provisions for physical security in any ensuing depositions or hearings attended by Respondent. *Id*. at 5-6.

52. On November 18, 2015, Mr. Gold filed an ethics complaint with ODC against Respondent. DCX 43. The principal allegation of Mr. Gold's complaint was that Respondent had used threats of ethics complaints against Mr. Gold in order to gain leverage in connection with Respondent's settlement proposal to USDA (*see* FF 40 and 42, *supra*).

53. On November 19, 2015 (DCX 27), the MSPB received from Respondent a pleading dated November 18, 2015, entitled "Appellant's Reply to Agency Motion for Sanctions." DCX 38. As a preface to this pleading, Respondent restated the following language, echoing an e-mail (DCX 39) he sent to Mr. Gold that day:

> As a professional courtesy, I will not mention professional ethical complaints or defamation actions against Mr. Gold for the remainder of this case. Having been bullied, harassed, and forced from a job that I loved this Spring, I hardly want Mr. Gold or USDA to feel abused, chilled, bullied, intimidated, or threatened. It was neither my intent nor my goal to impinge Mr. Gould's [sic] zealous representation or to disrupt proceedings.

DCX 38 at 4.[37] Respondent's pleading first criticized Mr. Gold for citing foreign (New Jersey) case law as support for the contention that attorneys have immunity

[37] Three weeks later Respondent rescinded this "professional courtesy," and resumed his on-the-record references to his filing ethics complaints against Mr. Gold. *See* FF 62, *infra*.

from civil liability for statements made in the course of litigation,[38] discussing instead the propriety of referring to the law of California (where Mr. Gold was admitted to practice), the law of District of Columbia (where the MSPB proceeding was being conducted), or federal case law (because Mr. Gold was acting as defense counsel for a federal agency in a federal administrative proceeding). *Id*. at 4-6. Respondent next contended it would be overly broad to apply the immunity doctrine to ethics complaints (an argument not made in USDA's sanctions motion; *see* FF 51, *supra*) or to statements allegedly made by Mr. Gold as a "witness" rather than as an attorney (*id*. at 6-7), but concluded, "whether . . . [Respondent] may bring a defamation action against Mr. Gold . . . is moot because [Respondent] voluntarily agrees to eschew that option" (*id*. at 7). Respondent then argued that sanctions were not warranted, *inter alia*, because Mr. Gold, "[a]s discussed in my forthcoming *Daubert* Motion," was not in a position to "opine on my personal motives" (*id*.).

54. On November 19, 2015, Respondent filed with the MSPB a pleading entitled "Appellant's *Daubert* Motion to Exclude the Opinion Testimony of Martin Gold."[39] DCX 40. Respondent's motion attacked USDA's position (FF 41 and 51)

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[38] When Respondent, however, became the subject of a sanctions motion in a District of Columbia court proceeding, he had no difficulty in citing cases from other jurisdictions to support his claim for immunity as an advocate. *See* FF 147(b), *infra*.

[39] *See Daubert v. Merrell Dow Pharmaceuticals, Inc*., 509 U.S. 579 (1993). In that case, the Court held that in applying Fed. R. Evid. 702 (entitled, "Testimony by Expert Witnesses"):

> Faced with a proffer of expert scientific testimony . . . the trial judge must determine at the outset . . . whether the expert is proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to understand or determine a fact in issue. This entails a preliminary assessment of whether the reasoning or methodology

that the MSPB lacked jurisdiction over Respondent's whistleblower complaint, and attacked USDA's motion for sanctions and a protective order against Respondent. Attributing no significance to the fact that Mr. Gold was the attorney designated to represent USDA's position before the MSPB (FF 38), Respondent sought an order "precluding opinion testimony by Agency Representation [sic] Martin Gold." *Id*. at 4. Respondent argued:

a. Mr. Gold's factual arguments on jurisdiction were inaccurate and unreliable (*id*. at 5-6);

b. USDA'S jurisdictional pleading should be discredited because it was "relete [sic] with disparagement of [Respondent's] character" (*id*. at 6) and because Mr. Gold lacked personal knowledge and expertise "regarding [Respondent's] responsibility for his work in EID or personal feeling toward Mr. [sic] Quarles" (*id*. at 7);

c. Statements in USDA's sanctions motion about the threatening purpose of Respondent's e-mails to Mr. Gold should be discredited because Mr. Gold lacked expertise "in an academic field that deals with issues of subjectivity and objectivity" (*id*.); and

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> underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue.

509 U.S. at 592-93 (internal footnotes omitted).

d. USDA's statements about Respondent's claims of gross waste in connection with Respondent's position that the MSPB had jurisdiction over his appeal were "purely subjective" (*id*. at 9).

55. On November 20, 2015, Respondent filed with the MSPB a pleading entitled "Appellant's First Reply to Agency Response," in support of his position that the MSPB had jurisdiction over his whistleblower complaint. DCX 41. Respondent's summary of his position (*id*. at 1) was:

a. he had standing to file his MSPB complaint as a *former* federal employee (not with the USDA, but with the National Labor Relations Board (*id*. at 4)), and as an alleged applicant for a USDA position;

b. he had made protected disclosures; and

c. his protected disclosures "were a contributing factor in the prohibited personnel" (sic).

56. On November 21, 2015, USDA filed with the MSPB a response to Respondent's "Daubert" motion (DCX 40, discussed in FF 54) as well as to Respondent's "First Reply to Agency Response" (DCX 41, discussed in the preceding paragraph). DCX 42. USDA moved to strike the "*Daubert*" motion as meritless, because Mr. Gold, as the attorney representing USDA, was not a witness, either expert or otherwise; arguments of counsel are not testimony or evidence; and *Daubert* (*see* n. 39, *supra*) was irrelevant because it dealt with the subject of admitting expert *scientific* witness testimony, not the arguments of counsel. *Id*. at 1-2. USDA further moved to strike the "*Daubert*" motion as well as Respondent's

"First Reply to Agency Response" as unauthorized filings (*id*. at 3), because earlier that month the parties had filed their jurisdictional pleadings (FF 46) and no further pleadings were permitted under the ALJ's October 27, 2015 Jurisdiction Order. FF 39. That Order stated, in pertinent part, that Respondent

> . . . must file [his jurisdictional] statement within 10 calendar days of the date of this Order, and must serve a copy on the agency at the same time. The agency may file a response on the jurisdictional issue within 20 calendar days of the date of this Order. *Unless I tell the parties otherwise, the record on the issue of jurisdiction will close on the date the agency's response is due. No evidence and/or argument on jurisdiction filed after that date will be accepted* unless the party submitting it shows that it was not readily available before the record closed.

Id. at 4 (emphasis added).

57. Late in November,[40] 2015, the ALJ granted USDA's motion (FF 41) for a stay of discovery and of the time for the agency to file a comprehensive response to Respondent's MSPB appeal. DCX 50 at 2.

58. On December 5, 2015, Respondent sent Mr. Gold an e-mail in response to the ethics complaint Mr. Gold filed against him with ODC on November 18, 2015 (FF 52), threatening a new ethics complaint to ODC as well as another "three count" ethics complaint to the California State Bar. DCX 45.

59. On December 8, 2015, Respondent sent Mr. Gold an e-mail with the subject line, "Notice of California Bar Complaint and MSPB Sanctions Motion

[40] Mr. Gold stated in a pleading filed with the MSPB that the date of the ALJ's ruling was November 27, 2015 (DCX 50 at 2); the docket sheet for the MSPB proceeding states that an order was entered on November 25, 2015 (DCX 27).

Against Martin Gold" (full capitalization omitted). DCX 46. *Inter alia*, Respondent's e-mail criticized Mr. Gold's legal work in the MSPB case, and stated (*id*. at 1), "This e-mail isn't a threat of what might or could happen. It is a notice of what will happen." As with other e-mails from Respondent to Mr. Gold (*e.g.*, FF 44), Respondent sent copies of this e-mail to other employees at USDA, including Ms. Peters, Mr. Ruiz, Mr. Pfaeffle, and Mr. Leonard. In a long "PS" at the end of the e-mail, Respondent began three paragraphs with the question, "Do your superiors know . . . " and then continued by making specific criticisms of alleged defects in Respondent's legal work. *Id*. at 1-2.[41]

60. On December 9, 2015, Respondent sent Mr. Gold another e-mail (DCX 47), again with the subject line, "Notice of California Bar Complaint and MSPB Sanctions Motion Against Martin Gold" (full capitalization omitted), and again with copies to Ms. Peters, Mr. Ruiz, Mr. Pfaeffle, Mr. Leonard, and four additional USDA employees. The e-mail, which is clearly phrased as being directed to the e-mail recipients other than Mr. Gold, stated, in pertinent part, "I filed ethics charges against Mr. Gold today" and "I realize it is difficult, if not impossible, for a dishonest lawyer like Mr. Gold . . . to fathom that someone could be disgusted with his dishonesty or feel compelled to report his dishonesty." *Id*. at 1.

[41] The first such paragraph stated, "Do your superiors know you cited a New Jersey common law case - Loigman - for the proposition that you enjoy absolute immunity from, according to you, both ethic [sic] complaints and defamation suits for your conduct in the MSPB proceeding?" DCX 46 at 1.

61. On December 9, 2015, ODC received from Respondent a response (dated December 5, 2015) to Mr. Gold's November 18, 2015 ethics complaint to ODC against Respondent (FF 52). DCX 44. Respondent's principal position was that Mr. Gold had incorrectly perceived Respondent's e-mails to him as threats to gain an advantage in litigation. *Id*. at 3-4.

62. On December 9, 2015, Respondent filed with the MSPB a pleading entitled "Appellant's Motion for Sanctions and Second Reply to Agency Sanctions Motion." DCX 48. In this pleading, Respondent stated (*id*. at 1) he was rescinding his prior offer of "professional courtesy" (*see* DCX 38 at 4, quoted in FF 53) not to refer to ethics complaints against Mr. Gold, and placed on the record a statement that Respondent was filing a further ethics complaint with the California State Bar in response to Mr. Gold's ethics complaint to ODC (FF 52) against Respondent. DCX 48 at 1. Respondent also asserted that Mr. Gold had committed a "most egregious misstatement of law" by mis-citing the *Loigman* case (FF 51). *Id*.

63. By letter dated December 9, 2015, Respondent lodged a complaint against Mr. Gold with the California State Bar, asking that disciplinary action be taken against Mr. Gold for alleged misconduct in the MSPB proceeding. DCX 49 at 2-3.[42] Respondent's letter to the California State Bar made several allegations of unprofessional conduct against Mr. Gold, and stated (*id*. at 3) that Mr. Gold's "most egregious misstatement of law to MSPB" was citing *Loigman* in USDA's motion for

[42] A copy of this letter was sent by Respondent to ODC as an attachment to a letter dated December 14, 2015. DCX 49 at 1.

sanctions and a protective order (DCX 36, discussed in FF 51), allegedly for the proposition that "a New Jersey common law case . . . absolutely immunizes him from both defamation and disciplinary actions for his statements and conduct before the MSPB."[43] However, as noted in FF 51, USDA's sanctions motion made no claim about immunity from ethics charges, and cited *Loigman* as only one of three authorities to support the proposition that the litigation privilege generally protects an attorney from civil liability arising for words uttered in the course of judicial proceedings.

64. On December 15, 2015, Respondent filed with the MSPB a pleading entitled "Appellant's Second Reply to Agency Jurisdictional Response."[44] DCX 51. On December 21, 2015, USDA filed a reply to Respondent's pleading, disagreeing with the analysis in Respondent's "Second Reply." DCX 52.

65. On December 21, 2015, Respondent sent Mr. Gold two more e-mails. The first e-mail (DCX 53 at 3), with the subject heading, "Yet another ethics violation," stated (*inter alia*), "[y]our dishonesty and lack of ethical responsibility seem boundless," and declared Respondent's intention of filing another ethics complaint against Mr. Gold with the California State Bar. The second e-mail (*id*. at 2), with

[43] As noted in FF 147(b), *infra*, when Respondent himself was faced with a motion for sanctions in a District of Columbia court proceeding, he had no concern about citing foreign state law in claiming that defamatory statements he had made in litigation that were the subject of the motion for sanctions were absolutely privileged, even if they were "scurrilous" (DCX 90 at 2, citing, *inter alia*, *Surace v. Wuliger*, 495 N.E. 2d 939, 944 (Ohio 1986)).

[44] This filing again violated the ALJ's Jurisdiction Order quoted in FF 56, prohibiting any further filings relating to jurisdiction after the parties' initial submissions on jurisdiction made in November, 2015 (FF 46).

the subject heading, "On disbarment," stated (*inter alia*), "since you can't seem to draft a pleading without misrepresenting the law or misrepresenting facts to this tribunal, you make disbarment ever more possible."

66. On December 28, 2015, Respondent sent Mr. Gold another e-mail, reiterating Respondent's intention to file a second ethics complaint against him with the California State Bar. DCX 54.

67. By letter dated January 12, 2016 (DCX 58 at 12-14), the California State Bar advised Respondent that it had reviewed and was closing his ethics complaint (FF 63) against Mr. Gold, having found no grounds for disciplinary action. *Inter alia*, the letter specifically rejected Respondent's allegation that Mr. Gold unethically cited *Loigman v. Twp. Comm. of Twp. of Middletown*, 185 N.J. 566, 575, 889 A.2d 426, 431 (2006) (DCX 58 at 12-13), and rejected Respondent's argument in his "*Daubert*" motion (FF 54) that Mr. Gold had improperly offered himself as a witness, stating (*id*. at 13), "The fact that you disagree with the attorney's argument to the court does not present grounds for discipline."

68. On February 3, 2016, Respondent sent Mr. Gold an e-mail stating, *inter alia*, "in the spirit of fair play and reciprocity, I will withdraw my ethics complaint in California if you withdraw yours in DC." DCX 57 at 1. The offer in Respondent's e-mail was disingenuous because, as noted in the preceding paragraph, on January 12, 2016 the California State Bar had already notified Respondent that it had dismissed Respondent's ethics complaint against Mr. Gold.

69. By letter dated March 31, 2016 (DCX 58 at 2-11), Respondent asked the California State Bar to reconsider its January 12, 2016 dismissal of his ethics complaint, and to disbar Mr. Gold. *Inter alia*, Respondent extensively reargued (*id*. at 3-5) his contention that Mr. Gold improperly cited *Loigman* as holding that statements made by Mr. Gold in the MSPB proceeding could not be the basis of an ethics complaint. As noted in FF 51, however, that was not USDA's position.

70. On April 7, 2016, the California State Bar wrote to Respondent, stating that it could not provide an estimate of when his request for reconsideration might be assigned for review. DCX 59 at 2. On April 21, 2016, Respondent wrote to the California State Bar, stating that he was withdrawing his request for reconsideration. *Id*. at 4.

71. On September 28, 2016, the ALJ dismissed Respondent's MSPB whistleblower complaint for lack of jurisdiction. DCX 60. The ALJ held "there was no factual dispute bearing on the issue of jurisdiction" (*id*. at 1), and ruled that:

a. Although Respondent asserted the MSPB had jurisdiction over his complaint because he was "federally employed,"

> [t]he record reflects, however, that at the time of his alleged whisteblowing activity, and at all relevant times thereafter, [Respondent] was actually working as a contract employee for the Panum Group, a private sector firm. The record further reflects that the appellant's contract with the Panum Group was terminated or non-renewed on May 25, 2015.

Id. at 3 (internal citations omitted).

b. Although Respondent claimed the MSPB had jurisdiction over his complaint pursuant to 5 U.S.C. § 2302(b)(4)[45] because of USDA employees' assertedly "obstructing" his alleged request for a transfer of his work assignment from one USDA function to another, Respondent's

> largely unintelligible statement leaves unclear exactly what protected disclosure [Respondent] is alleged to have made, and/or what personnel action is alleged to have resulted from it.
>
> * * *
>
> [Respondent] alleges he was subject to "selection/retention/promotion discrimination[,]" apparently based on race, conflating this and other references to prohibited personnel practices, harassment, defamation, and retaliation for discrimination complaints and/or whistleblowing activity, without . . . detailing precisely what protected disclosures he was alleging, and what alleged personnel actions resulted from them.

Id. at 3-4.

c. Although Respondent alleged that USDA employees unfairly criticized his work performance and that the resulting disputes over these performance issues constituted "gross waste,"[46]

> Even favoring [Respondent's] version of these events, such workplace disputes, regarding the best manner to achieve office goals, fall outside what is contemplated by a gross waste of funds, as defined under the [whistleblower protection statutes].
>
> * * *
>
> Indeed, it is well-established that an appellant's expressions of disagreement over agency decisions or policies, and his personal sense of grievance over how he has been treated and utilized by the agency,

[45] 5 U.S.C. § 2302(b)(4) requires an individual with authority to take personnel actions not to "deceive or willfully obstruct any person with respect to such person's right to compete for employment."

[46] 5 U.S.C. § 2302(a)(2)(D)(ii) defines a protected "disclosure" as one that evidences, *inter alia*, "a gross waste of funds."

> do not, of themselves, constitute non-frivolous allegations of gross mismanagement, a gross waste of funds, or an abuse of authority.

Id. at 5.

d. Although MSPB jurisdiction might be founded on allegations by an applicant for federal employment of non-selection in retaliation for making a protected "disclosure" (*id*. at 6),

> [Respondent's] Exhibit 1, a listing of vacancy announcements from USAJOBS . . . fails to indicate that [Respondent] ever completed an application for any particular position, much less that he was non-selected for it. Even assuming, moreover, that [Respondent] did complete an application for . . . some . . . position, he has failed to non-frivolously allege that his whistleblowing activity contributed as a factor in the agency's decision not to select him for it.

Id. at 7-8.

B. Count Two (Dettling)

72. Rosemary Dettling, Esq. ("Ms. Dettling") is a Washington, D.C., attorney who since 2007 has focused her practice on representing federal employees as claimants in employment discrimination cases. Tr. 133:9-20 (Detttling). She has adopted for her practice the trade name "Federal Employee Legal Services Center" (sometimes referred to in this Report and in the exhibits for this case as "FELSC"), but FELSC is a sole proprietorship owned by Ms. Dettling and is not operated as a separate legal entity. Tr. 133:21-132:3; 138:4-16 (Dettling).[47] (Unless otherwise

[47] After Ms. Dettling ended Respondent's short period of working for her as hereinafter discussed, he opened a competing law practice (DCX 82 at 4; DCX 159 at 4) with a similar name, *i.e.*, "Federal Employees Defense, LLC." DCX 65 at 1.

specified in this Report, references herein to "Ms. Dettling" include both her and FELSC.)

73. Beginning in 2013, Ms. Dettling represented Mr. Stephen Hall ("Mr. Hall") as a claimant in federal employment law matters (Tr. 176:16-177:5 (Dettling)), and on December 4, 2013 Mr. Hall signed a retainer agreement with her for representation in an appeal to the MSPB. DCX 82 at 72-75. The agreement provided that Mr. Hall would pay a fixed retainer amount, after which he would not be charged additional legal fees, but if Mr. Hall's claim was successful then Ms. Dettling would bill the respondent federal agency for her legal fees at the prevailing rate for Washington, D.C. (the "Laffey rate"), and legal fees prevously paid by Mr. Hall would be refunded. *Id*. at 73 ¶ 3(B). If Mr. Hall's case was dismissed at an early date, Ms. Dettling agreed to charge him only for fees earned and to refund Mr. Hall the difference. *Id*. Mr. Hall had the right to discharge Ms. Dettling at any time, but if he did so before resolution of his case he agreed to be liable to Ms. Dettling for all expenses incurred, as well as hourly fees for her legal work at the "Laffey rate." *Id*. at 74 ¶ 7.[48]

74. Ms. Dettling sometimes hires third parties as independent contractors to assist in her practice (Tr. 134:1-7 (Dettling)), and at the suggestion of a friend ("Ms. Weth") she got in touch with Respondent (Tr. 135:8-20 (Dettling); DCX 63 at 1-2).

[48] Because the Hearing Committee seeks to present its findings of fact largely in chronological form, at this point the Report discusses Ms. Dettling's contacts and problems with Respondent before the filing of the federal court litigation hereinafter described involving Ms. Dettling, Mr. Hall, and Respondent. Discussion of Mr. Hall's case resumes at FF 90, *infra*.

75. On June 2, 2015,[49] Respondent signed an independent contractor agreement with Ms. Dettling. DCX 61. The principal terms of the agreement were:

a. Respondent's work was to be focused on intake services. Ms. Dettling would send Respondent e-mails with information about prospective clients who contacted her; he was to get in touch with them by telephone and e-mail, and send them retainer agreements if they were interested in working with Ms. Dettling. *Id*. at 1 ¶ 1.

b. Ms. Dettling agreed to pay Respondent $50 per hour, plus $100 for each new client who retained her, up to a maximum of 15 hours of work per week. Respondent was required to obtain prior approval from Ms. Dettling for any work in excess of 15 hours per week. *Id*. at 1 ¶ 2.

c. Respondent agreed to provide Ms. Dettling an e-mailed billing statement every other Friday with time spent on calls and e-mails to potential clients. *Id.* Payment was due within two weeks after each billing statement. *Id*.

d. Either party retained the right to terminate the agreement at any time. *Id*. at 2 ¶ 5.

e. Because Respondent would be exposed to information relating to client cases as well as Ms. Dettling's marketing strategies, a confidentiality clause required Respondent to keep all such information confidential and not divulge it to third parties. *Id*. at 2 ¶ 4. For similar reasons, all client files, e-mails, and attachments remained the property of Ms. Dettling. *Id*. at 2 ¶ 7.

[49] This date is about one week after Respondent's work ended at USDA. FF 11.

76. On June 4, 2015, Respondent advised Ms. Dettling that he was ready to begin work, and Ms. Dettling began sending him e-mail contacts for her potential clients. DCX 63 at 2.

77. On Friday, June 19, 2015, Respondent asked Ms. Dettling how to submit his billable hours, and that day she e-mailed him the following reply:

> I don't need a fancy invoice. Please send me a list of the clients you called and how many minutes you spoke to each of them. Please tell me why they didn't sign. That can be real brief. Please then add the minutes up and multiply by the hourly rate. Thanks.

Id. at 2.

78. On June 21, 2015, Respondent submitted his first invoice to Ms. Dettling. *Id*. Ms. Dettling found it vague, and it did not contain any information on who Respondent had called. *Id*. Accordingly, on that day Ms. Dettling sent Respondent another e-mail, stating (*id*.):

> I really need to see how long you spoke to each client. Please do not [r]ound off time. It needs to be exact. Does your phone bill show that you were on the phone 31 hours?

79. At this point in time, Ms. Dettling was becoming concerned about Respondent's suitability for doing contact work with potential clients, because out of 61 referrals to him, the client signing rate (three) was much lower than her experience with another person who did the same work. *Id*. Accordingly, on June 22, 2015 Ms. Dettling sent Respondent an e-mail expressing her concern about the low sign-up rate. *Id*. at 2-3.

80. On June 26, 2015, Respondent sent Ms. Dettling an e-mail indicating he was unhappy with the existing agreement, and forwarded a proposed revision to her. Ms. Dettling replied by e-mails the same day telling Respondent she was not interested in signing a new contract, and terminating his services. *Id*. at 3. Ms. Dettling's e-mails evoked belligerent e-mail responses from Respondent, some sent in the middle of the night. *Id*.

81. On June 28, 2015, Respondent submitted a final invoice to Ms. Dettling, along with the following comments (*id*.):

> The greed is disgusting. What did your firm make off my calls? 24-36K? And you are trying to nickel and dime me over a dozen dollars? The same greed loses you 3/4 of the potential clients who can't afford the 6k.

82. Ms. Dettling promptly paid the full amount of Respondent's final invoice for $2,058 in hourly charges,[50] plus $300 for three clients who signed retainer agreement with her (Diane Schooley and two others). *Id*. at 4; Tr. 148:14-16 (Dettling); DCX 62 at 4 (June 29, 2015 e-mail from Ms. Dettling to Respondent stating she was paying him in full); DCX 62 at 15 (Respondent admits that Ms. Dettling "paid me the monies").

83. On June 28, 2015, Respondent placed a negative internet posting on Ms. Dettling's website, stating:

> Worked for FELSC as a consultant for two plus weeks. When Rosemary Dettling started trying to nickel and dime me, in violation of

[50] $2,058 is the equivalent of a little over 41 hours at the $50 hourly rate specified in Respondent's contract with Ms. Dettling.

> our contract, I protested[.] Rather than honoring the terms of our contract, she said my services were no longer needed.
>
> I made somewhere in the neighborhood of $24-$36k for her in those weeks ($6 a retainer). And yet she was trying to cheat me out of a dozen dollars by claiming she would not pay for administrative tasks that were expressly part of our contract.
>
> So many federal employees are under siege but Rosemary only wants to help those who can afford her steep $6 retainer and $350 an hour. She loses clients left and right because of this.

DCX 63 at 5.[51]

84. In another website posting on Google, Respondent stated, *inter alia*, "I haven't looked but I wouldn't be surprised that [i]f I looked up 'slimeball' in the dictionary there would be a picture of [Ms. Dettling] there" (DCX 62 at 14),[52] and in a later internet review of Ms. Dettling he called her "dishonest and greedy" (*id*. at 15-16).

85. The foregoing website postings are part of a prolonged and continuing harassment campaign by Respondent against Ms. Dettling, about which she testified as follows:

> Google ended up taking things down, and then he would repost. And then he would send me an e-mail saying, I took it down, but I changed it. I mean, he would change it all the time. And that was the summer [of 2015]--that ruined my summer.

[51] Additional examples of similar negative website postings by Respondent continuing into 2016 are in the record at DCX 62 at 2-3, 13-14, and 16.

[52] Other portions of this e-mail are also discussed *infra* at FF 100 in connection with a settlement demand Respondent directed to Ms. Dettling in connection with his representation of Diane Schooley, a former client of Ms. Dettling.

Tr. 150:8-12 (Dettling).

> Q. Are these [DCX 62] all the e-mails that he sent you?
>
> A. Oh, this is just the tip of the iceberg. I still get e-mails, nasty, harassing e-mails. I've had over a hundred. And he found my personal e-mail. He sends me -- I mean it's -- it's so obsessive that I finally filed a complaint with the FBI, because it's -- I've looked up the law on cyber harassment and cyber stalking.
>
> He still contacts my -- my clients. A lot of these decisions are published decisions. He's found out every case I've won or lost and exploits it for whatever purpose serves him. In court documents he brings up cases I've lost, he brings up cases I've won, and somehow misinterprets them and things that even though I won, I must have done something wrong. I mean it's just been -- and the names he calls me is just -- it's horrible.
>
> Q. And when was the last time you got an e-mail from [Respondent].
>
> A. I think a week ago. It has not stopped, and I'm terrified.

Tr. 166:7-167:6 (Dettling).[53] *See also* Tr. 173:17-175:8; 259:17-262:2 (Dettling) (description of Respondent's continuing punitive actions and their adverse effects on Ms. Detting, her law practice, and her life).

[53] Other non-litigation examples of actions taken against Ms. Dettling by Respondent include filing an unemployment compensation claim against her in Virginia (where Respondent lives), to which she had to respond, and which was dismissed (Tr.168:5-19 (Dettling)); an ethics complaint against Ms. Dettling by Diane Schooley (one of the clients who retained Ms. Dettling as a result of Respondent's work for her; FF 82) and her husband ("the Schooleys") prompted by Respondent (DCX 63 at 10), which was dismissed (Tr. 171:11-22 (Dettling)); an e-mail dated April 3, 2016 (DCX 62 at 12, discussed *infra* in FF 98)) from Respondent to Ms. Dettling and another attorney who worked with her, threatening an ethics complaint, a malpractice suit, punitive damages, court costs, increased malpractice insurance costs, and a claim for Respondent's own fees at the "Laffey rate" − all unless the Schooleys were paid $3,000 within three days; a derogatory e-mail posting on May 2, 2016 (DCX 62 at 14); and an e-mail (DCX 62 at 17) from Respondent to Ms. Dettling in June, 2016 (almost a year after Respondent's work for Ms. Dettling ended) with the subject heading, "Given your dishonesty and greed, I am reexamining whether you cheated me out of retainer commission" [*sic*], to which Ms. Dettling responded:

> I received four emails from you over the last few days, plus notification from LinkedIn that you are reviewing my account. Is there anything I can do to get you

86. On June 29, 2015, Ms. Dettling sent Respondent an e-mail stating that the negative internet posting quoted in FF 83 was a breach of the confidentiality provision in their agreement (FF 75(e)), and demanding that Respondent cease and desist from disclosing confidential information about her business and that he take down his negative posting. DCX 62 at 4.

87. Early on the morning of July 9, 2015,[54] notwithstanding the confidentiality provision in his agreement with Ms. Dettling (FF 75(e)), Respondent sent a series of five e-mails to potential clients he had learned of through his work for Ms. Dettling, asking if they had retained her. DCX 62 at 5-9; Tr. 156:7-157:6 (Dettling).

88. Later on the morning of July 9, 2015, Ms. Dettling sent Respondent the following e-mail (DCX 62 at 9):

> I have tried to refrain from emailing you, but you seem obsessed with me. It is really beginning to alarm me.
>
> I do not wish you any ill will and hope you can move on to something more productive.
>
> It is not appropriate for you to contact my clients and/or potential clients. Please refrain from doing so. If you continue doing so, and continue harassing me with emails and bad reviews, I will take legal action.

> to leave me alone? I am sorry that you were hurt that I let you go last year, but that was a year ago. I do not understand why you feel the need to keep contacting me and following me online. I paid you what you requested and paid you for the people you signed up during the 20 days you worked for me. Please stop contacting me.

[54] The time indicators on these e-mails show they were sent between 5:07 A.M. and 5:21 A.M.

89. On July 15, 2015, Respondent sent Ms. Weth (the person who had first brought him to Ms. Dettling's attention) an e-mail asking if Ms. Dettling would consider re-hiring him. DCX 62 at 11.[55] Ms. Dettling declined to respond. Tr. 158:13-20 (Dettling).

90.[56] On November 3, 2015, pursuant to 5 C.F.R. § 1201.41(c)(1)[57] and Chapter 14 of the MSPB Judges Handbook[58] (DCX 82 at 20, 30-31), the administrative law judge ("ALJ Hudson"; *see* DCX 85 at 8) assigned to Mr. Hall's MSPB case (FF 73) initiated a settlement call to Ms. Dettling, to which Ms. Dettling

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[55] In pertinent part, Respondent's e-mail to Ms. Weth stated:

> If Rosemary hasn't found a replacement for me, I'd like to give the FELSC job another go.
>
> The simple fact is- I liked the work and found it interesting.
>
> But I think this time we need a very specific contract . . . .
>
> * * *
>
> Despite all the fireworks, I think we can make this work, to our mutual benefit.

[56] Findings of fact relating to Ms. Dettling's representation of Mr. Hall resume at this point.

[57] 5 C.F.R.§ 1201.41 is a general regulation governing the authority of administrative law judges. 5 C.F.R. § 1201.41(c)(1) states, "***Settlement discussion***. The judge may initiate attempts to settle the appeal informally at any time. The parties may agree to waive the prohibitions against *ex parte* communications during settlement discussions, and they may agree to any limits on the waiver." (Bolding and italics in original.)

[58] Chapter 14 of the MSPB Judges Handbook deals generally with the subject of *ex parte* communications. Section 4b of Chapter 14 states, in pertinent part, "Waiver of the Prohibition Against Ex Parte Communications. The parties may agree to waive the rule against prohibited ex parte communications in order to obtain the AJ's active involvement in the settlement process. This is permissible." *See also* 5 C.F.R. § 1201.102, stating, "Except as otherwise provided in § 1201.41(c)(1) [allowing *ex parte* communications, as quoted in the preceding footnote] ex parte communications that concern the merits of any matter before the Board for adjudication, or that otherwise violate rules requiring written submissions, are prohibited . . . . "

responded. DCX 87 at 1. Later that day, Ms. Dettling sent Mr. Hall an e-mail about that settlement discussion, stating (*id*.):

> I talk[ed] to the judge today. She called me and I called her back. She wanted to talk about settlement[.] She said that she didn't think that you would win your case. And told me she wanted me to pass that onto [sic] you. She said that she could try to get the agency to take the termination off your record. She insisted that that was a good settlement and that she did not think that she would find in your favor. I know that this is not what you want to hear. But it's my obligation to pass this on.

91. On November 22, 2015, Mr. Hall sent Ms. Dettling an e-mail (DCX 82 at 90), stating, "I'm going to accept what DHS [*i.e.*, the United States Department of Homeland Security; hereinafter, "DHS"] offer [sic] and move on from that. You're a good person and I appreciate you. One day me and my wife would like to invite you to our church in Clinton, Md."

92. Despite the sentiment expressed in the preceding paragraph, Mr. Hall came to feel that the settlement with DHS was unfair, and on or about November 28, 2015[59] he discharged Ms. Dettling as his lawyer because he felt she had pressured him to agree to the settlement. DCX 93 at 4. He nevertheless signed the settlement agreement. *Id*.

93. Shortly after signing that settlement agreement Mr. Hall decided to revoke it, but he later rescinded his revocation; Ms. Dettling was no longer representing Mr.

[59] A pleading filed by Respondent in the federal court litigation discussed in this Section II(B) states that the termination date was "November 28, 2016," but the year cited is clearly a typographical error.

Hall when he rescinded his revocation of the settlement, and he decided on his own to proceed with the settlement anyway. *Id*.

94. After accepting the settlement of his MSPB case a second time, Mr. Hall changed his mind again, and filed a review petition with the MSPB to reconsider the validity of the settlement, claiming he had been misled into signing it and that ALJ Hudson had shown bias in pushing him to agree to the settlement. *Id*.

95.[60] On March 15, 2016, Respondent sent an e-mail to Joanne Dekker, Esq., a contract attorney who assisted Ms. Dettling in representing Diane Schooley (Tr. 159:6-160:16 (Dettling)),[61] stating that he now represented Ms. Schooley; implying that there might have been some irregularity in the representation provided to Ms. Schooley; and asking for additional information about the representation. DCX 63 at 8. Ms. Dettling and Ms. Dekker both replied promptly to Respondent's e-mail, advising him about their representation of Ms. Schooley and indicating their belief that there had not been any irregularity in their representation of her. *Id*. at 8-9.

96. On March 18, 2016, Respondent sent another e-mail concerning the Schooley matter, stating (*id*. at 9-10):

> Rather than litigating against the two of you, I'd much prefer to expend my energies battling errant employers. To that end, I have convinced the Schooley's to accept an alternative to ethics and malpractice actions. They are willing to forego such actions if they are returned their retainer with billable hours up until December 27, 2015.

[60] FF 95-101 relate to harassing actions against Ms. Dettling by Respondent in connection with his representation of Diane Schooley. Discussion of matters relating to Mr. Hall resumes at FF 102.

[61] Ms. Schooley is one of the three clients who retained Ms. Dettling during the period when Respondent was doing new-client intake work for her. *See* FF 82, *supra*. (The hearing transcript in this matter misspells "Schooley" as "Skully" and misspells "Dekker" as "Decker.")

> Rosemary - if you lose monies on billables after that point, perhaps Ms. Dekker will comp you. She botched the case after December 28, 2015. Please timely provide the Schooleys their monies and an invoice detailing all charges by no later than COB next Friday (Eastern time).

97. Ms. Dettling and Ms. Dekker did not respond to Respondent's foregoing e-mail because they had already provided him with the information he had requested about their representation of Ms. Schooley. *Id*. at 10.

98. On April 3, 2016, Respondent sent another e-mail to Ms. Dettling and Ms. Dekker stating he represented the Schooleys for the purpose of filing a malpractice suit against them. The e-mail demanded the payment of $3,000 to the Schooleys "by COB Eastern Wednesday April 6, 2016 . . . (along with signing a settlement agreement waiving all counterclaims)"; otherwise, Respondent threatened: an ethics complaint; a malpractice suit; punitive damages; court costs and legal fees; a likely increase in Ms. Dettling's and Ms. Dekker's professional liability insurance costs; and a claim for Respondent's own legal fees. *Id*. The e-mail proposed an explicit *quid pro quo* – "By settling and paying $3,000 . . . you will save yourselves . . . [a]n ethics complaint." *Id*.

99. On April 7, 2016, Respondent sent an e-mail to Mr. Schooley, with a copy to Ms. Dettling, stating, "Wes, you should file your ethics complaint against Rosemary Dettling if you have not already," and sent the same e-mail to Ms. Dekker. *Id*.

100. On or about April 7, 2016, Respondent made another negative internet posting about Ms. Dettling, stating (*inter alia*):

> Rosemary Dettling tried to cheat me out of contractually required monies when I worked for her. But Rosemary's refusal to represent people who couldn't come up with her massive retainer that disgusted me more. [sic]
>
> * * *
>
> And I now represent a former client of [Ms. Dettling] whose case was completely mishandled by Rosemary and . . . employee Joanne Dekker. Those clients are suing her for malpractice.

Id. at 11.[62] Ms. Dettling viewed Respondent's internet posting as "extortion" (Tr. 162:4) (Dettling)), and in fact the Schooleys never filed a malpractice suit against her (Tr. 171:8-10 (Dettling)).

101. By letter dated May 11, 2016, Ms. Dettling filed an ethics complaint against Respondent with ODC, based on the actions he had taken against her. DCX 63.

102. On June 23, 2016 (DCX 66 at 2), the MSPB dismissed Mr. Hall's review petition (FF 94) on the ground that he had previously settled his case. The MSPB ruled that Mr. Hall could not show he had been misled about any settlement terms by any alleged misrepresentation from DHS because he had revoked the agreement and then changed his mind only after "carefully considering [his] options." The MSPB also concluded that Mr. Hall's bias claim against ALJ Hudson was unavailing because although Mr. Hall claimed ALJ Hudson had improperly discussed the

[62] The same internet posting appears at another point in the record of this matter (DCX 62 at 14) with a date of May 2, 2016, and other language from this posting is discussed in FF 84, in connection with Respondent's general campaign of harassment against Ms. Dettling.

weakness of his case with Ms. Dettling, such conversations were allowed by the MSPB's rules.[63] DCX 93 at 4-5.

103. On July 15, 2016, Mr. Hall filed a *pro se* complaint in the United States District Court for the District of Columbia. DCX 66. The case was assigned to the Hon. James E. Boasberg ("Judge Boasberg"). DCX 65 at 1. The defendants named in the complaint were DHS; the attorney who represented DHS in the MSPB proceeding ("Ms. Byers") (DCX 66 at 2 ¶ 1; Tr. 184:20-185:2 (Dettling)); Ms. Dettling/FELSC; and Joanne Dekker (the attorney who assisted Ms. Dettling in representing Mr. Hall (DCX 66 at 3 ¶ 3; Tr. 184:15-19 (Dettling)). DCX 66 at 1.

104. Mr. Hall's complaint sought revocation of the settlement agreement he had signed with DHS, and monetary damages against all of the defendants. DCX 66 at 14-15. Mr. Hall alleged that Ms. Byers (the DHS attorney) had "concealed vital information" and made "misstatements of facts" (*id*. at 8-9 ¶ 6); that Ms. Dettling and Ms. Dekker had not properly and competently represented him (*id*. at 9-10 ¶ 7); that all three of the individual defendants acted "to coerce and entice me into involuntary signing the fraudulent Agreement" (*id*. at 10 ¶ 8) and "collaborated in coercion and fraud to deceive and misled [sic] me and the MSPB AJ" (*id*. at 11 ¶ 9); that DHS, Ms. Dettling, and Ms. Dekker took unfair advantage of him and violated his rights as an individual over age 40 with various medical problems and disabilities (*id*. at 11-13 ¶¶ 10-11); and that DHS and Ms. Byers engaged in "prohibited personnel practices," and the three individual defendants "corroborated

[63] *See* nn. 57-58, *supra*.

and collaborated as a team to provide the MSPB AJ a fraudulent Agreement" (*id*. at 13-14 ¶ "6"[64]).

105. On August 10, 2016, Ms. Dettling moved for an extension of time within which to answer Mr. Hall's complaint, and by a minute order on the same day Judge Boasberg granted an extension until August 31, 2015. DCX 65 at 3. Ms. Dekker was likewise granted an extension of time to answer until August 31, 2015. *Id*.

106. On August 15, 2016, before the time had expired for Ms. Dettling and Ms. Dekker to answer the complaint, and before the federal defendants (DHS and Ms. Byers) had even moved for any extension of time, Mr. Hall filed a *pro se* motion (DCX 68) which withdrew his requests for a jury trial and for damages from DHS and FELSC, stating, *inter alia*, "My relief alleviates the . . . United States Attorney . . . from having to spend additional time reviewing this case complaint . . . ." However, Mr. Hall's motion retained a request that Ms. Dettling refund him legal fees of $20,097.50.[65] *Id*. at 2.

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[64] This paragraph is mis-numbered in Mr. Hall's complaint as filed; it should have been numbered as paragraph 12.

[65] Although, as set forth in the remainder of this Section II(B), Mr. Hall's federal court lawsuit never reached a conclusion on his claim against Ms. Dettling for a refund of legal fees (or on any other substantive issue while Respondent was representing Mr. Hall), Mr. Hall's and Ms. Dettling's respective claims for legal fees were eventually submitted to fee arbitration. The result of the arbitration proceeding was a ruling that Ms. Dettling was entitled to retain the $30,000 she obtained as a result of Mr. Hall's settlement of his claims against DHS in his MSPB proceeding, and that Mr. Hall owed Ms. Dettling additional legal fees (*see* FF73, *supra*, regarding Mr. Hall's contractual liability for legal fees if he prematurely discharged Ms. Dettling (as he did; FF 72)). Ms. Dettling declined to seek court enforcement of the arbitration award against Mr. Hall because she just wanted Respondent to leave her alone, but a separate court challenge by Mr. Hall seeking to overturn the arbitration award was rejected. Tr. 252:20-255:4 (Dettling).

107. On August 18, 2016, Judge Boasberg entered a minute order construing Mr. Hall's motion described in the preceding paragraph as one to dismiss all defendants except Ms. Dettling, and dismissing all defendants except her without prejudice. The minute order further stated, "Given such dismissal, the Court further ORDERS Plaintiff by September 1, 2016, to show cause why the Court has subject-matter jurisdiction to hear this case." DCX 65 at 3-4.

108. On August 22, 2016, Mr. Hall filed a *pro se* motion asking that "portions of this case [be] remanded back to the Merit Systems Protection Board for review," and that the court allow him "to forward my latest request for relief [against Ms. Dettling] that disputes un-refunded attorneys fees to DC State Court." DCX 69 at 2.

109. On August 25, 2016, Judge Boasberg dismissed Mr. Hall's complaint without prejudice for lack of subject matter jurisdiction. DCX 70. In the memorandum opinion accompanying his dismissal order, Judge Boasberg stated that Mr. Hall's August 22, 2016 response to the August 18, 2016 order to show cause was an admission that Mr. Hall realized "there is no federal subject-matter jurisdiction and is thus electing to proceed either administratively or in District of Columbia Superior Court." *Id*. at 2.

110. On August 30, 2016, Mr. Hall filed a *pro se* motion seeking to rescind the motions he had filed on August 15, 2016 (FF 106) and August 22, 2016 (FF 108), and asking for an extension of time until September 7, 2016 to attempt to establish that the court had jurisdiction over his case. The motion also indicated that Mr. Hall was negotiating with legal counsel for representation. DCX 71.

111. Almost simultaneously with the motion described in the preceding paragraph, Respondent, nominally on behalf of Federal Employees Defense, LLC (*see* n. 47, *supra*) sought leave to file an amicus brief to establish that the court had jurisdiction over Mr. Hall's case. DCX 93 at 6. At the time Respondent sought to file this amicus brief on behalf of Federal Employees Defense, LLC, he was not admitted to practice before the court, and was not so admitted until September 12, 2016. DCX 73.

112. On September 2, 2016, the court denied leave to file Respondent's amicus brief (DCX 65 at 4),[66] stating (in Judge Boasberg's words (DCX 93 at 6)) "in the plainest of terms that it could not be granted as 'the [c]ase has been dismissed.'"

113. On September 6, 2016, Mr. Hall filed a *pro se* pleading entitled "Showing Cause to Not Dismiss Defendants Without Prejudice." DCX 72. This pleading contained a long recitation of the alleged activities of Ms. Dettling, her assistant Ms. Dekker, and Ms. Byers (the DHS attorney), and stated that the dismissal of Ms. Byers and Ms. Dekker would "prevent me from having the [settlement agreement with DHS] revoked." *Id*. at 2; *see also id*. at 8.

114. In response to the pleading described in the preceding paragraph, Judge Boasberg ordered all parties (including those already dismissed from the case) to appear for a status conference on September 21, 2016. DCX 65 at 4; DCX 93 at 6.

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[66] The court docket entry in connection with this ruling reads, in pertinent part (*id*.):

> LEAVE TO FILE DENIED- Federal Employees Defense's Motion for Leave to File Amicus Curiae Brief & Supporting Memorandum of Law ("Leave to file DENIED. Case has been dismissed.")

The court later re-scheduled the status conference for September 28, 2016. DCX 65 at 4.

115. On September 16, 2016, Respondent entered his appearance as attorney of record for Mr. Hall. *Id*. at 5; DCX 74.

116. On September 21, 2016, Ms. Dettling filed a sealed motion seeking to disqualify Respondent from representing Mr. Hall, alleging that Respondent had been cyber-stalking her and that she had paid Respondent to process retainer agreements that were at issue in the case, thereby creating a conflict of interest. DCX 65 at 5; DCX 93 at 6; Tr. 209:19-210:1 (Dettling). That same day, Ms. Dettling advised Respondent by e-mail (DCX 79 at 19) of the filing of her motion, but because Respondent was not yet enrolled in the court's electronic filing system[67] Ms. Dettling sent him the service copy of her motion by overnight mail (at a cost of $22.95).[68] DCX 93 at 6-7; DCX 79 at 17; Tr. 206:21-207:13 and 210:1-7 (Dettling).

117. On September 26, 2016, Respondent filed a pleading entitled "Plaintiff's Motion [for] Leave to Amend & Supporting Memorandum of Law." DCX 75.[69] In this motion, Respondent (*inter alia*) accused Ms. Dettling of "haranguing [Mr. Hall] into a bad settlement" (*id*. at 7); engaging in "tortious and unethical conduct" (*id*.) in

[67] D.D.C. Local Civil Rule 5.4(b)(1) − cited in DCX 85 at 14-15 − provides, "An attorney must obtain a CM/ECF user name and password from the Clerk in order to enter an appearance electronically, to file documents electronically with the Court, or to receive documents filed electronically by other parties or matters entered electronically on the docket by the Court."

[68] In a subsequent motion filed by Respondent seeking to disqualify Ms. Dettling from representing herself, Respondent characterized this mailing as "snail mail." DCX 79 at 8.

[69] Respondent served all defendants with copies of this motion by regular mail. DCX 75 at 11.

representing Ms. Schooley (*see* FF 82, 96-99); and engaging in "ex parte communications" with the court through her September 21, 2016 motion to disqualify him as Mr. Hall's attorney (*id*.). As Judge Boasberg described Respondent's motion:

> . . . rather than seek to vacate the dismissal of the case or wait for the imminent hearing to discuss the same, [Respondent] filed a motion to amend the Complaint on September 26, though he failed to attach any such revised complaint to the motion, as required by the local rules.

DCX 93 at 7.

118. On September 28, 2016, after the scheduled status conference before Judge Boasberg (FF 114), he entered a minute order denying without prejudice Ms. Dettling's motion to disqualify Respondent as moot because the case was already dismissed, and reiterating his direction to Respondent at the status conference that Respondent would need to move to vacate the dismissal of the case before proceeding with any other motions activity in the lawsuit. DCX 65 at 5; DCX 93 at 7-8.

119. On September 28, 2016, Respondent, as the attorney for Mr. Hall, sent an e-mail to Chief Judge Cassidy of the MSPB, alleging that Ms. Dettling had either engaged in improper *ex parte* communications with ALJ Hudson − a claim which the MSPB had already rejected (FF 102) − or had lied to Mr. Hall about her interactions with ALJ Hudson, and urging that this alleged misconduct by Ms. Dettling should be investigated by the MSPB. DCX 76. Respondent also sent a copy of this e-mail to Deborah Miron, the Director of MSPB's Washington, D.C., headquarters. DCX 82 at 12. This attack by Respondent on Ms. Dettling's probity,

made to senior officials of an agency before which she regularly practices, caused Ms. Dettling serious distress. *Id*. at 13, 49 ¶ 28; Tr. 205:12-206:1 (Dettling).

120. On September 30, 2016, ODC received an ethics complaint from Respondent against ALJ Hudson and Ms. Dettling, repeating the allegations Respondent made to MSPB Chief Judge Cassidy as described in the preceding paragraph. DCX 82 at 83-84.

121. On September 30, 2016, Judge Boasberg entered a minute order denying without prejudice Respondent's September 26, 2016 motion for leave to amend (FF 117), noting that the motion had not been accompanied by the proposed amended pleading as required by local civil rule 15.1, and reiterating the Order of September 28, 2015 (FF 118) that Respondent's motion for leave to amend the complaint was not in order because vacatur of the dismissal of the case had not been obtained. DCX 65 at 5; DCX 93 at 7-8.

122. On October 3, 2016, the court docketed a pleading from Respondent dated and served on September 30, 2016, entitled "Plaintiff's Motion on Jurisdiction." DCX 77; DCX 65 at 5. However, as Judge Boasberg subsequently ruled (DCX 93 at 8), the motion "did not explain why vacatur of the dismissal would be appropriate."[70]

[70] As Ms. Dettling stated in a pleading filed with the court (DCX 85 at 28), although "district courts can have jurisdiction over mixed cases, [Respondent] stopped his argument there and did not prove jurisdiction." *See also* Tr. 223:21-224:21 (Dettling).

123. On October 3, 2016 (DCX 82 at 81), Respondent sent Ms. Dettling a document in the form of an electronic district court pleading entitled "Plaintiff's Memorandum of Law Supporting Motion for Lien," which claimed a lien on behalf of Mr. Hall for $15,500 out of the $30,000 in legal fees she received from the settlement of Mr. Hall's MSPB case. *Id*. at 76-81.[71] The "lien" document Respondent sent Ms. Dettling was never filed with the court (Tr. 231:10-232:17 (Dettling)),[72] and she testified that she felt "it was just designed to harass me and make me anxious" (Tr. 232:19-20 (Dettling)).

124. On October 5, 2016, Judge Boasberg entered a minute order (DCX 65 at 5) scheduling a status conference for the case on October 12, 2016.

125. On October 5, 2016, ODC received from Respondent a second ethics complaint against Ms. Dettling. DCX 85 at 38.[73]

126. On October 8, 2016, even though Mr. Hall's case remained dismissed (FF 109) and Judge Boasberg had twice placed Respondent on notice that no motions were in order until a vacatur of the dismissal was obtained (FF 118 and 121),

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[71] *See* n. 65, *supra*, regarding the fee arbitration ruling denying entitlement by Mr. Hall to any portion of the $30,000, and awarding additional legal fees to Ms. Dettling.

[72] As Judge Boasberg described the document Respondent sent to Ms. Dettling (DCX 93 at 8):

> Despite these admonitions [*i.e.*, the minute orders of September 28, 2016 and September 30, 2016 barring motions on behalf of Mr. Hall until there had been a vacatur of the dismissal] . . . [Respondent] mailed Dettling a Memorandum of Law Supporting Motion for Lien. * * * This "motion" purported to seek a lien for attorney fees in the amount of $15,500, though [Respondent] failed to send it to any other Defendants and did not file it with the Court.

[73] FF 120 discusses a prior ethics complaint by Respondent against Ms. Dettling, received by ODC on September 30, 2016.

Respondent filed a "Motion for Default Judgment," claiming that all of the defendants named in Mr. Hall's complaint had failed to file timely answers. DCX 78.

127. On October 11, 2016, Judge Boasberg entered a minute order denying Respondent's motion for a default judgment described in the preceding paragraph, stating, "The Court ORDERS that Plaintiiff's . . . Motion is DENIED. He must first succeed in vacating the dismissal before seeking any affirmative relief." DCX 65 at 6.

128. On October 11, 2016, notwithstanding Judge Boasberg's minute orders on September 28, 2016 and September 30, 2016 stating that Respondent could not engage in motions practice in the case until a vacatur of the dismissal had been obtained, Respondent filed a "Motion to Disqualify Rosemary Dettling." DCX 79. As grounds for the motion − filed as a public document[74] − Respondent asserted that Ms. Dettling had violated various provisions of the District of Columbia Rules of Professional Conduct. In the conclusion to his motion Respondent made the following statement about Ms. Dettling (*id*. at 11):

> Like his Constitutionally-protected, social media reviews of Dettling on her Google page, [Respondent's] representation of the Schooleys and Mr. Hall share the goal of holding this greedy, dishonest and unethical lawyer accountable for her long train of ethics violations and abuses of judicial and ethical proceedings. [Respondent] applied to file an amicus brief and contacted Mr. Hall because Dettling's chicanery in this case was a closely mirrored [sic] her mishandling of the Schooley settlement. If, in the process of defending these sheep from this wolf,

[74] Ms. Dettling's September 21, 2016 motion to disqualify Respondent from representing Mr. Hall was filed under seal. FF 116.

> this wolf feels discomfort, then so be it. The dishonest and greedy never like being called out on their mendacity and avarice.

Inter alia, Respondent's motion asserted that Ms. Dettling violated Rule 3.5(a) District of Columbia Rules of Professional Conduct by engaging in an *ex parte* communication with the court through the filing of her sealed motion on September 21, 2016 seeking to disqualify Respondent as Mr. Hall's attorney (*id*. at 8-9), even though Ms. Dettling advised Respondent by e-mail on September 21, 2016 of her filing the motion and sent him the service copy of the motion by overnight express mail (FF 116).[75]

129. On October 11, 2016, Judge Boasberg entered a minute order denying Respondent's motion to disqualify Ms. Dettling as "plainly frivolous" because "[a]s Plaintiff's counsel well knows, Defendant Dettling represents herself in this matter and thus cannot be disqualified." DCX 65 at 6. Judge Boasberg's ruling further ordered Respondent to show cause at the status conference scheduled for the following day why sanctions should not be issued against him. *Id*.

130. On October 12, 2016, Judge Boasberg held the status conference scheduled by his minute order on October 5, 2016 (FF 124), as well as the show cause hearing referred to in the preceding paragraph. The overall purpose of the hearing was, in Judge Boasberg's words, to "try to impose some sense of order on

[75] Another allegation Respondent made (DCX 79 at 10) was that Ms. Dettling violated Rule 4.2 because she sent Mr. Hall a "cc" copy of her September 21, 2016 e-mail to Respondent. As Ms. Dettling promptly explained to the court (DCX 82 at 8), she inadvertently hit the "reply all" button on her computer when she sent Respondent her e-mail, and nothing in the text of the e-mail was directed to Mr. Hall.

the proceedings." DCX 93 at 8. As a result of the hearing, Judge Boasberg entered a minute order that day (DCX 65 at 6) directing: (1) Ms. Dettling was to file by October 19, 2016 a supplemental motion to disqualify Respondent, with Respondent's reply due by November 2, 2016; (2) unless the court ordered otherwise, no defendant needed to reply to Respondent's October 3, 2016 "Motion for Jurisdiction" (FF 122); and (3) "[a]side from Dettling's forthcoming Motion for Sanctions and the Motion to Disqualify, no further motion may be filed until the Court rules on the disqualification motion."

131. On October 16, 2016, notwithstanding the directive in the court's October 12, 2016 minute order barring further motions as described in the preceding paragraph, and notwithstanding that on October 11, 2016 (FF 127) Judge Boasberg had already denied Respondent's October 8, 2016 motion (FF 126) for a default judgment, Respondent filed an "Affidavit in Support of Default" seeking the entry of a default judgment against all of the defendants named in Mr. Hall's initial complaint. DCX 80.

132. On October 17, 2016, Judge Boasberg entered a minute order denying Respondent's request for the entry of a default judgment described in the preceding paragraph, stating, "Such a filing . . . violates the Court's Minute Order of October 12, 2016, regarding the filing of motions." DCX 65 at 6; *see also* DCX 93 at 9.

133. On October 18, 2016, notwithstanding the directive in the court's October 12, 2016 minute order barring further motions, Respondent filed a pleading entitled "Clarification of Supplements [sic] to Plaintiff's October 8, 2016 Motion for Default

Judgment." DCX 81. In this pleading Respondent asserted that his October 16, 2016 request for entry of a default "did not violate the October 12 Order" (*id*. at 1), or, as Judge Boasberg later described Respondent's "Clarification" (DCX 93 at 9), Respondent "thought this motion for default was an appropriate supplement to the first motion for the same, which, as a reminder, the Court had already denied."

134. On October 19, 2016, pursuant to Judge Boasberg's October 12, 2016 minute order (FF 130), Ms. Dettling filed a 45-page supplemental motion and memorandum to disqualify Respondent from representing Mr. Hall, supported by a 5-page declaration of facts and over 70 pages of exhibits. DCX 82. The memorandum set forth in detail the history of Ms. Dettling's contractual relationship with Respondent, her representation of Mr. Hall, the many punitive actions Respondent had taken against her after she fired Respondent, and Respondent's various improper filings with the court. *Id*. at 4-18. The memorandum then argued, *inter alia*, that Respondent should be disqualified because pleadings he had filed with the court constituted misconduct and contained misstatements (*id*. at 21-33), and because Respondent had filed frivolous claims and pleadings (*id*. at 33-35).

135. On October 20, 2016, Respondent filed a pleading entitled "Notice of Withdrawal of Plaintiff's Motion to Disqualify." DCX 83. However, on October 11, 2016 − the same day Respondent's motion to disqualify Ms. Dettling was filed − Judge Boasberg had already entered a minute order denying that motion as "plainly frivolous." FF 129. "In this new filing," as Judge Boasberg later wrote (DCX 93 at 9), "[Respondent] inexplicably continued to argue that Dettling should be

disqualified from representing herself, ignoring the Court's previous explanation that a *pro se* litigant could not be so disqualified."

136. On October 26, 2016, notwithstanding Judge Boasberg's repeated directives barring additional filings (FF 118, 121, and 130), and, as Judge Boasberg later described it (DCX 93 at 9), "[b]eyond all reason," Respondent filed a pleading entitled "Second Amended Complaint." DCX 84. Count II of the "Second Amended Complaint" reiterated Respondent's allegation (FF 119) that Ms. Dettling had engaged in improper *ex parte* communications with ALJ Hudson. *Id*. at 2.

137. On October 27, 2016, Judge Boasberg entered a minute order striking the "Second Amended Complaint" described in the preceding paragraph, on the ground that "[t]he dismissal has not been vacated." DCX 65 at 7.

138. On October 28, 2016, pursuant the Judge Boasberg's October 12, 2016 minute order (FF 130), Ms. Dettling filed a motion for sanctions against Respondent. DCX 85. Ms. Dettling asked the court to "intervene or respond to [Respondent's] irrational, public rage" lest it "manifest itself in other ways" (*id*. at 16), noting that "[Respondent] wants to keep [Ms. Dettling] in a constant state of high anxiety" (*id*. at 20), that "[Respondent] has the *modus operandi* of a classic bully" (*id*.), and that "[Respondent] is willfully attempting to maximize harm to a litigant" (*id*. at 23). Ms. Dettling argued that sanctions against Respondent were appropriate because, *inter alia*, he had made misstatements in pleadings filed with the court (*id*. at 23-24); had failed to follow orders of the court (*id*. at 24-26); had made frivolous filings (*id*. at 26-30); and had exhibited contemptuous behavior (*id*. at 30-33).

139. On October 30, 2016, Respondent filed a request to withdraw his appearance in the case, stating that Mr. Hall could no longer afford counsel. DCX 86.[76]

140. On October 31, 2016, Judge Boasberg entered a minute order granting Respondent's request to withdraw his appearance (discussed in the preceding paragraph); denying as moot Ms. Dettling's October 19, 2016 supplemental motion to disqualify Respondent (FF 134); and scheduling a status conference for November 14, 2016. DCX 65 at 7.

141. On November 1, 2016, despite the fact that Judge Boasberg on October 31, 2016 had dismissed Respondent as Mr. Hall's attorney, Respondent filed with the court a pleading entitled "Supplemental Memorandum to Amended Complaint." DCX 87. A primary purpose of Respondent's filing this pleading was to place in the court record a letter to him dated October 31, 2016 from the MSPB, responding to an FOIA request he had made for any records of *ex parte* communications between Ms. Dettling and ALJ Hudson, and informing him that no responsive records had been located. *Id*. at 7-8.

[76] However, in an e-mail to Ms. Dettling on August 4, 2016 Respondent had asked her for Mr. Hall's e-mail address, stating, "I will defend him for free." DCX 67 at 2. In one of his internet reviews of Ms. Dettling, Respondent also stated, "I formed my own firm and pledged I wouldn't turn wrongly discharged employees away like [Ms. Dettling] does, simply because they lack monies." DCX 82 at 54. Furthermore, in a pleading filed with the court on December 19, 2016, Respondent stated, "For the foreseeable future [I] will reduce [my] legal representation activities and instead focus on other priorities like developing a mediation/arbitration practice and preparing for the 2017 ITU triathlon World Championships." DCX 96 at 7. In a *pro se* pleading filed by Mr. Hall on November 22, 2016, he stated, "Plaintiff requested that his former counsel withdraw from the case because the case was dismissed by this Court on August 25, 2016." DCX 91 at 1.

142. On November 1, 2016, Judge Boasberg entered a minute order striking the "Supplemental Memorandum to Amended Complaint" described in the preceding paragraph, "as it was inexplicably filed by counsel who has withdrawn from the case." DCX 65 at 8.

143. On November 2, 2016, in light of Respondent's withdrawal from the case, Mr. Hall filed a motion with the court for leave to appear *pro se*. DCX 65 at 8.

144. On November 3, 2016, Judge Boasberg entered a minute order stating that notwithstanding "the specter that [Respondent's] behavior will not be examined given the mooting of Dettling's motion to disqualify . . . [t]hat is not the case, as [Respondent] must still respond to Dettling's . . . Motion for Sanctions." The minute order further directed Respondent to respond to the motion for sanctions by November 14, 2016.[77] DCX 65 at 8.

145. On November 4, 2016, Respondent filed a request for a postponement of the November 14, 2016 status conference and of the date for his responding to Ms. Dettling's motion for sanctions, on the ground that Respondent's uncle was scheduled to have surgery on November 7, 2016, and "[i]n the event my uncle passes away, I will have to assist with funeral plans" and other related tasks. DCX 88.

146. On November 6, 2016, notwithstanding Respondent's request (described in the preceding paragraph) for an extension of time to reply to Ms. Dettling's motion for sanctions, Respondent filed a pleading entitled "First Reply to Motion for

[77] Pursuant to Judge Boasberg's minute order entered on October 31, 2016 (FF 140), November 14, 2016 was the date on which the court had scheduled a status conference to be attended by the parties.

Sanctions." DCX 89. Respondent first argued that Ms. Dettling's motion for sanctions was itself a violation of Fed. R. Civ. P. 11 (which authorizes sanctions for improper pleadings). *Id*. at 1-3. Respondent then asserted:

a. Ms. Dettling was non-credible because the MSPB's response to his FOIA request (FF 141) − referred to in a pleading which the court had already ordered stricken (FF 142) − proved that Ms. Dettling had "made . . . up" her conversation with ALJ Hudson and that "no such communication occurred" (*id*. at 4);

b. Ms. Dettling was non-credible because "her shady billing practices" with clients demonstrated "the lengths to which she is driven by avarice " (*id*.);

c. Ms. Dettling was non-credible because of her failure to reimburse legal fees paid to her by Mr. Hall (*id*. at 8-9);[78] and

d. Ms. Dettling had a history of filing or threatening meritless or frivolous pleadings (*id*. at 9-12).

147. On November 7, 2016, again notwithstanding Respondent's request (FF 145) for an extension of time to reply to Ms. Dettling's motion for sanctions, Respondent filed a pleading entitled "Second Response to Motion for Sanctions" (DCX 90), which made two principal points:

[78] *See* n. 65, *supra*, regarding the fee arbitration proceeding between Mr. Hall and Ms. Dettling, which denied Mr. Hall's request for a refund and required him to pay Ms. Dettling additional legal fees.

a. Respondent again attacked Ms. Dettling personally, asserting that she had provided bad representation to Mr. Hall and another former client (Ms. Schooley), because, *inter alia*, "Dettling pressured, or tried to pressure, her clients into signing an unconscionable settlement" that was "good for her pocketbook, but bad for her clients." *Id*. at 1.

b. Relying on two cases decided under foreign state law,[79] Respondent argued that sanctions were not appropriate because his defamatory statements about Ms. Dettling in court pleadings were absolutely privileged. *Id*. at 2-3.[80]

148. On November 7, 2016, Judge Boasberg entered a minute order summarily striking Respondent's "Second Response" filed earlier that day. DCX 65 at 8. Judge Boasberg stated:

> As Plaintiff's former counsel [Respondent] has already filed his Response to . . . Rosemary Dettling's Motion for Sanctions, the Court ORDERS that his second Response is STRICKEN. In addition, the Court ORDERS that [Respondent's] pleading docketed as "Response to Order of the Court," which in actuality [is] a Motion for Extension, is DENIED as moot. As he has already filed his Response to the Motion for Sanctions, he does not need an extension for such filing. In addition, the status hearing is only for counsel presently in the case, so he has no need to appear.

Id. (internal citation omitted).

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[79] *Surace v. Wuliger*, 495 N.E. 2d 939, 944 (Ohio 1986), and *Greenberg v. Aetna Ins. Co*., 235 A.2d 576, 578 (Pa. 1967) (quoting *Kemper v. Fort*, 67 A. 991, 995 (Pa. 1907)).

[80] As previously noted in this Report (FF 53), Respondent had criticized Mr. Gold for filing a pleading with the MSPB that relied on foreign-state (New Jersey) law to support the proposition that an attorney ordinarily is immune from civil liability for statements made in litigation, and had filed ethics charges against Mr. Gold with the California State Bar based on Mr. Gold's alleged mis-citation of that case (FF 63 and FF 69).

149. On November 14, 2016, Judge Boasberg held a status conference pursuant to his October 31, 2016 minute order (FF 140). At the status conference, as described by Judge Boasberg (DCX 93 at 10):

> [Mr.] Hall expressed a desire to return the case to the posture it had been in before [Respondent's] ill-fated intervention so that he could pursue his claims in other fora. * * * As a result, the last motion left to be resolved in this still-terminated case is the intact Motion for Sanctions against [Respondent] that Dettling pressed in the midst of his final flurry of activity.

Accordingly, on November 14, 2016 Judge Boasberg entered a minute order (DCX 65 at 9) denying Respondent's October 3, 2016 "Motion on Jurisdiction" (FF 122); confirming the court's prior dismissal order entered on August 25, 2016 (FF 109); and allowing Ms. Dettling until November 16, 2016 to file a further reply regarding her October 28, 2016 motion for sanctions (FF 138) against Respondent.

150. On November 28, 2016, the Judicial Council for the District of Columbia Circuit (hereinafter, the "Judicial Council") received an initial complaint[81] (dated November 25, 2016; DCX 104 at 8) from Respondent alleging judicial misconduct by Judge Boasberg, docketed by the Office of the Circuit Executive on December 5, 2016 as Complaint No. DC-16-90046. DCX 104 at 7-13. Respondent's complaint alleged: (a) abuse of judicial power because Judge Boasberg issued procedural orders in the *Hall* litigation "without citing a single case" (*id*. at 10); (b) Judge Boasberg improperly failed to reverse the court's ruling on August 25, 2016 dismissing Mr. Hall's complaint without prejudice for lack of subject matter

[81] *See* FF 160, *infra*, regarding a second complaint of judicial misconduct filed by Respondent against Judge Boasberg.

jurisdiction (*id*. at 10-11); and (c) Judge Boasberg was biased in favor of the federal defendants named in Mr. Hall's lawsuit (who were represented by the office of the United States Attorney for the District of Columbia) because Judge Boasberg was a former Assistant United States Attorney (*id*. at 11-13).

151. On November 28, 2016, Respondent filed a further opposition to Ms. Dettling's motion for sanctions, via a pleading entitled "Second Response to Defendant Dettling's Eight Pleadings." DCX 92. Respondent accused Ms. Dettling of "untruths, exaggerations, prevarication, canards, elisions, misrepresentations, falsities, irrelevancies, inaccurate quotations, distortions, and obliquities . . . not simply a matter of . . . a few lies" (*id*. at 1), and further stated (*id*. at 5):

> She lies, lies about the lies, lies about the new lies. Her lying is like Goebbels Big Lie.

He also continued to attack Ms. Dettling for "sneakily filed pleadings," including her alleged "sneaky ex parte communications . . . to the Judge." *Id*. at 2. Respondent further asserted that Judge Boasberg had violated Judicial Rule of Conduct "2.9(A)"[82] by having *ex parte* communications with Ms. Dettling (*id*.), and that

[82] Canon 2(A) of the Code of Conduct for United States Judges states, "A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Rule 2.9(A) of the Code of Judicial Conduct applicable to judges of the District of Columbia Court of Appeals and the Superior Court of the District of Columbia prohibits *ex parte* communications on pending matters. Nothing in Canon 2(A) or Rule 2.9(A), however, prohibits a judge from reading a pleading filed by a party and served on the opposing party(ies).

Judge Boasberg had "confirmation bias" which caused him to ignore Respondent's arguments on subject matter jurisdiction (*id*. at 4-5 n.4[83]).

152. On November 29, 2016, the court entered a minute order striking Respondent's pleading described in the preceding paragraph, stating, "He has already filed a Response and does not get the opportunity to file multiple ones absent leave of Court." DCX 65 at 9.

153. On December 1, 2016, Judge Boasberg filed a memorandum opinion granting Ms. Dettling's motion for sanctions against Respondent. DCX 93. After reciting the procedural history of Ms. Dettling's involvement with Respondent, and the proceedings in the *Hall* case (already described in this Report) both before and after Respondent filed his appearance as Mr. Hall's attorney, the court found that Respondent's conduct violated 28 U.S.C. § 1927.[84] The court stated:

> Although the bar for imposing Section 1927 sanctions is high, [Respondent's] conduct rises to the challenge. [Respondent's] filings did not merely seek the advancement of meritless positions, but they were also composed of largely irrelevant diatribes against Dettling that "utterly" lacked any "colorable basis" in law . . . In several instances, he filed motions to allegedly supplement filings that this Court had already denied or stricken from the record as improper. See, e.g., ECF No. 28 (Motion to Withdraw) [*i.e.*, DCX 83, discussed in FF 135]. He also used these motions to insert extraneous attacks against Dettling's character back into the public record – in open defiance of the Court's prior orders denying or striking his previous motions. His filings, in short, were not germane to the merits of this case and easily constituted

[83] This lengthy footnote refers to Judge Boasberg several times as "Judge Bates."

[84] 28 U.S.C. § 1927 states, "Any attorney or other person admitted to conduct cases in any court of the United States . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct."

> "a path that a reasonably careful attorney would have known, after appropriate inquiry, to be unsound."
>
> * * *
>
> Nor does the Court have any difficulty finding bad faith or improper motive. [Respondent's] efforts did not stem from his desire to zealously represent his client, but rather from an intent to harm Dettling and smear her reputation. That purpose motivated his entry into this case as "amicus" all the way through his sudden and voluntary withdrawal. In sum, the Court finds by clear and convincing evidence that [Respondent] improperly sought to hijack this terminated suit solely to advance his own personal vendetta against Dettling. This is the definition of bad faith.

DCX 93 at 12-13 (internal citations omitted). As a partial remedy, the court awarded Ms. Dettling reimbursement of any costs and expenses she had incurred in connection with seven specified pleadings filed by Respondent − ECF[85] Nos. 20 (DCX 78; FF 126), 21 (DCX 79; FF 128), 23 (DCX 80; FF 131), 24 (DCX 81; FF 133), 28 (DCX 83; FF 135), 29 (DCX 84; FF 136), and 32 (DCX 87; FF 141)[86] − as well as in connection with the preparation of her own motion for sanctions against Respondent. DCX 93 at 14-15. Ms. Dettling was given until December 15, 2016 to file her petition for reimbursement of costs. DCX 65 at 9-10.

154. On December 16, 2016, Ms. Dettling filed a motion for leave to file her

[85] "ECF" refers to the designation numbers for pleadings and orders under the federal courts' Case Management/Electronic Case Files ("CM/ECF") system.

[86] These pleadings are, respectively, Respondent's "Motion for Default Judgment," "Motion to Disqualify Rosemary Dettling," "Affidavit in Support of Default," "Clarification of Supplements to Plaintiff's October 8, 2016 Motion for Default Judgment," "Notice of Withdrawal of Plaintiff's Motion to Disqualify," "Second Amended Complaint," and "Supplemental Memorandum to Amended Complaint."

petition for reimbursement of costs one day late,[87] accompanied by her proposed petition seeking reimbursement only for out-of-pocket expenses incurred, in the amount of $967.86. DCX 94. By minute order entered the same day, Judge Boasberg granted Ms. Dettling's motion to late-file her petition, and directed Respondent to file any opposition to the petition by December 30, 2016. DCX 65 at 10.

155. On December 19, 2016, acting pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), (iii)[88] and Rule 11(c)(1)(B), (D),[89] Jud. Conf. U.S., Rules for Judicial-Conduct and Judicial-Disability Proceedings, Associate Circuit Judge Karen LeCraft Henderson, sitting by designation pursuant to Rule 25(f) of the Judicial Conference rules,[90] dismissed Respondent's November 28, 2016 complaint of judicial misconduct against Judge Boasberg (FF 150). DCX 104 at 34. The memorandum opinion

[87] Ms. Dettling missed the December 15 midnight deadline for filing her petition for reimbursement of costs by 1-1/2 hours. Tr. 245:3-13 (Dettling).

[88] 28 U.S.C. § 352(b)(1)(A)(ii) authorizes the chief judge of each federal judicial circuit to provide expedited review and (if appropriate) dismissal of a complaint if the complaint is found to be "directly related to the merits of a decision or procedural ruling." Subsection (b)(1)(A)(iii) of § 352 also authorizes dismissal where the complaint is found to be "frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred, or containing allegations which are incapable of being established through investigation."

[89] Rule 11(c)(1)(B), Jud. Conf. U.S., Rules for Judicial-Conduct and Judicial-Disability Proceedings, authorizes dismissal of a complaint that is "directly related to the merits of a decision or procedural ruling." Subsection (c)(1)(D) of that Rule authorizes dismissal of complaints that are "based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred . . . ."

[90] Rule 25(f) provides that if the chief judge of the circuit is disqualified from carrying out the duties prescribed in 28 U.S.C. § 352 (quoted in n. 88, *supra*), the most-senior active associate judge of the circuit who is not disqualified shall act in place of the chief judge.

accompanying the dismissal order found that the record did not support Respondent's allegation of abuse of judicial power; that Respondent's complaint about Judge Boasberg's August 25, 2016 dismissal of Mr. Hall's complaint without prejudice was unavailing because that ruling was "directly related to the merits of a decision or procedural ruling"; and that Respondent's complaint of judicial bias was also "directly related to the merits of a decision or procedural ruling" or otherwise lacked "sufficient evidence to raise an inference that misconduct has occurred." *Id*. at 35-36.

156. On December 19, 2016, Respondent filed two separate pleadings opposing Ms. Dettling's petition for reimbursement of costs. DCX 95 (ECF 47) and DCX 96 (ECF 48).

a. In the first pleading, entitled "Initial Reply to Order," Respondent argued that Judge Boasberg's December 1, 2016 memorandum opinion (FF 153) granting Ms. Dettling's motion for sanctions had improperly retaliated against Respondent for filing a judicial misconduct complaint against Judge Boasberg. DCX 95 at 1. In addition, Respondent − apparently unaware (*id*. at 1 n. 1) of the Judicial Council's dismissal that day of his initial judicial misconduct complaint against Judge Boasberg − re-alleged arguments he had raised in that complaint, including the assertion that Judge Boasberg was biased in favor of the Office of the United States Attorney for the District of Columbia because Judge Boasberg had previously worked there. *Id*. at 1-3.

b. Respondent's second pleading, entitled "Opposition to Costs,"

continued his public-record attack on Ms. Dettling, stating that "[g]iven Ms. Dettling's tendency to cook the books," he was amazed her request for reimbursement of costs for her "baseless motion for sanctions" was not for many thousands of dollars, because that "would not be the first time Dettling tried to rip off [Respondent]." DCX 96 at 1. He then described his version of his dispute with Ms. Dettling, *id*. at 1-2, adding:

> Angry that Dettling tried to rip him off, [Respondent] availed himself of his First Amendment right by posting information warning the public and potential employees of Dettling's dishonesty.

Id. at 2. Commenting on the substance of Ms. Dettling's petition for reimbursement of costs, Respondent stated that in view of "her well documented attempts to cook the books" he opposed her "fee estimate" because her "work on sanctions was much less than of [sic] the amount she claims she billed." *Id*. at 5.

157. On December 20, 2016, Respondent filed a third opposition to Ms. Dettling's petition for reimbursement of costs, entitled "Memorandum in Support of Opposition to Fees Petition." DCX 97 (ECF 49). Ignoring the fact that Judge Boasberg had already granted Ms. Dettling's motion to file her petition for reimbursement one day late (FF 154), Respondent accused Ms. Dettling of lying to the court about the reason for the lateness of her submission. Respondent averred, "[t]he real reason Dettling late filed her costs was the previous day's deadline to file a response to Hall's ethics complaint" (*id*. at 2), and concluded, "Why lie?" (*id*. at 3).

158. On December 20, 2016, Respondent filed a fourth opposition to Ms. Dettling's petition for reimbursement of costs, entitled "Reply to Declaration of

Costs Exhibit B." DCX 98 (ECF 50). Respondent reiterated his accusation that Ms. Dettling "cooks the books" (*id*. at 1), and took issue with certain minor expenses for which she claimed reimbursement (*id*. at 4). He concluded (*id*.):

> The issue here is not the paltry sums involved. The issue is Dettling's dishonest submission of PACER billing prior to my involvement. Similarly, Dettling unethically billed Hall for her fees . . . .
>
> * * *
>
> The issue here isn't the $1.40. The issue is the veracity of the Billing History, the veracity of the averments of Ms. Dettling, and her credibility (or more accurately, the utter lack thereof).

159. On December 26, 2016, Respondent filed a fifth opposition to Ms. Dettling's petition for reimbursement of costs, entitled "Reply to Ms. Dettling's Westlaw Bill." DCX 99 (ECF 51). In this pleading Respondent stated (*id*. at 3-6) that Ms. Dettling had not only "padded" the amount of Westlaw research expenses she incurred as set forth in her petition for reimbursement of costs, but also had improperly "padded" her charges for legal fees to Mr. Hall (*id*. at 1-3).

160. On December 27, 2016, the Judicial Council received from Respondent a "Second Judicial Misconduct Complaint" (dated December 23, 2016) against Judge Boasberg, docketed by the Office of the Circuit Executive on December 28, 2016 as Complaint No. DC-16-90056. DCX 104 at 38-46. Respondent's second judicial misconduct complaint contained the following allegations: (a) Judge Boasberg improperly retaliated against Respondent's filing of his first judicial misconduct complaint, by "granting Defendant Dettling's meritless and frivolous motion for sanctions" (*id*. at 40); (b) essentially the same claims as in the first misconduct complaint, alleging judicial bias and improper failure to reverse the

August 25, 2016 dismissal of Mr. Hall's case for lack of subject matter jurisdiction (*id*. at 40-42); and (c) an accusation of judicial "dishonesty," because Judge Boasberg allegedly knew Respondent was correct in arguing that the court had subject matter jurisdiction over Mr. Hall's claims (*id*. at 42-43).[91]

161. On January 9, 2017, pursuant to the memorandum opinion previously entered by Judge Boasberg on December 1, 2016 granting Ms. Dettling motion for sanctions against Respondent (*see* DCX 93 at 15), Judge Boasberg sent the court's Committee on Grievances a supplemental letter to provide the Committee with additional information about Respondent's conduct. DCX 104. Included in Judge Boasberg's letter was documentation establishing that on December 1, 2016, Respondent had made a Twitter posting directed to the plaintiffs in a separate high-profile case Judge Boasberg was handling, *Standing Rock Sioux Tribe v. United States Army Corps of Engineers*, stating, "Would any of your members or supporters be interesting [sic] in protesting at the home of Judge Boasberg?" *Id*. at 1, 4.[92]

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[91] Because the copies of Respondent's judicial misconduct complaints against Judge Boasberg are provided as exhibits to the judge's January 9, 2017 letter to the court's Committee on Grievances discussed in the next finding of fact, the record of this case does not include the disposition of Respondent's second judicial misconduct complaint against Judge Boasberg.

[92] In *Standing Rock Sioux Tribe v. United States Army Corps of Engineers*, 205 F. Supp. 3d 4 (D.D.C. 2016) ("*Standing Rock I*"), Judge Boasberg denied a motion for a preliminary injunction which sought to block the completion of the Dakota Access oil pipeline. However, immediately thereafter the Obama Administration required the government to undertake a reconsideration of its previous decisions regarding the pipeline, a reconsideration that was not reversed until January 24, 2017, after the Trump Administration came into office. *Standing Rock Sioux Tribe v. United States Army Corps of Engineers*, 239 F. Supp. 3d 77, 81-82 (D.D.C. 2017) ("*Standing Rock II*"). Therefore, when Respondent issued his December 1, 2016 Twitter invitation to the Tribe to protest at the home of Judge Boasberg, it is difficult to see − had the Tribe accepted Respondent's invitation − precisely what issue the Tribe might have been protesting.

162. On January 6, 2017, Judge Boasberg entered an Order (DCX 101) granting Ms. Dettling's petition for reimbursement of costs in full ($967.86), finding that amount "eminently reasonable" (*id*. at 2), and directed Respondent to pay those costs by January 23, 2017 (*id*. at 3). In granting Ms. Dettling's petition, Judge Boasberg reviewed (*id*. at 2-3) Respondent's multiple oppositions to the petition (DCX 96-99 (ECF 48-51)), even though, as Judge Boasberg observed (*id*. at 2), the court had never granted Respondent leave to file more than one.

163. On January 10, 2017, Respondent filed a notice of appeal to the United States Court of Appeals for the District of Columbia Circuit (hereinafter, the "D.C. Circuit") from Judge Boasberg's January 6, 2017 order sanctioning Respondent in the amount of $967.86. DCX 102; DCX 65 at 11; DCX 106 at 1.

164. On February 28, 2017, Ms. Dettling filed a motion with the D.C. Circuit seeking summary affirmance of Judge Boasberg's sanctions order. DCX 106 at 2.

165. On May 17, 2017, the D.C. Circuit issued a per curiam order granting summary affirmance of Judge Boasberg's sanctions order. *Id*.[93]

166. On May 21, 2017, Respondent filed with the D.C. Circuit a petition seeking a rehearing and rehearing en banc, and on July 4, 2017 filed a renewed petition seeking the same relief. *Id*.

167. On July 7, 2017, the D.C. Circuit entered per curiam orders denying Respondent's requests for rehearing and rehearing en banc. *Id*.

[93] The court of appeals at the same time also denied Respondent's request for summary reversal. *Id*.

C. Count Three (Bromley)

168. e-Management Consultants, Inc. ("e-Management") is engaged in the business of providing information technology services to the United States government (DCX 107 at 3), and is represented in employment law matters by Tyree P. Jones, Jr., Esq. ("Mr. Jones"), an attorney with offices in Washington, D.C. (Tr. 418:19-419:18 (Jones)).

169. Laura Bromley ("Ms. Bromley") was employed by e-Management, and assigned by it to work as a contract employee at the United States Department of Energy ("DOE"). DCX 108 at 1; Tr. 420:2-6 (Jones).

170. On October 22, 2015, e-Management placed Ms. Bromley in a Performance Improvement Plan ("PIP") status in order to address her employee performance deficiencies identified by e-Management supervisors and e-Management's client (DOE). DCX 108 at 7.

171. On October 28, 2015, Ms. Bromley notified e-Management of allegedly inappropriate conduct directed toward her by a DOE employee. *Id*.

172. On October 30, 2015, Ms. Bromley retained Respondent in connection with claims for alleged sexual harassment by her DOE supervisor (DCX 108 at 1; Tr. 422:2-17 (Jones)), including claims against DOE and e-Management for harassment and retaliation in violation of federal law and DOE policies. DCX 108 at 1.

173. On October 30, 2015, Mr. Jones, as legal counsel for e-Management, sent Respondent an e-mail notifying him of his representation of e-Management in

connection with the Bromley matter, and directing him to have all future communications to e-Management regarding that matter sent to Mr. Jones. DCX 108 at 7.

174. On October 31, 2015, Respondent sent Mr. Jones an e-mail asserting that his client, Ms. Bromley, had been subjected to sexual harassment and reprisal which resulted in her receiving a "pretextual, retaliatory PIP," and that neither DOE nor e-Management had fulfilled their legal obligations to "stop, prevent and remedy harassment and retaliation" against her. *Id*. at 9. Notwithstanding Mr. Jones' e-mail to Respondent the previous day requiring all communications to e-Management regarding the Bromley matter to be directed to Mr. Jones, Respondent sent copies of his e-mail to Ivy Allen, the then-head of the human resources department at e-Management (Tr. 424:10-11 (Jones)), and to William Bodine, the department manager for the group in which Ms. Bromley worked (Tr. 424:11-13 (Jones)), both of whom had authority as representatives of e-Management to bind the company with respect to the Bromley matter. Tr. 424:15-19 (Jones); DCX 108 at 9.[94] (Various individuals at DOE also received copies of Respondent's e-mail. DCX 108 at 9.) At no time did Respondent have Mr. Jones's consent to contact e-Management personnel concerning the Bromley matter. DCX 107 at 5.

[94] The record in this case establishes that Respondent was well aware that sending copies of a communication to a lawyer as well as to the lawyer's client is a violation of Rule 4.2 of the Rules of Professional Conduct, because Respondent made precisely that allegation about Ms. Dettling in his motion attempting to disqualify her from representing herself (DCX 79 at 10, discussed in FF 128 n. 75, *supra*), and had the same issue brought to his attention in 2014 in connection with an unauthorized communication by Respondent to officials of the Great Valley School District, as discussed in FF 191 - 194, *infra*, in connection with Count Four of the Specification.

175. On or about June 11, 2016, e-Management notified Ms. Bromley that her employment with the company was being terminated. DCX 108 at 4; Tr. 426:2-5 (Jones). Respondent asserts that when e-Management terminated Ms. Bromley's employment with the company, she was told she had to leave the building immediately, and she was not allowed to gather personal belongings from her desk and the locker in her cubicle. DCX 108 at 4 (Respondent's response to disciplinary complaint).

176. Following the termination of Ms. Bromley's employment by e-Management, Respondent communicated a series of threats to Mr. Jones of criminal charges, a civil action, a complaint to the Equal Employment Opportunity Commission, and a discrimination complaint to DOE, but told Mr. Jones that Ms. Bromley would be willing to "resolve the matter" in exchange for a monetary settlement and converting her termination to a "resignation." However, e-Management declined to make any settlement proposal to Ms. Bromley. Tr. 426:6-427:1 (Jones). Mr. Jones concluded from the belligerent tone of Respondent's conversations with him ("he would be yelling these things at me" (Tr. 439:8-9 (Jones)) that through these threats Respondent was clearly trying to bully him and e-Management into making a monetary settlement offer to Ms. Bromley to resolve her claims against e-Management. Tr. 438:3-439:12; 440:16-441:10; 442:1-13 (Jones).

177. On June 23, 2016, Mr. Jones notified Respondent by e-mail that Mr. Jones had learned that both Respondent and Ms. Bromley, in violation of Rule 4.2

of the District of Columbia Rules of Professional conduct,[95] had contacted representatives of e-Management (including its chief executive officer) concerning pending issues between Ms. Bromley and e-Management; that Mr. Jones had not consented to such contacts with his client; and that Respondent was to cease and desist from such contacts, instruct Ms. Bromley not to communicate directly with e-Management personnel, and have all communications directed instead solely through Respondent to Mr. Jones. DCX 107 at 8.

178. On June 25, 2016, Ms. Bromley sent an e-mail to Patricia Anderson ("Ms. Anderson"), a management-level employee of e-Management (Tr. 430:17-19 (Jones)), with copies to Mr. Jones and to Respondent, asking about items of Ms. Bromley's personal property that had not yet been returned to her. DCX 107 at 17.[96]

179. On June 29, 2016, Ms. Bromley sent an e-mail jointly to Ms. Anderson and Ivy Allen (*see* FF 174, *supra*) concerning the delivery of Ms. Bromley's personal belongings and Ms. Bromley's final pay entitlement. *Id*. at 16.

180. On July 1, 2016, Ms. Bromley sent an e-mail to Ms. Anderson and to Ivy Allen at e-Management regarding her personal belongings as well as about pay and employment issues. *Id*. at 12-13.

181. On July 1, 2016, Respondent sent an e-mail to Ms. Bromley and Mr. Jones with the subject line stating, "On E-management and Jones' Lies," and

[95] *See* n. 94, *supra*, regarding Respondent's knowledge of the applicability of Rule 4.2 of the Rules of Professional Conduct to communications sent by a lawyer simultaneously to a represented party and to that party's legal counsel.

[96] In this e-mail Ms. Bromley stated she had received two boxes of items from e-Management, but that some of her personal property was still missing.

containing the statement, "If good [sic] were stolen, Jones and Ivy and Anderson are accessories after the fact to theft, hindering and preventing the return of stolen goods." *Id*. at 9.

182. On July 6, 2016, Ms. Bromley sent another e-mail to e-Management, resulting in an e-mail protest later that day from Mr. Jones reminding Respondent to have Ms. Bromley cease and desist from such contacts. *Id*. at 11.

183. On July 7, 2016, at 7:35 P.M., Ms. Bromley sent an e-mail (*id*. at 12, 15) to e-Management forwarding copies of her prior e-mails to which she claimed she had not received a response. *See id*. at 4 (ethics complaint from Mr. Jones listing Ms. Bromley's e-mails).

184. On July 8, 2016, at 3:17 A.M., Respondent sent an e-mail to Ms. Bromley, with copies to Ivy Allen and Ms. Anderson at e-Management as well as to Mr. Jones, characterizing as "[d]espicable" the alleged non-return of Ms. Bromley's personal belongings to her. *Id*. at 12.

185. On July 8, 2016, at 3:26 A.M., Respondent sent a second e-mail to Ms. Bromley, again with copies to Ivy Allen, Ms. Anderson, and Mr. Jones, with the subject line, "Jones lied!," alleging that Mr. Jones had lied about e-Management's returning Ms. Bromley's property to her. Respondent's e-mail also stated, *inter alia*, "In my opinion Jones, Ivy, and Anderson are all criminal accessories to theft after-

the-fact. Next week will go to the police and also file civil charges against Jones IV [sic] and Anderson any [sic] management." *Id*. at 15.[97]

186. On July 18, 2016, Ms. Bromley sent an e-mail to Ivy Allen, Ms. Anderson, Respondent, Mr. Jones, and to Mr. B. Bamgbose (the second-highest official at e-Management) and Ola Sage (e-Management's chief executive officer) (Tr. 434:13-16 (Jones)), forwarding them copies of prior e-mails regarding the return of her personal property, her pay slips, and a breakdown of her final pay, none of which Ms. Bromley stated she had received. DCX 107 at 19.

187. Mr. Jones concluded principally from his receiving copies of e-mails Ms. Bromley also sent to e-Management employees that Respondent must have been directing Ms. Bromley's actions in sending such e-mails. Tr. 437:7-438:2 (Jones).

D. Count Four (Stevenson)

188. Beginning in 2007 (DCX 141 at 1), Anthony L. Stevenson, Sr. (DCX 116 at 1) ("Mr. Stevenson"), a resident of Douglassville, PA (*id*. at 2)[98] was employed as a teacher (DCX 132 at 19) by the Great Valley School District (the "School District"), with principal offices in Malvern, PA (DCX 141 at 1).[99] Mr. Stevenson is Respondent's brother-in-law (DCX 119 at 1), and for a long period of

[97] So far as Mr. Jones was aware, no police action was ever taken against him or against any employee of e-Management in connection with the Bromley matter, nor was any civil action filed by Ms. Bromley against any of them. Tr. 435:13-19 (Jones).

[98] The Hearing Committee takes notice of the fact that Douglassville is approximately 14 miles southeast of Reading, PA.

[99] The Hearing Committee takes notice of the fact that Malvern is approximately 30 miles southeast of Reading, PA.

time Respondent assisted him (without compensation) in non-court proceedings, and then litigation (hereinafter described), against the School District, arising from Mr. Stevenson's claims against the School District for racial harassment, unlawful retaliation, and other employment-related matters (*id*.; DCX 141 at 2-9; DCX 110 at 4).

189. Since 2014, Michael D. Kristofco, Esq. ("Mr. Kristofco") and the law firm of which he is a member have represented the School District in connection with employment-related matters involving Mr. Stevenson. Tr. 30:1-32:7 (Kristofco).

190. The School District has an internal grievance adjudication system known as the "Policy 448" process (DCX 110 at 16-17; DCX 141 at 3 ¶ 16-18; *id*. at 6 ¶¶ 43-44) whereby an employee who has a complaint against another employee for harassment can have that matter reviewed by their immediate supervisor, and if a satisfactory result is not reached, can have the complaint further reviewed by more senior personnel within the School District. Tr. 32:11-16 (Kristofco).

191. In 2014, Mr. Stevenson had a Policy 448 complaint pending within the School District. Tr. 32:17-22 (Kristofco); DCX 141 at 6 ¶¶ 43-44.

192. While Mr. Stevenson's 2014 Policy 448 complaint was pending, and after Respondent had been directed by Mr. Kristofco's law firm to direct all communications to the law firm and not to communicate directly with the School District (Tr. 32:19-33:14; 34:5-15 (Kristofco)), on May 20, 2014 Respondent sent an e-mail (DCX 110 at 16-17) regarding Mr. Stevenson's complaint to Robert Koslo-

Stahl, the School District's assistant superintendent in charge of human relations (Tr. 36:5-11 (Kristofco)), with copies to Mr. Kristofco as well as Alan Lonoconus (the School District's then-superintendent) and another lawyer at Mr. Kristofco's law firm (Mr. Dodds) (Tr. 36:11-17 (Kristofco)). Both Mr. Koslo-Stahl and Mr. Lonoconus had authority to bind the School District with respect to the matter raised by Mr. Stevenson's pending Policy 448 complaint. Tr. 36:8-21 (Kristofco).

193. Respondent's e-mail referred to in the preceding paragraph asked for Mr. Koslo-Stahl's opinion on whether Mr. Stevenson, as a Policy 448 complainant, could have a third party represent him, and asked Mr. Koslo-Stahl if Respondent would be allowed to serve as such a third-party representative. *Inter alia*, Respondent's e-mail made the legal argument to Mr. Koslo-Stahl that the Policy 448 process incorporates Title VII of the federal Civil Rights Act of 1964[100] and the Pennsylvania Human Relations Act, as well as the regulations and guidance issued thereunder, and that the same representational rights afforded to complainants under those two authorities should therefore be afforded to complainants under the School District's Policy 448 process. DCX 110 at 16-17.

194. On May 21, 2014, Mr. Kristofco sent a reply e-mail to Respondent stating:

> You have been told that we represent the District. You have been expressly instructed not to communicate directly with any employee of the District concerning your brother[-in-law]'s discrimination claims. You have acknowledged that "direct communication with represented persons rather than their attorneys is an ethics violation." Yet, you

[100] 42 U.S.C. §§ 2000e - 2000e-17, relating to discrimination and the Equal Employment Opportunity Commission.

> continue to send emails to our client. Copying us on emails to our client or copying our client on emails to us is still a direct communication from you to our client.

Mr. Kristofco's e-mail then informed Respondent that any similar communication from Respondent in the future would result in ethics charges being filed against Respondent; that Respondent was not allowed to represent Mr. Stevenson in his Policy 448 complaint; and that if Mr. Stevenson wanted representation he should contact the relevant teachers' union official. *Id*. at 15-16.

195. On October 30, 2015, Mr. Stevenson filed in the United States District Court for the Eastern District of Pennsylvania a pre-printed *pro se* form complaint alleging racial discrimination against him by the School District. DCX 116. The case was assigned to the Hon. Jeffrey L. Schmehl ("Judge Schmehl"). DCX 115 at 1. The complaint sought, *inter alia*, remedies against various named employees of the School District, including "Dan Goffredo" (who was the subject of an attack by Respondent in a different context, as hereinafter discussed in FF 215); expungement of all personnel actions taken by the School District against Mr. Stevenson; revision of the School District's Policy 448 so that only an "EEOC certified" investigator (a status Respondent later claimed he had; *see* FF 200(a), *infra*) could do Policy 448 investigations; $50,000 in compensatory damages; and legal fees at the "Laffey" rate (even though Mr. Stevenson filed his complaint *pro se*). DCX 116 at 7.

196. Attached as a required exhibit[101] to Mr. Stevenson's complaint was a document issued to Mr. Stevenson by the United States Equal Employment Opportunity Commission ("EEOC") on September 28, 2015, entitled "Dismissal and Notice of Rights." The notice indicated that the EEOC had "adopted the findings of the state or local fair employment practices agency that investigated this charge," and was identified as EEOC Charge No. "17F-2014-61105." *Id*. at 6. However, in alleging the facts relating to his cause of action in ¶ II.E of the form complaint (*id*. at 3) Mr. Stevenson said, "See attached Discrimination Complaint" (*id*.), and attached to the complaint was a copy of a document bearing the designation EEOC Charge "530-2014-02490" (*id*. at 8-12).

197. On December 23, 2015, Mr. Stevenson sent an e-mail to Mr. Kristofco, asking him to waive service of process and acknowledge service of the complaint on the School District, and on December 31, 2015 Mr. Kristofco e-mailed the signed waiver of service to Mr. Stevenson. DCX 136 at 7; DCX 137 at 2. The waiver form signed by Mr. Kristofco stipulated that the School District "must file and serve an answer or a motion under Rule 12 within 60 days from 12/16/2015." DCX 136 at 8.

198. On February 10, 2016, the School District filed a motion (DCX 117) to dismiss Mr. Stevenson's complaint pursuant to Fed. R. Civ. P. Rule 12(b)(6), on the ground that the complaint facially showed a failure to exhaust administrative remedies because the "Dismissal and Notice of Rights" letter Mr. Stevenson had

[101] The instructions on the first page of the pre-printed form complaint state, "In order to bring suit in federal district court under Title VII, you must first obtain a Notice of Right to Sue Letter from the Equal Employment Opportunity Commission." DCX 116 at 1.

attached to his complaint was for EEOC Charge No. "17F-2014-6115," but the allegations attached to the complaint were for EEOC Charge "530-2014-02490." *See* FF 196, *supra*.

199. On February 24, 2016, Respondent filed an initial application to practice before the court *pro hac vice* as Mr. Stevenson's attorney. DCX 118 at 1. The Pennsylvania attorney who submitted a sponsorship motion for Respondent's admission was Sharon R. Meisler, Esq. ("Ms. Meisler"). DCX 118 at 2.

200. On March 21, 2016, Mr. Stevenson filed a two-part "*pro se*" pleading with the court (DCX 119):

a. The first part of Mr. Stevenson's pleading (*id*. at 1) is a formal motion seeking Respondent's admission *pro hac vice*. Mr. Stevenson identifies Respondent as "Glenn H. Stephens, III, Ph.D., Esq.," stating, *inter alia*, that "Dr. Stephens" is a "Certified EEOC Investigator," and adds:

> . . . as my brother-in-law, [Respondent] knows the factual backgrounds and procedural history of this case very well. [Respondent] has worked tirelessly, without any compensation, on this case and related cases against the District and my harassers.

b. The second part of Mr. Stevenson's "*pro se*" pleading is a lengthy legal argument with many case law citations opposing the School District's February 10, 2016 motion to dismiss the complaint (FF 198). *Id*. at 2-6. Included in the opposition is the request, "Even assuming for the sake of argument, that the EEOC sent Mr. Stevenson a right to sue letter with the wrong case number listed, the proper remedy for that error is not dismissal but a stay pending correction of that mistake

by the EEOC." *Id*. at 4. The opposition concludes with the following personal attack on Mr. Kristofco (*id*. at 6):

> [T]he Defendant's Motion to Dismiss rests only [on] the thin reeds of bald assertions, inapposite legal principles drawn from distinguishable cases, and Mr. Kristofco's confusions. * * * [W]hen Mr. Kristofco cannot advance his client's case by applying law to facts, he prefers to obfuscate, to muddy the waters.

In all material respects the opposition appears to be the product of a trained lawyer, and the record in this matter establishes that Respondent wrote it. Mr. Stevenson identifies Respondent as the person who has assisted him for years "on this case" (*id*. at 1), and Respondent later told the court that "[f]or the last seven years, I've worked tirelessly, pro bono to help end the discrimination, harassment, and retaliation that the [School District] inflicts on my brother-in-law" (DCX 153 at 1). Respondent, however, was not identified in the opposition as the person who wrote it. DCX 119 at 5-6.

201. By order filed March 22, 2016 (dated March 21, 2016), Judge Schmehl granted the motion for Respondent to represent Mr. Stevenson *pro hac vice*. DCX 120.

202. By order filed May 18, 2016 (dated May 17, 2016), Judge Schmehl directed: (1) all written should discovery continue; (2) "[c]ounsel for plaintiff shall immediately request a proper right to sue letter from the EEOC"; and (3) the scheduling of a status conference for August 8, 2016. DCX 121.

203. On May 18, 2016, Respondent filed a motion seeking to change the "venue" of Mr. Stevenson's case from the Reading courthouse of the United States

District Court for the Eastern District of Pennsylvania to the Philadelphia courthouse within that district. DCX 122. The motion argued that Philadelphia was Mr. Stevenson's preferred "venue"; that Philadelphia would be more convenient for the parties and witnesses;[102] and that "perverse racism in the Reading jury pool would prevent a fair trial." *Id*. at 1.[103]

204. On May 18, 2016, Judge Schmehl referred the pending case to Magistrate Judge Richard A. Lloret for the purposes of matters relating to pretrial discovery, and for scheduling and conducting a mediation. DCX 115 at 4. Judge Lloret held a settlement conference on June 27, 2016. *Id*. 205. On May 31, 2016, the School District filed an opposition to Respondent's request for a change of "venue." DCX 123. The School District asserted that the request was "specious" (*id*. at 4) because Mr. Stevenson resided in Berks County, not Philadelphia; the School District's principal office was in Chester County, not Philadelphia; and inasmuch as the geographic boundary of the Eastern District of Pennsylvania was spread across nine counties in the southeastern portion of that State as well as Philadelphia, there was no "Reading jury pool" as Respondent alleged, and the jury pool for the case − whether it was heard in the Reading courthouse or in the Philadelphia courthouse − would be drawn from the entire area covered by the Eastern District of Pennsylvania. *Id*. at 2-3.

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[102] *But see* n. 98, *supra*, indicating the proximity of Mr. Stevenson's residence to Reading, PA.

[103] As he had also alleged with respect to Judge Boasberg (FF 151), Respondent argued in addition that the Reading jury pool would be prone to "confirmation bias." DCX 122 at 2.

206. On June 29, 2016, Respondent filed a First Amended Complaint with the court (ECF 20), which Judge Schmehl ordered stricken on July 14, 2016, "as plaintiff did not seek leave of court or written consent of the opposing party before filing . . . as required by Rule 15(a)(2) of the Federal Rules of Civil Procedure."[104] DCX 115 at 4 (ECF 21).

207. On July 20, 2016, Respondent filed a motion for leave to file a Second Amended Complaint, which Judge Schmehl granted on July 25, 2016 as unopposed. *Id*. at 4-5 (ECF nos. 23-26).

208. On August 8, 2016, the School District filed a motion to dismiss plaintiff's Second Amended Complaint. *Id*. at 5 (ECF 28). *Inter alia*, the School District argued that Mr. Stevenson had failed to exhaust administrative remedies, and that claims raised in the Second Amended Complaint were time-barred. Tr. 54:1-17 (Kristofco).

209. Neither Respondent nor Ms. Meisler as local counsel attended the status conference on August 8, 2016 scheduled by the court's prior order issued on May 18, 2016 (FF 202), despite attempts by the court to get in touch with both of them. Tr. 57:2-19 (Kristofco).

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[104] Fed. R. Civ. P. 15(a)(1) provides that a plaintiff may amend the complaint once without consent of the opposing party or the court if the amendment is filed within 21 days after service of the complaint or within 21 days after service of a responsive pleading. Mr. Stevenson, however, had filed his complaint on October 30, 2015 (FF 195), and the School District filed a motion to dismiss the complaint on February 10, 2016 (FF 198). Fed. R. Civ. P. 15(a)(2) states:

> (2) *Other Amendments*. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

210. On August 10, 2016, Judge Schmehl entered two separate orders:

a. In one order, the court denied Respondent's May 18, 2016 request for a change of venue (FF 203), stating:

> . . . Reading and Philadelphia are both located within the Eastern District of Pennsylvania and, therefore, share the same jury pool. In addition to the extent a jury is needed in this case, the jury will be chosen in Philadelphia, while the trial will take place in Reading.

DCX 115 at 5 (ECF 32).[105]

b. In the second order, expressly noting the failure of plaintiff's counsel to attend the status conference on August 8, 2016, the court directed: (1) all factual discovery was to be completed by November 8, 2016; and (2) the scheduling of a status conference on November 17, 2016. DCX 124.

211. On August 21, 2016, Respondent sent a School District teacher named Mr. Meiswich an e-mail (DCX 110 at 32), which Mr. Kristofco learned about only after the e-mail was sent (Tr. 62:6-19 (Kristofco)). In this e-mail, Respondent stated, in pertinent part:

> . . . I am told you asked [Mr. Stevenson] how you can help, help make things right.
>
> One way, you may be able to help, is with testimony. Testimony about why you were reporting things about [Mr. Stevenson] to the Principal and Superintendent.

[105] The operation of a district-wide federal jury pool was described in a newspaper editorial concerning the jury empanelled in the United States District Court for the Eastern District of Virginia for the criminal trial of President Trump's former campaign chairman, Paul Manafort. As noted in that editorial, *How Justice Works*, Wash. Post, Aug. 27, 2018, at A20, " . . . [o]ne juror drove more than 100 miles each day to the federal courthouse."

> Were you reporting things about him entirely of your own accord? Or did you initially report something and then the District asked you to report anything else that you observed?

212. On September 1, 2016, Respondent − without the prior consent of the School District's legal counsel (Tr. 61:2-6 (Kristofco)) − sent an e-mail (DCX 132 at 19) to eight of the nine school board members of the School District and to its superintendent, all of whom dealt with the School District's counsel concerning the Stevenson matter. Tr. 60:4-9 (Kristofco); DCX 110 at 7. Respondent also sent copies of this e-mail to Mr. Kristofco and another attorney in his law firm, and to two teachers' union representatives. Tr. 60:10-18 (Kristofco). The e-mail proposed "a facilitated dialogue regarding the employment situation of [Mr.] Stevenson," the goal of which "would be a productive frank dialogue aimed at arriving at a mutually agreeable outcome that avoids the need for future litigation." DCX 132 at 19. Respondent's e-mail alleged, "the District brought in a black principal Mr. Hammond, and assigned [Mr.] Stevenson to Hammond in an attempt to make efforts to chase [Mr.] Stevenson out look less racist than in earlier attempts by white principal Souders," and further stated, "[i]f, by sitting down and having a robust discussion, we can avoid years of costly litigation, we can save my client, the District and PA taxpayers a considerable sum of money and much hassle." *Id*. In his conclusion, Respondent asked the e-mail recipients to "communicate with your counsels" concerning the proposed "facilitated dialogue." *Id*.

213. On September 2, 2016, Mr. Kristofco sent Respondent an e-mail protesting Respondent's unauthorized contact with members of the school board and

the School District's superintendent as described in the preceding paragraph, and once again brought to Respondent's attention[106] the provisions of Rule 4.2 of the Pennsylvania Rules of Professional Conduct, prohibiting a lawyer from communicating with any third party represented by legal counsel without the prior consent of such legal counsel. DCX 132 at 21.

214. On September 7, 2016, Respondent sent Mr. Meiswich a follow-up e-mail to Respondent's August 21, 2016 e-mail (FF 211). DCX 110 at 33-34. In this second e-mail, Respondent stated:

> Although you claimed you would help [Mr.] Stevenson with the fall out from you ratting him out to management, that offer is apparently just talk[.]
>
> You didn't even respond to my last e-mail. Let alone answer my question regarding the role of management in your unethical behavior.
>
> As a result, we are reexamining whether to file ethics charges against you and bringing defamation charges against you.
>
> To avoid this, we simply need a detailed description of how you became a management rat[.] Was this entirely your doing? Did management encourage it?
>
> If I don't have an answer in a week, we will file ethics charges.
>
> * * *
>
> PPS - If we are forced to sue in state court, we will ask for compensatory damages, punitive damaged [sic], and legal fees. I don't think much of management spies like you, so I wouldn't mind garnishing your wages or putting liens on your vehicles and property if I must.

[106] S*ee* FF 194, *supra*, regarding a similar protest by Mr. Kristofco in 2014.

Mr. Meiswich was concerned about Respondent's e-mails to him and brought them to the attention of the School District's legal counsel. Tr. 62:16-19; 63:5-11 (Kristofco).[107]

215. On September 7, 2016, Respondent made a posting (DCX 132 at 34) to the School District's Facebook page about Dan Goffredo,[108] the School District's assistant superintendent for human relations (Tr. 63:20-64:8 (Kristofco)), stating:

> Assistant Superintendent Daniel Goffredo was allegedly caught videotaping female teachers doing pilates. IF this turns out to be true and any of those teachers need a lawyer for purposes of sexual harassment actions at EEOC or PHRC, please let me know. Glenn Stephens, Esq.

216. On September 8, 2016, Respondent made another posting (DCX 132 at 36) to the School District's Facebook page, stating:

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[107] In a partial response dated December 4, 2016 to Mr. Kristofco's ethics complaint against Respondent to ODC, Respondent stated (DCX 111):

> Kristofco simply doesn't like the fact that we identified his rat and filed union ethics charges against the rat. Union ethics rules prohibit tattling on other teachers.
>
> In 2016, after a two year battle, we gained union censure of the previous rat. And we will gain union ethics charges against this rat in time.

Respondent's response to ODC concluded by saying, "My very detailed response will also be used in a wave of litigation I will send [Mr. Kristofco's] way." *Id*. On October 11, 2016, Respondent sent Mr. Kristofco an e-mail (DCX 110 at 29) threatening "defamation per se actions against you for the many untrue and defamatory remarks in your protective order." On October 13, 2016, Respondent sent Mr. Kristofco another e-mail (*id*. at 30-31) threatening "Section 1983 and Constitutional actions against you as an individual and the District as an entity." On December 27, 2017, Respondent sent Mr. Kristofco an e-mail (with copies to two other attorneys in his law firm) stating, "I will be sueing [sic] you personally soon. Please provide the address and contact information for your attorney(s) for purposes of service of process." DCX 173 at 3.

[108] Mr. Goffredo was one of the School District employees against whom Mr. Stevenson sought relief in his initial court complaint. FF 195.

> Part of wellness is supporting diversity. In 1985, the NAACP sued [the School District] due to lack of black professionals and teachers. At that time there [were] just 8. 31 years have passed. We have had a black President. But [the School District's] percentage of black teachers is lower than in 1985. Why? Might have something to do with the all white school board and the near all white management at the school or the fact the school's lawyers are all white. Rather than getting on the right side of history, [the School District] is close to the mind set of Jim Crow and apartheid. If you care about the wellness of your non-white students, embrace rather than fighting faculty diversity. Just my opinion.

217. On September 8, 2016 − notwithstanding the pendency of the School District's August 8, 2016 motion to dismiss plaintiff's Second Amended Complaint (FF 208), which Respondent did not oppose until three months after the motion was filed (Tr. 56:11-13 (Kristofco); FF 241, *infra*)), and the fact that pretrial discovery was open until November 8, 2016 pursuant to the court's order of August 10, 2016 (FF 210(b)) − Respondent filed a motion for partial summary judgment, entitled "Motion for Summary Judgment on Retaliation (Count II)." DCX 126.[109] Respondent failed to support his motion with a joint stipulation of facts as required by page 5 of Judge Schmehl's standard Procedures (quoted in DCX 133 at 5) stating:

> Along with any motion for summary judgment, the parties must file a joint stipulation listing all of the material facts on which the parties can agree. Judge Schmehl expects parties opposing summary judgment motions to cooperate in preparing such stipulations. The parties should then address in their briefs any facts that could not be agreed upon because they are in dispute as to either correctness or materiality, or because one party simply asserts they should not be in dispute, but

[109] Among the School District employees who were alleged in the motion to have taken retaliatory action against Mr. Stevenson was Mr. Goffredo. DCX 126 at 6; 8 n. 31; 9-10.

> extensive factual disputes may lead to denial of summary judgment motions.

Furthermore, although Respondent's motion referred to numerous attached documentary exhibits,[110] there were no affidavits or similar declarations under penalties of perjury attached to the motion stating which specific facts allegedly were not in dispute, nor was there an attachment with a clear and specific statement of what those undisputed facts might be. DCX 126; DCX 133 at 4-5 (School District's opposition to Respondent's motion).

218. On September 12, 2016, because Mr. Kristofco was having difficulty in obtaining complete discovery responses from Respondent as well as in scheduling a telephone call with Respondent to discuss discovery issues (Tr. 65:6-19; 72:12-74:18 (Kristofco); DCX 134 at 2), Mr. Kristofco − pursuant to the court's normal procedure (Tr. 65:19-66:3 (Kritofco)) − e-mailed a letter to Judge Schmehl in accordance with Rule D(2) of the court's Local Policies and Procedures[111] requesting a telephone conference with the court. DCX 128 at 2. Copies of the e-mailed request for a telephone discovery conference were sent by e-mail to Respondent and Ms. Meisler. *Id.*

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[110] By the Hearing Committee's count, the references to exhibits end with "Exhibit 44." DCX 126 at 9.

[111] Rule D(2) states (DCX 131 at 3):

> In the event that a discovery dispute requires court intervention, the party contemplating a motion shall seek a telephone conference with the court before filing any motion. If the telephone conference fails to resolve the discovery dispute, the party seeking relief will be permitted to file an appropriate discovery motion.

219. On September 13, 2016, Judge Schmehl entered an order scheduling a telephone conference for September 14, 2016 at 3:30 P.M. DCX 115 at 6 (ECF 35). In an e-mail to counsel, Judge Schmehl's chambers, in accordance with Judge Schmehl's normal practice (Tr. 68:19-21 (Kristofco)), directed plaintiff's counsel to initiate the telephone conference call. DCX 134 at 27.

220. On September 14, 2016, at 10:00 A.M., Respondent sent Judge Schmehl a lengthy e-mail asking to postpone until September 21, 2016 the conference call referred to in the preceding paragraph. DCX 129 at 2-3. Respondent's e-mail contains a lengthy argument presenting his view of the status of the case (*id*.), and states that the delay is needed "so the parties have time to research and then better address the resumption of retaliatory conduct against Mr. Stevenson" which he asserts has recently occurred and which Respondent says he intends to address in an amended complaint (*id*. at 2).[112] Respondent further argues it would be more efficient to seek a "resolution of these matters in a single trial rather than two" *Id*. at 3.

221. On September 14, 2016, at 11:27 A.M., Judge Schmehl's chambers sent an e-mail to counsel in the case stating, "Judge Schmehl will have the telephone conference today as scheduled." *Id*. at 1.

222. At 3:30 P.M. on September 14, 2016, Respondent sent an e-mail to Mr. Kristofco, his associate (Ms. Diaz), and Ms. Meisler, representing that both

[112] On September 14, 2016, Respondent in fact filed a motion (dated September 8, 2016) for leave to file a Third Amended Complaint, to add a Count III alleging "disparate treatment" under Title VII of the Civil Rights Act of 1964. DCX 127.

Respondent and Ms. Meisler "are currently on cell phones and neither of us have the knowledge or capacity to create a conference call." Respondent therefore asked Mr. Kristofco to initiate the conference call. DCX 134 at 31.

223. Because of the last-minute notice provided by Respondent as described in the preceding paragraph, Mr. Kristofco was not able to arrange a conference call for the 3:30 P.M. time slot on September 14, 2016 as desired by Judge Schmehl, and the judge therefore postponed the conference call to September 15, 2016 at 3:00 P.M., with plaintiff's counsel again being directed by the court to initiate the call. DCX 134 at 3; Tr. 68:4-10 (Kristofco).

224. At 2:57 P.M. on September 15, 2016, Respondent sent an e-mail to the School District's legal counsel, Ms. Meisler, and Judge Schmehl's chambers, with a subject line reading "I will initiate the call in a moment," and stating in the text of the e-mail, "Please bear with me, this is my first live attempt at doing so on my Iphone after several experiments earlier." DCX 130 at 1.

225. At 3:10 PM on September 15, 2016, before Respondent initiated the "momentarily" promised conference call − which he did belatedly at 3:16 P.M. (DCX 134 at 4) − Respondent e-mailed to the court and to Mr. Kristofco a draft motion for sanctions against Mr. Kristofco (DCX 130 at 2-11).[113] Respondent alleged in this document that Mr. Kristofco's e-mail request to the court on September 12, 2016 seeking a telephone conference (FF 218) − a request which the court had already

[113] Respondent subsequently filed the motion for sanctions with the court on September 23, 2016. *See* FF 228, *infra*.

granted (FF 219) − constituted an improper *ex parte* communication with the court (*id*. at 6-8) sanctionable pursuant to Fed. R. Civ. P. 11, or, alternatively, as vexatious conduct pursuant to E.D. Pa. Loc. Civ. R. 83.6.1 (*id*. at 5, 10).[114] Respondent delayed initiating the telephone conference call at 3:00 P.M. as directed by the court because he was attempting to complete his motion for sanctions. *Id*. at 10 (draft motion stated, "[b]ecause the deadline for the call is upon us, Plaintiff ends there"); Tr. 70:5-11 (Kristofco)).

226. Respondent's draft motion for sanctions discussed in the preceding paragraph, derailed the September 15, 2016 conference call with the court from its intended focus − resolving discovery disputes − to dealing mostly with Respondent's last-minute allegations against Mr. Kristofco of communicating *ex parte* with Judge Schmehl. Tr. 71:3-8 (Kristofco); DCX 134 at 6.

227. On September 21, 2016, Judge Schmehl ordered all discovery disputes in the case to be referred to Magistrate Judge Lloret. DCX 115 at 6 (ECF 38).

228. On September 23, 2016, Respondent filed his motion for sanctions against Mr. Kristofco. DCX 131. Respondent's motion as filed added a section, not contained in his earlier draft, asserting that Mr. Kristofco had also violated his duty of candor with the court because Mr. Kristofco's e-mail letter to Judge Schmehl had

[114] E.D. Pa. Loc. Civ. R. 83.6.1 (b) states:

> No attorney shall . . . fail to appear when that attorney's case is before the court on a call, motion, pretrial or trial, or shall present to the court vexatious motions or vexatious opposition to motions or shall fail to prepare for presentation to the court, or shall otherwise so multiply the proceedings in a case as to increase unreasonably and vexatiously the costs thereof.

not accurately described the status of discovery in the case. *Id*. at 5-9. Respondent then proceeded to describe discovery issues from his perspective. *Id*. As a preface to his argument, Respondent referred to (*id*. at 2) − and attached as an exhibit to his motion (*id*. at 15B)[115] − a copy of Judge Schmehl's August 10, 2016 order (FF 210(b)) scheduling a status conference for November 17, 2016.

229. On September 28, 2016, the School District filed a motion for a protective order. DCX 132. The School District argued:

a. Respondent's unauthorized e-mail to the members of the School District's school board on September 1, 2016 (FF 212) and his prior e-mail to School District officials on May 20, 2014 (FF 192) violated Rule 4.2 of the Pennsylvania Rules of Professional Conduct ("PA ST RPC"), particularly as explained by Comment [7] to that Rule.[116] DCX 132 at 9-10.

b. Respondent's postings on the School District's Facebook page on September 7-8, 2016 − suggesting that assistant superintendent Goffredo had surreptitiously videotaped and sexually harassed female teachers while they were

[115] Exhibit page 15B was not with provided with DCX 131 as filed prior to the hearing in this matter, because ODC was trying to eliminate filing a duplicate document (*see* DCX 124); however, page 15B was provided by ODC during the hearing and admitted into evidence. Tr. 91:15-22; 123:18-127:6.

[116] Comment [7] states:

> In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability.

exercising (FF 215), and that the School District was affected by racial discrimination (FF 216) − were public extrajudicial comments on a pending case violating PA ST RPC Rule 3.6(a);[117] and the e-mail concerning assistant superintendent Goffredo (FF 215) violated PA ST RPC 7.3 prohibiting the solicitation of professional employment from persons with whom a lawyer has no family or prior professional connection, as well as PA ST RPC 5.5(b)(2) prohibiting a lawyer not admitted to practice in Pennsylvania from holding out to the public or otherwise representing that the lawyer is admitted to practice in that State. DCX 132 at 11-12.

c. Respondent's e-mails to Mr. Meiswich (FF 211 and 214) constituted witness intimidation and harassment, and violated PA ST RPC 4.4(a), which bars a lawyer from using "means that have no substantial purpose other than to embarrass, delay, or burden a third person" or "methods of obtaining evidence that violate the legal rights of such a person." *Id*. at 12-13.

230. On September 30, 2016, the School District filed an opposition to Respondent's September 8, 2016 motion for partial summary judgment (FF 217). DCX 133. In addition to arguing that Respondent's motion was procedurally defective as outlined in FF 217 (DCX 133 at 2-5), the School District also argued

[117] Rule 3.6(a) states:

> A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

that Respondent's motion was a substantively incorrect interpretation and application of the law of retaliation under Title VII of the Civil Rights Act (*id*. at 6-13).[118]

231. On October 3, 2016, Respondent filed a motion seeking a protective order against the School District. DCX 115 at 6-7 (ECF 43).

232. On October 7, 2016, the School District filed an opposition to Respondent's September 23, 2016 motion for sanctions (FF 228). DCX 134. The School District noted first that Respondent's motion violated the "safe harbor" provision of Fed. R. Civ. P. 11(c)(2). *Id*. at 5-6.[119] The School District then argued that Respondent's claim of improper *ex parte* communication was "specious" (*id*. at 5) because Respondent received a simultaneous e-mail copy of the School District's e-mail letter to Judge Schmehl requesting a telephone status conference on discovery (*id*. at 6), and because Respondent himself had communicated with the court by e-mail[120] two days later about discovery issues in the very same manner as the School District's legal counsel (*id*.).

233. On October 11, 2016, Magistrate Judge Lloret entered an Order (DCX 135) providing procedural directions concerning the resolution of discovery disputes (*id*. at 1-2 ¶¶ 1-4); summarily denying Respondent's September 23, 2016 motion for

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[118] The School District supported its opposition with a "Counter Statement of Material Facts in Opposition to Plaintiff's Motion for Summary Judgment on Retaliation." *See* DCX 133 at 10.

[119] Fed. R. Civ. P. 11(c)(2) states that while a motion under Rule 11 may be served, it can not be filed with the court "if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets."

[120] *See* FF 220 (describing Respondent's e-mail to Judge Schmehl on September 14, 2016).

sanctions (FF 228) against the School District's legal counsel (*id*. at 2 ¶ 5); denying Respondent's October 3, 2016 motion for a protective order (FF 231) as moot in light of the court's directives about discovery (*id*. at 2 ¶ 6); and giving plaintiff until October 13, 2016 to respond to the School District's September 28, 2016 motion for a protective order (FF 229) (*id*. at 2-3 ¶ 7).

234. No response on behalf of the plaintiff to the School District's motion for a protective order was filed by October 13, 2016 (DCX 115 at 7; Tr. 80:13-19 (Kristofco)), and the discovery that Magistrate Judge Lloret had directed plaintiff to provide was not forthcoming (Tr. 83:12-84:14 (Kristofco)).[121] Respondent did, however, send Mr. Kristofco and another attorney in his law firm an e-mail on October 11, 2016 (DCX 110 at 29) threatening "defamation per se actions against you for the many untrue and defamatory remarks in your protective order," and on October 13, 2016 sent Mr. Kristofco an e-mail (*id*. at 30-31) threatening "Section 1983 and Constitutional actions against you as an individual and the District as an entity" (*id*. at 30).

235. On October 20, 2016, Respondent filed a motion for default judgment against the School District. DCX 136. The motion asserted that a response to plaintiff's complaint had been due by January 19, 2016, but no response had been submitted until the School District moved to dismiss the complaint on February 10, 2016. *Id*. at 3. Respondent's motion did not give any weight to the provision in the

[121] On October 12, 2016, the School District filed a motion to compel discovery responses (DCX 115 at 7 (ECF 47)), as directed in ¶ 1 of Magistrate Judge Lloret's order of October 11, 2016 (DCX 135).

December 16, 2015 waiver form (FF 197) pursuant to which service of process had been accepted by the School District's legal counsel, and which allowed the School District 60 days from December 16, 2015 to respond to the complaint, although a copy of the waiver form (DCX 136 at 8) was attached as an exhibit to Respondent's motion.

236. On November 3, 2016, the School District filed an opposition to Respondent's motion for default judgment, asserting that the default motion was frivolous because the School District's initial motion to dismiss Mr. Stevenson's complaint had been filed within 60 days after execution of the waiver form described in the preceding paragraph. DCX 137; Tr. 85:9-86:16 (Kristofco).

237. On November 13, 2016, Respondent served a Reply (filed with the court on November 16, 2016) to the School District's opposition described in the preceding paragraph. DCX 138. Respondent's Reply asserted that Mr. Stevenson, as a *pro se* plaintiff, had been "[c]onfused" (*id*. at 1) about the issue of service of process on the School District, and had therefore also served the School District with process by certified mail on December 28, 2015. *Id*. Respondent then argued that the December 28, 2015 mailing was the actual service of process on the School District, and the School District had not filed a timely response to the complaint after that date. *Id*. at 2.

238. On November 15, 2016, Respondent sent the School District's legal counsel an e-mail stating:

> You were served properly under Rule 403 on December 28 and didn't file an answer or otherwise defend in 21 days.

> If or when you lose by default, due to your negligence, you will lose more than the case. You will likely lose the client and likely get sued for malpractice.
>
> Because clients don't like it when they lose cases and money because the lawyer misses a deadline.
>
> You would do well to settle the case for $30,000, not lose, keep the client, and avoid malpractice.
>
> My hunch is that the loss of business and the increase in your malpractice insurance will be well over the $30k requested.
>
> Better settle before you lose.

DCX 158 at 48.[122]

239. On November 17, 2016, the court held a status conference pursuant to Judge Schmehl's prior order dated August 10, 2016 (FF 210(b)). Neither Respondent nor Ms. Meisler appeared at that status conference, although the court (as with the status conference on August 8, 2016 (FF 209)) again attempted without success to get in touch with both of them. Tr. 88:9-89:4 (Kristofco).

240. On November 17, 2016, Respondent filed a pleading entitled "Regarding Today's Status Conference." DCX 139. *Inter alia*, Respondent stated he had been preoccupied earlier that month with medical problems involving his uncle, and Respondent had therefore asked Mr. Stevenson to check the court's docket for any upcoming status conferences, but Mr. Stevenson had not found the court's August 10, 2016 order scheduling the November 17, 2016 status conference. *Id*. at 1.

[122] *See* FF 98, *supra*, for a similar e-mail that Respondent sent to Ms. Dettling and Ms. Dekker on April 3, 2016 seeking to obtain a settlement on behalf of Diane Schooley.

Respondent also stated he had personally reviewed the history of the case in connection with preparing his November 13, 2016 Reply in support of his motion for default judgment (FF 237), but he "saw no order or event related to any upcoming status conference." *Id*. at 2. Respondent left unexplained the fact that in his September 23, 2016 motion for sanctions against Mr. Kristofco, Respondent himself had attached as an exhibit a copy of the court's August 10, 2016 order scheduling the November 17, 2016 status conference. FF 228.

241. On November 18, 2016, Respondent filed an opposition to the School District's August 8, 2016 motion (FF 208) to dismiss his July 20, 2016 Second Amended Complaint (FF 207). DCX 140. Respondent did not file a motion for leave to submit this untimely reply to the School District's motion. *Id*.; DCX 115 at 8.

242. On November 18, 2016, Respondent filed a pleading entitled "Proposed Second Amended Complaint." DCX 141. (Respondent had already filed a "Second Amended Complaint" on July 20, 2016 (FF 207)). Despite Judge Schmehl's having stricken Respondent proposed First Amended Complaint on June 29, 2016 because it did not comply with the requirements of Fed. R. Civ. P. 15(a)(2) (FF 206), Respondent's November 18, 2016 "Second Amended Complaint" once again neither sought leave of court for the filing, nor did it recite that the School District had consented to the amendment. DCX 141; DCX 115 at 8.

243. On November 18, 2016, Judge Schmehl signed a Rule to Show Cause (docketed November 21, 2016), directing Respondent to show cause why he should

not be held in contempt or otherwise sanctioned for his failure to appear at the status conferences on August 8, 2016 (FF 209) and November 17, 2016 (FF 239). DCX 142. The Rule to Show Cause scheduled a hearing for December 9, 2016, and further stated that at the conclusion of the show cause proceeding the court would hear argument on the School District's August 8, 2016 motion (FF 208) to dismiss Respondent's July 20, 2016 Second Amended Complaint (FF 207). *Id*.

244. On November 18, 2016, Magistrate Judge Lloret signed an order (docketed November 21, 2016) granting the School District's September 28, 2016 motion for a protective order (FF 229), stating that Respondent was prohibited from:

> (a) directly contacting the [School District] or its employees concerning this matter, other than [Mr. Stevenson], outside of the normal discovery process; and
>
> (b) posting comments related in any way to the subject of this litigation on [School District] maintained social media outlets, including the [School District's] Facebook page.

DCX 143.

245. On November 21, 2016, Respondent filed a pleading entitled "Motion for Indefinite Stay." DCX 144. The asserted rationale for this request (*id*. at 2) was to allow:

> . . . the exhaustion of the [Mr. Stevenson's] administrative remedies, the issuance of right to sue letters, the filing of a complaint, and the consolidation of this case with the complaint(s) arising from the most recent round of [School District] discrimination.

246. On November 22, 2016, Respondent filed a "Notice of Withdrawal" of his appearance, stating that Mr. Stevenson was looking for other counsel. DCX 145.

On the same day, Respondent also filed a "Response to Order" stating that the November 18, 2016 protective order signed by Magistrate Judge Lloret was "moot" in light of "the withdrawal of [Respondent] from this case." DCX 146.

247. On November 22, 2016, Judge Schmehl signed an order (docketed November 25, 2016) noting the withdrawal of Respondent's appearance, but nevertheless directing Respondent to be present at the contempt hearing scheduled for December 9, 2016 (FF 243). DCX 147.[123]

248. On November 25, 2016, notwithstanding Respondent's November 22, 2016 Notice of Withdrawal, Respondent filed a "Motion for Partial Summary Judgment" (DCX 148), asserting that his September 8, 2016 motion for summary judgment (FF 217) with respect to Count II of the then-pending Second Amended Complaint should be treated as conceded because the School District's September 30, 2016 opposition to that motion (FF 230) allegedly[124] was untimely.

249. On November 26, 2016, Respondent filed a pleading entitled "Motion to Stay Grant of Withdrawal." DCX 149. The motion argued that the court should "delay granting [Respondent's] withdrawal" pursuant to his November 22, 2016 Notice of Withdrawal (FF 246) because Mr. Stevenson was negotiating for alternative representation. *Id*. at 1.

250. On December 2, 2016, the School District filed an opposition (DCX 150)

[123] The court's order ends with the statement, "Failure to appear will result in the Court dispatching a United States marshal to bring [Respondent] before the Court."

[124] As noted in FF 243, Judge Schmehl's November 18, 2016 show cause order had already directed that at the show cause hearing on December 9, 2016 the court would hear argument on the School District's motion to dismiss the Second Amended Complaint.

to Respondent's November 21, 2016 motion for an indefinite stay of the case (FF 245), arguing, *inter alia*, that the motion was a transparent attempt by Respondent to avoid sanctions, and would serve only to delay resolution of the case (DCX 150 at 1).

251. On December 5, 2016, Ms. Meisler (the Pennsylvania attorney who had agreed to serve as Respondent's sponsor and local counsel in connection with his February 24, 2016 request for admission *pro hac vice* (FF 199)), filed a motion for leave to withdraw as plaintiff's counsel and to withdraw her sponsorship of Respondent. DCX 151. The motion stated that Ms. Meisler and Respondent had agreed that he would have the responsibility of "Lead Counsel" in the case; that Respondent's November 22, 2016 Notice of Withdrawal (FF 246) had been filed without prior notice to her; that Mr. Stevenson was seeking new legal counsel; and that differences had arisen concerning Ms. Meisler's role in the case, making it impractical for her to continue as counsel. *Id*. at 2 ¶¶ 6-9.

252. On December 6, 2016, notwithstanding Respondent's November 22, 2016 Notice of Withdrawal (FF 246), Respondent filed a motion for leave to file a Fourth Amended Complaint. DCX 152. The proposed complaint attached to Respondent's motion omitted a third count alleging disparate treatment, which Respondent had sought to add in a Third Amended Complaint filed on September 14, 2016 (*see* n. 112, *supra*). *Id*. at 13.

253. On December 7, 2016, Respondent filed a pleading entitled "On My Withdrawal." DCX 153. In this pleading, *inter alia*, Respondent described various

medical problems that had occurred in his and Mr. Stevenson's family, and some of the history of his involvement in Mr. Stevenson's disputes with the School District. *Id*. at 1-4. Respondent concluded by stating that he could no longer continue the "battle," and wanted to spend time with his ill uncle. *Id*. at 5.[125]

254. On December 7, 2016, Judge Schmehl entered an order directing that a hearing on Ms. Meisler's December 5, 2016 motion to withdraw (FF 251) would be consolidated with the show cause hearing against Respondent on December 9, 2016. DCX 154.

255. On December 8, 2016, notwithstanding Respondent's November 22, 2016 Notice of Withdrawal (FF 246), Respondent filed three additional pleadings:

a. The first pleading was entitled "Mediation Request." DCX 155. In this pleading, Respondent asked the court to schedule a mediation for a date after January 11, 2017 in order to allow another Pennsylvania attorney named in the Mediation Request to enter an appearance and become familiar with the case. *Id*.

b. The second pleading was entitled "Withdrawal of Motion to Withdraw." DCX 156. (Respondent on November 22, 2016 had not filed a motion to withdraw, but instead filed a "Notice of Withdrawal." FF 246.) In this pleading Respondent represented to the court that he was seeking to remain as counsel in the case because the proposed new Pennsylvania attorney designated in the "Mediation

[125] At approximately the same time as Respondent provided this explanation to Judge Schmehl regarding the reason for withdrawing while facing sanctions from the court, Respondent had advised Judge Boasberg − again while facing court sanctions − that he was withdrawing from the Hall/Dettling litigation in order to focus on other priorities such as developing a mediation/arbitration practice and preparing for the 2017 ITU triathlon World Championships. *See* n. 76, *supra*.

Request" described in the preceding subparagraph (a) had agreed to serve as local counsel only if Respondent remained as "Lead Counsel." *Id*.

c. The third pleading, entitled "Withdrawal of Motion for Indefinite Stay," consisted of one line stating, "The Plaintiff respectfully withdraws his earlier motion for an indefinite stay." DCX 157. Respondent offered no explanation as to why his November 21, 2016 "Motion for Indefinite Stay" and the rationale stated therein (FF 245) − to which the School District had already filed on opposition on December 2, 2016 (FF 250) − were no longer operative.

256. On December 8, 2016, the School District filed a motion for sanctions against Respondent, pursuant to 28 U.S.C. § 1927.[126] DCX 158. The motion argued that sanctions were appropriate because Respondent had filed frivolous pleadings and otherwise engaged in improper conduct. *Id*. at 4. In the course of presenting their argument, the School District's legal counsel brought to the court's attention the fact that in the *Hall* litigation Respondent had been sanctioned by Judge Boasberg for misconduct similar to what the School District was alleging. *Id*. at 6-7.

a. Among the pleadings the School District alleged as frivolous were Respondent's request for a change of venue (FF 203), which the School District opposed (FF 205) and which was subsequently denied by the court (FF 210(a)); the First Amended Complaint filed June 29, 2016 (FF 206), which the court ordered stricken because it did not comply with the Federal Rules of Civil Procedure (*id*.); Respondent's September 8, 2016 motion for partial summary judgment (FF 217), to

[126] 28 U.S.C. § 1927 is quoted in n. 84, *supra*.

which the School District filed an opposition on procedural and substantive grounds (FF 230); Respondent's motion for sanctions against the School District based on an allegedly improper *ex parte* communication with Judge Schmehl (FF 228), to which the School District filed an opposition (FF 232) and which was promptly denied by the court (FF 233); and Respondent's motion for a default judgment (FF 235), which the School District opposed (FF 236). DCX 158 at 4-14.

b. Among the examples of Respondent's allegedly improper conduct, the School District cited his unauthorized contacts with management-level School District personnel despite the fact that they were represented by counsel (FF 192 and 212); Respondent's harassing e-mails to a School District employee (FF 211 and 214); Respondent's improper postings to the School District's Facebook page (FF 215 and 216); the School District's motion for a protective order with regard to the foregoing conduct (FF 229), which was granted by the court (FF 244); Respondent's interference with the orderly conduct of the telephone conferences with Judge Schmehl that were scheduled during September, 2016 on discovery issues (FF 219-26); the harassing e-mail (FF 238) Respondent sent to the School District's legal counsel on November 15, 2016 several weeks after filing a motion seeking entry of a default judgment; and Respondent's failure to attend two scheduled status conferences (FF 209 and 239), leading the court to issue a Rule to Show Cause against Respondent (FF 243). DCX 158 at 4-14.

257. On December 9, 2016 − the date of the show cause hearing scheduled by Judge Schmehl on November 18, 2016 (FF 243) − Respondent filed a pleading

entitled "Reply to Show Cause Order," providing an explanation for his failure to appear at two status conferences. DCX 159. In the course of describing the "hectic" nature of his law practice (*id*. at 4-7), Respondent stated (*id*. at 4):

> About half of my clients previously had poor quality representation that included significant ethical violations and actionable mistakes. One such unethical attorney − Rosemary Dettling − is the subject of my ongoing representation and litigation on behalf of Steven Hall . . . .

When Respondent made this statement, however, he had already withdrawn his appearance − on October 30, 2016 (FF 139) − in that lawsuit.[127]

258. On December 9, 2016, the School District filed two pleadings:

a. First, the School District filed an "Opposition to Plaintiff's Motion to Stay Grant of Withdrawal."[128] DCX 160. In this pleading, the School District argued that "[Respondent] definitively withdrew his appearance from this case on November 22, 2016" (*id*. at 2), "Ms. Meisler has withdrawn her appearance in this case" (*id*.), and "unless and until [new local counsel] enters his appearance in this matter and sponsors [Respondent] to practice before this Court ***and*** the Court grants the application, [Respondent] remains disqualified from representing Plaintiff in this case" (*id*. at 3; footnote omitted; bolding, italicizing, and underlining in original).

b. Second, the School District filed an opposition to Respondent's

[127] In a footnote, Respondent added (*id*. at 4 n. 1), *inter alia*, "I have little doubt that the sanctions Judge Boasberg levied will be reversed. [They were not; FF 163-67.] Ms. Dettling is the object of a slew of ethics complaints and my pleading well document [sic] her ethics violations in her handling of the cases of my clients."

[128] One of the pleadings Respondent filed on December 8, 2016 was entitled "Withdrawal of Motion to Withdraw." FF 255(b).

November 25, 2016 second motion for partial summary judgment (FF 248). DCX 115 at 9 (ECF 75).

259. On December 9, 2016 (order docketed December 12, 2016) Judge Schmehl granted Ms. Meisler's motion to withdraw as counsel for the plaintiff and as Respondent's sponsor. DCX 161. In all other respects, Judge Schmehl took under advisement the matters presented to him at that day's show cause hearing. DCX 115 at 10 (ECF 78).

260. On December 19, 2016, notwithstanding that he no longer had a local counsel sponsor in the case (FF 259), Respondent filed three additional pleadings:[129]

a. In the first pleading, entitled "Motion to Rescind of [sic] Defendant's Protective Order" (DCX 162), Respondent sought to overturn the November 18, 2016 order (FF 244) entered by Magistrate Judge Lloret granting the School District's September 28, 2016 motion (FF 229) for a protective order, even though Respondent had not complied with Magistrate Judge Lloret's October 11, 2016 order (FF 233) giving him until October 13, 2016 to file an opposition to that motion.

b. The second pleading, entitled "Response to District Motion to Disqualify" (DCX 163), took issue with the School District's December 9, 2016 opposition (FF 258(a)) to Respondent's December 8, 2016 "Withdrawal" (FF 255(b))

[129] In addition to the three pleadings discussed in this finding of fact, Respondent also filed two documents from the *Hall* litigation described in Section II(B) of this Report. DCX 115 at 10 (ECF nos. 82 and 83); DCX 165 at 4 (School District pleading referring to Respondent's improper cross-filing of documents from the *Hall* case). All of these pleadings, as well as the subsequent pleadings Respondent filed after Ms. Meisler ceased to act as local counsel on December 9, 2016 (FF 259), were later ordered stricken by Judge Schmehl because Respondent, lacking a local counsel to sponsor him, was barred from filing any pleadings. *See* FF 265, *infra*; DCX 115 at 10-11.

of his November 22, 2016 "Notice of Withdrawal" (FF 246). This pleading concluded with the statement, "The Plaintiff's pending withdrawal [discussed in the next subparagraph] renders any participation by the undersigned moot." DCX 163 at 2.

c. The third pleading, entitled "Plaintiff's Withdrawal" (DCX 164), stated − in the context of a long explanation − "Plaintiff Mr. Stevenson voluntarily withdraws this complaint." *Id*. at 1. This pleading was not signed by Mr. Stevenson or by Ms. Meisler (whose motion for leave to withdraw had been granted on December 9, 2016 (FF 259)), but only bore the electronic signature of Respondent. *Id*. at 2.

261. On December 20, 2016, the School District filed an opposition to Respondent's December 6, 2016 motion (FF 252) for leave to file a Fourth Amended Complaint. DCX 165. *Inter alia*, the School District stated it felt compelled to file this opposition because it was unsure if the December 19, 2016 "Withdrawal" of the complaint described in the preceding subparagraph (c) had any binding effect, given that the "Withdrawal" was not signed by the plaintiff or by any attorney then authorized to represent him. *Id*. at 1-2, 4-5.

262. On December 31, 2016, notwithstanding that he no longer had a local counsel sponsor in the case (FF 259) and that on December 19, 2016 he had filed a "Withdrawal" of plaintiff's complaint (FF 260(c)), Respondent filed a "Second Memorandum of Law in Support of Motion to Rescind the Protective Order." DCX

166.[130] Respondent argued first that the withdrawal of plaintiff's complaint "will obviate the need for that protective order." *Id*. at 1. Respondent then asserted that the existence of the protective order had an effect on the issue of sanctions still pending before the court (*id*.), and he provided extensive argument as to why his e-mails and internet postings which were the subject of the School District's September 28, 2016 motion for a protective order (FF 229) were not a proper foundation for Magistrate Judge Lloret's November 18, 2016 order (FF 244). *Id*. at 1-15.

263. On January 3, 2017. the School District filed two pleadings:

a. First, the School District filed an opposition to Respondent's December 19, 2016 motion (FF 260(a)) seeking rescission of Magistrate Judge Lloret's protective order, as well as to Respondent's "Second Memorandum" (described in the preceding paragraph) which sought the same relief. DCX 167. *Inter alia*, the School District cited Respondent's failure to file a timely response to its motion for a protective order despite the court's setting an October 13, 2016 deadline (FF 233) for Respondent to do so (*id*. at 2, 4), and the absence of any new evidence in Respondent's "Second Memorandum" that would warrant reconsideration of the protective order (*id*. at 3-4).

b. Second, the School District filed a response to Respondent's December 19, 2016 "Withdrawal" (FF 260(c)) of plaintiff's complaint. DCX 168.

[130] *See* FF 260(a) regarding Respondent's first request filed on December 19, 2016 to rescind Magistrate Judge Lloret's November 18, 2016 protective order (FF 244). As indicated in n. 129, *supra*, this "Second Memorandum" (ECF 85) and all other pleadings filed by Respondent after December 9, 2016 were ordered stricken by Judge Schmehl. DCX 115 at 10-11.

The School District argued that the "Withdrawal" was not in proper form pursuant to Fed. R. Civ. P. 41 because it was not signed by Mr. Stevenson as the plaintiff or by any attorney then authorized to represent him, and therefore any dismissal of the case needed to be in the form of a stipulation co-signed on behalf of the School District, or by order of the court. *Id*. at 2-3.[131] As indicated in FF 265, *infra*, the court's ruling on January 11, 2017 in essence agreed with the School District's position.

264. On January 8, 2017, Respondent filed two pleadings:

a. First, Respondent filed a reply to the School District's December 8, 2016 motion (FF 256) for sanctions against Respondent. DCX 169. The longest portion of Respondent's pleading (argument heading "VI"; *id*. at 4-14) was a personal attack Mr. Kristofco for his allegedly "habitual lack of candor" (*id*. at 4).

b. Second, Respondent filed another sanctions motion[132] against the School District's legal counsel pursuant to Fed. R. Civ. P. 11. DCX 170. Respondent asked the court to "admonish the District's counsels to cease and desist from their use of abusive language in pleadings" and to strike "all references to 'witness intimidation' 'stalking' 'cyberstalking' and 'defamation' and conjugates of those terms from the District's pleadings" (*id*. at 2) because the School District's counsel had

[131] Fed. R. Civ. P. 41(a)(1) provides that a case may be dismissed without an order of the court either if the plaintiff files a voluntary notice of withdrawal before the opposing party files an answer or a motion for summary judgment, or if all parties sign a stipulation of dismissal. Fed. R. Civ. P. 41(a)(2) allows the court to dismiss a case "on terms that the court considers proper."

[132] *See* FF 228 for a discussion of Respondent's first motion for sanctions, filed September 23, 2016.

engaged in "abusive and scandalous ad hominem attacks" against him (*id*. at 4).[133]

265. On January 11, 2017, Judge Schmehl issued a "Memo/Order" ruling on issues taken under advisement at the court's December 9, 2016 show cause hearing against Respondent (FF 259), and on other matters. DCX 171. Judge Schmehl stated (*id*. at 2) that after the court's December 9, 2016 order granting Ms. Meisler's motion to withdraw as local counsel (FF 259),

> . . . despite the fact that he was no longer authorized to represent plaintiff, [Respondent] accelerated a disturbing trend of bombarding the Court with frivolous motions and documents.

Judge Schmehl then ordered (*id*. at 2-3): (1) Respondent was terminated as plaintiff's counsel; (2) the clerk of the court was to strike all documents filed by Respondent after December 9, 2016; (3) Respondent was barred from any further electronic filings in the case without prior court permission; and (4) the case would proceed with plaintiff acting *pro se* unless by January 31, 2017 he filed either a joint stipulation of dismissal or a personally-signed voluntary dismissal pursuant to Fed. R. Civ. P. 41(a).[134]

266. On January 24, 2017, Mr. Stevenson filed a notice of intention to proceed

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[133] Respondent argued that the School District could not validly accuse him of defamation because of the "absolute immunity" of Respondent's "litigation privilege" (DCX 170 at 5), and he included in his pleading a lengthy quotation (*id*. at 6) from *Kemper v. Fort*, 219 Pa. 85, 67 A. 991 (1907), a case which he had also cited to Judge Boasberg in his November 7, 2016 "Second Response to Motion for Sanctions" (FF 147 n. 79). Respondent's second Rule 11 motion gave no sufficient explanation of why the "absolute immunity" Respondent claimed for himself with respect to his own court pleadings attacking Mr. Kristofco did not reciprocally apply to the allegedly "abusive" language in pleadings filed by the School District's counsel.

[134] *See* n. 131, *supra*.

pro se. DCX 172.[135] On April 25, 2017, the court appointed an attorney to represent Mr. Stevenson (DCX 115 at 12 (ECF 97)), but on October 26, 2017 that attorney was granted leave to withdraw (DCX 115 at 14 (ECF 115)). By December 28, 2017 no other attorney had volunteered to accept appointment to represent Mr. Stevenson (DCX 115 at 15 (ECF 122)), and as of January 12, 2018 he was once again proceeding *pro se* (DCX 115 at 15 (ECF 124)).

267. The responses and oppositions by the School District to the many motions and other pleadings Respondent filed after his September 1, 2016 e-mail to the members of the School District's school board warning of "years of costly litigation" (FF 212) caused the School District to incur substantial expenses, particularly because of Respondent's practice of seeking relief by alleging a failure of the School District to file timely responses. Tr. 88:3-8; 96:20-97:5; 101:1-5; 104:12-17 (Kristofco); FF 235 (October 20, 2016 motion for entry of default); FF 248 (November 25, 2016 second motion for partial summary judgment).

268. Respondent's actions in the *Stevenson* case as described in this Section II(D) also interfered with the prompt and effective presentation of the plaintiff's claims. As Mr. Kristofco testified (Tr. 104:18-105:4):

> . . . it stalled this case from moving forward, which was an impact on not only my client but [Respondent's]. I mean, nobody could get anything done in the case because all this other stuff was going on. The actual substance of the case kind of became an afterthought, and everything was revolving around this flurry of filings that were being made and the other things that were happening. We weren't moving the

[135] The replacement Pennsylvania bar member for Ms. Meisler mentioned in Respondent's December 8, 2016 "Mediation Request" and "Withdrawal of Motion to Withdraw" (FF 255(a),(b)) never in fact entered an appearance on behalf of Mr. Stevenson. DCX 115 at 9-11.

actual case forward.

E. Circumstances Occurring After the Date of the Specification

269. On February 20, 2018, Respondent filed in the *Hall* litigation discussed in Section II(B) of this Report a 119-page (including exhibits) pleading entitled "Motion for the Appointment of a Magistrate Judge to Adjudicate Plaintiff's Motion for Section 1927 Sanctions." DCX 175 at 1. In this pleading, Respondent sought the appointment of a magistrate judge to rule on his request for sanctions pursuant to 28 U.S.C. § 1927[136] against Judge Boasberg, Ms. Dettling, Ms. Dekker (the attorney who assisted Ms. Dettling in representing Ms. Schooley; *see* FF 95), and two other persons, on the ground that all of those individuals allegedly knew or should have known (but feigned ignorance) that the court had jurisdiction of Mr. Hall's case. *Id*.

270. On March 1, 2018, the date on which Respondent and ODC were required by the Pre-Hearing Order in this matter to deliver their proposed documentary exhibits, Respondent sent ODC the following e-mail (DCX 174):

> Pleases don't kill trees, waste taxpayer resources and ODC personnel on me.
> ODC has no credibility or legitimacy to me. Or the drivel you generate.
> You are simply dishonest lawyers who do nothing to regulate honest lawyers.
> And racists to boot.
> Rather than wasting time, money, and paper on your sophistries, please disbar me.
> Disbarment by ODC would be an honor.
> To date, aside from competing in the triathlon world championships,

[136] 28 U.S.C. § 1927 is quoted in n. 84, *supra*.

> my greatest honors are my PhD from UCLA and my law degree from Boalt.
> But a disbarment letter from ODC will be framed and go up right alongside those diplomas.
> Please do me the honor of disbarring me.
> I will be so very very [sic] proud.

271. On March 5, 2018, Respondent filed two pleadings in the *Hall* litigation:

a. First, Respondent filed an "Entry of Appearance to Provide Limited Representation," stating that he

> . . . seeks to enter a limited appearance to represent the otherwise pro se party in this action at his request for the limited purpose of filing the attached motion, memorandum and order related to Section 1927 sanctions related to jurisdiction.

DCX 175 at 2.

b. Second, Respondent filed a "Notice" stating he had filed his appearance and moved for appointment of a magistrate judge to adjudicate his motion for sanctions (FF 269). *Id*. at 4. Respondent's further stated:

> To preclude and counter any false claims that the Plaintiff's sanctions motion was filed to vex or harass Rosemary Dettling, today the undersigned counsel will send Mr. Hall a check or money order for $100 to cover Ms. Dettling's portion of the $500.

Id. Respondent's pleading did not otherwise explain what the monetary amounts in the foregoing quotation related to, but he did file with the court a copy of a $100 money order payable to Mr. Hall. *Id*. at 6.[137]

272. On March 7, 2018, Respondent filed in the *Hall* litigation a pleading

[137] When Respondent made these court filings in February and March of 2018, the *Hall* case remained closed. Tr. 255:5-13 (Dettling); 469:3-7 (statement by ODC).

entitled "Clarification Or [sic] That Which Was Already Clear." DCX 175 at 7-8. *Inter alia*, Respondent's pleading stated:

> Since Judge Boasberg is disqualified from judging the merits of a sanctions motion against himself, Plaintiff moves that another judge, for example, a Magistrate Judge, be appointed to judge the merits of Plaintiff's sanctions motion.
>
> Of course, this was clear already.

Id. at 7. Respondent then asserted Judge Boasberg was subject to additional sanctions under § 1927 because the judge "feigns befuddlement, thereby needlessly and vexatiously multiplying proceedings in this regard also." *Id*. Respondent added that this "second round of sanctionable conduct" would lead to an additional judicial misconduct complaint. *Id*. Respondent concluded with the statement:

> We must speak truth to power. Even if power pretends not to hear. Even if power feigns befuddlement.

Id. at 8.

273. Respondent served Ms. Dettling with his February 20, 2018 motion for sanctions against her (and others), as well as his other filings in the *Hall* case in March of 2018, as discussed in this Section II(E). Tr. 255:14-258:11 (Dettling).

III. CONCLUSIONS OF LAW

This Part III presents the Hearing Committee's conclusions on the ethics violations alleged against Respondent. Section III(A) contains a short preliminary discussion of the Hearing Committee's choice of law conclusions as to which jurisdiction's legal ethics rules are applicable to Respondent's alleged misconduct. Section III(B) then discusses each of the rules Respondent allegedly violated.

Within each subsection of Section III(B), this Report first quotes the text of the rule allegedly violated; then reviews general legal principles relating to each rule (some relevant legal authorities are discussed in the context of particular alleged rule violations); and then discusses the Hearing Committee's conclusions and the findings of fact supporting the conclusions.

A. Choice of Law

D.C. Rule[138] 8.5(b) deals with choice of law issues in District of Columbia disciplinary proceedings. Rule 8.5(b)(1) provides that for conduct in connection with a matter pending before a tribunal, the rules to be applied generally will be the rules of the jurisdiction in which the tribunal sits. For other types of alleged misconduct, Rule 8.5(b)(2)(i) provides that if the respondent attorney is licensed to practice only in the District of Columbia (as is the case with Respondent), the rules to be applied are the D.C. Rules.

Respondent's alleged misconduct in connection with the Quarles defamation suit discussed in Section II(A)(1) of this Report involved matters pending before tribunals in Virginia, and therefore the Hearing Committee would ordinarily look to Virginia's legal ethics rules. However, ODC contends (ODC Br. at 51) that in view of the Court's decision in *In re Pelkey*, 962 A.2d 268 (D.C. 2008), the D.C. Rules

[138] References in this Part III to the District of Columbia Rules of Professional Conduct are designated with the prefix "D.C. Rule ___"; references to the Virginia Rules of Professional Conduct are designated with the prefix "Va. Rule ___"; and references to the Pennsylvania Rules of Professional Conduct are designated with the prefix "Pa. Rule ___." Where no state-specific designation is used in this Part III, the Report is referring to the District of Columbia Rules of Professional Conduct.

should apply. At pp. 2-3 of its pre-hearing brief in this matter filed on March 1, 2018, ODC supported this contention by citing *In re Bernstein*, 774 A.2d 309 (D.C. 2001), and arguing that because the D.C. and Virginia Rules both prohibit the same conduct, it should make no difference which jurisdiction's legal ethics rules are applied.

In *Pelkey*, the Board considered a case where the respondent attorney was a *pro se* litigant in proceedings before California tribunals (as well as in the District of Columbia). Because Mr. Pelkey was not licensed to practice law in California and had not been admitted *pro hac vice* there, the Board rejected Mr. Pelkey's argument that his conduct before California tribunals should be judged exclusively under California ethics rules, and applied the D.C. Rules instead. Board Docket No. 67-03 at 34-35. On review, the District of Columbia Court of Appeals agreed that Mr. Pelkey had violated the D.C. Rules, but did not discuss specifically the conflict of law issue which the Board had addressed. *In re Pelkey*, 962 A.2d 268, 277-80 (D.C. 2008). In light of the Board's ruling in *Pelkey*, and the facts that Respondent was acting *pro se* in the Quarles defamation suit (FF 6), he is admitted to practice only in the District of Columbia (FF 1), and he has never been admitted to practice in Virginia (*id.*), the Hearing Committee concludes that the D.C. Rules should apply to most of Respondent's alleged misconduct in the Quarles defamation suit.

However, with respect to Respondent's alleged violation of D.C. Rule 8.4(d) − conduct that seriously interferes the administration of justice − the Hearing Committee finds there is a material difference between the D.C. Rule and the

Virginia Rule, because Va. Rule 8.4 does not contain language analogous to D.C. Rule 8.4(d).[139] Because of this difference, the Hearing Committee concludes it is appropriate under *Bernstein* to apply D.C. Rule 8.5(b)(1) to the issue of Respondent's alleged interference with the administration of justice in the Quarles defamation case, and in turn look to the disciplinary rules of the jurisdiction in which the tribunals in that case sat (*i.e.*, Virginia), which do not contain an explicit sanction for conduct that "seriously interferes with the administration of justice."

Pursuant to D.C. Rule 8.5(b)(1), the D.C. Rules apply to Respondent's *pro se* MSPB appeal because it was heard in MSPB's Washington Regional Office, a tribunal located at 1615 M Street, N.W., Washington, D.C. 20419 (*see*, *e.g.*, DCX 31 at 1 (caption heading)).[140] Similarly, the D.C. Rules apply to Respondent's alleged misconduct through court filings he made in or which were directly related to the *Hall* litigation discussed in Count Two of the Specification (Dettling), because all of those filings were made in proceedings before the United States District Court for the District of Columbia, the United States Court of Appeals for the District of Columbia Circuit, or the Judicial Council for the District of Columbia Circuit.

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[139] Va. Rule 8.4(a) deals generically with violating or attempting to violate the Rules of Professional Conduct; Va. Rule 8.4(b) deals with committing a criminal or other wrongful act that reflects adversely on the attorney's fitness to practice law; Va. Rule 8.4(c) deals with engaging in dishonest conduct; Va. Rule 8.4(d) deals with stating or implying an ability to influence improperly any tribunal, legislative body, or public official; and Va. Rule 8.4(e) deals with knowingly assisting a judge or judicial officer in violating applicable rules of judicial conduct or other law.

[140] *See also Collins v. Department of Justice*, 94 M.S.P.R. 62 (Aug. 22, 2003), ruling that an attorney in MSPB proceedings will be expected to conform to applicable state rules governing attorney conduct.

To the extent that Count Two alleges misconduct that did not occur before tribunals in the *Hall* litigation, the Hearing Committee will apply the D.C. Rules pursuant to D.C. Rule 8.5(b)(2)(i). The same is true for Respondent's alleged misconduct in the Bromley matter (Count Three of the Specification), and to Respondent's May 20, 2014 e-mail (FF 192) to the superintendent of schools for the School District, which occurred approximately two years before Mr. Stevenson filed his court complaint with the federal court in Pennsylvania.

For all of Respondent's alleged misconduct in *Stevenson v. Great Valley School District*, a proceeding pending before the United States District Court for the Eastern District of Pennsylvania and where Respondent had clearly been admitted to practice before that court *pro hac vice* (FF 201), pursuant to D.C. Rule 8.5(b)(1) the Hearing Committee will apply the legal ethics rules of Pennsylvania.[141]

B. Rule Violations

1. Rule 3.1 − Frivolous Claims

ODC alleges that Respondent violated this Rule in Count One (USDA, including both the Quarles defamation case and Respondent's MSPB appeal), Count Two (Dettling), and Count Four (Stevenson) of the Specification.

a. Text of the Rule

Rule 3.1 states, in pertinent part:[142]

[141] E.D. Pa. L.R.Civ.P. 83.6, Rule IV B, adopts the legal ethics rules promulgated by the Pennsylvania Supreme Court, except as otherwise specifically provided by the federal court's own rules.

[142] Va. Rule 3.1 is the very similar to D.C. Rule 3.1, and provides, in pertinent part, "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a

> A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension modification, or reversal of existing law.

b. Applicable Principles

Comment [1] to Rule 3.1 states that as a general matter lawyers have both a duty to use legal procedures for the fullest benefits of their clients, as well as a duty not to abuse the legal system. In evaluating that balance, *In re Yelverton*, 105 A.3d 413, 424-25 (D.C. 2014), establishes an analytical framework of factors to consider in deciding if a litigation position taken by a lawyer is frivolous for purposes of Rule 3.1. These factors include: (1) the clarity or ambiguity of the law relating to the position; (2) the plausibility of the position; (3) the complexity of the issue; and (4) whether after an objective appraisal of the merits of the position a reasonable attorney would have concluded there was not even a faint hope of success. *See also Adams v. Dep't of Public Welfare*, 781 A.2d 217, 220, 220 n. 2 (Pa. Cmwlth. 2001) (courts apply an objective test to determine if a claim is frivolous for purposes of Rule 3.1). It is clear that a lawyer can violate Rule 3.1 while acting as a *pro se* litigant. *In re Barber*, 128 A.3d 637, 639 (D.C. 2015) (per curiam); *Barrett v. Virginia State Bar*, 272 Va. 260, 268, 634 S.E. 2d 341, 345 (2006).

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basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." (The Virginia version of Rule 3.1 omits the words "in law and fact" after the words ". . . unless there is a basis . . . ." Pa. Rule 3.1 is identical to D.C. Rule 3.1, and states (in pertinent part), "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law."

One indication of the frivolous nature of a complaint for purposes of Rule 3.1 is that it cannot withstand a motion to dismiss for failure to state a claim on which relief can be granted. *In re Spikes*, 881 A.2d 1118, 1121 (D.C. 2005) (trial court dismissed defamation complaint because it was facially barred by the privilege accorded to communications with ODC (then known as "Bar Counsel") regarding allegations involving unethical conduct). Another indication of the frivolous nature of a complaint for purposes of Rule 3.1 is that it has been dismissed on motion for summary judgment. *In re Fastov*, Board Docket No. 10-BD-096, at 7, 26 (BPR July 31, 2013) (trial court granted defendant's motion for summary judgment, finding that most of Mr. Fastov's claims were time-barred and all of them were meritless).[143] An appeal is frivolous "when it is 'wholly lacking in substance' and not 'based upon even a faint hope of success on the legal merits.'" *Spikes*, 881 A.2d at 1125 (citing *Slater v. Biehl*, 793 A.2d 1268, 1278 (D.C. 2002)).

With respect to Respondent's allegations of bias against Judge Boasberg, contentions that a judge acted with bias or prejudice are typically based on an extra-judicial source for the alleged bias, not on a judge's handling of a case. *In re Banks*, 805 A.2d 990, 1003 (D.C. 2002) (quoting *Liteky v. United States*, 510 U.S. 540, 555

[143] The Court of Appeals issued an opinion in the *Fastov* case on September 8, 2014, but on September 26, 2014 the Court vacated its opinion as moot due to the respondent attorney's death. By order dated September 25, 2018 the Board vacated its decision in *Fastov* in light of the Court's action, but nothing in the Board's order indicates that the Board had a substantive problem with its prior decision. (The Board cited its *Fastov* decision in an analogous case (*In re Pearson*, Board Docket No. 15-BD-031, at 32 (BPR May 23, 2018)) just four months before it vacated the *Fastov* decision.) The Hearing Committee finds the facts of *Fastov* and the reasoning in the Board's *Fastov* decision to be instructive in the present case, and therefore cites that decision at various points in this Report.

(1994)). Judicial rulings alone almost never constitute a valid basis for a bias/partiality motion. *Id*. (quotation marks and citations omitted); *see also Coulter v. Gerald Family Care, P.C.*, 964 A.2d 170, 179 (D.C. 2009) (judicial bias claims are reviewed under an objective standard, "as to which 'an objective person, informed of the trial proceedings, could reasonably conclude an appearance of bias existed.'") (quoting *Mejia v. United States*, 916 A.2d 900, 903 (D.C. 2007)).[144]

c. Discussion

The Quarles Defamation Case

ODC asserts (ODC Br. at 53) that in the Quarles defamation case (part of Court One of the Specification), Respondent violated Rule 3.1 when he asserted seven different litigation positions for which there was no basis in law or fact and were therefore frivolous. The Hearing Committee concludes there is clear and convincing evidence that Respondent violated Rule 3.1 with respect to each of those seven litigation positions, discussed in the subheadings below.

(1) Respondent's Defamation Claim Against Ms. Quarles

Respondent's defamation claim against Ms. Quarles was facially barred because he had not complied with the administrative exhaustion requirement of the FTCA and because of sovereign immunity. FF 29(a). Judge Brinkema therefore granted DOJ's motion to dismiss on that basis (FF 20) for failure to a state a claim

[144] In *Coulter*, which involved an appeal from a trial judge's directed verdict in favor of the defendants in a medical malpractice case, the Court found no objective appearance of partiality, notwithstanding the fact that the trial judge's spouse was a physician who was insured by the same medical risk pool as the defendants. 964 A.2d at 178-79.

on which relief could be granted. FF 29. These were not novel issues of law. They are spelled out explicitly in the FTCA. FF 20 nn. 21 and 22. Any objective attorney would have concluded for those reasons Respondent could not have entertained even a faint hope of prevailing on his claim.

Even if Respondent had litigated his defamation suit solely as a state-court case based on the contents of Ms. Quarles' e-mail, his suit would not have survived a motion to dismiss for failure to state a claim. Pursuant to Restatement (Second) Torts, § 614(1), the issues of whether a communication is capable of bearing a particular meaning and whether that meaning is defamatory are preliminary issues of law for the court to decide. *Klayman v. Segal*, 783 A.2d 607, 609, 612-13 (D.C. 2001) (affirming dismissal of a defamation suit for failure to state a claim on which relief could be granted);[145] *Clawson v. St. Louis Post*-Dispatch, 906 A.2d 308, 310, 313 (D.C. 2006) (affirming summary judgment dismissing a defamation claim);[146] *Yeagle v. Collegiate Times*, 255 Va. 293, 296, 497 S.E.2d 136, 138 (Va. 1998) (trial court's dismissal on demurrer to a complaint for defamation *per se* affirmed, because "[w]hether statements complained of in a defamation action fall within the type of speech which will support a state defamation action is a matter for the trial judge to determine as a matter of law").[147]

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[145] Claim that the plaintiff (founder of a pro-life ethics organization) was "insensitive to the murder of innocent children" held not defamatory.

[146] Claim by a broadcaster and investigative reporter describing him as being an "FBI informer" held not defamatory.

[147] Description of a university vice president of student affairs as "Director of Butt Licking" held not defamatory.

Nothing in Ms. Quarles' April 10, 2015 e-mail (FF 5) was defamatory. The e-mail stated that the EEO case in question was first processed by an EEO specialist other than Respondent; that Respondent had taken over the case; that Respondent had sent the case back for modification; that Ms. Quarles was unsure when the Report of Investigation ("ROI") for the case was distributed; and that some person other than Respondent had tried to update the iComplaints data base as much as possible. The e-mail then asked Respondent to provide the ROI to FSIS. Nothing in the foregoing statements is pejorative toward Respondent. If anything in the e-mail could even faintly be deemed a criticism, it was that an unidentified person − not Respondent − was responsible for updating the iComplaints data base.

Respondent claimed that the defamatory statement in Ms. Quarles' e-mail was, "This case was . . . taken over for review by [Respondent] . . . I am not sure when the ROI was distributed." FF 19(a). Any objective attorney would have concluded that Respondent could not have entertained even a faint hope of prevailing on that defamation claim, or on the basis of anything else stated in Ms. Quarles' e-mail. As the Court stated in *Klayman*, 783 A.2d at 613, "[a]n allegedly defamatory remark must be more than unpleasant or offensive; the language must make the plaintiff[] appear 'odious, infamous or ridiculous'" (quoting *Howard University v. Best*, 484 A.2d 958, 989 (D.C. 1984)); *see also Clawson*, 906 A.2d at 313 (same).

(2) Respondent's Claim That Ms. Quarles Was Not Acting Within the Scope of Her Employment

Respondent argued (FF 24(b)) that as a matter of law the evidence in the case demonstrated Ms. Quarles' e-mail was not sent within the scope of her federal

employment. All of the facts before the court, however, demonstrated that the e-mail was clearly sent as part of Ms. Quarles' employment with USDA. She was an EEO supervisor. FF 4. Her e-mail regarding the status of a particular EEO case was sent from her USDA government e-mail account during regular work hours to FSIS in response to an inquiry from that division of USDA. FF 4-5. Judge Brinkema and the Fourth Circuit concluded that Ms. Quarles' e-mail was squarely within the scope of her duties as a USDA employee. FF 24 nn. 26 and 27; 29(c); 34. Respondent's argument to the contrary was utterly implausible and clearly frivolous.

(3) Respondent's "Perjury" Claim Against United States Attorney Dana Boente

Respondent's Second Motion to Strike, filed July 7, 2015, argued (FF 24(a)) that DOJ was "literally clueless" as to whether his defamation claim against Ms. Quarles arose out of their having worked together at USDA, and therefore United States Attorney Boente's Westfall Act certification dated June 6, 2015 was "perjured." The record in this case, however, establishes that DOJ had ample time between Respondent's first filing of a defamation claim against Ms. Quarles on April 16, 2015 (FF 6) and the June 6, 2015 date of the Westfall Act certification (FF 15) to find out about Respondent's fraught relationship with Ms. Quarles, including but not limited to information gleaned from his May 22, 2015 EEO complaint against USDA (FF 10), and to conclude in good faith that Respondent's claim against Ms. Quarles was related to her work at USDA. DOJ in fact did exactly that. FF 14. Significantly, a senior attorney at USDA was listed as co-counsel in DOJ's Notice of Removal, to which the Westfall Act certification was attached. FF 13. The

Westfall Act certification stated, in pertinent part, "On the basis of the information now available with respect to the claims set forth [in Respondent's state court defamation suit], I hereby find and certify that the named defendant, Tina Quarles, was acting within the scope of her federal office or employment at the time of the incident out of which the plaintiff's claim arose." FF 15. Based on established Fourth Circuit precedent, *Maron v. United States*, 126 F. 3d 317, 323 (4th Cir. 1997), Judge Brinkema ruled that DOJ's not providing a detailed explanation of the basis for United States Attorney Boente's scope-of-employment determination in the Westfall Act certification "does not raise an inference of perjury" and that Respondent's arguments to the contrary were unsubstantiated attempts to "subvert" established procedures. FF 29(b). The Fourth Circuit affirmed that determination, stating, "no evidence establishes that the removal certificate was perjured as [Respondent] alleges." FF 34. No objective attorney would have concluded there was even a faint hope of prevailing on Respondent's frivolous claim that the United States Attorney for the Eastern District of Virginia had committed perjury by signing the Westfall Act certification.

(4) Respondent's Privacy Act Claim

In his July 9, 2015 motion for sanctions against AUSA Free, Respondent argued that DOJ's attaching a copy of the EEO complaint form he filed against USDA on May 22, 2015 violated his rights under the federal Privacy Act. FF 25(a). Respondent's argument does not withstand basic scrutiny. The Privacy Act, 5 U.S.C. § 552a(b)(3), contains an explicit exception for "routine use," and USDA's long-

established regulation[148] published in the Federal Register defined "routine use" as including referral to the Department of Justice (referral use category no. 9 in the regulation) as well as referral to "a court, magistrate or administrative tribunal . . . in a proceeding before any of the above . . . ." (referral use category no. 20 in the regulation). 49 Fed. Reg. 48076-77 (Dec. 10, 1984).[149] Judge Brinkema accordingly ruled that DOJ's use of the Respondent's EEO complaint form constituted "routine use" for purposes of the Privacy Act exception in 5 U.S.C. § 552a(b)(3). FF 29(d). Furthermore, in the EEO complaint form Respondent explicitly waived the right to remain anonymous. FF 10. An objective attorney would have concluded based on established law and USDA regulations, as well as Respondent's waiver of anonymity, that there was not even a faint hope of prevailing on Respondent's frivolous claim under the Privacy Act, much less that there were adequate grounds for Respondent's sanctions motion against AUSA Free, which Judge Brinkema denied as "meritless" (FF 29(e)).

(5) Respondent's "Evidence Tampering" Claim

Judge Brinkema also denied as "meritless" (*id.*) the claim in Respondent's sanctions motion that AUSA Free had engaged in "evidence tampering" because the names of individuals other than Respondent's were redacted from copies of

[148] The relevant portion of the regulation is titled, "Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses."

[149] A copy of the USDA regulation regarding the Privacy Act and the "routine use" of USDA records − keyed to the relevant pages of the Federal Register − is also attached as Exhibit A to DOJ's "Memorandum of Law in Opposition to Plaintiff's Motion for Sanctions and Evidence Tampering" filed with the court on July 20, 2015 (DCX 16). The specific citation to the portion of that regulation quoted in this Report, 49 Fed. Reg. 48076-77, is found in DCX 16 at 23.

documents relating to the ROI process which DOJ filed with the court on June 22, 2015 (FF 21), including but not limited to Ms. Quarles' April 10, 2015 e-mail. Respondent's claim was specious. It must be remembered that the redacted documents DOJ filed with the federal court were merely copies of documents that Respondent himself filed with his "Bill of Particulars" in his state court suit. FF 19. DOJ's redaction therefore in no way deprived Respondent of access to the redacted names. Nor was there any corrupt intent or attempt to hide the redacted names from Judge Brinkema. DOJ informed the court when the redacted document copies were filed that DOJ had redacted the names of third parties, as well as the reasons for that redaction (FF 21), and offered to produce un-redacted copies of the documents for *in camera* inspection by the court (FF 25).[150] In fact, Respondent himself filed with the court the names of the people mentioned in Ms. Quarles' April 10, 2015 e-mail (FF 25(b) n. 28), and even if one inserts those names into the e-mail, the e-mail remains completely non-defamatory. It was perfectly rational for USDA and DOJ to protect the privacy of the people involved in making the EEO claim that resulted in the ROI about which Ms. Quarles' wrote her e-mail, as well the names of individuals (other than Respondent, who voluntarily disclosed his identity) who were involved in reviewing the EEO claim, and not have those names exposed on the federal court docket as collateral damage. An objective attorney with a knowledge of the relevant facts would have concluded there was not even a faint hope of success on Respondent's frivolous claim that AUSA Free engaged in

[150] Judge Brinkema never found it necessary to pursue DOJ's offer.

"evidence tampering," a claim which, as noted above, Judge Brinkema deemed "meritless."

(6) Respondent's Type-Font Claim

Respondent's "Second Motion to Strike" filed on July 7, 2015 asked the court, *inter alia*, to strike DOJ's motion to dismiss his complaint because DOJ's supporting memorandum allegedly was not in a 12-point typeface. FF 24. It is completely implausible to suppose that the United States Attorney's Office for the Eastern District of Virginia, which practices regularly before the district court there and probably has its computers automatically set for the type font and margins required by the court, would have fiddled with the type font in the eight-page memorandum supporting its motion to dismiss the complaint, when the allowable page limit for such a memorandum was thirty pages. FF 20 n. 19. Judge Brinkema disposed of Respondent's implausible assertion in eight words,[151] and no objective attorney would have concluded there was even a faint hope of succeeding on Respondent's frivolous type font claim.

(7) Respondent's Fourth Circuit Appeals

Respondent appealed to the Fourth Circuit from Judge Brinkema's order dismissing his complaint, and when the appeal was unsuccessful he petitioned for rehearing en banc. FF 30, 35. In his initial appeal, Respondent continued to make the frivolous argument that United States Attorney Boente's certification under the

[151] Judge Brinkema ruled, FF 29(f), that DOJ's memorandum "does appear to comply with the local rules."

Westfall Act was "perjured" and improper (FF 31, 33), and Respondent's petition for rehearing en banc argued that his Westfall Act contention presented "a case of first impression" (FF 35). The grounds for Respondent's appeal were so weak that DOJ declined to file a brief, and instead simply asked the Fourth Circuit to affirm on the basis of Judge Brinkema's decision. FF 32-33. It must be remembered that Judge Brinkema denied Respondent's claims regarding an allegedly improper Westfall Act certification because Respondent's arguments were subversive of "established procedures" (FF 29(b)), citing *Osborn v. Haley*, 549 U.S. 225 (2007), and *Maron v. United States*, 126 F. 3d 317, 323 (4th Cir. 1997). The Fourth Circuit, pointedly ignoring Respondent's request for oral argument (FF 31), summarily affirmed Judge Brinkema in a two page unpublished per curiam opinion, citing *Osborn*. FF 34. Respondent's petition for rehearing en banc was denied. FF 36. No objective attorney faced with Judge Brinkema's thoughtful treatment of Respondent's Westfall Act claims would have concluded there was even a faint hope of reversal. No objective attorney faced with the Fourth Circuit's per curiam affirmance would have concluded there was even a faint hope of obtaining a rehearing en banc. Both the appeal and the petition for rehearing were frivolous.

Respondent's MSPB Appeal

ODC asserts (ODC Br. at 53-54) that in Respondent's "whistleblower" appeal to the MSPB (also part of Court One of the Specification), he violated Rule 3.1 when he asserted the following litigation positions for which there was no basis in law or fact and which were therefore frivolous: (1) MSPB had jurisdiction over

Respondent's appeal because USDA engaged in a "gross waste of funds" in time spent on his dispute with his supervisor; (2) Mr. Gold committed “perjury” by seeking a stay based on USDA’s position that MSPB did not have jurisdiction over Respondent’s appeal; (3) Mr. Gold offered expert or opinion testimony that violated *Daubert*; (4) MSPB should sanction Mr. Gold for relying on a New Jersey case and making an argument he never made, *i.e.*, that the litigation privilege immunized Mr. Gold from Bar discipline; and (5) Respondent made unauthorized MSBP filings. The Hearing Committee concludes there is clear and convincing evidence that Respondent violated Rule 3.1 with respect to items (1), (3), (4), and (5) noted above, but not item (2).

(1) Respondent's "Gross Waste of Funds" Claim

Respondent's October 22, 2015 "whistleblower" complaint asserted that MSPB had jurisdiction over his appeal because USDA allegedly retaliated against him for disclosing a "gross waste" of government funds resulting from the time he and USDA personnel spent dealing with Respondent's contentions about his work at USDA. FF 37. Respondent opposed USDA's objection to this contention as being "purely subjective." FF 54(d). However, as the ALJ ruled in dismissing Respondent's appeal on jurisdictional grounds, USDA's position was precisely objective and correct, stating that Respondent's "personal sense of grievance over how he has been treated and utilized by the agency" did not constitute a "gross waste" of agency funds. FF 71(c). An objective attorney would have concluded that

Respondent's attempt to predicate MSPB jurisdiction on Respondent's "gross waste" of funds contention did not have even a faint hope of success.

(2) Respondent's Claim that Mr. Gold Committed Perjury

Respondent's 4:34 A.M. e-mail on October 30, 2015 to Mr. Gold accused him of perjury and threatened an MSPB sanctions motion based on that accusation. FF 44. If Respondent had acted on that threat, the Hearing Committee would have no difficulty in finding clear and convincing evidence that such a claim was frivolous and that Respondent had violated Rule 3.1. However the MSPB sanctions motion Respondent eventually filed against Mr. Gold on December 9, 2015 (FF 62; DCX 48) accused him only of an "egregious misstatement of law" but not of perjury, nor does ODC's proposed finding of fact ("PFF") concerning Respondent's perjury allegation against Mr. Gold (PFF 34; ODC Br. at 10) contend such a filing was made. Rule 3.1 states that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue *therein*" (emphasis added). The Hearing Committee concludes ODC has not provided clear and convincing evidence that Respondent asserted his perjury allegation against Mr. Gold in a "proceeding." Therefore, the Hearing Committee finds that Respondent did not violate Rule 3.1 in that regard.

(3) Respondent's "*Daubert*" Claim

On November 19, 2015, Respondent filed with MSPB a pleading entitled "Appellant's *Daubert* Motion to Exclude the Opinion Testimony of Martin Gold." FF 54; DCX 40. The motion attacked USDA's jurisdictional filing, as well as USDA's motion for sanctions against Respondent based on his harassing actions (FF

42, 44-45, 47-50) against Mr. Gold. Respondent argued that in USDA's pleadings, Mr. Gold was improperly giving expert testimony on issues relating to work within the USDA's EEO division, and on the harassing nature of Respondent's actions. The legal foundation for Respondent's argument was the Supreme Court decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc*., 509 U.S. 579, 592-93 (1993), where the Court held that in applying Fed. R. Evid. 702 to proffered expert scientific testimony, trial courts should do a preliminary evaluation of whether the methodology underlying the proffered scientific testimony is valid and applicable to the facts at issue. Respondent's argument improperly blurred the distinction between the role of a witness and the role of an advocate. Mr. Gold was not a witness, scientific or otherwise. He was not testifying or proposing to testifying; instead, he was presenting the arguments of USDA as his client, and, with respect to the jurisdictional questions at issue, offering nothing more than USDA's interpretation of legal doctrines as applicable to the facts of the case. Respondent's frivolous argument was based on a clearly implausible and inapposite citation of *Daubert*, and no objective attorney would have concluded Respondent's argument had even a faint hope of success.

(4) Mr. Gold's Alleged Mis-Citation of *Loigman*

On November 17, 2015, USDA filed a motion for sanctions and for a protective order against Respondent, arguing that Respondent's harassing e-mails to Mr. Gold were an effort to bully and intimidate him, and to create a chilling effect that disrupted the MSPB proceedings. FF 51. The motion stated that many of

Respondent's allegations against Mr. Gold were defeated by the privilege against civil liability normally accorded to statements of counsel made in litigation, citing, *inter alia*, *Loigman v. Township Committee*, 889 A.2d 426 (N.J. 2006), but the motion did not claim that statements of counsel made during litigation are immune from bar disciplinary complaints. FF 51. Respondent, however, went on the attack against Mr. Gold for allegedly mis-citing *Loigman*, filing not only a California ethics complaint against him (FF 63), but also a motion for sanctions with MSPB alleging "Mr. Gold claimed that a New Jersey common law case (*Loigman*) absolutely immunizes him from both defamation and disciplinary actions for his statements and conduct before the MSPB." DCX 48 at 1; FF 62. The California State Bar rejected Respondent's allegation about the mis-citation of *Loigman* (FF 67), as does the Hearing Committee. Respondent's argument in his motion for sanctions was a frivolous exaggeration of USDA's position, seeking to create an issue where none existed in order to continue attacking Mr. Gold. No objective attorney reading USDA's initial motion for sanctions against Respondent would have concluded Mr. Gold mis-cited *Loigman* as allegedly supporting the proposition that statements of counsel in pleadings are immune from disciplinary scrutiny.

(5) Respondent's Unauthorized MSPB Filings

On October 27, 2015, the ALJ issued an order in the MSPB proceeding setting deadlines for Respondent and USDA to file their positions on jurisdictional issues in the case. FF 39. That order stated, in pertinent part (FF 56):

> Unless I tell the parties otherwise, the record on the issue of jurisdiction will close on the date the agency's response is due. No evidence and/or

> argument on jurisdiction filed after that date will be accepted unless the party submitting it shows that it was not readily available before the record closed.

On November 9, 2015 MSPB received Respondent's response to the ALJ's order, and on November 16, 2015 USDA's response was due and was timely filed. FF 46. Thereafter, on November 19, 2015 Respondent filed his "*Daubert*" motion (FF 54); on November 20, 2015 he filed a pleading entitled "Appellant's First Reply to Agency Response" (FF 55); and on December 15, 2015 he filed a pleading entitled "Appellant's Second Reply to Agency Jurisdictional Response" (FF 64). All of these additional pleadings continued to argue Respondent's position on jurisdiction, and clearly violated the ALJ's October 27, 2015 order. They also ignored the "safety valve" which the ALJ built into that order, allowing the parties to seek permission for additional jurisdictional filings. The pleadings were therefore procedurally frivolous.

The Dettling Matter

ODC contends (ODC Br. at 54) that in the Dettling matter Respondent violated Rule 3.1 when he asserted six different litigation positions for which there was no basis in law or fact and which were therefore frivolous. For the reasons discussed in the following subheadings, the Hearing Committee concludes there is clear and convincing evidence supporting five of ODC's six contentions (but not the contention discussed in subheading (2), below).

(1) The Alleged *Ex Parte* Contact With Judge Boasberg

On September 21, 2016, Ms. Dettling filed a motion under seal seeking to disqualify Respondent from representing Mr. Hall, advised him by e-mail that day of the filing, and sent him the service copy of the motion by overnight express mail. FF 116. In three subsequent pleadings Respondent alleged that Ms. Dettling's motion was an improper *ex parte* communication with Judge Boasberg. FF 117; 128; 151.

Respondent's allegation is another example of his creating an issue where none existed in order to continue attacking a person he perceived as an antagonist. Ms. Dettling's filing was perfectly proper, and there was nothing underhanded about it. Respondent would have had adequate time to reply to the motion had not Judge Boasberg pretermitted the need for a reply by denying the motion as moot on September 28, 2016. No objective attorney would have concluded there were tenable grounds for Respondent's frivolous allegation that Ms. Dettling's motion constituted an improper *ex parte* communication.

(2) The Alleged *Ex Parte* Contact With ALJ Hudson

On September 28, 2016, Respondent sent an e-mail to MSPB Chief Judge Cassidy alleging that Ms. Dettling had either engaged in an improper *ex parte* conversation with ALJ Hudson about Mr. Hall's MSPB appeal, or had lied to Mr. Hall about having had such a conversation. FF 119. The allegation was specious: MSPB had already ruled on June 23, 2016 that no improper *ex parte* communication had occurred. FF 102. Nevertheless, because this allegation by Respondent was

made only in the context of an e-mail, and ODC's PFF 89 (ODC Br. at 22) does not contend the allegation was made in a pleading filed with MSPB or the court, *i.e.*, in a "proceeding," the Hearing Committee concludes ODC has not provided clear and convincing evidence that Respondent's e-mail allegation violated Rule 3.1.

(3) Respondent's Default Judgment Pleadings

On August 10, 2016, Judge Boasberg extended the time for Ms. Dettling to answer Mr. Hall's complaint until August 31, 2016. FF 105. However, on August 25, 2016, Judge Boasberg dismissed the case. FF 109. On September 28, 2016 and September 30, 2016, Judge Boasberg entered minute orders stating that no further pleadings on behalf of the plaintiff would be in order until the dismissal had been vacated. FF 118, 121. Ignoring these orders and the dismissed status of the case, on October 8, 2016 Respondent filed a motion for default judgment against Ms. Dettling and all other defendants for failure to file timely answers. FF 126. On October 11, 2016, three days after the motion was filed, Judge Boasberg denied it because the dismissal of the complaint had not been vacated. FF 127. Notwithstanding Judge Boasberg's October 11, 2016 denial of the motion for default, and a further minute order from Judge Boasberg on October 12, 2016 barring Respondent from filing any further motions (FF 130), on October 16, 2016 Respondent filed an affidavit (FF 131) seeking entry of a default judgment pursuant to the motion that had already been denied. On October 17, 2016 Judge Boasberg entered a minute order denying Respondent's second request for the entry of a default judgment, because it violated the Court's minute order of October 12, 2016. FF 132. Given that the *Hall* case

had been dismissed before an answer would have been due, no objective attorney could have concluded there was even a faint hope of success in obtaining the default judgment that Respondent sought. The frivolous nature of Respondent's filings is confirmed by the fact that both of Respondent's pleadings seeking a default were subjects of Judge Boasberg's December 1, 2016 Memorandum Opinion imposing sanctions on Respondent pursuant to 28 U.S.C. § 1927. FF 153.

(4) Respondent's Motion to Disqualify Ms. Dettling

On October 11, 2016, Respondent filed a motion to disqualify Ms. Dettling from representing herself in the *Hall* case. FF 128. On the same day as the motion was filed, Judge Boasberg denied it as "plainly frivolous," stating, "[a]s Plaintiff's counsel well knows, Defendant Dettling represents herself in this matter and thus cannot be disqualified." FF 129. The Hearing Committee agrees with Judge Boasberg's conclusion and his reasoning. No objective attorney would have entertained even a faint hope of barring Ms. Dettling as a *pro se* litigant from representing herself in the *Hall* case.

(5) Respondent's Claims of Judicial Bias

On November 28, 2016, Respondent filed a judicial misconduct complaint against Judge Boasberg, alleging, *inter alia*, that Judge Boasberg was biased in favor of the federal defendants because he was a former Assistant United States Attorney ("AUSA"). FF 150. That same day, in a pleading entitled "Second Response to Defendant Dettling's Eight Pleadings," Respondent accused Judge Boasberg of "confirmation bias" which caused him to ignore Respondent's arguments on subject

matter jurisdiction. FF 151. On December 19, 2016, in a pleading entitled "Initial Reply to Order," Respondent reiterated his bias allegation against Judge Boasberg as a former AUSA (FF 156(a)), and did so again in a second judicial misconduct complaint filed on December 27, 2016 (FF 160). However, as noted in *Banks*, 805 A.2d at 1003, judicial rulings alone almost never constitute a valid basis for a bias/partiality motion, and Respondent's claim of judicial bias was summarily rejected by the D.C. Circuit Judicial Conference because it "directly related to the merits of a decision or procedural ruling" or otherwise lacked "sufficient evidence to raise an inference that misconduct has occurred." FF 155. Inasmuch as Respondent's allegations of bias stemmed from Judge Boasberg's rulings in the *Hall* case, an objective attorney would not have concluded there was even a faint hope of success in pressing Respondent's frivolous claim that Judge Boasberg's rulings in the *Hall* case were biased in favor of the federal defendants because he had previously served as an AUSA.[152]

[152] Service as an Assistant United States Attorney is, to an objective observer, never viewed as an *a priori* source of judicial bias, but rather as a credential validating the breadth of experience of a judge. One thinks quickly, for example, of the Hon. Royce C. Lamberth. Judge Lamberth served for many years as an Assistant United States Attorney in the District of Columbia, and then as chief of that office's civil division from 1978 to 1987 before being nominated to serve as a federal district judge. *See* S. Hrg. 100-1009, Pt. 1, Confirmation of Appointments to the Federal Judiciary and the Department of Justice, Serial No. J-100-8, at 526 (statement of Senator John Warner introducing AUSA Lamberth to the Senate Judiciary Committee). Despite his years of service as an AUSA, however, Judge Lamberth is well known for being as tough on the government as on opposing litigants. *See*, *e.g.*, *Cobell v. Norton*, 229 F.R.D. 5 (D.D.C. 2005) (procedural ruling in favor of Native American plaintiffs in a suit against the United States government for breach of fiduciary trust duties).

(6) Respondent's Unauthorized Filings in the *Hall* Case

Respondent violated Rule 3.1 by filing procedurally frivolous pleadings in the *Hall* case, which fall into three principal categories: (*a*) pleadings conflicting with orders issued by Judge Boasberg; (*b*) improper second or subsequent pleadings filed without leave to supplement a prior pleading; or (*c*) pleadings filed after Respondent had withdrawn as Mr. Hall's attorney (on October 30, 2016 Respondent filed a request to withdraw his appearance in the case (FF 139), which Judge Boasberg granted on October 31, 2016 (FF 140)).

Pleadings in category (*a*) include the default judgment pleadings discussed above in subheading (3); a "Clarification" that Respondent filed on October 18, 2016 (FF 133); Respondent's October 20, 2016 "Notice of Withdrawal of Plaintiff's Motion to Disqualify" (FF 135) which was filed after Judge Boasberg on October 11, 2016 had already denied Respondent's motion to disqualify Ms. Dettling (FF 135); and Respondent's October 26, 2016 "Second Amended Complaint" (FF 136), which Judge Boasberg ordered stricken on October 27, 2016 (FF 137) because the dismissal of the case had not been vacated. The two latter pleadings were specific subjects of Judge Boasberg's December 1, 2016 Memorandum Opinion imposing sanctions on Respondent pursuant to 28 U.S.C. § 1927. FF 153.

Pleadings in category (*b*) include a "Second Response to Motion for Sanctions" filed November 7, 2016 (FF 147), which Judge Boasberg ordered stricken on the day it was filed (FF 148); another pleading filed November 28, 2016 directed to the issue of sanctions, entitled "Second Response to Defendant Dettling's

Eight Pleadings" (FF 151), which Judge Boasberg ordered stricken on November 29, 2016 (FF 152); a December 19, 2016 "Opposition to Costs" (FF 156(b)); a December 20, 2016 "Memorandum in Support of Opposition to Fees Petition" (FF 157); a December 20, 2016 "Reply to Declaration of Costs Exhibit B" (FF 158); and a December 26, 2016 "Reply to Ms. Dettling's Westlaw Bill" (FF 159).

Category (*c*) includes Respondent's November 1, 2016 "Supplemental Memorandum to Amended Complaint" (FF 141), which Judge Boasberg ordered stricken on the day it was filed (FF 142), and which was a specific subject of Judge Boasberg's December 1, 2016 Memorandum Opinion imposing sanctions on Respondent pursuant to 28 U.S.C. § 1927 (FF 153).

The Hearing Committee concludes that each of these filings violated Rule 3.1 because each was procedurally frivolous, such that no objective attorney could have concluded they had even a faint hope of success.

The Stevenson Case

ODC asserts (ODC Br. at 54-55) that in the *Stevenson* case (Count Four of the Specification) Respondent violated Rule 3.1 when he asserted five litigation positions for which there was no basis in law or fact and which were therefore frivolous. The Hearing Committee concludes there is clear and convincing evidence that Respondent violated Rule 3.1 with respect to each of ODC's five contentions.

(1) Respondent's Request for a Change of Venue

On May 18, 2016, Respondent filed a motion seeking to change the "venue" of Mr. Stevenson's case from the Reading courthouse of the United States District

Court for the Eastern District of Pennsylvania to the Philadelphia courthouse within that District. FF 203. The motion was frivolous for the reason stated in Judge Schmehl's August 10, 2016 minute order denying the motion. FF 210(a). An objective lawyer familiar with the court's process for jury selection – and the Hearing Committee notes that Respondent's local counsel, Ms. Meisler, did not sign Respondent's motion (DCX 122 at 3) and in all likelihood was not involved in its preparation (*see* FF 251 (Ms. Meisler's motion to withdraw as local counsel)) – would have known there was no merit to the motion because the jury pool for any trial would have been drawn from all parts of the Eastern District, not just the city of Reading.

(2) The Alleged "*Ex Parte*" Contact With Judge Schmehl

Respondent's September 23, 2016 motion for sanctions against Mr. Kristofco (FF 228) and the draft motion he e-mailed to the court on September 15, 2016 (FF 225) contained the frivolous allegation that Mr. Kristofco's September 12, 2016 e-mailed letter to Judge Schmehl requesting a telephone conference on discovery issues was an improper *ex parte* communication with the court. However, copies of the e-mailed request were also sent by e-mail to Respondent and Ms. Meisler (FF 218), and on September 13, 2016 Judge Schmehl entered an order granting the requested conference (FF 219). An objective lawyer with knowledge of these facts would have concluded there was not even a faint hope of success in alleging there had been any improper *ex parte* communication with the court, and on October 11, 2016, Magistrate Judge Lloret denied Respondent's motion (FF 233).

(3) Respondent's Motion for a Default Judgment

On October 20, 2016, Respondent filed a motion for default judgment against the School District. FF 235. The motion was frivolous because the School District had waived service of process, and pursuant to plain terms of Fed. R. Civ. P. 4(d)(3)[153] the School District was allowed sixty days to respond to the complaint. Respondent can hardly claim to have been unaware of this, because the waiver form signed and returned by Mr. Kristofco as the School District's counsel explicitly recited that a response to Mr. Stevenson's complaint was not due until sixty days after December 16, 2015. FF 197. Inasmuch as the School District's motion to dismiss the complaint was filed on February 10, 2016 (FF 198), it was timely. An objective lawyer with knowledge of these facts would have concluded there was not even a faint hope of success in seeking entry of a default judgment.

(4) Respondent's *Ad Hominem* Attacks

In general, the Hearing Committee believes the issue of Respondent's *ad hominem* attacks against Mr. Kristofco are best dealt with (if at all) in the context of Rule 4.4(a), but one particular pleading Respondent filed is so singly and frivolously focused on Mr. Kristofco's alleged wrongdoing that the pleading is a Rule 3.1 violation. On January 8, 2017, after Respondent was cited by Judge Schmehl on November 18, 2016 to show cause why Respondent should not be held in contempt or otherwise sanctioned (FF 243), Respondent filed a second motion for sanctions,

[153] Fed. R. Civ. P. 4(d)(3) states, "A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the request was sent – or until 90 days after it was sent to the defendant outside any judicial district in the United States."

asking the court to "admonish the District's counsels to cease and desist from their use of abusive language in pleadings" and to strike "all references to 'witness intimidation' 'stalking' 'cyberstalking' and 'defamation' and conjugates of those terms from the District's pleadings." FF 264(b). Respondent could not have had (nor would any objective lawyer have had) any expectation that the relief he sought would be granted. He filed the motion simply because he could, to take one more gratuitous swipe at his opposing counsel before Judge Schmehl − as was done three days later − barred Respondent from any further electronic filings in the case without prior court permission (FF 265) and terminated Respondent's involvement in the *Stevenson* case.

(5) Respondent's Unauthorized Filings in the *Stevenson* Case

On December 9, 2016, Judge Schmehl granted Ms. Meisler's motion to withdraw as local counsel of record in the *Stevenson* case. FF 259. From that day forward, Respondent was not authorized to file any pleadings in the case because he lacked a sponsoring local counsel. FF 265. Nevertheless, after December 9, 2016 Respondent filed ten additional pleadings (ECF nos. 79-83, 85-86, and 89-91; DCX 115 at 10-11), all of which the court ordered stricken from the record (*id*.). The Hearing Committee accordingly concludes that the referenced pleadings were procedurally frivolous, and therefore violated Rule 3.1.

2. Rule 3.2(a) − Expediting Litigation

ODC alleges that Respondent violated this Rule in Count Two (Dettling) and Count Four (Stevenson) of the Specification. ODC Br. at 55.

a. Text of the Rules

D.C. Rule 3.2(a) states:

> In representing a client, a lawyer shall not delay a proceeding when the lawyer knows or when it is obvious that such action would serve solely to harass or maliciously injure another.

Pa. Rule 3.2 − the analog of D.C. Rule 3.2(a) − states:

> A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

b. Applicable Principles

As stated in *Fastov*, *supra*, at 31:

> According to the Comment to Rule 3.2, "[t]he question is whether a competent lawyer acting in good-faith would regard the course of action as having some substantial purpose *other than delay*." Rule 3.2, Comment [1] (emphasis added). While the rule prohibits harassing or maliciously injuring another, read in context that language relates to the use of delaying tactics for the purpose of harassment; it does not reach other forms of harassment.

Fastov, Board Docket No. 10-BD-096, at 31 (alterations and emphasis in original). Filing frivolous and redundant motions alone, without demonstrating a design or intent to delay a proceeding, will not violate Rule 3.2. *Id*. However, in *In re Barber*, Board Docket Nos. 10-BD-076, *et al*., at 25-27 (BPR Dec. 31, 2013),[154] the Board found the requisite intent to delay where, for example, the respondent attorney continued to litigate an asserted contract claim despite being told by the court that the matter belonged in arbitration, and pursued meritless appeals through rehearing

[154] The Court accepted the Board's recommendation of disbarment based on the overall facts of that case. *Barber*, 128 A.3d 637 (D.C. 2015) (per curiam).

and rehearing en banc petitions, preceded by a flurry of meritless and irrelevant motions before the trial court, for which there was no legitimate purpose other than to prolong the litigation and delay its ultimate outcome.

c. Discussion

The Dettling Matter

ODC argues (ODC Br. at 56-57) that through the filing of various pleadings before and after Respondent's October 30, 2016 withdrawal of his appearance in the *Hall* litigation (FF 139), Respondent violated D.C. Rule 3.2(a) by knowingly (or, to an objective observer, obviously) acting to delay that proceeding solely to harass or maliciously injure Ms. Dettling. The Hearing Committee agrees there is clear and convincing evidence that many of the pleadings Respondent filed were intended in whole or in part to harass or maliciously injure Ms. Dettling.[155] However, because Respondent's unmeritorious filings were not as extensive as those described by the Board in *Barber*, the Hearing Committee concludes ODC has not provided clear and convincing evidence that Respondent's conduct in the *Hall* case violated D.C. Rule 3.2(a).

[155] *E.g.*, FF 117 (Respondent's September 26, 2016 "Motion [for] Leave to Amend & Supporting Memorandum of Law" (DCX 75)); FF 128 (Respondent's October 11, 2016 motion to disqualify Ms. Dettling from representing herself (DCX 79)); FF 146 (Respondent's November 6, 2016 "First Reply to Motion for Sanctions" (DCX 89)); FF 147 (Respondent's November 7, 2016 "Second Response to Motion for Sanctions" (DCX 90)); and FF 151 (Respondent's November 28, 2016 "Second Response to Defendant Dettling's Eight Pleadings" (DCX 92)). Furthermore, as Judge Boasberg stated in his sanctions order, "the Court finds by clear and convincing evidence that [Respondent] improperly sought to hijack this terminated suit solely to advance his own personal vendetta against Dettling." FF 153.

It must be remembered that Respondent's tenure as counsel of record for Mr. Hall lasted only from September 16, 2016 (FF 115) to October 31, 2016 (FF 140). Furthermore, because Judge Boasberg carefully monitored the case, otherwise frivolous pleadings filed by Respondent also had such very short operative lives[156] that Ms. Dettling never had the occasion or the need to respond to them (*see* DCX 65 at 5-7). And although Respondent filed multiple oppositions to Ms. Dettling's October 28, 2016 motion for sanctions (FF 138) and to her December 16, 2016 itemized bill of costs (FF 154), it is not clear from the record that Respondent's filings delayed either Judge Boasberg's December 1, 2016 decision granting the motion for sanctions (FF 153) or his January 6, 2017 decision approving Ms. Dettling's bill of costs (FF 162).

Respondent's appellate actions in the *Hall* case, although lacking substantive merit, also did not extensively prolong the case. Respondent paid the monetary sanction ordered by Judge Boasberg on January 23, 2017 (DCX 105 at 4), so the payment process itself was not delayed while the D.C. Circuit considered Respondent's appeal. On February 28, 2017, Ms. Dettling filed a motion seeking summary affirmance of Judge Boasberg's sanctions order (FF 164), and on May 17,

[156] Respondent's September 26, 2016 "Motion [for] Leave to Amend & Supporting Memorandum of Law" (FF 117 (DCX 75)) was denied on September 30, 2016 (FF 121). Respondent's October 8, 2016 motion for entry of a default judgment (FF 126) was denied on October 11, 2016 (FF 127). Respondent's October 11, 2016 motion to disqualify Ms. Dettling (FF128; DCX 79)) was denied on the day it was filed (FF 129). Respondent's October 16, 2016 "Affidavit in Support of Default" (FF 131; DCX 80)) was denied on October 17, 2016 (FF 132). Respondent's proposed second amended complaint filed on October 26, 2016 (FF 136; DCX 84) was ordered stricken on October 27, 2016 (FF 137).

2017 the court of appeals issued a per curiam order granting that motion (FF 165). On May 21, 2017, Respondent filed a patently frivolous petition for rehearing and rehearing en banc (FF 166), which the court of appeals denied in per curiam orders on July 7, 2017 (FF 167).

The Board in *Barber*, Board Docket Nos. 10-BD-076, *et al*., at 27, found that the respondent attorney's conduct violated D.C. Rule 3.2(a) because, *inter alia*, it included "filing multiple motions for reconsideration, and . . . wasteful and meritless appeals of virtually every adverse decision, [which] dragged out litigation with [the opposing party] for years" and "fil[ing] an appeal . . . that lingered for more than three years due to his stalling tactics . . . ." (*id*. at 26). Measured by that standard, the Hearing Committee cannot conclude Respondent's conduct in the Dettling matter violated D.C. Rule 3.2(a).

The Stevenson Case

ODC asserts (ODC Br. at 57-58) that Respondent violated Pennsylvania Rule 3.2 (an inadvertent typographical error on page 57 of ODC's brief refers to "Rule 3.2(b)"), requiring lawyers to “make reasonable efforts to expedite litigation consistent with the interests of the client,” because Respondent did little to pursue Mr. Stevenson's claims and instead filed procedurally defective and frivolous pleadings which were intended to and had the twin effects of substantially delaying the resolution of the case and imposing substantial costs on the School District. The Hearing Committee agrees there is clear and convincing evidence that Respondent

violated Pa. Rule 3.2 by filing obstructive pleadings which failed to serve his client's interests and delayed the resolution of the case.

Respondent made sure through his September 1, 2016 e-mail that the School Board was directly informed of his expectation that the *Stevenson* case could involve "years of costly litigation" as well as "a considerable sum of money and much hassle." FF 212. Respondent made good on his promise of "much hassle," throwing one roadblock after another in the way of court and opposing counsel in order to prevent an expeditious resolution of the *Stevenson* case. A foretaste the promised "hassle" was Respondent's May 18, 2016 frivolous request for a change of venue (FF 203), which the School District opposed in May 31, 2016 (FF 205), and which the court denied on August 10, 2016 (FF 210(a)). There then ensued:

-- Respondent's disorganized and procedurally deficient September 8, 2016 "Motion for Summary Judgment on Retaliation (Count II)" (FF 217), which the School District opposed on September 30, 2016 (FF 230).

-- Respondent's interference with the court's orderly conduct of the telephone conference calls in mid-September, 2016 that were intended to resolve outstanding discovery issues. FF 218-26.

-- Respondent's frivolous September 23, 2016 motion for sanctions against the School District's attorneys alleging improper *ex parte* contact with Judge Schmehl (FF 228), which the School District opposed on October 7, 2016 (FF 232), and which the court denied on October 11, 2016 (FF 233). Respondent could not have entertained the slightest reasonable hope that the court would grant the motion for

sanctions, because the court granted the School District's September 12. 2016 request for a telephone discovery conference (FF 218) immediately after the request was made, and well before the filing of Respondent's motion. FF 219. The obvious purposes of the motion were therefore delay and the harassment of opposing counsel, rather than the advancement of Mr. Stevenson's interests.

-- Respondent's October 3, 2016 motion for a protective order against the School District (FF 231), which the court denied as moot on October 11, 2016 (FF 233).

-- Respondent's frivolous October 20, 2016 motion for a default judgment (FF 235), which the School Board opposed on November 3, 2016 (FF 236) on the ground that Mr. Stevenson had submitted to the court as proof of service (DCX 136 at 6)[157] the "Waiver of the Service of Summons" form (*id*. at 8) giving the School Board 60 days from December 16, 2015 to respond to the Complaint, which the School Board timely did on February 10, 2016 (FF 198). Respondent dragged out his frivolous argument further with his November 13, 2016 reply, insisting that notwithstanding his client's proof of service to the contrary, service of process had occurred on December 28, 2015 (FF 237). Once again, Respondent could not have entertained the slightest reasonable hope that the court would grant a default judgment against

[157] Mr. Stevenson sent the Waiver of Service form to the School District's legal counsel by e-mail on December 23, 2015 (DCX 136 at 6), and the Proof of Service form submitted to the court by Mr. Stevenson indicates that Mr. Kristofco returned the Waiver of Service form to him by e-mail on December 31, 2015 (*id*. at 6-7).

the School District, and the obvious purposes of the motion and reply were therefore delay and harassment, rather than the advancement of Mr. Stevenson's interests.

-- On November 18, 2016, Respondent filed a "Proposed Second Amended Complaint" (FF 242) which neither sought leave of court for the filing nor recited that the School District had consented to the amendment as required by Fed. R. Civ. P. 15(a). Respondent made this filing despite the facts that: (a) Respondent had already filed a "Second Amended Complaint" on July 20, 2016 (FF 207); (b) Judge Schmehl had previously stricken Respondent's proposed First Amended Complaint on July 14, 2016 because it did not comply with the requirements of Fed. R. Civ. P. 15(a) (FF 206); and (c) on September 14, 2016 Respondent had filed a still-pending motion for leave to file a Third Amended Complaint (FF 220 n. 112).

-- On November 21, 2016, Respondent filed a motion for an indefinite stay of the *Stevenson* case, explaining that the purpose of the requested stay was to allow Mr. Stevenson to pursue additional administrative claims against the School District, and then consolidate all of his claims in one lawsuit. FF 245. Less than three weeks later, however, on December 8, 2016 Respondent did a 180° reversal and withdrew his motion, without any explanation for the change in position. FF 255(c). Mr. Stevenson's interests were not furthered by Respondent's actions − indeed, given the rationale of the initial request for a stay, Mr. Stevenson would appear to have been harmed by Respondent's December 8, 2016 change in position − but in the interim on December 2, 2016 the School District was put to the expense of opposing the motion (FF 250).

-- The same indecisive disruption of the case as described in the preceding item was effected by Respondent's filing on November 22, 2016 of a "Notice of Withdrawal" of his appearance (FF 246), followed on November 26, 2016 by a "Motion to Stay Grant of Withdrawal" (FF 249), and further followed on December 8, 2016 by a "Withdrawal of Motion to Withdraw" (FF 255(b)). Respondent's disruptive actions did nothing to advance Mr. Stevenson's cause; to the contrary, Respondent's actions prompted Ms. Meisler on December 5, 2016 to withdraw her appearance as local counsel, thereby depriving Mr. Stevenson of local counsel to represent his interests in the case. FF 251.

-- On November 25, 2016, Respondent filed a motion for partial Summary Judgment (FF 248), asserting that his September 8, 2016 motion for summary judgment (FF 217) with respect to Count II of the then-pending Second Amended Complaint should be treated as conceded. Once again, Respondent could not have entertained the slightest reasonable hope that the court would treat his partial summary judgment motion as conceded, because Judge Schmehl's November 18, 2016 show cause order against Respondent had already directed that on December 9, 2016 the court would hear argument on the School District's motion to dismiss the Second Amended Complaint. FF 243. The motion therefore did nothing to advance Mr. Stevenson's interests, but again was Respondent's means of delaying the proceedings and harassing the School District, which filed an opposition to the motion on December 9, 2016 (FF 258(b)).

-- On December 6, 2016, Respondent filed a motion for leave to file a Fourth Amended Complaint (FF 252), which did nothing to advance Mr. Stevenson's interests because the proposed complaint attached to Respondent's motion omitted a third count alleging disparate treatment, which Respondent had sought to add in a Third Amended Complaint filed on September 14, 2016. FF 220 n. 112. Coming so soon after Respondent's November 18, 2016 "Proposed Second Amended Complaint," discussed above, Respondent's request for leave to file Fourth Amended Complaint only injected more uncertainty in the case and emphasized to the court the lack of direction in the proceedings. Respondent's motion did, however, put the School District to the expense of filing an opposition on December 20, 2016. FF 261.

-- On December 19, 2016, Respondent filed a pleading entitled "Plaintiff's Withdrawal" (FF 260(c)), which did nothing to advance Mr. Stevenson's interests. The stated purpose of the pleading − the voluntary withdrawal of Mr. Stevenson's complaint − was rendered ineffective because the pleading was not signed by Mr. Stevenson or by any attorney then authorized to represent him, as pointed out in the School District's January 3, 2017 response to the "Withdrawal" (FF 263(b)), and as the court ruled on January 11, 2017, directing Mr. Stevenson to resume representing himself *pro se* or to file either a joint stipulation of dismissal or a personally-signed voluntary dismissal pursuant to Fed. R. Civ. P. 41(a). FF 265.

That Respondent was dilatory in failing to answer (FF 234) and on December 19, 2016 belatedly opposing (FF 260(a)) the School District's successful request for

a protective order, and in belatedly responding on November 18, 2016 (FF 241) to the School District's August 8, 2016 motion to dismiss Mr. Stevenson's Second Amended Complaint, is merely additional evidence of Respondent's violation of Pa. Rule 3.2: Respondent failed to "make reasonable efforts to expedite [the] litigation consistent with the interests of the client." Instead, as Judge Schmehl stated in his January 11, 2017 Memo/Order, Respondent "bombard[ed] the Court with frivolous motions and documents." FF 265. Mr. Kristofco was precisely correct in testifying that Respondent's actions "stalled this case from moving forward, which was an impact on not only my client but on [Respondent's]." FF 268.

3. Rule 3.4(c)[158] – Violating the Rules of a Tribunal

ODC alleges that Respondent violated this Rule only in Count Two (Dettling) of the Specification.

a. Text of the Rule

Rule 3.4(c) states:

> A lawyer shall not:
>
> * * *
>
> (c) Knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

[158] The argument heading for this section of ODC's post-hearing brief refers to Rule "3.4(a)" (ODC Br. at 58), but that is clearly a typographical error, and the remainder of that section of ODC's brief deals with alleged violations of Rule 3.4(c).

b. Applicable Principles

A lawyer can violate Rule 3.4(c) by violating court rules or a court order. The violation of a trial court order concerning the filing of motions − or conditions on filings or the prohibition against filings − constitutes a violation of Rule 3.4(c). *See, e.g.*, *In re Bland*, Bar Docket No. 245-95 at 16 (BPR Jan. 13, 1998), *recommendation adopted*, 714 A.2d 787, 788 n.2 (D.C. 1998) (per curiam) (respondent's knowing and willful noncompliance with trial court's order to file a pretrial statement and attend the pretrial hearing when his motion to withdraw was denied established clear and convincing evidence of a Rule 3.4(c) violation); *see also Fastov*, Board Docket No. 10-BD-096, at 32-33 (attorney violated Rule 3.4(c) by filing a pleading with improper margins, single-spaced footnotes, and argumentative "exhibits" in order to evade a court-imposed page limitation (*id*. at 6 n.6), and by filing a prolix 225-page complaint that did not comply with the "short and plain statement" requirement of Fed. R. Civ. P. 8). Rule 3.4(c) includes a requirement that the lawyer act knowingly, but as Rule 1.0(f) points out, "knowledge may be inferred from circumstances."

c. Discussion

ODC asserts (ODC Br. at 59) that "every filing Respondent made [in the *Hall* case] violated either the court rules or a court order and, in many instances, both." Although the Hearing Committee does not find all of the documents referred to in ODC's post-hearing brief violated Rule 3.4(c),[159] the Hearing Committee concludes

[159] The Hearing Committee concludes ODC's assertion (ODC Br. at 59) that Respondent violated Rule 3.4(c) on October 3, 2016 by e-mailing Ms. Dettling a document entitled "Plaintiff's Memorandum of Law Supporting Motion for Lien" (FF 123) is not supported by clear and

for the reasons set forth below there is clear and convincing evidence that most of them did.

(1) On or about August 30, 2016, Respondent filed on behalf of Federal Employees Defense, LLC, a motion for leave to file an amicus brief to establish that the court had jurisdiction over Mr. Hall's case. FF 111. On August 25, 2016, however, Judge Boasberg had entered an Order dismissing the case (FF 109), and Respondent is held to knowledge of that Order. Indeed, there would be little reason for Respondent to have filed the amicus brief if the case had *not* been dismissed, and as Judge Boasberg noted (DCX 93 at 6), the motion for leave was filed almost simultaneously with a *pro se* motion from Mr. Hall asking for an extension of time to attempt to establish that the court had jurisdiction over his case. FF 110-11. On September 2, 2016, Judge Boasberg denied the motion for leave because it violated the intent and effect of the August 25, 2016 dismissal Order by attempting to make a filing in a closed case. FF 112. Furthermore, Respondent's filing the motion violated D.D.C. LCvR 83.2(c)(1), which requires all filed pleadings to be joined or signed by an attorney admitted to practice before the court, and the record is clear that Respondent was not so admitted until September 12, 2016. FF 111.

(2) On September 26, 2016, Respondent filed a motion seeking to amend Mr. Hall's complaint, but − in violation of D.D.C. LCvR 15.1 − failed to attach to this pleading a copy of the proposed amendment. FF 117. On September

convincing evidence because Respondent never filed that document with the court as a pleading seeking relief.

30, 2016, Judge Boasberg denied the motion for that reason, as well as because the motion was not in order until vacatur of the dismissal of the case had been obtained. FF 121. Respondent is held to knowledge of LCvR 15.1, because D.D.C. LCvR 83.8(b)(6)(iii) requires every applicant for admission to the bar of the court to certify that s/he is familiar with the court's local rules. Moreover, Judge Boasberg did not regard Respondent's violation of LCvR 15.1 as a minor inadvertence, because he included a reference to that violation in his December 1, 2016 sanctions order (FF 153) against Respondent, stating (DCX 93 at 7):

> . . . rather than seek to vacate the dismissal of the case or wait for the imminent hearing to discuss the same, [Respondent] filed a motion to amend the Complaint on September 26, though he failed to attach any such revised complaint to the motion, as required by the local rules.

(3) On October 3, 2016, Respondent filed a pleading entitled "Plaintiff's Motion on Jurisdiction" (FF 122), notwithstanding that on September 28, 2016 Judge Boasberg had entered a minute order reiterating his direction to Respondent at a status conference held that day requiring Respondent initially to obtain vacatur of the August 25, 2016 dismissal of the case (FF 118), a ruling that Judge Boasberg reiterated once again in a minute order on September 30, 2016 (FF 121). Judge Boasberg's December 1, 2016 sanctions order against Respondent (FF 153) ruled that the motion disobeyed an obligation under the court's prior minute orders, stating that Respondent's motion "did not explain why vacatur of the dismissal would be appropriate, despite this Court's direction to do so." DCX 93 at 8.

(4) On October 8, 2016, Respondent filed a motion for a default judgment against all of the defendants named in Mr. Hall's complaint (FF 126),

despite the facts that Respondent knew the case was dismissed against all defendants on August 25, 2016 (FF 109), and that Judge Boasberg on September 28, 2016 (FF 118) and September 30, 2016 (FF 121) had entered minute orders placing Respondent on notice that such a motion was not in order unless vacatur of the dismissal had been obtained. Judge Boasberg accordingly denied the motion on October 11, 2016, stating that plaintiff "must first succeed in vacating the dismissal before seeking any affirmative relief." FF 127. Furthermore, this motion (ECF 20) was one of the pleadings for which Judge Boasberg specifically sanctioned Respondent pursuant to 28 U.S.C. § 1927. FF 153.

(5) On October 11, 2016, Respondent filed a motion seeking to disqualify Ms. Dettling from representing herself *pro se* as a defendant. FF 128. This motion violated Judge Boasberg's minute orders of September 28, 2016 and September 30, 2016, previously discussed, and was denied by Judge Boasberg on the day it was filed because it was "plainly frivolous." FF 129. Because Respondent's motion was frivolous it also violated Fed. R. Civ. P. 11(b)(2), which requires all "claims, defenses, and other legal contentions [to be] warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." Accordingly, Judge Boasberg ordered Respondent to show cause at a status conference scheduled for the following day why sanctions should not be issued against him (FF 129), and the motion (ECF 21) was one of the pleadings for which Judge Boasberg specifically sanctioned Respondent pursuant to 28 U.S.C. § 1927 (FF 153).

(6) On October 16, 2016, Respondent filed a pleading entitled "Affidavit in Support of Default" (FF 131), despite the facts that on October 11, 2016 Judge Boasberg had already denied Respondent's motion for a default judgment (FF 127), and that on October 12, 2016 Judge Boasberg had entered a minute order directing that no further motion was to be filed until the court ruled on Ms. Dettling's forthcoming supplementary motion to disqualify Respondent from representing Mr. Hall (FF 130). On October 17, 2016, Judge Boasberg entered a minute order denying the relief sought in Respondent's "Affidavit in Support of Default," stating, "Such a filing, furthermore, violates the Court's Minute Order of October 12, 2016, regarding the filing of motions." FF 132. In addition, the "Affidavit in Support of Default (ECF 23) was one of the pleadings for which Judge Boasberg specifically sanctioned Respondent pursuant to 28 U.S.C. § 1927. FF 153.

(7) On October 18, 2016, Respondent filed a "Clarification," attempting to justify the filing of the Affidavit of Default discussed in the preceding item, and seeking reconsideration of Judge Boasberg's October 17, 2016 minute order denying the relief requested in the "Affidavit of Default."[160] FF 133. As such, the "Clarification" was yet another violation of Judge Boasberg's October 12, 2016 minute order, discussed above, prohibiting the filing of further motions. In addition, the explanation provided in the "Clarification" was both specious and vexatious. The third paragraph of the "Clarification" states (DCX 81 at 1) that while Respondent

[160] The "Clarification" states, DCX 81 at 1, "The Plaintiff respectfully submits the October 16 filing did not violate the October 12 Order."

was doing other legal research he came across the Affidavit form and decided to file it because he was "[c]oncerned that the October 8 default judgment motion was lacking the necessary formalities" and he wanted "to ensure the forms are in place in the event that the Court reaches the merits of the Motion for Default Judgment." This explanation ignores the facts that Respondent had not first obtained vacatur of the dismissal of the case, as Judge Boasberg had previously directed, and that Judge Boasberg had *already* reached the "merits" of the motion for default judgment by denying it on October 11, 2016 (FF 127). Accordingly, the "Clarification" (ECF 24) was one of the pleadings for which Judge Boasberg specifically sanctioned Respondent pursuant to 28 U.S.C. § 1927. FF 153.

(8) On October 20, 2016, Respondent filed a pleading entitled "Notice of Withdrawal of Plaintiff's Motion to Disqualify." FF 135. This pleading was in effect a motion for reconsideration of Judge Boasberg's order of October 11, 2016 denying Respondent's motion seeking to disqualify Ms. Dettling from representing herself, because, as Judge Boasberg stated in his sanctions order (DCX 93 at 9):

> In this new filing, [Respondent] also inexplicably continued to argue that Dettling should be disqualified from representing herself, ignoring the Court's previous explanation that a *pro se* litigant could not be so disqualified.

See also id. at 12 (Judge Boasberg refers to Respondent's "Withdrawal" as an example of Respondent's filing "motions to allegedly supplement filings that this Court had already denied or stricken from the record as improper"). Respondent's continued argument on the reasonableness of having moved to disqualify Ms. Dettling therefore violated Judge Boasberg's October 12, 2016 minute order

prohibiting the filing of further motions. That argument also violated Fed. R. Civ. P. 11, because it was made in support of a position which the court had already ruled to be "plainly frivolous." FF 129. As with other pleadings filed by Respondent, Judge Boasberg specifically sanctioned the "Withdrawal" as a violation of 28 U.S.C. § 1927. FF 153.

(9) On November 1, 2016, Respondent filed a pleading entitled "Supplemental Memorandum to Amended Complaint" (FF 141), despite the facts that on October 30, 2016 Respondent had filed a request to withdraw his appearance (FF 139) and on October 31, 2016 Judge Boasberg entered a minute order granting that request (FF 140). Respondent must have known that he was no longer authorized to represent Mr. Hall, because as of September 8, 2016 he had been authorized to use the court's CM/ECF electronic filing system (DCX 65 at 4); Respondent in fact made electronic filings in the case,[161] and would therefore have actually received Judge Boasberg's October 31, 2016 order. Judge Boasberg entered a minute order striking the "Supplemental Memorandum" on the day it was filed, stating, "it was inexplicably filed by counsel who has withdrawn from the case." FF 142. The filing violated Judge Boasberg's October 31, 2016 minute order dismissing Respondent as Mr. Hall's attorney of record (FF 140). The filing also violated Judge Boasberg's October 27, 2016 order (FF 137) striking Respondent's October 26, 2016 proposed Second Amended Complaint (FF 136), on the ground that "[t]he dismissal

[161] *See*, *e.g.*, Respondent's October 10, 2016 motion to disqualify Ms. Dettling, which bears an electronic rather than a manual signature. DCX 79 at 1.

has not been vacated" (FF 137). In addition, the filing violated Fed. R. Civ. P. 11 because Mr. Hall's complaint had been dismissed since August 25, 2016 (FF 109), and there was no "Amended Complaint" Respondent could "supplement" since the Second Amended Complaint had already been stricken (FF 137). Accordingly, the "Supplemental Memorandum" (ECF 32) was one of the pleadings for which Judge Boasberg specifically sanctioned Respondent pursuant to 28 U.S.C. § 1927. FF 153.

(10) On November 7, 2016, Respondent filed a pleading entitled "Second Response to Motion for Sanctions." FF 147. Judge Boasberg entered a minute order striking the "Second Response" on the day it was filed, stating, "Plaintiff's former counsel, [Respondent] has already filed his Response to . . . Rosemary Dettling's Motion for Sanctions."[162] FF 148. Judge Boasberg further stated in his sanctions order against Respondent that the court struck the "Second Response" as "inappropriately duplicative." DCX 93 at 10. *See* D.D.C. LCvR 7(b), stating that a party opposing a motion shall file "*a* memorandum of points and authorities in opposition" (emphasis on the singular added). Similarly, on November 28, 2016 Respondent filed another opposition to Ms. Dettling's motion for sanctions (FF 151), which Judge Boasberg ordered stricken the next day, stating, "[Respondent] has already filed a Response and does not get the opportunity to file multiple ones absent leave of Court" (FF 152).

[162] Respondent's opposition to Ms. Dettling's motion for sanctions was filed on November 6, 2016. FF 146.

(11) After Ms. Dettling's December 16, 2016 filing (FF 154) of her bill of costs pursuant to Judge Boasberg's sanctions order against Respondent, and Respondent's initial opposition ("Initial Reply to Order") filed on December 19, 2016 (FF 156(a)), Respondent filed four additional oppositions: an "Opposition to Costs" (FF 156(b)); a "Memorandum in Support of Opposition to Fees Petition" (FF 157); a "Reply to Declaration of Costs Exhibit B" (FF 158); and a "Reply to Ms. Dettling's Westlaw Bill" (FF 159). As Judge Boasberg observed in his January 6, 2017 order granting reimbursement of the costs for which Ms. Dettling had asked, "the Court never gave [Respondent] leave to file more than the standard single pleading." FF 162 (DCX 101 at 2). Particularly after the express statement in Judge Boasberg's order of November 29, 2016 (FF 152) quoted above in subheading (10) that Respondent was not entitled to file multiple responses absent leave of court, Respondent could not have been under any illusions that his multiple oppositions were permissible.

4. Rule 4.2 − Communicating With a Represented Person

ODC alleges that Respondent violated this Rule in Count Three (Bromley) and Count Four (Stevenson) of the Specification.

a. Text of the Rule

D.C. Rule 4.2(a) states the general principle of the Rule as follows:

> During the course of representing a client, a lawyer shall not communicate or cause another to communicate about the subject of the representation with a person known to be represented by another lawyer in the matter, unless the lawyer has the prior consent of the lawyer representing such other person or is authorized by law or a court order to do so.

Section (b) of the Rule deals with permissible communications with nonparty employees of an organization, and the preconditions applicable to such communications; section (c) of the Rule defines the terms "party" and "person" for purposes of the Rule as including employees who have the authority to bind their employing organization regarding the representation to which the communication relates; and section (d) of the Rule contains an exception for communicating with a government official who has the authority to redress the grievances of the lawyer's client, provided that the lawyer discloses to the government official the lawyer's identity and the fact that the lawyer represents an adverse party.

Pa. Rule 4.2 in its entirety states the same basic principle embodied in D.C. Rule 4.2(a), as follows:

> In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Two particular comments to Pa. Rule 4.2 provide the same types of clarifications contained in other portions of D.C. Rule 4.2. Comment [5] to Pa. Rule 4.2 serves a function similar to D.C. Rule 4.2(d), by stating, "Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government." Comment [7] to Pa. Rule 4.2, like D.C. Rule 4.2(b) and (c), deals with the subject of communicating with employees of a represented organization, and prohibits

> . . . communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability.

b. Applicable Principles

Applying the language of D.C. Rule 4.2 to the facts of the Bromley matter appears to be relatively straightforward, bearing in mind that Rule 1.0 (h) defines the term "matter" as used in Rule 4.2(a) to include:

> . . . any litigation, administrative proceeding, lobbying activity, application, claim, investigation, arrest, charge or accusation, the drafting of a contract, a negotiation, estate or family relations practice issue, or any other representation, except as expressly limited in a particular rule.

With regard to Pa. Rule 4.2, ODC Br. at 66-67 cites two decisions by the United States District Court for the Eastern District of Pennsylvania as illustrations of the interpretation and application of Pa. Rule 4.2.

The first case, *Carter-Herman v. City of Philadelphia*, 897 F. Supp. 899 (E.D. Pa. 1995), involved a civil rights suit by a female police officer and a female police sergeant alleging sexual harassment and retaliation by members of the Philadelphia Police Department. Plaintiff's counsel expressed a desire to interview non-party police officers without the participation of the City's legal counsel, and the City filed a motion for a protective order against such interviews. The court reviewed the written job descriptions of the various ranks within the City's police department, and ruled that police officers with the rank of sergeant and below lacked sufficient

managerial responsibility to make them subject to the prohibition in Comment [7] to Pa. Rule 4.2 against contacts with employees of represented organizations. *Id*. at 903-04.

The second case, *Raub v. US Airways*, No. CV 16-1975, 2017 WL 5172603 (E.D. Pa. Nov. 8, 2017), was a negligence suit for physical injuries sustained as a result of air turbulence during an airline flight. The plaintiff's attorney engaged in *ex parte* communications with two US Airways flight attendants, and the airline filed a motion for sanctions alleging that the attorney had violated Pa. Rule 4.2. The court undertook an analysis of whether the flight attendants were persons described in Comment [7] to Pa. Rule 4.2, and, relying on Fed. R. Evid. 801(d)(2)(D),[163] ruled that because flight attendants are generally responsible for the safety of passengers in their custody, statements by the flight attendants regarding the flight in question and their acts/omissions during the flight could subject US Airways to liability, and therefore the flight attendants were "represented parties" for the purpose of Pa. Rule 4.2. *Raub*, No. CV 16-1975, 2017 WL 5172603, at 5.

Last, because various e-mail communications discussed below were sent jointly to represented clients as well as to their legal counsel, the Hearing Committee notes that "a lawyer ordinarily is not authorized to communicate with a represented nonclient even by letter with a copy to the opposite lawyer." Restatement (Third) of

[163] Fed. R. Evid. 801(d)(2)(D) states that admissible hearsay included statements "made by the [opposing] party's agent or employee on a matter within the scope of that relationship and while it existed."

the Law Governing Lawyers, § 99 cmt. f. *See also* Philadelphia Bar Op. 2000-11 (2001) (written communication with a represented government official is not permissible, even though simultaneous notice is given to government counsel); *In re Hedrick*, 822 P.2d 1187, 1191 (Or. 1991) (en banc) (per curiam) ("A lawyer is not permitted to ignore the plain words of the rule and then escape responsibility for violating it . . . because counsel for the party receiving the communication was alerted that it had been made."); *In re Uttermohlen*, 768 N.E.2d 449, 450-51 (Ind. 2002) (same).[164]

c. Discussion

The Bromley Matter

ODC asserts (ODC Br. at 62) that Respondent violated D.C. Rule 4.2 because Respondent, without Mr. Jones's prior consent, copied management officials at Mr. Jones's client ("e-Management") on e-mails Respondent sent to Mr. Jones regarding matters pertaining to the representation. ODC further asserts (*id.*) that Respondent violated D.C. Rule 4.2 by causing his client Ms. Bromley to communicate with officials at e-Management concerning her claims. The Hearing Committee concludes there is clear and convincing evidence that Respondent violated D.C. Rule 4.2 with respect to e-mails he sent to Mr. Jones on which management officials at e-Management were copied, but that ODC has not provided clear and convincing

[164] *See* n. 94, *supra*, regarding Respondent's knowledge that Rule 4.2 is violated by sending simultaneous copies of a communication to a lawyer as well as to the party or parties the lawyer represents regarding the matter involved in the representation.

evidence that Respondent caused Ms. Bromley to communicate with e-Management officials.

Respondent clearly represented Ms. Bromley in connection with a "matter," *i.e.*, claims relating to her employment by e-Management. FF 169-72. From the very beginning of the representation, Respondent was also clearly on notice that Mr. Jones wanted all future communications from Respondent concerning the Bromley matter directed solely to him. FF 173.

Notwithstanding that notice, and without Mr. Jones's consent, on October 31, 2015, Respondent sent two officials at e-Management who had authority to bind the company with respect to the Bromley matter (Ivy Allen and William Bodine) copies of an e-mail to Mr. Jones which alleged, *inter alia*, that e-Management had not fulfilled its legal obligation to "stop, prevent and remedy harassment and retaliation" against Ms. Bromley. FF 174.

On June 23, 2016, Mr. Jones sent Respondent an e-mail reminding him that Mr. Jones did not consent to direct contacts with personnel at e-Management, and that all communications regarding the Bromley matter were to be directed solely to Mr. Jones. FF 177. Notwithstanding that additional notice, on July 8, 2016 Respondent sent copies of two e-mails concerning the Bromley matter jointly to Mr. Jones and to two management officials at e-Management.[165] In the first e-mail (FF 184), Respondent asserted that e-Management had engaged in "despicable" conduct in connection with the alleged non-return of Ms. Bromley's personal belongings to

[165] Ivy Allen, as well as another management official named Patricia Anderson (FF 178).

her after e-Management terminated her employment with the company on or about June 11, 2016 (FF 175). In the second e-mail, Respondent accused e-Management officials as well as Mr. Jones of criminal conduct in connection with the handling of Ms. Bromley's property, and threatened criminal as well as civil action against them. FF 185.

The e-mails from Respondent described in the two preceding paragraphs − copies of which Respondent sent to management officials at e-Management even though Mr. Jones had repeatedly notified Respondent to send all future communications regarding the Bromley matter solely to him − were clearly related to the Bromley matter. Respondent's actions therefore violated Rule 4.2.

In addition to the e-mails described above which were sent by Respondent, Ms. Bromley herself sent a number of e-mails to officials at e-Management following the termination of her employment. FF 178-80, 182-83, 186. Mr. Jones concluded principally from his receiving copies of those e-mails that Respondent had directed Ms. Bromley to send them, and therefore violated Rule 4.2. FF 187. While that is one possible inference, the Hearing Committee concludes that Ms. Bromley's e-mails are not a basis for finding that Respondent violated Rule 4.2. Neither Ms. Bromley nor Respondent were witnesses at the hearing in this matter, so there is no testimony from either of them that Respondent directed Ms. Bromley to send the e-mails. In addition, Ms. Bromley's e-mail exchanges with e-Management appear to the Hearing Committee to be markedly different in tone and content from Respondent's, and deal on a more personal and pedestrian way with

Ms. Bromley's post-employment issues. Accordingly, the Hearing Committee concludes there is a lack of clear and convincing evidence that Respondent violated Rule 4.2 by directing Ms. Bromley to communicate with e-Management officials.

The Stevenson Case

ODC asserts (ODC Br. at 62-67) that Respondent violated the prohibition against communicating with a represented party in three different ways: (1) Respondent's May 20, 2014 e-mail to officials of the School District regarding Mr. Stevenson's "Policy 448" complaint; (2) Respondent's September 1, 2016 e-mail to eight of the nine members of the School District's school board members as well as to the superintendent of schools regarding Mr. Stevenson's lawsuit against the School District; and (3) Respondent's August 21, 2016 and September 7, 2016 e-mails to Mr. Meiswich. As explained in Section (A) of this Part III, the Hearing Committee applies D.C. Rule 4.2 to Respondent's May 20, 2014 e-mail, and applies Pa. Rule 4.2 to Respondent's other e-mails. The Hearing Committee concludes that Respondent violated D.C. Rule 4.2 with respect to the May 20, 2014 e-mail; violated Pa. Rule 4.2 with respect to the May 1, 2016 e-mail; but did not violate Pa. Rule 4.2 with respect to his e-mails to Mr. Meiswich.

(1) Respondent's May 20, 2014 E-Mail

On May 20, 2014 Respondent sent the School District's assistant superintendent in charge of human relations and the School District's superintendent an e-mail regarding Mr. Stevenson's internal "Policy 448" complaint. FF 192. Respondent also sent Mr. Kristofco a copy of this e-mail. *Id*. Both of the School

District officials who received the e-mail had the authority to bind the School District with respect to Mr. Stevenson's Policy 448 complaint. *Id*. *Inter alia*, Respondent's e-mail contained legal arguments concerning the proper mode of representation of Mr. Stevenson in the School District's Policy 448 process. FF 193. At the time Respondent sent this e-mail, he was aware that the School District was represented by Mr. Kristofco's law firm, and Respondent had been directed by the School District's counsel not to communicate directly with School District employees. FF 194. Respondent's e-mail involved an important issue relating to Mr. Stevenson's complaint, *i.e.*, the procedure to be followed in adjudicating the matter. FF 193. On the basis of the foregoing facts, the Hearing Committee concludes that Respondent's May 20, 2014 e-mail was a violation of D.C. Rule 4.2.

(2) Respondent's September 1, 2016 E-Mail

On September 1, 2016, Respondent sent an e-mail regarding Mr. Stevenson's lawsuit to eight of the nine school board members of the School District as well as to its superintendent, all of whom dealt with the School District's counsel concerning that matter. FF 212. Respondent also sent Mr. Kristofco and other individuals copies of the e-mail. *Id*. At the time Respondent sent the e-mail, he was aware that the School District was represented by Mr. Kristofco's law firm, and Respondent did not have the prior consent of the School District's legal counsel to send it. FF 212-13.

Comment [5] to Pa. Rule 4.2, which permits communications exercising a client's "constitutional or other legal right to communicate with the government,"

does not excuse Respondent's September 1, 2016 e-mail to persons who were represented by legal counsel. Nothing about the e-mail signals an effort to invoke Mr. Stevenson's First Amendment right to petition the government. Respondent's e-mail was not a formal petition for redress of grievances; rather, it was a routine settlement proposal such as any lawyer might send an adversary, albeit accompanied by unseemly threats of "years of costly litigation" and "much hassle." FF 212.

Furthermore, assuming *arguendo* that the school board is a governmental agency to which a petition for redress of grievances might lawfully be addressed, there is a clear tension between the purpose of Rule 4.2 which prohibits an adverse lawyer from contacting a represented governmental agency, and the exception in Comment [5] to the Rule which permits contacts authorized by law. To harmonize this tension, limiting principles are required so that the exception does not negate the purpose of the Rule. Those limiting principles as applied to litigation are addressed in Ethics Op. 2000-11 of the Philadelphia Bar Association, which states:

> If the litigation involves the governmental purpose for which [the agency] was organized, the government agency exception might apply. Where the litigation involves a collateral matter, such as employment with or personal injury by the agency, the exception likely will not apply.

Quoting ABA Formal Op. 97-408, Ethics Op. 2000-11 further states:

> To give effect to the purposes of Rule 4.2 [where direct communication is permitted], however, . . . the lawyer must afford government counsel reasonable advance notice of an intent to communicate, in order to afford an opportunity for the officials to obtain advice of counsel before entertaining the communication.

Respondent's September 1, 2016 e-mail clearly dealt with an employment matter rather than an intrinsic governmental function, and he did not provide the School District's counsel with any advance notice of his intent to communicate with the school board. FF 212. The Hearing Committee concludes for these additional reasons that Comment [5] to Pa. Rule 4.2 cannot be used to excuse Respondent's e-mail to the school board members.

Respondent, however, did not in fact even need to seek redress from the school board members in order to get settlement discussions started. On May 18, 2016, Judge Schmehl had already ordered Magistrate Judge Lloret to schedule a mediation, and Judge Lloret held a settlement conference on June 27, 2016. FF 204. If an additional mediation or settlement discussion was needed, Respondent certainly knew how to ask the court for it, as he did in a motion filed on December 8, 2016. FF 255(a). Respondent, however, wanted to ensure that his threat about costing "PA taxpayers a considerable sum of money" (FF 212) reached the school board members in undiluted form, and the September 1, 2016 e-mail was his chosen means of doing so.

Based on the foregoing considerations, the Hearing Committee concludes there is clear and convincing evidence that Respondent's September 1, 2016 e-mail violated Pa. Rule 4.2, and did not come within the exception in Comment [5] for communications "authorized by law" under that Rule.

(3) The Meiswich E-Mails

On August 21, 2016, Respondent sent Mr. Steve Meiswich, a teacher in the School District, an e-mail asking him why he was reporting information about Mr. Stevenson to supervisory personnel, and whether Mr. Meiswich was acting of his own accord. FF 211. Receiving no answer, on September 7, 2016 Respondent sent Mr. Meiswich a second e-mail, threatening punitive action against him as a "management rat." FF 214. ODC argues (ODC Br. at 66) that these communications with Mr. Meiswich violated Pa. Rule 4.2 because statements by him would have been deemed "admissions" of the School District pursuant to Fed. R. Evid. 801(d)(2)(D), and therefore, under the reasoning of *Raub v. US Airways*, *supra*, Mr. Meiswich should be deemed a "represented party" whom Respondent was barred from contacting.

It appears to the Hearing Committee, however, that the rationale of *Raub* is not applicable to the situation of Mr. Meiswich because, unlike the flight attendants involved in that case, reporting or not reporting information about a fellow-teacher was not an intrinsic part of Mr. Meiswich's duties as a teacher. Instead, Mr. Meiswich falls in the category of operating personnel such as police officers with the rank of sergeant and below, as discussed in *Carter-Herman v. City of Philadelphia*, *supra*, who lack sufficient managerial responsibility to make them subject to the prohibition in Comment [7] to Pa. Rule 4.2 against contacting employees of represented organizations. In addition, the Hearing Committee notes that in the School District's motion to the court for a protective order, the School

District did not argue Respondent's e-mails to Mr. Meiswich violated Pa. Rule 4.2; rather, the School District's position was that those e-mails violated Pa. Rule 4.4(a), barring a lawyer from using "means that have no substantial purpose other than to embarrass, delay, or burden a third person" or "methods of obtaining evidence that violate the legal rights of such a person." FF 229 (c).

In light of the foregoing considerations, the Hearing Committee concludes there is a lack of clear and convincing evidence that Respondent's e-mails to Mr. Meiswich violated Pa. Rule 4.2.

5. Rule 4.4(a) − Embarrassing/Burdening Third Parties

ODC alleges that Respondent violated this Rule in Count One (USDA, including both the Quarles defamation case and Respondent's MSPB appeal), Count Two (Dettling), and Count Four (Stevenson) of the Specification.

a. Text of the Rule

Rule 4.4(a) states:

> In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or knowingly use methods of obtaining evidence that violate the legal rights of such a person.

Va. Rule 4.4 is very similar to D.C. Rule 4.4(a), but omits the word "substantial" that is found in D.C. Rule 4.4(a). Pa. Rule 4.4(a) is identical to D.C. Rule 4.4(a).

b. Applicable Principles

Rule 4.4(a) protects the rights of third parties, including witnesses and opposing parties and counsel. G. Hazard, Jr., W. Hodes, and P. Jarvis, *The Law of Lawyering*, Vol. 2, §43.02 (4th ed. 2017). Furthermore, the rule applies not only

when a lawyer is representing a third party as a client, but also when the lawyer is representing himself or herself *pro se*. *Pelkey*, 962 A.2d at 280.

Among other misconduct, filing frivolous motions and unnecessarily protracting litigation can violate Rule 4.4(a). *Pelkey*, 962 A.2d at 270-71, 280. In *Barber*, Board Docket Nos. 10-BD-076, *et al*., at 27, *aff'd*, 128 A.3d at 639, the Board found that a lawyer's practice of filing multiple meritless motions violated Rule 4.4(a) (as well as Rule 3.2(a)) because the lawyer dragged out litigation and caused the opposing party to incur substantial and unnecessary expenses in defending against tactics which had no merit or which did not benefit the lawyer's client. In *Fastov*, *supra*, the Board found that the respondent attorney violated Rule 4.4(a) by using obstructionist litigation tactics at the expense of the court and opposing counsel (*Fastov*, Board Docket No. 10-BD-096, at 17), and – after sending a pre-suit letter stating he was "fully prepared by make a career of this lawsuit" and would cause his opposing party to "incur hundreds of thousands of dollars in attorneys' fees" (*id*. at 4) – by litigiously pursuing a claim "to vent his anger over what he viewed as [defendant's] unfair and improper treatment of him" (*id*. at 33-34).

However, the Board also held in *Fastov* that the respondent attorney's sending pre-suit threats to the opposing party was not a *per se* violation of Rule 4.4(a) because the Rule applies only when a lawyer is representing a client, and the attorney was not at that point clearly representing himself as such. *Id*. at 34, 38 ¶ 6. *See also*

The Law of Lawyering, Vol. 2, §43.02, *supra*, stressing the importance of the use of the phrase "in representing a client" in Rule 4.4 and related disciplinary rules.

c. Discussion

The Quarles Defamation Case

ODC asserts (ODC Br. at 67) that Respondent embarrassed and harassed Ms. Quarles by suing her in Virginia for doing nothing more than responding to an internal USDA email, thereby violating Rule 4.4(a). The Hearing Committee agrees.

As already established in Section B(1) of this Part III, Respondent's suit against Ms. Quarles was frivolous; the purpose of the suit was to personally embarrass and burden Ms. Quarles, whom he viewed as an antagonist. FF 10. Because Ms. Quarles did not testify at the hearing in this matter, the Hearing Committee does not know if she actually felt embarrassed and harassed, and she may not have, given the timely assertion of the protection she had as a federal employee under the Westfall Act. But achieving the effect of embarrassing and burdening a third person is not required to prove a violation of Rule 4.4(a); it is a lawyer's baselessly using *means* to embarrass and burden a third person − in this case, a frivolous lawsuit − that violates the rule. *In re Frison*, Board Docket No. 11-BD-083 (BPR May 24, 2013) appended HC Rpt. at 180 (Dec. 20, 2012) (lawyer found to have violated Rule 4.4(a) by, *inter alia*, suing a former client on the basis of falsified billing), *recommendation adopted,* 89 A.3d 516 (D.C. 2014) (per curiam).

And even if the Hearing Committee cannot be certain Ms. Quarles felt embarrassed and burdened by the defamation lawsuit, it is highly likely that she did.

Respondent kept after her. He sued her (FF 6); then non-suited his first claim (FF 7); then sued her again (FF 9); and even after the case was removed to federal court, Respondent continued to serve her with legal pleadings, in violation of 28 U.S.C. § 1446(d) (FF 19, 21).

Neither the attorney members nor the public member of the Hearing Committee are blind to the fact that for a lay person such as Ms. Quarles, the mere fact of being sued is both threatening and worrisome. The suit against Ms. Quarles is now a matter of record. She may have to disclose and explain that suit forever in connection with financial or personnel matters. But for the fortuitous intervention of Ms. Quarles's Westfall Act protection − a factor which Respondent probably did not foresee, just as he did not foresee the administrative exhaustion requirements of the FTCA (FF 20) − Ms. Quarles would have become mired in an expensive and threatening lawsuit. And that was precisely Respondent's intention.

If the record of this case establishes anything by clear and convincing evidence (and particularly as discussed in this Section B(5)), it is that Respondent harries those he sees as opponents, whether it is opposing counsel such as Mr. Gold, discussed in the next subheading of this Report; a sitting federal judge (FF 150, 160-61); or people he thinks have wronged him (*e.g.*, FF 83-85 (Respondent's harassment of Ms. Dettling after she terminated his employment and refused to re-hire him)). As Ms. Dettling wrote in her October 28, 2016 motion for sanctions against Respondent, harassment is Respondent's standard operating procedure − his "*modus operandi*." FF 138.

Respondent's MSPB Appeal

ODC asserts (ODC Br. at 67-68) that while representing himself in the MSPB appeal Respondent violated Rule 4.4(a) by: (1) sending Mr. Gold (and his co-workers at USDA) multiple e-mails that threatened Mr. Gold and subjected him to personal criticism; and (2) repeating his threats and allegations in pleadings filed with the MSPB. The Hearing Committee agrees with both of ODC's contentions.

There is clear and convincing evidence that in connection with Respondent's MSPB appeal he sent Mr. Gold a stream of e-mails (often with copies to Mr. Gold's co-workers at USDA) that had no substantial purpose other than to burden Mr. Gold and embarrass him in front of his USDA colleagues and supervisors. FF 42 (e-mails dated 10/29/15); 44 (e-mails dated 10/30/15); 47 (e-mail dated 11/13/15); 48 (e-mail dated 11/16/15); 49 (e-mail dated 11/17/15); 58 (e-mail dated 12/5/15); 59 (e-mail dated 12/8/15); 60 (e-mails dated 12/9/15); 65 (e-mails dated 12/21/15). Furthermore, there is clear and convincing evidence in the record that Mr. Gold felt embarrassed and burdened by these e-mails, because on November 17, 2015 he filed a motion for sanctions and a protective order against Respondent predicated in substantial part on those e-mails, and seeking to put a stop to them. FF 51.

There is also clear and convincing evidence in the record that Respondent filed pleadings with the MSPB for the purpose of embarrassing and burdening Mr. Gold in the same way as Respondent's e-mails. FF 53 (Respondent's November 19, 2015 "Reply to Agency Motion for Sanctions," which, *inter alia*, criticized Mr. Gold for citing *Loigman*, a New Jersey case); FF 54 (Respondent's frivolous November

19, 2015 "*Daubert*" motion, already discussed in Section B(1) of this Report); and FF 62 (Respondent's December 9, 2015 motion for sanctions against Mr. Gold, which once again attacked him for alleged ethics violations and for a "most egregious misstatement of law" by mis-citing *Loigman*).

The Dettling Matter

ODC asserts (ODC Br. at 68-69) that Respondent violated Rule 4.4(a) in the following respects: (1) through e-mails he sent and internet postings he made while representing Diane Schooley in claims against Ms. Dettling (and against her former associate, Ms. Joanne Dekker); (2) his campaign of harassment against Ms. Dettling after she terminated his employment; (3) false and derogatory claims Respondent made in a September 28, 2016 e-mail to MSPB Chief Judge Cassidy about an allegedly improper *ex parte* contact between Ms. Dettling and ALJ Hudson, or other misconduct; and (4) continuing his "vendetta" against Ms. Dettling while representing the plaintiff in the *Hall* litigation. For the reasons set forth below, the Hearing Committee concludes some − but not all − of Respondent's communications regarding the Schooley representation violated Rule 4.4(a); that his campaign of harassment against Ms. Dettling prior to becoming involved in the *Hall* litigation did not violate Rule 4.4(a); that Respondent's e-mail to MSPB Chief Judge Cassidy violated Rule 4.4(a); and that Respondent also violated Rule 4.4(a) by pursuing his "vendetta" against Mr. Dettling during the *Hall* litigation.

(1) The Schooley Representation

Via e-mails dated March 15, 2016 (FF 95), March 18, 2016 (FF 96), and April 3, 2016 (FF 98) which Respondent sent to Ms. Dettling and Ms. Dekker, he asked for information about their representation of Diane Schooley and then demanded a settlement on her behalf. Although the e-mails had a harsh and (particularly as to the April 3, 2016 e-mail) threatening tone, the Hearing Committee cannot conclude, as Rule 4.4(a) requires, that e-mails had "no substantial purpose other than to embarrass, delay, or burden a third person." Respondent was raising issues about the quality of representation provided to his then-client, Ms. Schooley, by Ms. Dettling and Ms. Dekker, and making a settlement demand.

In his internet postings on April 7, 2016 (FF 100) and May 2, 2016 (*id*. n. 62), however, Respondent crossed the line between arguably proper representation of a client's interests and improperly acting to inflict intentional harm on Ms. Dettling and Ms. Dekker. In the context of stating that he represented a former client of Ms. Dettling, Respondent broadcasted to the world the accusations that Ms. Dettling had tried to cheat him, that Ms. Dettling and Ms. Dekker had mishandled a client's case and were being sued for malpractice, and that Ms. Dettling was a "slimeball" (*id*.). Ms. Dettling clearly felt embarrassed and burdened by Respondent's April 7, 2016 e-mail: she testified that she viewed it as "extortion." *Id*. This repeated use by Respondent of a means of mass communication directed to unknown third parties − in contrast to the prior e-mails he directed solely to Ms. Dettling and Ms. Dekker − in order to say derogatory things about Ms. Dettling and Ms. Dekker is clear and

convincing evidence that Respondent acted with no substantial purpose other than to embarrass and burden Ms. Dettling and Ms. Dekker, in violation of Rule 4.4(a).

(2) Respondent's Harassment of Ms. Dettling

There is clear and convincing evidence in the record that after Ms. Dettling terminated Respondent's work for her, he undertook a prolonged campaign to embarrass and burden her. FF 83-85. Long ago, Justice Brandeis reminded the nation that one of the most essential rights in society is the right to be left alone, *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting). Respondent's non-litigation harassment of Ms. Dettling certainly deprived her of that right. Nevertheless, much of what Respondent did to harm Ms. Dettling he did as an individual, not as an attorney. The Hearing Committee cannot conclude that there is a basis for finding a live controversy existed between Respondent and Ms. Dettling after Ms. Dettling terminated Respondent's employment (FF 80) and paid him in full (FF 82), such that his harassment campaign prior to the *Hall* suit occurred in the context of Respondent representing himself. The Hearing Committee therefore concludes that Respondent's non-representational harassment of Ms. Dettling, however hurtful and mean-spirited as it was, did not violate Rule 4.4(a) because, as pointed out in *Fastov*, Board Docket No. 10-BD-096, at 33, 34, 38 ¶ 6, Rule 4.4(a) is focused on misconduct involved "[i]n representing a client."

(3) The E-Mail to MSPB Chief Judge Cassidy

Respondent's September 28, 2016 e-mail to MSPB Chief Judge Cassidy stands on an entirely different footing. In this e-mail, Respondent clearly was acting

as the attorney for Mr. Hall: the e-mail begins with the statement, "I represent Steven H. Hall in a federal district court appeal of two MSPB decisions in June of this year." FF 119; DCX 76. The body of the e-mail contains allegations that Ms. Dettling either had engaged in improper *ex parte* contact with ALJ Judson, or had lied to Mr. Hall about having had such contact. FF 119. Both alternatives were calculated to besmirch Ms. Dettling's reputation before a federal agency where she regularly practiced. To make sure this message was spread more broadly, Respondent sent a copy of the e-mail to the Director of MSPB's headquarters in Washington, D.C. *Id*. The e-mail had no substantial purpose other than to embarrass and burden Ms. Dettling (and, quite likely, ALJ Hudson), because MSPB's June 23, 2016 ruling on Mr. Hall's case had already rejected the allegation of improper *ex parte* contact between Ms. Dettling and ALJ Hudson. FF 102. There is also clear and convincing evidence that Respondent's e-mail in fact embarrassed and burdened Ms. Dettling, as she testified before the Hearing Committee. FF 119; Tr. 205:12-206:1. Accordingly, the Hearing Committee concludes that Respondent's September 28, 2016 e-mail to MSPB Chief Judge Cassidy violated Rule 4.4(a).

(4) The "Vendetta" in the *Hall* Litigation

There is clear and convincing evidence in the record that on multiple occasions in the *Hall* litigation, Respondent went out of his way to relentlessly attack Ms. Dettling's character and her work as an attorney. FF 117 (September 26, 2016 "Motion [for] Leave to Amend & Supporting Memorandum of Law"); FF 128 (October 11, 2016 "Motion to Disqualify Rosemary Dettling"); FF 136 (October 26,

2016 "Second Amended Complaint"); FF 146 (November 6, 2016 "First Reply to Motion for Sanctions"); FF 147 (November 7, 2016 "Second Response to Motion for Sanctions"); FF 151 (November 28, 2016 "Second Response to Defendant Dettling's Eight Pleadings"); FF 156(b) (December 19, 2016 "Opposition to Costs"); FF 157 (December 20, 2016 "Memorandum in Support of Opposition to Fees Petition"); FF 158 (December 20, 2016 "Reply to Declaration of Costs Exhibit B"); FF 159 (December 26, 2016 "Reply to Ms. Dettling's Westlaw Bill").

These attacks on Ms. Dettling were in large measure gratuitous and non-germane: Judge Boasberg's December 1, 2016 sanctions order against Respondent ruled that "[Respondent's] filings did not merely seek the advancement of meritless positions, but they were also composed of largely irrelevant diatribes against Dettling that 'utterly' lacked any 'colorable basis' in law" and that Respondent, in bad faith, "improperly sought to hijack this terminated suit solely to advance his own personal vendetta against Dettling." FF 153.

The Hearing Committee accordingly concludes that in the pleadings cited in the first paragraph of this subheading (4), Respondent violated Rule 4.4(a).

The Stevenson Case

ODC contends (ODC Br. at 69) that Respondent violated Pa. Rule 4.4(a) in two ways: (1) filing frivolous pleadings in the *Stevenson* case that had no substantial purpose other than to burden the School District by forcing it to incur substantial and unwarranted legal fees; and (2) sending harassing and/or embarrassing e-mails to, or making harassing and/or embarrassing internet postings about, School District

employees, which had no substantial purpose other than to embarrass and/or burden the e-mail recipients or persons who were the subject(s) of the internet postings. The Hearing Committee concludes there is clear and convincing evidence in the record supporting both of ODC's contentions, although, as to item (2), not in each respect asserted by ODC.

(1) Frivolous Pleadings Burdening the School District

Based on clear and convincing testimony from Mr. Kristofco (FF 267), the Hearing Committee concludes that the School Board was financially burdened by incurring substantial legal expenses in responding to Respondent's frivolous pleadings in the *Stevenson* case. The Hearing Committee also concludes that pleadings filed by Respondent in the *Stevenson* case as discussed in the following subheadings (a), (b), and (c) had no substantial purpose other than to burden the School District.

(a) First, in Subsection B(1) of this Part III, the Hearing Committee has concluded that Respondent violated Pa. Rule 3.1 (asserting frivolous claims) in four substantively frivolous pleadings (as well as numerous other unauthorized pleadings that were procedurally frivolous because Respondent filed them after he had lost local counsel sponsorship). These four substantively frivolous pleadings are: Respondent's May 18, 2016 request for a change of venue (FF 203); Respondent's September 23, 2016 first motion for sanctions against the School District's legal counsel (FF 228); Respondent's October 20, 2016 motion for a default

judgment (FF 235); and Respondent's January 8, 2017 second motion for sanctions against the School District's legal counsel (FF 264(b)).

With respect to the four identified substantively frivolous pleadings, the Hearing Committee notes:

-- The School District filed a response on May 31, 2016 (FF 205) to Respondent's May 18, 2016 frivolous request for a change of venue (FF 203), a request which Judge Schmehl promptly denied on August 10, 2016 (FF 210(a)).

-- The School District filed a response on October 7, 2016 (FF 232) to Respondent's frivolous September 23, 2016 motion for sanctions (FF 228), a motion which Magistrate Judge Lloret promptly denied on October 11, 2016 (FF 233).

-- The School District filed a response on November 3, 2016 (FF 236) to Respondent's frivolous October 20, 2016 motion for entry of a default judgment (FF 235).

-- With respect to Respondent's January 8, 2017 frivolous second motion for sanctions against the School District's legal counsel (FF 264(b)), the School Board did not file a response to the motion only because on January 11, 2017 Judge Schmehl struck all pleadings filed by Respondent after December 9, 2016 (FF 265).

Because the Hearing Committee has found for the reasons stated in Subsection B(1) of this Part III that no objective lawyer would have concluded that the four pleadings discussed above had any merit, the Hearing Committee also concludes that those pleadings had no substantial purpose other than to burden the School District, and therefore violated Pa. Rule 4.4(a). In addition, the Hearing Committee

concludes that Respondent's September 23, 2016 and January 8, 2017 motions for sanctions (FF 228 and 264(b)) were intended by him to embarrass and burden the School District's legal counsel personally by frivolously accusing them of wrongdoing, again in violation of Pa. Rule 4.4(a).

(b) Second, ODC asserts (ODC Br. at 69, referring to PFF 201) that Respondent, in violation of Pa. Rule 4.4(a), filed additional meritless pleadings that had no substantial purpose other than to burden the School District with legal expenses. The Hearing Committee in large part[166] agrees, and concludes the ODC's position is supported by clear and convincing evidence. These additional meritless pleadings, and the reasons why the Hearing Committee concludes they had no substantial purpose other than to burden the School District and violated Pa. Rule 4.4(a), are:

-- Respondent's September 8, 2016 motion for partial summary judgment with respect to Count II (retaliation) of plaintiff's Second Amended Complaint, which was deficient for the many reasons stated in FF 217. The court never ruled on Respondent's motion (DCX 115 at 5-16), an entirely foreseeable outcome because of the motion's many flaws (FF 217), so it was of no benefit to Mr. Stevenson. However, the School District was put to the expense on September 30, 2016 of filing an opposition (FF 230) that pointed out the numerous procedural and substantive flaws in Respondent's motion and provided a specific statement of material facts in

[166] The Hearing Committee cannot conclude there was no substantial purpose to the motion for leave to file a fourth amended complaint filed by Respondent on December 6, 2016 (FF 252), to which the School District filed an opposition on December 20, 2016 (FF 261).

controversy (*id*. n. 118). Respondent's motion was so flawed, including the fact that it was premature in light of the School District's August 8, 2016 motion to dismiss the Second Amended Complaint (FF 208), the Hearing Committee concludes it lacked any substantial purpose other than to burden the School District.

-- Respondent's November 21, 2016 motion for an indefinite stay of the case (FF 245), filed three days after Judge Schmehl's November 18, 2016 Order (FF 243) directing Respondent to show cause why he should not be held in contempt. The School District opposed the motion, arguing that Respondent was only attempting to delay the case and transparently seeking to avoid sanctions. FF 250. The court evidently agreed, because the day after Respondent's motion was filed Judge Schmehl entered an order directing him to be present at the show cause hearing on December 9, 2016 or face arrest by the United States Marshals Service. FF 247 and *id*. n. 123. However, less than three weeks after Respondent sought the stay, on December 8, 2016 he filed an unexplained "Withdrawal" of the stay motion. FF 255(c). These facts lead the Hearing Committee to conclude that Respondent was simply stalling for time, and that no substantial purpose underlay his stay motion other than to burden the School District.

-- Respondent's December 19, 2016 "Motion to Rescind of [sic] Defendant's Protective Order." FF 260(a). Respondent's motion was procedurally frivolous and was stricken by Judge Schmehl because after December 9, 2016 there was no longer a local counsel to sponsor Respondent and therefore he was not authorized to file any pleadings. FF 265. The motion was also untimely, because the court had given

Respondent until October 13, 2016 to respond to the School District's motion for a protective order, and he had failed to do so. FF 233-34. The motion, however, caused the School District to bear the predictable expense of filing an opposition on January 3, 2017, pointing out that Respondent's motion was clearly untimely. FF 263(a). These facts lead the Hearing Committee to conclude there was no substantial purpose underlying Respondent's "Motion to Rescind" other than to burden the School District.

-- Respondent's pleading entitled "Plaintiff's Withdrawal" filed December 19, 2016, purported to effect a voluntary withdrawal of Mr. Stevenson's complaint. FF 260(c). Respondent's pleading was procedurally frivolous and was stricken by Judge Schmehl because after December 9, 2016 there was no longer a local counsel to sponsor Respondent and therefore he was not authorized to file any pleadings. FF 265. The "Notice of Withdrawal" was of no benefit to Mr. Stevenson: after Judge Schmehl directed him either to file a dismissal complying with Fed. R. Civ. P. 41(a) or to resume representing himself *pro se* (*id.*), Mr. Stevenson indicated − contrary to Respondent's "Notice of Withdrawal" − that he actually wanted to continue the case, even if only as a *pro se* plaintiff (FF 266). However, the "Notice of Withdrawal" caused the School District to bear the predictable expense of filing a response on January 3, 2017 pointing out that the "Withdrawal" was nugatory because it was not signed by Mr. Stevenson or by any attorney then authorized to represent him, and that the School District had not consented to the voluntary withdrawal. FF 263(b). These facts lead the Hearing Committee to conclude there was no substantial

purpose underlying Respondent's "Notice of Withdrawal" other than to burden the School District.

(c) Third, ODC asserts (ODC Br. at 69) that Respondent's conduct violating Pa. Rule 3.2 (not making reasonable efforts to expedite litigation) also violated Pa. Rule 4.4(a). The only pleading in this category (c) not already discussed in this subheading (1) that the Hearing Committee concludes violated Pa. Rule 4.4(a) is Respondent's November 25, 2016 motion for partial summary judgment. FF 248. For the reasons stated in Subsection B(2) of this Part III, Respondent could not have entertained the slightest reasonable hope that the court would treat his partial summary judgment motion as conceded, and therefore the motion served no substantial purpose other than to burden the School District.

(2) Respondent's E-Mails and Internet Postings

ODC argues (ODC Br. at 69) that various communications originating with Respondent (e-mails or internet postings) violated Pa. Rule 4.4(a) because their purpose was to harass and/or embarrass School District employees.

On August 21, 2016 and September 7, 2016 Respondent sent two different e-mails to Mr. Steve Meiswich, a School District teacher. FF 211 and 214. The Hearing Committee concludes that the first e-mail did not violate Pa. Rule 4.4(a); it had at least some facial relationship to Mr. Stevenson's lawsuit because Respondent was basically seeking information relating to his client's claims. FF 211. The Hearing Committee concludes, however, that the second e-mail to Mr. Meiswich clearly violated Pa. Rule 4.4(a). The e-mail was menacing in tone and content,

calling Mr. Meiswich a "management rat" and a "management sp[y]," and threatening him with legal proceedings, punitive damages, legal costs, garnishment of wages, placing liens on his cars, and ethics charges. FF 214. The substantial purpose of this e-mail therefore was − as the School District argued in its September 28, 2016 motion for a protective order (FF 229(c)) and as the court ruled on November 18, 2016 in barring Respondent from contacting School District employees outside of the normal discovery process (FF 244) − to burden Mr. Meiswich, as well as to attempt to obtain evidence in a manner that violated Mr. Meiswich's rights.

In addition to the Meiswich e-mails, on September 1, 2016 Respondent sent an e-mail to members of the School District's school board, and other individuals. FF 212. Although this e-mail contained threats of "years of costly litigation" and "much hassle," these threats did not have the same menacing tone as those in Respondent's September 7, 2016 e-mail to Mr. Meiswich, and overall the September 1, 2016 e-mail had at least some facial relationship to Mr. Stevenson's lawsuit by proposing another round of settlement negotiations.

Respondent also made two separate internet postings to the School Board's website. In the first posting, on September 7, 2016 posting (FF 215), Respondent suggested that assistant superintendent Goffredo (a target of some of the allegations in the *Stevenson* case (FF 195; 217 n. 109)) was "caught" secretly videotaping female teachers while they exercised. This posting was grossly inappropriate and not at all related to the issues of the *Stevenson* case. The Hearing Committee accordingly

concludes there is clear and convincing evidence that Respondent's September 7, 2016 internet posting had no substantial purpose other than to embarrass and burden Mr. Goffredo, and violated Pa. Rule 4.4(a).

The Hearing Committee concludes, however, that Respondent's second website posting, on September 8, 2016 posting (FF 216), did not violate Pa. Rule 4.4(a). This second posting had at least some facial relationship to Mr. Stevenson's lawsuit because the posting commented on alleged racial discrimination in the staff operations of the School District, an issue raised in Mr. Stevenson's October 30, 2015 complaint against the School Board (FF 195).

6. Rule 8.4(d) − Interference With the Administration of Justice

ODC alleges that Respondent violated this Rule in Count One (USDA, including both the Quarles defamation case and Respondent's MSPB appeal), Count Two (Dettling), and Count Four (Stevenson) of the Specification.

a. Text of the Rule

D.C. Rule 8.4(d) states that it is professional misconduct to "[e]ngage in conduct that seriously interferes with the administration of justice." As noted in Section III(A) of this Report, Va. Rule 8.4 does not contain analogous language. Pa. Rule 8.4(d) generally tracks the language of D.C. Rule 8.4(d) by stating it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice," but Pa. Rule 8.4(d) omits the word "seriously" that is present in D.C. Rule 8.4(d).

b. Applicable Principles

For the purposes of applying D.C. Rule 8.4(d), the Court for many years has applied the tri-partite analytical framework stated in *In re Hopkins*, 677 A.2d 55, 61 (D.C. 1996); *In re Martin*, 67 A.3d 1032, 1051 (D.C. 2013). First, the conduct must be improper, and such impropriety can be shown, for example, if the conduct violates a specific statute, court rule, or court procedure. Second, the conduct must bear directly upon the judicial process with respect to an identifiable case or tribunal. Third, the conduct must taint the judicial process in more than a *de minimis* way, *i.e.*, it must at least potentially impact the judicial process to a serious and adverse degree. *Hopkins*, 677 A.2d at 60-61; *Martin*, 67 A.3d at 1051. Therefore, to find a violation of D.C. Rule 8.4(d) does not require a demonstration that the violator actually caused the court to malfunction or make an incorrect decision. *Hopkins*, 677 A.2d at 59-60; *In re Uchendu*, 812 A.2d 933, 941 (D.C. 2002).

Filing a frivolous lawsuit or a frivolous appeal taints the judicial process in more than a *de minimis* way for the purposes of D.C. Rule 8.4(d) because such actions waste the time and resources of the court, and may cause opposing parties unwarranted delay and expense. *Spikes*, 881 A.2d at 1119, 1127; *Fastov*, Board Docket No. 10-BD-096, at 36; *Barber*, Board Docket Nos. 10-BD-076, *et al*. (BPR Dec. 31, 2013), at 25;[167] *Yelverton*, 105 A.3d at 427. In assessing whether an attorney is an "abusive litigator" rather than being merely litigious, courts look to

[167] On review, the Court adopted the Board's recommended sanction of disbarment. *Barber*, 128 A.3d 637.

the number, content, frequency, and disposition of a respondent's court filings. *See In re Powell*, 851 F. 2d 427, 434 (D.C. Cir. 1988). As stated in Comment [2] to Rule 8.4, failure to obey a court order is also a violation of Rule 8.4(d). Obstructionist litigation tactics at the expense of the court and opposing counsel and using the judicial system for the purpose of harassing others likewise violate D.C. Rule 8.4(d). *Fastov*, Board Docket No. 10-BD-096, at 17, 41. Furthermore, as the Board stated in *Fastov* (*id*. at 36), an entire course of conduct in litigating a case and pressing frivolous claims can constitute a violation of D.C. Rule 8.4(d):

> Here, [Fastov] filed and pursued frivolous claims which . . . were brought to harass his opponents. In pursuing those claims, [Fastov] flooded the courts with voluminous, duplicative, and meritless motions. His conduct directly burdened the federal courts in which he filed his actions and, while his pleading may have been summarily denied, by requiring those courts to wade through his verbose and repetitive pleadings, [Fastov] abused the judicial process.

With respect to the scope and application of Pa. Rule 8.4(d), ODC cites two Pennsylvania cases (ODC Br. at 70-71), *Office of Disciplinary Counsel v. Koresko*, No. 119 DB 2013 (Pa. 2015), and *Office of Disciplinary Counsel v. Quinn*, No. 97 DB 2012 (Pa. 2014). *Koresko* considered, *inter alia*, claims that an attorney violated Pa. Rule 8.4(c) (dishonesty) as well as Pa. Rule 8.4(d), and − without stating precisely which conduct violated either or both of those two rules − held that false allegations the respondent attorney made in his pleadings, his speculative claims about a judge's political bias in denying one of his motions, his false claims that he represented a party who he did not, and his filing false and contradictory affidavits

by a witness in a case where he represented himself *pro se* violated those two rules.[168] *Quinn* held that an attorney's failure to comply with two specific court orders[169] violated Pa. Rule 8.4(d).

Pennsylvania does not have an analytical framework for its version of Rule 8.4(d) such as is the tri-partite test applied to D.C. Rule 8.4(d) pursuant to *Hopkins*, *supra*. Pennsylvania also does not follow District of Columbia law in holding that attorney misconduct which may only potentially affect a judicial proceeding violates Pa. Rule 8.4(d). *Office of Disciplinary Counsel v. DiAngelus*, 589 Pa. 1, 8, 907 A.2d 452, 456 (Pa. 2006). The United States District Court for the Eastern District of Pennsylvania does, however, follow the rule that an attorney's undisclosed "ghost writing" of *pro se* pleadings violates Pa. Rule 8.4(d) because it "interfere[s] with the Court's ability to superintend the conduct of counsel and parties during the litigation." *United States v. Eleven Vehicles*, 966 F. Supp. 361, 367 (E.D. Pa. 1997).

c. Discussion

The Quarles Defamation Case

ODC asserts (ODC Br. at 71) that Respondent violated D.C. Rule 8.4(d) in the Quarles defamation case by: (1) pursuing a frivolous defamation suit against Ms.

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[168] *Koresko* also held that the respondent attorney's frivolous court filings, dishonest conduct, and bad faith efforts to obstruct his opponents' legitimate discovery requests violated Pa. Rules 3.1, 3.2, 3.3(a)(1), 3.3(a)(3), 3.4(b), 4.1(a), and 4.4(a).

[169] One order directed the respondent attorney to provide discovery materials to opposing counsel, and the respondent attorney's failure to do so resulted in the filing of a motion for sanctions, which the court granted. The court found that the respondent attorney had engaged in contemptuous conduct, and entered a sanctions order directing the respondent attorney to pay $375 within twenty days, an order which the respondent attorney also failed to obey (payment was made more than two years after the sanctions order).

Quarles; (2) continuing to file and serve pleadings on Ms. Quarles in the state court action after it had been removed to federal court; and (3) making frivolous claims in the district court and/or on appeal. As noted in Section (A) of this Part III, however, Virginia Rule 8.4 does not contain language analogous to D.C. Rule 8.4(d)'s proscription against conduct that "seriously interferes with the administration of justice." The Hearing Committee therefore concludes that Respondent's alleged misconduct, which clearly took place before tribunals in the Commonwealth of Virginia, did not violate Va. Rule 8.4.

Should the Hearing Committee be mistaken in this conclusion, *i.e.*, if under either D.C. Rule 8.4(d) or Va. Rule 8.4 a "serious interference with the administration of justice" standard is applicable, then most of ODC's contentions are valid. Respondent's filing of the frivolous lawsuit against Ms. Quarles, and his frivolous claims before the district court and/or the Fourth Circuit − that United States Attorney's Boente's certification under the Westfall Act was perjured (FF 24(a), 34), that DOJ violated Respondent's rights under the federal Privacy Act (FF 23), that DOJ tampered with the evidence in the case (FF 25(b)), and that DOJ's brief in support of its motion to dismiss Respondent's claim was not in a proper type font (FF 24) − all seriously interfered with the administration of justice. All of these claims were improper because they were substantively specious; they related directly to an identifiable case or tribunal; and they caused the district court and the Fourth Circuit to spend time dealing with frivolous allegations − time that could have been better spent on meritorious matters.

The one point on which the Hearing Committee would differ with ODC if either D.C. Rule 8.4(d) or Va. Rule 8.4 applies is regarding ODC's contention that Respondent's continued filing and service of pleadings on Ms. Quarles in the state court action after it was removed to federal court seriously interfered with the administration of justice. Although Respondent's conduct was clearly improper because it violated 28 U.S.C. § 1446(d) (FF 19), Judge Brinkema's decision (FF 29) paid no attention to DOJ's making this issue a matter of record (FF 21), nor was it involved in Respondent's appeals before the Fourth Circuit (FF 31, 35). This minor procedural matter therefore would not be viewable as "serious interference."

Respondent's MSPB Appeal

ODC asserts (ODC Br. at 71) that Respondent violated D.C. Rule 8.4(d) in his MSPB appeal by: (1) pursuing a frivolous "whistleblower" appeal to the MSPB when there was no basis for MSPB jurisdiction; (2) threatening Mr. Gold by e-mails and frivolously attacking him in pleadings during the course of the MSPB proceeding; (3) asking Mr. Gold to withdraw his ODC ethics complaint against Respondent in exchange for Respondent's withdrawing his California State Bar ethics complaint against Mr. Gold − a complaint which the California State Bar had already rejected; and (4) making repeated unauthorized filings with the MSPB. The Hearing Committee concludes there is clear and convincing evidence supporting all four of ODC's contentions.

(1) The Frivolous MSPB Appeal

Respondent's MSPB "whistleblower" appeal was improper because it was clearly frivolous. As Mr. Gold testified (FF 37 (Tr. 321:16-324:2) and FF 41 (322:3-4; 341:21-342:5; 348:2-4)), and as the ALJ ruled in dismissing Respondent's appeal for lack of jurisdiction, Respondent had no non-frivolous claim for asserting MSPB jurisdiction because Respondent was not a federal employee or an applicant for federal employment (FF 71(a),(b),(d)) and because Respondent's allegedly protected "disclosure" of a "gross waste" of federal funds was based on nothing more than Respondent's own "workplace disputes" (FF 71(c)). The "whistleblower" appeal clearly bore upon a specific case pending before a specific tribunal, and it tainted the MSPB's adjudicatory process in more than a *de minimis* way by preoccupying the MSPB and the ALJ with a matter that never should have been filed in the first place.

(2) Attacking Mr. Gold

During the course of the MSPB proceeding Respondent made multiple personal e-mail attacks on Mr. Gold that were directly related to the case. FF 42 (threats of ethics complaint following the filing of a routine motion (FF 41) for a stay of MSPB deadlines pending a ruling on jurisdictional issues); FF 44 (notice of ethics complaint, coupled with accusation of perjury and threat of a motion for sanctions); FF 47 (threats of ethics complaints coupled with accusation of lack of candor to a tribunal); FF 48 (threat of defamation suit based on alleged misrepresentations of fact in a pleading filed by Mr. Gold − who, in Respondent's words, "need[ed] to be taught a lesson"); FF 49 (e-mail referring to information from

the California State Bar's website, and asking Mr. Gold, "[p]lease confirm that this is you"); FF 58 (threat of a new "three count" ethics complaint to the California State Bar); FF 59 ("Notice of California Bar Complaint and MSPB Sanctions Motion"); FF 60 (same, coupled with accusation to Mr. Gold's supervisors that he was a "dishonest lawyer"); FF 65 (threats of additional ethics complaint, coupled with accusation of misrepresenting law and facts to the MSPB). Respondent also made a personal attack on Mr. Gold in Respondent's frivolous "*Daubert*" motion by improperly accusing him of testifying as an "expert" through the pleadings Mr. Gold filed with the MSPB. FF 54.

Respondent's attacks were improper because they interfered with Mr. Gold's ability to act as an advocate representing the USDA and advising the MSPB. In Mr. Gold's motion to the MSPB for a protective order (FF 51), he correctly argued that the attacks were "an effort to bully and intimidate [Mr. Gold] in order to create a chilling effect and disrupt the proceedings." To guard against such disruptive litigation tactics, statements made by legal counsel during the course of an adjudicatory proceeding are generally held not to be grounds for a defamation suit – a doctrine with which Respondent was familiar and which he cited in his own defense when facing motions for sanctions that were filed against him (FF 147(b); 264(b) n. 133). Similarly, § 19(a) of D.C. Bar Rule XI confers absolute immunity on (*inter alia*) the attorneys who represent ODC so that they can carry out their duties conscientiously and without being worried about the dangers posed by litigiously-minded persons.

Respondent's attacks against Mr. Gold clearly bore upon a specific case pending before a specific tribunal. That the attacks also tainted the adjudicatory process in more than a *de minimis* way is shown not only by the additional work imposed on the MSPB through the filing of USDA's motion for a protective order (FF 51) and the filing of Respondent's frivolous "*Daubert*" motion (FF 54), but also by the fact that Mr. Gold was even fearful of testifying before the Hearing Committee in this matter (FF 50).

(3) Respondent's Attempt to Induce Mr. Gold to Withdraw His ODC Ethics Complaint

On February 3, 2016, Respondent sent Mr. Gold an e-mail stating, *inter alia*, "in the spirit of fair play and reciprocity, I will withdraw my ethics complaint in California if you withdraw yours in DC." FF 68. Relying on *Martin*, 67 A.3d at 1051-52, ODC contends (ODC Br. at 71) that Respondent's attempt to get Mr. Gold to withdraw his ODC ethics complaint (FF 52) seriously interfered with the administration of justice in violation of Rule 8.4(d). In *Martin*, the Court held that the respondent attorney's including a provision in a settlement agreement with a client requiring the client to withdraw a pending ethics complaint was improper and violated Rule 8.4(d) because the proposed agreement had the potential to seriously impact the bar proceedings against Mr. Martin. *Id*. at 1051-52. The Hearing Committee agrees that the rationale and holding of *Martin* apply equally to Respondent's attempt to induce Mr. Gold to withdraw his ODC ethics complaint − a complaint that is a principal subject of Count One of the Specification in this matter. Respondent's action therefore had the potential of tainting the Bar's own disciplinary

process. Respondent's action was further improper because he attempted to obtain the withdrawal of Mr. Gold's ethics complaint by trickery: Respondent offered as an exchange "in the spirit of fair play and reciprocity" to "withdraw" a California State Bar complaint that had already been dismissed. FF 68. These actions by Respondent clearly violated Rule 8.4(d).

(4) Filing Unauthorized Pleadings With the MSPB

There is clear and convincing evidence in the record that Respondent violated Rule 8.4(d) through the repeated filing of unauthorized pleadings with the MSPB. The pleadings at issue are Respondent's November 19, 2015 "*Daubert*" motion (FF 54); Respondent's November 20, 2015 "First Reply to Agency Response" (FF 55); Respondent's December 9, 2015 "Motion for Sanctions and Second Reply to Agency Sanctions Motion" (FF 62); and Respondent's December 15, 2015 "Second Reply to Agency Jurisdictional Response" (FF 64).

All of the pleadings cited in the preceding paragraph were improper. In the initial October 27, 2015 Jurisdiction Order (FF 39), the ALJ prohibited additional filings directed to the jurisdictional issues in the case after the parties' initial filings, unless the ALJ granted permission for additional filings (FF 56). On November 9, 2015, Respondent filed his response to the ALJ's Jurisdiction Order, and on November 16, 2015 USDA's filed its opposition. FF 46. Respondent's "*Daubert*" motion, which was directed at least in part to the jurisdictional issues in the case (FF 54 (a),(b),(d)), therefore violated the ALJ's Jurisdiction Order. Respondent's "First Reply to Agency Response" which was also directed to the issue of MSPB

jurisdiction (FF 55) likewise violated the ALJ's Jurisdiction Order. Respondent's December 9, 2016 "Motion for Sanctions and Second Reply to Agency Sanctions Motion" (FF 62), which by its own terms was a "second reply," violated the MSPB's rules of procedure, 5 C.F.R. § 1201.55(b), providing, "Unless the judge provides otherwise, any objection to a written motion must be filed within 10 days from the date of service of the motion." (USDA's motion for sanctions was filed on November 17, 2015 (FF 51), and Respondent's initial reply to USDA's motion was filed on November 19, 2015 (FF 53)).[170] Respondent's "Second Reply to Agency Jurisdictional Response" (FF 64) violated both the ALJ's Jurisdiction Order and 5 C.F.R. § 1201.55(b).

All four of Respondent's pleadings discussed in this subheading (4) clearly bore upon a specific case pending before a specific tribunal, and they tainted the MSPB's adjudicatory process in more than a *de minimis* way because they repeatedly imposed on the time and resources of the MSPB and the ALJ, and, as indicated in Comment [2] to Rule 8.4, failure to obey the requirements of a tribunal is a violation of Rule 8.4(d).

The Dettling Matter

ODC contends (ODC Br. at 71-72) that in the Dettling matter Respondent violated Rule 8.4(d) in eleven different ways. The Hearing Committee concludes

[170] As Mr. Gold testified, "second replies" are not allowed by the MSPB. Tr. 371:3-7 (Gold).

there is clear and convincing evidence supporting eight[171] of ODC's eleven contentions, but not the contentions discussed below in subheadings (5), (8), and (9).

Preliminarily, the Hearing Committee discusses its conclusions that Respondent's misconduct described below in subheadings (1)-(4), (6)-(7), and (10)-(11) clearly meets the second and third prongs of the tri-partite analytical framework of *In re Hopkins*, *supra*. Respondent's conduct clearly bore on specific cases pending before specific tribunals, *i.e.*, the *Hall* litigation pending before Judge Boasberg (FF 111-49; 151-54; 156-59; 161-62), and Respondent's judicial misconduct complaints against Judge Boasberg filed with the Judicial Council for the District of Columbia Circuit (FF 150; 155; 160). Respondent's conduct also seriously interfered with the administration of justice. As discussed below, Judge Boasberg repeatedly had to deal with Respondent's procedurally improper and/or frivolous pleadings. Judge Boasberg scheduled two status conferences (FF 130, 149) specifically to deal with the disruption in the *Hall* case caused by Respondent's six weeks as counsel of record for Mr. Hall (September 16, 2016 (FF 115) to October 31, 2016 (FF 140)). Judge Boasberg sanctioned Respondent for vexatious and bad faith actions taken in violation 28 U.S.C. § 1927 while serving as plaintiff's counsel in the *Hall* litigation. FF 153. The Judicial Council also was burdened by having to deal with Respondent's two specious complaints of alleged judicial misconduct by

[171] Subheadings (6) and (7) overlap substantially with subheading (4), and the discussion in subheading (4) is therefore incorporated by reference in subheadings (6) and (7).

Judge Boasberg. FF 150; 155; 160. It could not be plainer that Respondent's actions seriously interfered with the administration of justice.

Bearing in mind the two general conclusions discussed above, in the following eleven subheadings the Hearing Committee principally discusses its conclusions as to whether there is clear and convincing evidence in the record that Respondent's conduct was improper – *i.e.*, the first prong of the tri-partite analytical framework of *Hopkins*.

(1) Respondent's Motion for Leave to File an Amicus Brief

On September 2, 2016, the court denied Respondent's motion for leave to file an amicus brief in the *Hall* case. Respondent's motion was clearly improper because, as Judge Boasberg ruled, Respondent sought to make a substantive filing in a case that had already been dismissed. FF 112.

(2) Respondent's Proposal to File an Amended Complaint

On September 26, 2016, Respondent filed a motion seeking leave to file an amended complaint. FF 117. Respondent's motion was clearly improper because, as the court ruled on September 30, 2016, the motion was not accompanied by the proposed amended pleading as required by the court's rules of procedure, and because Respondent had not obtained a vacatur of the dismissal of the case. FF 121. The motion was also clearly improper because Respondent's personal attacks on Ms. Dettling in the motion were part of what Judge Boasberg described (FF 153) as Respondent's personal vendetta against her. FF 117.

(3) Alleged *Ex Parte* Communication With the Court

One of the attacks on Ms. Dettling in Respondent's motion described in the previous subheading was the allegation that she engaged in *ex parte* communication with Judge Boasberg by the filing of her September 21, 2016 sealed motion to disqualify Respondent from representing Mr. Hall (FF 116). Respondent repeated this allegation in his October 11, 2016 motion to disqualify Ms. Dettling (FF 128), and in his October 26, 2016 "Second Amended Complaint (FF 136). The allegation was clearly improper for the reasons stated in FF 116; the allegation was completely baseless. The allegation was also clearly improper because this personal attack on Ms. Dettling was part of what Judge Boasberg described (FF 153) as Respondent's personal vendetta against her.

(4) Violating the Court's September 28, 2016 Minute Order

On September 28, 2016, Judge Boasberg entered a minute order which, *inter alia*, reiterated his directive to Respondent at the status conference that day regarding the need to move to vacate the dismissal of the case before proceeding with any other motions activity. FF 118. There is clear and convincing evidence in the record that Respondent made filings in the *Hall* case which violated this directive, and were therefore improper.

On October 8, 2016, Respondent filed a motion for default judgment asserting that all of the defendants in the *Hall* case had failed to file timely answers. FF 126. On October 16, 2016, Respondent filed an Affidavit in support of that motion (FF 131), and on October 18, 2016 he filed a "Clarification" attempting to justify the

filing of the Affidavit (FF 133). All three filings violated Judge Boasberg's September 28, 2016 minute order because, as Judge Boasberg ruled on October 11, 2016 in denying the underlying motion, Respondent "must first succeed in vacating the dismissal before seeking any affirmative relief." FF 127. All three pleadings were also specific subjects of Judge Boasberg's December 1, 2016 order sanctioning Respondent pursuant to 28 U.S.C. § 1927. FF 153.

Respondent's October 11, 2016 motion to disqualify Ms. Dettling (FF 128) and his October 20, 2016 purported "Withdrawal" of that motion (FF 135) likewise violated the September 28, 2016 minute order because they related to requests for affirmative relief before Respondent had obtained vacatur of the dismissal (and the Motion to Disqualify was, as Judge Boasberg ruled, "plainly frivolous" (FF 129)). The Motion to Disqualify was also a specific subject of Judge Boasberg's December 1, 2016 order sanctioning Respondent pursuant to 28 U.S.C. § 1927. FF 153.

Respondent's October 26, 2016 "Second Amended Complaint" (FF 136) and his November 1, 2016 "Supplemental Memorandum to Amended Complaint" (FF 141) further violated the September 28, 2016 minute order because they related to requests for affirmative relief before Respondent had obtained vacatur of the dismissal. On October 27, 2016, Judge Boasberg struck the "Second Amended Complaint" from the court docket on the ground that "[t]he dismissal has not been vacated" (FF 137), and that pleading was also a specific subject of Judge Boasberg's December 1, 2016 order sanctioning Respondent pursuant to 28 U.S.C. § 1927 (FF 153).

(5) Respondent's September 28, 2016 E-Mail to the MSPB

ODC contends (ODC Br. at 72), citing to PFF 89 which discusses Respondent's September 28, 2016 e-mail to MSPB Chief Judge Cassidy (FF 119), that Respondent violated Rule 8.4(d) by "filing pleadings alleging and reporting to the MSPB that Ms. Dettling engaged in improper ex parte communications with the AJ in Mr. Hall's MSPB case." However, there is no indication in the record that Respondent filed this e-mail with the MSPB as a pleading, that the MSPB accepted it as such, or that the MSPB paid any particular attention to it. The Hearing Committee accordingly concludes there is a lack of clear and convincing evidence that Respondent's e-mail to MSPB Chief Judge Cassidy seriously interfered with the administration of justice in violation of Rule 8.4(d).

(6) Respondent's Motion to Disqualify Ms. Dettling

Respondent's October 11, 2016 motion seeking to disqualify Ms. Dettling from representing herself as a defendant in the *Hall* case (FF 128) has already been discussed in subheading (4), *supra*, where the Hearing Committee concluded that the motion was clearly improper. That discussion is incorporated herein by reference. Furthermore, the motion was improper because it served as a vehicle for Respondent's continuing personal attack on Ms. Dettling as part of what Judge Boasberg described (FF 153) as Respondent's personal vendetta against her.

(7) Respondent's Motion for a Default Judgment

Respondent's October 8, 2016 motion for default judgment in the *Hall* case (FF 126) has already been discussed in subheading (4), *supra*, where the Hearing

Committee concluded that the motion was clearly improper. That discussion is incorporated herein by reference.

(8) Referring to an ODC Investigation in a Pleading

On September 26, 2016, Respondent filed a motion for leave to amend the complaint in the *Hall* case. FF 117. In the memorandum supporting that motion Respondent accused Ms. Dettling, *inter alia*, of "tortious and unethical conduct" (*id.*), and in that connection he stated ethics complaints against her had been filed with ODC by his client Mr. Hall (DCX 75 at 3) and by the Schooleys (*id.* at 7), whom Respondent also represented (FF 98). Respondent attached as Exhibit 3 to the motion a document relating to the Schooleys' ethics complaint. DCX 75 at 7.

Comment [2] to Rule 8.4 states, in pertinent part:

> The cases under paragraph (d) include acts by a lawyer such as: failure to cooperate with Disciplinary Counsel; failure to respond to Disciplinary Counsel's inquiries or subpoenas; failure to abide by agreements made with Disciplinary Counsel . . . . Paragraph (d) is to be interpreted flexibly and includes any improper behavior of an analogous nature to these examples.

Section 17(a) of D.C. Bar Rule XI provides that in general, "all proceedings involving allegations of misconduct by an attorney shall be kept confidential until either a petition has been filed . . . or an informal admonition has been issued." Section 17, however, does not specify directly on whom that duty of confidentiality is imposed. Section 17 also does not explicitly prohibit a client who has filed an ethics complaint against a lawyer, or the attorney for such a client, from publicly disclosing information relating to the alleged ethics violation, and ODC discusses

no case holding that such a disclosure constitutes serious interference with the administration of justice. The Hearing Committee therefore concludes that Respondent's reference to the ODC ethics complaints by Mr. Hall and the Schooleys in his motion as described above did not violate Rule 8.4(d).

(9) Threats of Ethics Complaints if Ms. Dettling Did Not Refund Mr. Hall's Legal Fees

Citing PFF 92 and 102, ODC contends (ODC Br. at 72) that Respondent violated Rule 8.4(d) by "threatening the filing of ethics complaint during the litigation if Ms. Dettling did not refund all the fees Mr. Hall had paid her." PFF 92 describes the "Memorandum of Law Supporting Motion for Lien" that Respondent served on Ms. Dettling but did not file (FF 123), and an e-mail he sent to her on September 28, 2016 (DCX 82 at 71) threatening legal action if Ms. Dettling did not refund legal fees Mr. Hall had paid her, pursuant to the terms of Mr. Hall's retainer agreement (FF 73). PFF 102 deals with Ms. Dettling's October 19, 2016 supplemental motion to disqualify Respondent (FF 134), stating that the motion described "threats of more lawsuits if she did not pay [Respondent's] clients." Neither PFF 92 nor PFF 102 discusses threats of filing ethics complaints. The Hearing Committee accordingly concludes that this contention by ODC is not supported by clear and convincing evidence.

(10) Filing Multiple Unauthorized Responses

ODC contends (ODC Br. at 72) that Respondent violated Rule 8.4(d) by "filing multiple and unauthorized responses to Ms. Dettling's motion for sanctions

and subsequent motion for costs." There is clear and convincing evidence in the record that supports ODC's position.

With respect to Ms. Dettling's motion for sanctions, after Respondent filed an initial response on November 6, 2016 (FF 146), on November 7, 2016 he filed a "Second Response to Motion for Sanctions" (FF 147), which Judge Boasberg ordered stricken on the day it was filed, stating (FF 148), "As Plaintiff's former counsel [Respondent] has already filed his Response to . . . Rosemary Dettling's Motion for Sanctions, the Court ORDERS that his second Response is STRICKEN." On November 28, 2016, Respondent filed another pleading directed to the issue of sanctions, entitled "Second Response to Defendant Dettling's Eight Pleadings" (FF 151), which Judge Boasberg ordered stricken on November 29, 2016, stating (FF 152), "[Respondent] has already filed a Response and does not get the opportunity to file multiple ones absent leave of Court."

With respect to Ms. Dettling's petition for costs, after Respondent filed an initial response on December 19, 2016 (FF 156(a)), on the same day he filed a second pleading, entitled "Opposition to Costs" (FF 156(b)). On December 20, 2016, Respondent filed a third opposition to Ms. Dettling's petition for reimbursement of costs, entitled "Memorandum in Support of Opposition to Fees Petition" (FF 157), and on the same day he filed a fourth opposition entitled "Reply to Declaration of Costs Exhibit B" (FF 158). On December 26, 2016, Respondent filed a fifth opposition, entitled "Reply to Ms. Dettling's Westlaw Bill" (FF 159). In his Order dated January 6, 2017 granting Ms. Dettling's petition for costs (FF 162) and in his

January 9, 2017 letter to the court's Committee on Grievances (DCX 104 at 2), Judge Boasberg explicitly stated that these multiple filings by Respondent were unauthorized.

Based on the foregoing facts, the Hearing Committee concludes that Respondent's multiple filings in response to Ms. Dettling's pleadings were improper, and violated Rule 8.4(d).

(11) Respondent's Attacks on Judge Boasberg

ODC contends (ODC Br. at 72) that Respondent violated Rule 8.4(d) by: (a) frivolously accusing Judge Boasberg of bias; and (b) attempting to intimidate the judge. There is clear and convincing evidence in the record supporting both contentions.

(a) Frivolous Accusations of Bias

The Hearing Committee has already concluded in Section B(1) of this Part III regarding Rule 3.1 that Respondent's allegations of bias against Judge Boasberg in Respondent's two complaints of judicial misconduct were frivolous. That discussion is incorporated herein by reference. The Judicial Council summarily denied in its entirety Respondent's first complaint (FF 150), stating that Respondent's allegations of judicial bias were "directly related to the merits of a decision or procedural ruling" or otherwise lacked "sufficient evidence to raise an inference that misconduct has occurred." FF 155. The Hearing Committee entertains no doubt that the Judicial Council likewise denied the allegations of bias in Respondent's second complaint of judicial misconduct (FF 160), because Respondent's 2018

filings in the *Hall* case seeking sanctions against Judge Boasberg (and others) pursuant to 28 U.S.C. § 1927 (FF 269, 271-72) make no mention of a Judicial Council ruling in favor of Respondent. These repeated filings by Respondent burdened the judges of the Judicial Council, who were diverted by Respondent's frivolous allegations from devoting their attention to more substantive matters. Respondent's allegations of bias in his judicial misconduct complaints were therefore clearly improper, and violated Rule 8.4(d).

(b) Attempted Intimidation

On December 1, 2016, Respondent made a Twitter posting directed to the plaintiffs in different case Judge Boasberg was handling, asking, "Would any of your members or supporters be interesting [sic] in protesting at the home of Judge Boasberg?" FF 161. Respondent's action was clearly improper. At a time when the issue of the ultimate sanction against Respondent was still undecided, Respondent used of a medium of mass communication directed to individuals entirely unrelated to him and the *Hall* case which was likely to − and in fact did (*id.*) − come to Judge Boasberg's attention, seeking to bring public pressure to bear on the adjudicative process itself. This was done not in the pursuit of any noble cause or issue of public importance,[172] but simply to carry forward Respondent's own sense of private grievance against Judge Boasberg. It was the dark whisper, "We know where you

[172] Judge Boasberg was in fact highly sympathetic to the plight of the members of the Sioux nation who were the plaintiffs in the other case he was handling. *See Standing Rock Sioux Tribe v. United States Army Corps of Engineers*, 205 F. Supp. 3d 4, 33 (D.D.C. 2016), citing *Bury My Heart at Wounded Knee*, Dee Brown's well-known exposition of the tragedies visited upon the Sioux nation by American expansionism.

live." This attempt at intimidation had the potential for causing serious interference with the administration of justice, and was a blatant violation of Rule 8.4(d).

The Stevenson Case

ODC contends (ODC Br. at 72-73) that in the *Stevenson* case Respondent violated Rule 8.4(d) in nine different ways. For the reasons set forth below, the Hearing Committee concludes there is clear and convincing evidence supporting seven of ODC's contentions, but not the contentions discussed in subheadings (2), and (4).

(1) Respondent's "Ghost Written" Pleading

On March 21, 2016, Mr. Stevenson, purportedly as a "*pro se*" plaintiff, filed a two-part pleading (FF 200), the second part of which was a lengthy legal argument opposing the School District's initial motion to dismiss Mr. Stevenson's complaint. That opposition was written by Respondent, but it contained no disclosure to the court that he wrote it. FF 200(b). The United States District Court for the Eastern District of Pennsylvania takes the position that a lawyer's "ghost writing" pleadings for a *pro se* litigant without disclosing the lawyer's involvement is a violation of Pa. Rule 8.4(d). *United States v. Eleven Vehicles*, 966 F. Supp. 361, 367 (E.D. Pa. 1997) ("Knowing whether the pleadings were prepared by a lawyer or non-lawyer is therefore important to the administration of justice . . . ."). The Hearing Committee accordingly concludes that Respondent's conduct violated Pa. Rule 8.4(d).

(2) Failure to Involve Local Counsel

ODC contends (ODC Br. at 72) that Respondent violated Rule 8.4(d) because he "failed to involve local counsel by omitting her [*i.e.*, Ms. Meisler] from the briefs he filed and did not advise her of his intention to withdraw." On December 5, 2016, Ms. Meisler filed a motion for leave to withdraw as plaintiff's counsel and to withdraw her sponsorship of Respondent. FF 251. The motion stated that Ms. Meisler and Respondent had agreed that Respondent would have the role of "Lead Counsel" in the *Stevenson* case − which is the role his filings in the case indicate he played − and that he filed his November 22, 2016 Notice of Withdrawal without prior notice to her. *Id*. Neither the *Koresko* case nor the *Quinn* case cited by ODC clearly holds that this state of facts constitutes a violation of Pa. Rule 8.4(d), nor is there any ruling in the *Stevenson* case indicating that the division of responsibility between Respondent and Ms. Meisler as described in her motion was clearly improper or affected the functioning of the court. The Hearing Committee therefore concludes ODC has not proved by clear and convincing evidence that Respondent violated Pa. Rule 8.4(d) by failing to keep Ms. Meisler more fully involved in the *Stevenson* case.

(3) Respondent's Frivolous Request for a Change of Venue

The order issued by Judge Schmehl's on January 11, 2017 criticized Respondent for filing "frivolous motions." FF 265. One such frivolous motion, as the Hearing Committee has found in Section B(1) of this Part III, was Respondent's May 18, 2016 pleading requesting a change of venue in the *Stevenson* case. FF 203.

Respondent's request was summarily denied by Judge Schmehl on August 10, 2016 in a tartly worded minute order pointing out that "Reading and Philadelphia are both located within the Eastern District of Pennsylvania and, therefore, share the same jury pool." FF 210(a). Judge Schmehl clearly viewed Respondent's request for a change of venue as an unwarranted imposition on the court's time. The Hearing Committee concludes that Respondent's frivolous motion therefore was prejudicial to the administration of justice and violated Pa. Rule 8.4(d).

(4) Failure to Cooperate in Pre-Trial Discovery

There are certainly indications in the record that legal counsel for the School District were dissatisfied with how Respondent provided information in response to the School District's discovery requests. *See*, *e.g.*, FF 218 (the School District's initial request for a telephone conference with the court to resolve discovery disputes); FF 234 n. 121 (the School District filed a motion to compel discovery responses). However, absent a court order compelling discovery which had been withheld in bad faith or an order sanctioning Respondent for not providing pre-trial discovery, the Hearing Committee concludes there is insufficient documentation in the record to demonstrate by clear and convincing evidence that the discovery disputes which occurred rose to the level of a violation of Pa. Rule 8.4(d).

(5) Pleadings Not Complying With Court Rules

As previously noted, the order issued by Judge Schmehl's on January 11, 2017 criticized Respondent for filing "frivolous motions." FF 265. One such frivolous pleading was Respondent's June 29, 2016 First Amended Complaint, which Judge

Schmehl ordered stricken on July 14, 2016 because "plaintiff did not seek leave of court or written consent of the opposing party before filing . . . as required by Rule 15(a)(2) of the Federal Rules of Civil Procedure." FF 206. Another such pleading was Respondent's September 23, 2016 motion for sanctions against the School District's legal counsel (FF 228) for allegedly violating Fed. R. Civ. P. 11 by asking for a discovery conference that was in fact authorized by the court's rules (FF 218 n. 111); the court summarily denied Respondent's motion on October 11, 2016 (FF 233). A third such pleading was Respondent's November 18, 2016 "Proposed Second Amended Complaint," which had the same defects as the court pointed out in striking Respondent's "First Amended Complaint." FF 242. The Hearing Committee concludes that Respondent clearly violated Pa. Rule 8.4(d); each of these pleadings constituted a wanton disregard of court rules and was prejudicial to the administration of justice because courts cannot function properly if the attorneys who appear before them violate the basic rules of practice.

(6) Respondent's Interference With Court-Ordered Conferences

Respondent failed to appear at the court's duly-scheduled status conference on August 8, 2016. FF 209. Respondent also failed to appear at the court's duly-scheduled status conference on November 17, 2016. FF 239. As to the latter failure, Respondent claimed that when he reviewed the court docket for the *Stevenson* case he "saw no order or event related to any upcoming status conference" (FF 240), but Respondent's claim cannot be reconciled with the fact that attached to a pleading he filed on September 23, 2016 was a copy of the order scheduling the November 17,

2016 status conference. *Id*. On November 18, 2016, Judge Schmehl signed a Rule to Show Cause directing Respondent to show cause on December 9, 2016 why he should not be held in contempt or otherwise sanctioned for failing to appear at these status conferences. FF 243.[173] These facts alone constitute clear and convincing evidence that Respondent interfered with the administration of justice in violation of Pa. Rule 8.4(d).

Completely independent of the status conference issue, the Hearing Committee concludes that Respondent also literally interfered with the administration of justice in violation of Pa. Rule 8.4(d) through the actions he took to delay and disrupt the court-ordered telephone discovery conference (FF 219) sought by the School District's legal counsel in mid-September, 2016. FF 218-25.

(7) Dilatory Responses to School District Motions

Citing PFF 188, 196, and 209, ODC contends (ODC Br. at 73) that Respondent violated Pa. Rule 8.4(d) by dilatory actions in two principal ways: first, by not filing a timely response to the School District's September 28, 2016 motion for a protective order (FF 229) or seeking additional time to do so, and then on December 19, 2016 belatedly filing a motion (FF 260(a)) to rescind the protective order after it had been granted; and second, by belatedly filing an opposition on November 18, 2016 (FF 241) to the School District's August 8, 2016 motion to dismiss the Second Amended complaint, without seeking leave of court for that

[173] E.D. Pa. L. Civ. R. 83.6.1, cited by Respondent in his initial motion to sanction the School District's legal counsel (DCX 131 at 9-10), authorizes the imposition of discipline for an attorney's failure to attend a scheduled hearing.

untimely opposition. As to the first point, there is clear and convincing evidence that Respondent's dilatory conduct was prejudicial to the administration of justice and violated Pa. Rule 8.4(d), not only because he ignored a court order directing him to file any opposition to the School District's motion for a protective order by October 13, 2016 (FF 233-34), but also because Judge Schmehl ordered Respondent's belated request to rescind the protective order stricken inasmuch as after December 9, 2016 Respondent was no longer authorized to file any pleadings (FF 265). As to the second point, the Hearing Committee concludes there is a lack of clear and convincing evidence that Respondent acted in a manner prejudicial to the administration of justice in violation Pa. Rule 8.4(d), because on November 18, 2016 Judge Schmehl scheduled oral argument on the School District's motion without commenting on the untimeliness of Respondent's belated opposition. FF 243.

(8) Respondent's Harassing Communications

On September 7, 2016 Respondent sent Mr. Meiswich a coercive e-mail that abused Respondent's role as an attorney in gathering information about the *Stevenson* case, and that threatened further abuse of the judicial process in order to harm Mr. Meiswich. FF 214. On the same day, Respondent made a salacious internet posting on the School District's Facebook page about the School District's assistant superintendent for human relations, Mr. Goffredo (FF 215), an individual who was explicitly viewed as an opponent in the *Stevenson* case (FF 195, 217 n. 109). As the Hearing Committee has concluded in Section (B)(5) of this Part III,

that posting had no substantial purpose other than to embarrass and burden Mr. Goffredo in violation of Pa. Rule 4.4(a). On November 18, 2016, Magistrate Judge Lloret issued a protective order barring Respondent from contacting School District employees relating to the *Stevenson* case outside of normal litigation discovery, and further barring Respondent from making any postings on social media outlets maintained by the School District relating in any way to the *Stevenson* case. FF 244. These facts constitute clear and convincing evidence that Respondent's acted in a manner prejudicial to the administration of justice in violation of Pa. Rule 8.4(d).

(9) Respondent's Additional Frivolous Court Filings

In addition to Respondent's frivolous request for a change of venue discussed above in subheading (3), Section (B)(1) of this Part III identifies and discusses numerous other frivolous court filings Respondent made in the *Stevenson* case. That discussion is incorporated herein by reference. In his order barring Respondent from making any further filings in the *Stevenso*n case, Judge Schmehl stated that Respondent had been "bombarding" the court with frivolous motions and documents, and that this misconduct had accelerated in the month since Ms. Meisler had been granted leave to withdraw, leaving Respondent without a local counsel sponsor. FF 265. Any lawyer found by a judge to be "bombarding" the court with frivolous filings is acting in a manner prejudicial to the administration of justice, and the Hearing Committee therefore concludes there is clear and convincing evidence that Respondent violated Pa. Rule 8.4(d) through these additional frivolous filings.

7. Rule 8.4(g) − Misuse of Criminal/Disciplinary Charges

ODC alleges that Respondent violated this Rule in Count One (USDA, but only with respect to actions taken in connection with his MSPB appeal) and Count Three (Bromley) of the Specification.

a. Text of the Rule

Rule 8.4(g) states that it is professional misconduct to "[s]eek or threaten to seek criminal charges or disciplinary charges solely to obtain an advantage in a civil matter."

b. Applicable Principles

In *Barber*, the Board found that the respondent attorney violated Rule 8.4(g) by threatening a Bar complaint against opposing counsel unless Barber was paid his legal fees. *Barber*, Board Docket No. 10-BD-076, *et al*., at 30. The Board noted that Mr. Barber's statement was understood and intended to be an extortionate threat, and was made while he was pursuing a civil action for the payment of such fees. The Board did not credit Mr. Barber's testimony about what he specifically intended, but inferred his intent from the surrounding facts and circumstances. *Id*., citing *In re Starnes*, 829 A.2d 488, 500 (D.C. 2003) (per curiam) (appended Board Report) (circumstantial evidence was sufficient to prove respondent's state of mind as "more direct proof, such as an outright assertion of an individual's intent, is rarely available"); *see also* Rule 1.0(f) (belief or knowledge "may be inferred from circumstances").

c. Discussion

Respondent's MSPB Appeal

On October 28, 2015, Respondent sent Mr. Gold an e-mail proposing a settlement of Respondent's recently-filed MSPB appeal. FF 40. On October 29, 2015, Mr. Gold on behalf of the USDA filed a motion with the MSPB to stay all deadlines pending a ruling on whether the MSPB had jurisdiction over Respondent's appeal. FF 41. That day, Respondent sent Mr. Gold an e-mail threatening an ethics complaint against him. FF 42. Mr. Gold testified unequivocally that he perceived Respondent's threat as being intended to coerce a settlement. *Id*. The Hearing Committee finds Mr. Gold's testimony entirely credible, particularly because there is additional clear and convincing evidence in the record confirming the accuracy of his perception about the coercive purpose of Respondent's actions.

First, because USDA's stay motion posed a facial jurisdictional challenge to Respondent's MSPB appeal (FF 41), he quickly realized[174] his appeal could be summarily thrown out on jurisdictional grounds, thereby losing any settlement value it might have had. Respondent therefore had a strong incentive to try to force a prompt settlement by any means available.

Second, Respondent's October 29, 2015 e-mail to Mr. Gold stated "[t]his is not a threat to gain an advantage in litigation" (FF 42), indicating that Respondent

[174] On October 30, 2015, the MSPB received from Respondent a pleading dated October 29, 2015 that opposed USDA's motion for a stay, and asked the ALJ to certify an interlocutory appeal to the full MSPB on the jurisdictional issue of whether Respondent as a contract employee assigned to work at the USDA qualified for federal employee "whistleblower" protection. FF 43.

himself saw the relationship between his threatened ethics complaint and his settlement proposal. However, like the Board in *Barber*, Board Docket Nos. 10-BD-076, *et al*., neither Mr. Gold nor the Hearing Committee would be bound to credit Respondent's asserted lack of nexus between his ethics threat and his MSPB appeal, and Respondent's actual intent is more properly to be inferred from all of the surrounding facts and circumstances

Third, the very next day (October 30, 2015) Respondent sent Mr. Gold another e-mail, confirming he had filed an ethics complaint, but Respondent also sent copies of the e-mail to four senior officials at USDA to ensure that USDA management was aware of the pressure Respondent was bringing to bear. FF 44; FF 44 at n. 34.

Fourth, Respondent saw ethics complaints as transactional bargaining chips, a point demonstrated by his offering Mr. Gold to withdraw a California ethics complaint he had filed against him if Mr. Gold withdrew an ethics complaint against Respondent which Mr. Gold had filed with ODC. FF 68.

Fifth, as ODC points out (ODC Br. at 74), there was barely any time between the October 26, 2015 date of Mr. Gold's appearance as counsel for the USDA (FF 38) and Respondent's October 29, 2015 threat of an ethics complaint against him (FF 42) for Respondent to have had the kind of substantive interaction with Mr. Gold which would give Respondent a reason for making his ethics threat, unless Respondent thought he had something very significant to gain by doing so.

Based on the foregoing facts and circumstances as well as Mr. Gold's testimony, the Hearing Committee concludes that Respondent's threat and filing of

an ethics complaint against Mr. Gold were intended solely to obtain an advantage for Respondent in his MSPB appeal, in violation of Rule 8.4(g).

The Bromley Matter

Ms. Bromley's employment with e-Management was terminated by the company on June 11, 2016. FF 175. As the company's attorney (Mr. Jones) testified, following the termination Respondent threatened to bring criminal charges related to the termination unless e-Management agreed to a settlement that included monetary compensation to Ms. Bromley and the conversion of her termination to a "resignation." FF 176. In the weeks following the termination, a dispute arose concerning Ms. Bromley's claim that personal property she had at e-Management's offices was not returned to her. FF 178-80. On July 1, 2016, Respondent sent Mr. Jones and Ms. Bromley an e-mail intimating that company personnel could be deemed "accessories after the fact to theft." FF 181. On July 8, 2016, Respondent sent Ms. Bromley an e-mail, with copies to Mr. Jones as well as to responsible personnel at e-Management, stating that in Respondent's opinion Mr. Jones and company personnel were "all criminal accessories to theft after-the-fact" (FF 185) and further stating "[n]ext week will go to the police . . . ." (*id*.).

The foregoing facts constitute clear and convincing evidence that Respondent made threats of criminal charges for the sole purpose of obtaining an advantage in a civil matter. Respondent's threats of criminal charges were directly proximate in time and made with reference to Ms. Bromley's termination and personal property disputes with e-Management; Respondent threatened criminal charges explicitly as

part of his attempt to obtain a settlement for Ms. Bromley; Respondent sent senior e-Management personnel copies of his July 8 e-mail to ensure they were directly aware of the threat he was making personally against them; and the repetition of Respondent's threats over a period of several weeks is strong evidence that they were made for the sole purpose of furthering Ms. Bromley's claims. The Hearing Committee therefore concludes that Respondent's threats of criminal charges violated Rule 8.4(g).

IV. SANCTION RECOMMENDATION

The Hearing Committee recommends that Respondent should be suspended for a period of three years, and that before resuming the practice of law he should be required to demonstrate fitness. Section A of this Part IV presents a short summary of the general principles applicable to a sanction recommendation. Section (B) discusses those principles, and the Hearing Committee's recommendation that Respondent should be suspended for three years. In addition, because the Hearing Committee recommends a showing of fitness before resuming practice, Section (C) of this Part IV discusses the criteria relating to, and the Hearing Committee's conclusions regarding, the recommendation of a fitness requirement.

A. General

In *Barber*, Board Docket No. 10-BD-076, *et al.*, at 37-38, the Board summarized the criteria and legal authorities guiding the determination of an appropriate sanction, as follows:

> The appropriate sanction is one that is necessary to protect the public and the courts, maintain the integrity of the profession, and deter other

> attorneys from engaging in similar misconduct. *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc); [*In re*] *Reback*, 513 A.2d 226, 231 (D.C. 1986) (en banc). The sanction imposed must be consistent with sanctions for comparable misconduct. *See* D.C. Bar R. XI, § 9(h)(1); *In re Elgin*, 918 A.2d 362, 373 (D.C. 2007). The factors properly considered when determining an appropriate sanction include: (1) the nature and seriousness of the misconduct; (2) the presence of misrepresentation or dishonesty; (3) the respondent's attitude toward the underlying misconduct; (4) prior disciplinary violations; (5) mitigating or aggravating circumstances; and (6) prejudice to the client. *See In re Peek*, 565 A.2d 627, 632 (D.C. 1989) (citations omitted); *In re Hill*, 619 A.2d 936, 939 (D.C. 1993) (appended Board Report); *In re Jackson*, 650 A.2d 675, 678 (D.C. 1994) (per curiam) (appended Board Report).

Section (B) of this Part IV discusses each of the six factors enumerated in the preceding quotation, and the following additional factors: (7) protecting the public and the courts; (8) maintaining the integrity of the profession and deterring other attorneys from engaging in similar misconduct; and (9) comparability of the Hearing Committee's recommended sanction.

B. Discussion of Suspension Recommendation

1. Nature and Seriousness of the Misconduct

Respondent's misconduct in the instant case is very serious, including multiple violations of seven different disciplinary rules spread across at least five different representations,[175] and over approximately a two-year period of time. In the words of the Board in *Barber*, Board Docket No. 10-BD-076, *et al*., at 38, Respondent:

[175] The allegations in Count One of the Specification comprise two separate representations, the defamation lawsuit against Ms. Quarles and Respondent's MSPB appeal. The allegations in Count Two of the Specification include not only actions taken by Respondent in the course of representing Mr. Hall, but also actions taken by Respondent in connection with his representation of Ms. Schooley.

> . . . browbeat his adversaries in lawsuits . . . by filing and pursuing frivolous claims, and by using unwarranted tactical measures − including improperly threatening a disciplinary complaint − to burden his adversaries and interfere with the administration of justice [,] [a]cting on his crass, specific threat to "run up" fees until his opponents "gave in" . . . .

Respondent also repeatedly violated court rules, court orders, and the applicable rules of practice, and his serious interference with the administration of justice included the attempted intimidation of a sitting judge. Respondent was sanctioned by Judge Boasberg for violating 28 U.S.C. § 1927, who also referred his conduct to the court's Committee on Grievances, and Respondent was cited by Judge Schmehl to show cause why he should not be held in contempt or otherwise sanctioned. Respondent's misconduct must be viewed with the utmost seriousness.

2. Presence of Misrepresentation or Dishonesty

ODC has not charged Respondent with violating Rule 8.4(c), *i.e.*, conduct involving dishonesty, fraud, deceit, or misrepresentation. The absence of dishonesty usually results in a less severe sanction. *Yelverton*, 105 A.3d at 428; *In re Boykins*, 748 A.2d 413, 414 (D.C. 2000) (per curiam). The Hearing Committee has taken this factor fully into account. Indeed, the absence of a Rule 8.4(c) violation is one reason why the Hearing Committee is not recommending disbarment.

3. Respondent's Attitude Toward His Misconduct

A lawyer's failure to acknowledge misconduct is a significant factor affecting a sanction recommendation. *In re Daniel*, 11 A.3d 291, 301 (D.C. 2011); *Yelverton*,

105 A.3d at 428. The record is clear that Respondent does not acknowledge his misconduct in any way. FF 270.

4. Prior Disciplinary Violations

Respondent has no prior disciplinary record which ODC brought to the attention of the Hearing Committee. That factor is "highly relevant and material" to the determination of a sanction. *In re Cope*, 455 A.2d 1357, 1361 (D.C. 1983). However, as the Board has stated in holding that a respondent attorney's lack of prior disciplinary history did not mitigate his misconduct:

> His litigation was unacceptable and an abuse of the legal system. As the District Courts observed, [Fastov] used the legal system to vent his personal pique . . . rather than trying to vindicate a right protected by law. There is no excuse for his conduct. It warrants a severe sanction.

Fastov, Board Docket No. 10-BD-096, at 42. Lack of a prior disciplinary record therefore need not be taken as complete mitigation of misconduct. The same circumstances cited by the Board in the preceding quotation from *Fastov* are operative in the present case. The Hearing Committee accordingly declines to give any weight to Respondent's lack of a prior disciplinary record beyond rejecting ODC's recommended sanction of disbarment.

5. Mitigating and Aggravating Circumstances

ODC introduced no evidence of prior misconduct by Respondent. However, as the Board noted in *Barber*, Board Docket Nos. 10-BD-076, *et al*., at 40 (citing *In re Kanu*, 5 A.3d 1, 15 (D.C. 2010), and *In re Cleaver-Bascombe*, 986 A.2d 1191, 1200 (D.C. 2010) ("*Cleaver-Bascombe II*")), a respondent's failure to acknowledge any impropriety or accept responsibility for his misconduct is an aggravating factor

warranting a "convincingly enhanced sanction." Furthermore, as the Board has stated in discussing the issue of aggravating circumstances, *In re Pearson*, Board Docket No. 15-BD-031, at 30 (BPR May 23, 2018), *review pending,* D.C. App. No. 18-BG-586, "We cannot blind ourselves to the impact that [r]espondent's frivolous claims had on the resources of the [court] and on the Defendants, all of whom had to respond to them." In addition, an enhanced sanction is appropriate where a respondent's misconduct is self-serving, *id*. at 31, as Respondent's was in the Dettling matter.

6. Prejudice to the Client

Lack of prejudice to the client is a mitigating factor. *Yelverton*, 105 A.3d at 428. There is no evidence in the record that Respondent's misconduct negatively affected his clients, although as noted in Part III of this Report, Mr. Hall and Mr. Stevenson received scant (if any) benefit from Respondent's representing them.

7. Protecting the Public and the Courts

Protecting clients and the judicial system is a principal – if not the principal – function of the disciplinary system. *In re Goffe*, 641 A.2d 458, 464 (D.C. 1994) (per curiam); *In re Haupt*, 422 A.2d 768, 771 (D.C. 1980) (per curiam); *In re Kleindienst,* 345 A.2d 146, 147 (D.C. 1975). That consideration is a principal reason for the Hearing Committee's recommendation of a three-year suspension, particularly with regard to protecting the judicial system against the abusive conduct Respondent exhibited in the matters reviewed in this Report.

8. Maintaining the Integrity of the Profession and Deterring Similar Misconduct

An important purpose of the disciplinary system is "to maintain the integrity of the profession and to . . . deter other attorneys from engaging in similar misconduct." *Reback*, 513 A.2d at 231. As noted in the cases discussed in next the subheading of this Section IV(B), numerous attorneys over the years have engaged in misconduct similar to Respondent's. In some instances that misconduct has been coupled with factors that warrant disbarment. By recommending a three-year suspension, it is the Hearing Committee's hope that misconduct such as Respondent's will be strongly discouraged.

9. Comparability of Recommended Sanction

In this subheading (9), the Hearing Committee reviews prior cases that have considered misconduct such as Respondent's which involved abuse of the judicial system.

In *In re Shieh*, 738 A.2d 814 (D.C. 2009), a case of reciprocal discipline originating from a disbarment in California, the Court rejected a Board recommendation that the Court impose the substantially different discipline of a two-year suspension plus fitness, and instead ordered disbarment. *Shieh* involved an attorney who abused the system in perhaps an even more extensive way than the Respondent here. The Court found that in light of the California finding of moral turpitude because of Mr. Shieh's defiance of criminal contempt proceedings instituted against him, his repeated willful violations of court orders, and a pattern of serious, habitual abuse of the judicial system both as a *pro se* and as a represented

litigant, Mr. Shieh had demonstrated a fundamental lack of regard for the administration of justice which warranted disbarment. *Id*. at 817-18. The Court rejected the Board's emphasis on the deterrence aspect of a sanction, and instead adopted the following summary statement of the California court's rationale for disbarring Mr. Shieh:

> Nothing the attorney discipline system can do will prevent respondent from continuing to abuse the legal system as a litigant, if he so chooses. But disbarring respondent will at least prevent him from continuing his abusive course of conduct under the cloak of authority conferred on him by his membership in the bar.

Id. at 819.

In *Spikes*, the Court imposed a thirty-day suspension for Mr. Spikes' violations of Rules 3.1 and 8.4(d) by pursuing a frivolous defamation claim against a person who had filed disciplinary charges against Mr. Spikes, despite the clear privilege accorded to such allegations. The Court noted that the case involved its first application of Rule. 3.1 for purposes of assessing an appropriate sanction, and therefore deferred to the Board's recommendation. The Court stated, however, that other courts had applied more severe sanctions for similar misconduct, including a sixty-day suspension (Oregon), an indefinite suspension (Ohio), and an eighteen-month suspension with all but thirty days stayed (District of Columbia reciprocal discipline imposed in a case from California). *Spikes*, 881 A.2d at 1127 n. 9.

In *In re Orci*, 974 A.2d 891 (D.C. 2009) (per curiam), the Court ordered the respondent attorney to be disbarred because he had filed multiple frivolous claims to harass and intimidate others, knowingly flouted court orders, seriously interfered

with the administration of justice, and also engaged in fraudulent and dishonest conduct.

In *Fastov*, for misconduct similar in many respects to that of the Respondent here, the Board imposed a sanction of an eighteen-month suspension coupled with a requirement of showing fitness before resuming the practice of law.

In *Barber*, the Court adopted a Board-recommended sanction of disbarment for misconduct similar in many respects to that of the Respondent here, but which also included material misrepresentations in a variety of contexts. The Board in that case, however, also stated (*Barber*, Board Docket Nos. 10-BD-076, *et al*., at 43), "even absent evidence of intentional misappropriation, disbarment is warranted in this case based on [R]spondent's other serious and pervasive misconduct alone . . ." (quoting *In re Omwenga*, 49 A.3d 1235, 1238 (D.C. 2012) (per curiam)).

In *Yelverton*, the respondent attorney filed multiple post-trial motions, many of which were duplicative, and some of which included accusations that the trial judge was biased and had engaged in *ex parte* communications with defense counsel. Mr. Yelverton then filed an appeal that was dismissed on the basis of well-established legal principles, and then filed petitions for rehearing and rehearing en banc, which were denied. "Many filings later" (105 A.3d at 418), the Court issued a *sua sponte* order referring Mr. Yelverton's conduct for investigation by ODC (then known as "Bar Counsel"). Mr. Yelverton fought the disciplinary process, moving to disqualify the Assistant Bar Counsel assigned to the case, to dismiss the charges, and to remove the disciplinary case to federal court. After removal was denied, Mr.

Yelverton appealed the denial, and then sought *certiorari* from the United States Supreme Court, which was denied. Following issuance of the Board's report, Mr. Yelverton filed a federal lawsuit against the Assistant Bar Counsel, the Executive Attorney of the Board, and the Clerk of the District of Columbia Court of Appeals seeking a preliminary injunction, which was denied. Mr. Yelverton then challenged the Board's report in multiple duplicative motions to the Court. The Court found that Mr. Yelverton's many frivolous pleadings violated Rules 3.1 and 8.4(d), but reduced a Board-recommended suspension of ninety days to thirty days because the nature of Mr. Yelverton's misconduct was similar to that in *Spikes*, and because Mr. Yelverton's misconduct was not motivated by his personal interests. 105 A.3d at 429. The Court nevertheless agreed with the Board's recommendation that Mr. Yelverton needed to show fitness before resuming the practice of law.

In *Pearson*, the Board recommended a ninety-day suspension for a respondent attorney who violated Rules 3.1 and 8.4(d) by pursuing a prolonged litigation seeking $67,000,000 in damages from a dry cleaner who lost a pair of the attorney's pants. The Board's recommended sanction was ameliorated, however, by the fact that the Board was considering the violation only of Rules 3.1 and 8.4(d) in a single case, and was not facing a situation such as the instant matter, which involves multiple violations of seven different disciplinary rules spread among at least five different cases.

Although, as previously noted in this Report, ODC argues for a sanction of disbarment (ODC Br. at 75-78), the Hearing Committee's reading of the foregoing

cases leads it to conclude that absent evidence of dishonesty or material misrepresentation, disbarment is not warranted. Nevertheless, considering the extreme seriousness of Respondent's misconduct, the multiple Rules violations involved in this case − including, as in no other case discussed above, Respondent's attempted intimidation of a federal judge − and the self-serving nature of Respondent's actions in the Dettling matter, it would understate the gravity of Respondent's misconduct to recommend a suspension of less than three years.

C. Fitness Requirement

The Hearing Committee recommends − as the Board did in *Fastov* − that before being allowed to resume the practice of law Respondent should be required to demonstrate fitness. A fitness requirement is appropriate when it is unlikely that the respondent attorney will be rehabilitated by the end of a particular period of suspension. *Yelverton*, 105 A.3d at 429. In *In re Cater*, 887 A.2d 1, 21 (D.C. 2005), the Court specified the following five factors that need to be considered in recommending a fitness requirement: (1) the nature and circumstances of the misconduct for which the attorney was disciplined; (2) whether the attorney recognizes the seriousness of the misconduct; (3) steps taken to remedy past wrongs and prevent future ones; (4) the attorney's present character; and (5) the attorney's present qualifications and competence to practice law. These factors are discussed in this Section (C).

1. Nature and Circumstances of Misconduct

Repetition of the same type of misconduct, showing that it is not isolated, indicates the need for a fitness requirement. *Yelverton*, 105 A.3d at 428, 430 (misconduct involving the "filing meritless motions for a mistrial, and . . . repetitive and frivolous motions"). Unfounded accusations of judicial bias likewise indicate the need for a fitness requirement. *Id*. at 430.

There is clear and convincing evidence in the record of this case that the repetitive nature of Respondent's misconduct warrants the imposition of a fitness requirement. Respondent's misconduct falls into a repeated pattern of abusing the judicial system, and he is continuing to file abusive pleadings and accusations of bias against Judge Boasberg relating to the *Hall* case years after it effectively ended. FF 269, 271-73. Furthermore, unlike the respondent attorney in *In re Tun*, 195 A.3d 65, 78 (D. C. 2018), Respondent's misconduct cannot be excused as being the product of "heightened emotional circumstances" or "pressure[s] of the moment" which are unlikely to be repeated.

2. Recognizing the Seriousness of Misconduct

A fitness requirement is appropriate where "[t]here is no indication that respondent recognizes the seriousness of the misconduct or even that he recognizes it as misconduct at all." *Yelverton*, 105 A.3d at 430; *see also In re Chisholm*, 679 A.2d 495, 505 (D.C. 1996) (citing attorney's "refusal to accept responsibility for his actions" and his "lack of contrition" as reasons for requiring him to demonstrate fitness); *In re Guberman,* 978 A.2d 200, 211 (D.C. 2009) (attorney's lack of remorse

is one circumstance that may tip the balance in favor of a fitness requirement); *In re Adams*, 191 A.3d 1114, 1121 (D.C. 2018) (per curiam) (rejecting a fitness requirement where the respondent attorney accepted responsibility for her misconduct, stipulated to almost all of the charges, and took appropriate remedial measures).

In the present case there is clear and convincing evidence in the record that Respondent shows absolutely no sign of recognizing the seriousness of his misconduct. To the contrary, he is expressly proud of his misconduct, and openly contemptuous of the disciplinary system. FF 270. Unlike the attorney in *Tun*, 195 A.3d at 74, there is no acknowledgement by Respondent that some sanction is warranted, and, therefore, no evidence that Respondent understands the seriousness of his misconduct.

3. Actions to Remedy Past Wrongs/Prevent Future Ones

A fitness requirement is a particularly forward-looking (*Cater*, 887 A.2d at 24) and future-oriented (*Yelverton*, 105 A.3d at 430) inquiry. It is therefore appropriate to look at a respondent's conduct after disciplinary proceedings were initiated. *Id*. As the Court stated in *Yelverton*, *id*. at 431 (footnote omitted), in imposing a fitness requirement:

> Respondent . . . is still using the same playbook that brought him into the disciplinary proceedings. He has received considerable feedback on his litigation tactics, from the trial judge, Bar Counsel, the Hearing Committee, the Board, this court, and the federal court, all of it sounding the same basic refrain: do not file baseless submissions, and do not file them over and over again. This patterns of abusive litigation is more than sufficient to produce a "serious doubt" that respondent will

refrain from engaging in this type of unprofessional, unproductive, and burdensome conduct in the future.

There is no evidence in the record that Respondent has taken any steps to prevent future similar misconduct. To the contrary, there is clear and convincing evidence in the record that Respondent is fully prepared to continue − and in fact is continuing to carry out − similar misconduct. FF 269, 271-73. As stated in the preceding quotation from *Yelverton*, Respondent "is still using the same playbook that brought him into the disciplinary proceedings."

4. Attorney's Present Character

The Hearing Committee has no testimony, either from Respondent himself or from character witnesses called by ODC or Respondent, on which to base a direct conclusion as to Respondent's present character. The only evidence of what Respondent has been doing recently is that set forth in Section II(E) of this Report. That evidence, however, clearly warrants drawing a strong negative conclusion concerning Respondent's present character. In particular, the Hearing Committee notes that in Respondent's February 20, 2018 119-page "Motion for the Appointment of a Magistrate Judge to Adjudicate Plaintiff's Motion for Section 1927 Sanctions," Respondent is seeking to embroil additional individuals besides Judge Boasberg and Ms. Dettling as defendants in his attempt to punish those he sees as opponents. FF 269.

5. Attorney's Present Competence to Practice Law

Judgment is a predictive factor to be taken into account in considering whether to impose a fitness requirement. *Adams*, 191 A.3d at 1120-21 (in rejecting a fitness

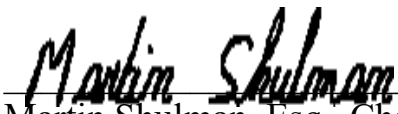
requirement, the Court referred to testimony from an expert witness that "he believed respondent's 'judgment ha[d] improved'"). With that criterion in mind, there is clear and convincing evidence that Respondent presently lacks the competence to practice law. In reaching this conclusion, the Hearing Committee is not saying anything about Respondent's intellectual capability (Respondent asserts he has both a Ph. D. degree and a law degree from very fine universities (FF 270)). Rather, the Hearing Committee's concern involves Respondent's lack of judgment, as reflected by his post-Specification conduct.

Respondent's first complaint of judicial misconduct against Judge Boasberg (FF 150) was summarily rejected by the Judicial Council for the District of Columbia Circuit (FF 155). The D.C. Circuit summarily affirmed Judge Boasberg's order sanctioning Respondent in the *Hall* case, and rejected Respondent's petitions for re-hearing and re-hearing en banc. FF 165-67. There is no indication that Respondent's second complaint of judicial misconduct against Judge Boasberg (FF 160) produced any different result. Given that record, it takes a singular lack of judgment for Respondent to have filed his February 20, 2018 119-page "Motion for the Appointment of a Magistrate Judge to Adjudicate Plaintiff's Motion for Section 1927 Sanctions." FF 269. As with the other predictive factors discussed in this Section IV(C), that lack of judgment counsels for the imposition of a fitness requirement.

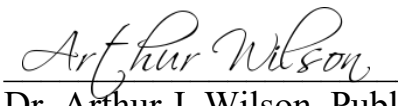
V. CONCLUSION

For the reasons set forth above, the Hearing Committee recommends that Respondent should be suspended for a period of three years, and that he should be required to demonstrate fitness before resuming the practice of law.

Respectfully submitted,



Martin Shulman, Esq., Chair



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