STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: Carrie J. Legus, Esq.
PRB File No. 2020-102

Decision No. 238

Following the Vermont Supreme Court's issuance of an order suspending on an interim basis Respondent's license to practice law, Disciplinary Counsel filed a petition of misconduct alleging that Respondent, Carrie J. Legus, Esq., knowingly failed to respond to lawful requests for information during the course of a lawyer disciplinary investigation, in violation of Vermont Rule of Professional Conduct 8.1(b) and Rule 7(D) of the Supreme Court's Administrative Order 9. A remote evidentiary hearing on the merits of the charges was held by video conference on June 28, 2021. Disciplinary Counsel submitted proposed findings of fact and conclusions of law on July 23, 2021.

Based on admissions by the Respondent in her Answer to the Petition of Misconduct and on evidence presented during the merits hearing, the Hearing Panel finds and concludes that Respondent violated Rule of Professional Conduct 8.1(b). The Panel concludes that Respondent should be suspended from the practice of law for a period of nine months.

PROCEDURAL BACKGROUND – THE INTERIM SUSPENSION ORDER

On May 22, 2020, in response to a petition filed by Disciplinary Counsel, the Vermont Supreme Court issued an order immediately suspending Respondent's license to practice law "pending final disposition of a disciplinary or disability proceeding in accordance with A.O. 9, Rule 18(b)." *In re Legus*, 2020 VT 40, ¶ 5. The Court concluded, on the basis of evidence presented at that time by Disciplinary Counsel, that Respondent had knowingly failed to respond to a lawful demand by Disciplinary Counsel for information, contrary to Vermont Rule of

Professional Conduct 8.1(b). The Court further concluded that "respondent's behavior presents a substantial threat of harm to the public . . . . Due to respondent's failure to communicate, Disciplinary Counsel cannot ascertain the nature of respondent's practice or determine if respondent has any active clients; she cannot determine if a disability investigation should be opened; and she cannot assess how to protect the public."

On June 19, 2020, the Court rejected a request by Respondent to dissolve the interim suspension order, reaffirming its earlier findings and conclusions. *In re Legus*, 2020 VT 49, ¶ 8. In its ruling, the Court addressed Respondent's assertion that she was entitled to assert a Fifth Amendment privilege in response to Disciplinary Counsel's inquiries, observing that "at least some of the matters Disciplinary Counsel has indicated she seeks to investigate may not implicate respondent's Fifth Amendment privilege." *Id*. ¶ 10. It added that it would entertain a further motion to dissolve or modify the interim suspension order "[i]f respondent chooses to participate in an interview with Disciplinary Counsel." *Id*. ¶ 11.

To date, the interim suspension order has not been dissolved or modified.

The petition of misconduct presented to this Hearing Panel incorporates the allegations that were presented to the Supreme Court and, in addition, alleges ongoing misconduct on the part of the Respondent subsequent to the Supreme Court's issuance of the interim suspension order. The Hearing Panel must now address the merits of the petition of misconduct.[1]

[1] Disciplinary Counsel argues that the Supreme Court's factual determinations are binding on the Hearing Panel. That argument, however, is inconsistent with the "interim" nature of the proceeding that was before the Court and the Court's own qualification of its suspension order as "pending final disposition." The petition for interim suspension most closely resembles a motion for preliminary injunction – a motion based on a limited evidentiary presentation designed to achieve temporary relief while the ultimate merits of the underlying claim go through the more time-consuming procedures that provide due process to litigants. The text of Rule 18(B) authorized the Court to issue an order "immediately suspending [a] lawyer, *pending final disposition of a disability or disciplinary proceeding predicated upon the conduct which poses the threat of seriously harm* . . . ." (emphasis added). The Court's suspension order included this qualifying language. Along these same lines, it should noted that the factual determinations in the

FINDINGS OF FACT

Respondent, Carrie J. Legus, resides in and is licensed to practice law in Vermont. On or about April 27, 2020 Respondent was charged with one count of reckless endangerment, a misdemeanor, in violation of 13 V.S.A. § 1025, in a criminal proceeding, Docket No. 178-4-20 Cacr. The affidavit in support of the criminal charge indicated that on April 26, 2021 Respondent come onto the premises of a store in her community "yelling about a social distancing sign . . . saying it was offensive and tried to knock it down"; and that, after an employee advised Respondent that the employee would have to speak to the store owner about Respondent's conduct, Respondent "pulled out a handgun and pointed it at [the employee] before leaving." Exhibit DC-4. The affidavit further indicated that when police interviewed Respondent later on the same day of the reported incident, Respondent told the police that she believed the sign at the store was a barricade and that "people were shooting [at] the road from it"; that Respondent was yelling that "everyone on the road is the military" and that she maintained that "her ex-husband was behind all this" and that the "state police have been following her vehicle all day long." The affiant also stated that Respondent conceded when asked by the police that she had a handgun on her and that the police then determined the handgun in her possession was loaded. Respondent pled not guilty to the charge and has represented herself in the criminal proceeding.

On May 1 and then again on May 4, Disciplinary Counsel left a voice mail message for Respondent and sent her a confirming email asking Respondent to contact her and advising her that under A.O. 9 licensed attorneys are required to respond to inquiries from Disciplinary

interim suspension ruling were based on affidavits submitted by Disciplinary Counsel – not live testimony. Respondents have a right to an evidentiary hearing with live testimony to contest the charges filed against them. The proceeding before this Hearing Panel effectuates that right. For all these reasons, the Court's rulings on the interim suspension petition cannot be given preclusive effect.

Counsel. Respondent did not reply to these emails until June 13 (after the Supreme Court's first interim suspension ruling had issued), when Respondent sent a brief email reply requesting that Disciplinary Counsel "use formal communication methods" and asserting that the Fifth Amendment "prohibits you from making the communication demand as absolute." Exhibit DC-2.

On June 10, 2020, following the initial decision by the Supreme Court placing Respondent on interim suspension, Disciplinary Counsel telephoned Respondent yet again in an attempt to schedule an interview. Respondent was uncooperative and argumentative during the call and hung up on Disciplinary Counsel. Following the unsuccessful phone call, Disciplinary Counsel sent a letter to Respondent (by U.S. mail and email) that same day. The June 10 letter requested that Respondent schedule an interview with Disciplinary Counsel, provided a date range for the interview to occur, and offered to conduct the interview by video conferencing or, alternatively, in person. The letter referenced the interim suspension order and stated that Disciplinary Counsel would need to interview Respondent regardless of the outcome of Respondent's then-pending motion to vacate the interim suspension order. It further stated that "[o]ne thing I need to discuss with you in your interview is whether a disability inactive status might be an appropriate option to pursue." Exhibit DC-6.

After receiving no response from Respondent to the letter, Disciplinary Counsel sent an email to Respondent on June 25, 2020 requesting that Respondent indicate whether she was willing to submit to an interview and, if so, whether by video conferencing or in-person so that Disciplinary Counsel could proceed to schedule the interview. Exhibit DC-5. A copy of the June 10 letter was attached to the June 25 email.

On July 8, 2020, Disciplinary Counsel sent another letter to Respondent. The letter referenced an earlier email communication sent by Respondent to Disciplinary Counsel on July 2, 2020, in which Respondent offered to participate in a telephone interview on July 4, 2020. Disciplinary Counsel indicated that the offer was unacceptable because it did not meet Disciplinary Counsel's request for either a video conference interview or in-person interview.[2] Disciplinary Counsel advised Respondent that the interview would take place on July 17 at 10:00 a.m. either in-person at the Vermont Supreme Court in Montpelier or by video conferencing and gave Respondent the choice of either option.

Related to the video-conferencing option, Disciplinary Counsel indicated that a link would be sent to Respondent's email address and provided the following additional information to facilitate Respondent being able to utilize this option:

> If internet access is a problem for you, the Department of Public Service's website states that there is free public internet accessible from outside the [town] school without any password and free public internet accessible from outside the [town] hall, with the password posted outside the building. I understand that both these locations are close to your residence. If you do not have a device, you should contact your local library and they may have a loaner device available for you to borrow. Laptops may also be available to borrow at the Burlington library and the Waterbury library with advance reservations. I understand that Burlington and Waterbury may be convenient locations for you because you receive mail at a Burlington post office box.

Exhibit DC-7.

With respect to the in-person option, Disciplinary Counsel provided the following information in the letter:

> I have arranged for an exemption to the current building access restrictions especially for you for Friday, July 17 at 10 a.m. If you choose the in-person option, you will first need to pass through security screening. A facemask is required at all times in State buildings. If you come without a mask, security will give you a disposable mask you must wear. Security will contact me

[2] Disciplinary Counsel also noted that July 4th fell on a Saturday and holiday weekend.

> when you arrive and I will escort you from security to a room with airflow and space for appropriate social distancing. My investigator Dan Troidl will be present for the interview and he may ask you questions.

Respondent did not respond to the July 8 letter.

On July 16, Respondent left a voice mail message for Disciplinary Counsel in which she took the position that there were no grounds for Disciplinary Counsel to conduct an interview because Disciplinary Counsel had not telephoned Respondent on July 4 and because Respondent had advised Disciplinary Counsel that she had no active clients and no trust accounts. Respondent maintained that A.O. 9 did not require her to submit to either an in-person or video conference interview. Respondent further stated that Disciplinary Counsel was attempting to interfere in her personal life.

On July 16, the Supreme Court's security officer placed a telephone call to Respondent. The officer left a voice mail message reminding Respondent of the two options for the scheduled July 17 interview and explaining the health and safety requirements for the in-person option.

On July 17, Respondent did not appear at the Supreme Court at the scheduled time for an in-person interview; nor did she take the steps necessary to log in to the scheduled video conference. A few minutes after 10:00 a.m. Disciplinary Counsel and her investigator telephoned Respondent from the investigator's cell phone. Respondent answered the call. Respondent, once again, declined to be interviewed either in person or by video conference; she provided answers to some questions posed to her during the phone call but declined to answer various questions, including questions related to Respondent's health and well-being.

* * *

Respondent participated in the remote merits hearing in this matter held on June 28, 2021 while seated in the front seat of a parked automobile with a Covid-19-type mask covering the

majority of her face. There did not appear to be anyone else in the automobile. When Disciplinary Counsel asked Respondent if she would remove her mask for the hearing, Respondent declined to do so without offering any explanation. After Disciplinary Counsel called her as a witness to testify, Respondent indicated that she was asserting her Fifth Amendment right against self-incrimination and on that basis would not answer questions from Disciplinary Counsel.

In response to essentially every question from Disciplinary Counsel, Respondent either cited the Fifth Amendment or indicated that "you have my response."[3] The Chair of the Panel took time to state on the record his understanding that the law does not allow for a general assertion of the Fifth Amendment right against self-incrimination. He further stated his understanding that in order to be valid, an assertion of the Fifth Amendment would have to be addressed to a specific question the answer to which could reasonably lead to a statement or statements that could incriminate Respondent. Respondent persisted in asserting a blanket Fifth Amendment privilege, at one point stating that she was asserting the Fifth Amendment "for the entire hearing."

At no time did Respondent submit to the Hearing Panel any explanation or justification tailored to a specific question posed in order to demonstrate a nexus between the question and the pending criminal proceeding against Respondent. After considering the content of the questions asked and in the absence of any supporting argument by Respondent focused on a specific question, the Chair of the Panel overruled Respondent's Fifth Amendment objections.

[3] In one instance, when Disciplinary Counsel asked if she was mispronouncing Respondent's last name, Respondent indicated that it was in fact being mispronounced; however, when Disciplinary Counsel asked for the correct pronunciation, Respondent remained silent.

The questions posed by Disciplinary Counsel during the merits hearing included a multitude of questions which the Panel concluded could not reasonably incriminate Respondent in the pending criminal proceeding. For example, Respondent declined to answer whether Disciplinary Counsel and Respondent spoke on the telephone on June 10, 2020; whether Respondent received an email from Disciplinary Counsel on June 13, 2020; and whether Respondent had logged on to the video conference that Disciplinary Counsel had scheduled to conduct an interview of Respondent.

During her testimony, Respondent engaged in some disrespectful behavior. In response to one question posed by Disciplinary Counsel she responded: "Are you asking me to do pushups?"

Prior to the completion of her examination by Disciplinary Counsel, Respondent stated that her computer battery was running out and that as a result she would have to cease participation in the hearing. She requested a continuance of the hearing. Respondent did not make any representation to the Panel as to why she was participating in the hearing from an automobile – as opposed to a location with a power outlet. Respondent did not file any motion with the Panel prior to the hearing either objecting to a remote hearing or citing any technology obstacle or limitation to her participation in the scheduled remote hearing or requesting an accommodation of any sort related to the hearing.

In response to Respondent's request, the Panel offered her an opportunity to travel to another location where she could plug in her computer and continue video-conference participation or to continue participating in the hearing by use of the audio connection available to her by cell phone (which Respondent was already utilizing for the audio connection to the hearing along with her computer). Respondent indicated that she would be unable to find

another location to plug in her computer and that participating with only an audio connection would violate her right of confrontation.

When the Panel indicated that the hearing would continue to completion Respondent took the position that the Panel was discriminating against her based on her status as a pro se litigant and her "impoverishment." The Panel renewed its suggestion that Respondent consider continuing to participate by means of her cell phone and made available the operations assistant assigned to the hearing to provide technical assistance to Respondent, but Respondent declined to continue participating. Shortly thereafter, Respondent's video and audio connections to the hearing stopped. The hearing continued and was completed approximately an hour later following Disciplinary Counsel's presentation of three additional witnesses.

CONCLUSIONS OF LAW

Rule 8.1(b) of the Vermont Rules of Professional Conduct provides as follows:

> [A] lawyer in connection with . . . a disciplinary matter, shall not . . . knowingly fail to respond to a lawful demand for information from [a] . . . disciplinary authority . . . ." V.R.Pr.C. 8.1(b).

V.R.Pr.C. 8.1(b).

Comment 2 acknowledges that:

> [t]his rule is subject to the provisions of the fifth amendment of the United States Constitution and corresponding provisions of state constitution. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this rule.

Id., Comment [2].

Beginning in early May 2020 and continuing through July 17, 2020, Respondent was aware of and knowingly failed to accede to multiple requests by Disciplinary Counsel for Respondent to submit to an interview. In addition, after Disciplinary Counsel went ahead and

scheduled an interview, Respondent knowingly failed to cooperate, despite being offered two options to facilitate her participation.

Respondent's obligation under Rule 8.1(b) to "respond to a lawful demand for information" logically encompassed an obligation to sit for an interview – a prerequisite to Disciplinary Counsel obtaining information that would allow her to assess Respondent's current fitness to practice. Disciplinary Counsel's desire to conduct an interview either in person or by video conference – so that she could observe Respondent's person – was reasonable. The affidavit in support of the criminal charge against Respondent suggested erratic and otherwise problematic social behavior on the part of Respondent and, in addition, reasonably called into question her mental health.

Moreover, there was no basis for Respondent to reject the two options provided or to insist on a telephone interview. Under A.O. 9, Rule 9, Disciplinary Counsel is granted broad authority to "investigate . . . all disciplinary and disability matters." Respondent could not dictate that an interview occur only by telephone – let alone insist that the interview take place on a holiday weekend and on two-day's notice. Her conduct violated Rule 8.1(b). *See, e.g., In re Liviz,* 144 N.E.3d 284, 285-86 (Mass. 2020) (affirming suspension order where respondent failed to respond to disciplinary counsel's requests for information).

The factual record presented to the Hearing Panel on the merits of the charges demonstrates that Respondent's attempts to avoid sitting for an interview with Disciplinary Counsel continued even after the Supreme Court rejected Respondent's attempt to stop the disciplinary investigation in its tracks through a general assertion of her Fifth Amendment right against self-incrimination. In its June 19, 2020 entry order, the Court made clear that,

notwithstanding Respondent's right to assert a Fifth Amendment privilege in response to specific questions from Disciplinary Counsel, Disciplinary Counsel was entitled to conduct an interview.

Each instance of non-responsiveness by Respondent to a communication from Disciplinary Counsel constituted a violation of Rule 8.1(b). *See, e.g., Attorney Grievance Commission v. Lewis*, 85 A.3d 865, 874 (Md. Ct. App. 2014) (respondent violated Rule 8.1(b) each time he failed to respond to letters, emails, and voice mail messages from disciplinary counsel and investigator). Under the facts presented, Respondent committed multiple violations of Rule 8.1(b).

Respondent received the various letters and emails from Disciplinary Counsel requesting an interview, culminating in the July 8 letter from Disciplinary Counsel which notified Respondent of the interview scheduled for July 17. Under Vermont law, "when a letter, properly addressed, is mailed there is a presumption of its receipt in due course." *Mary Fletcher Hosp. v. City of Barre*, 117 Vt. 430, 431, 94 A.2d 226, 228 (1953). Moreover, Respondent admitted in her answer to the petition that she had received the June 10 and July 8 letters from Disciplinary Counsel.[4]

Likewise, it is clear that Respondent received the email communications from Disciplinary Counsel on June 13 and June 25. Respondent sent emails to Disciplinary Counsel using the same email address that Disciplinary Counsel used to send these emails to Respondent. Finally, the voicemail message Respondent left on Disciplinary Counsel's answering machine on July 16 confirmed that Respondent was aware that an interview had been scheduled for July 17.

[4] Paragraph 8 of the answer states that the allegation with respect to the July 8 letter is "admitted in part and denied in part," without identifying the portion denied. Under the applicable rules of pleading, Respondent's failure to identify the portion denied results in an admission. *See* V.R.C.P. 8(b) & (d); A.O. 9, Rule 20(B) (Rules of Civil Procedure applicable in disability proceedings "except as otherwise provided").

In sum, Respondent was fully aware of Disciplinary Counsel's multiple requests for an interview and received advance notice of the scheduling of the July 17 interview. Accordingly, through her continuing non-cooperation Respondent committed multiple violations of Rule 8.1(b).

As the Supreme Court observed in its ruling on the interim suspension petition, Respondent does not have a Fifth Amendment right to decline to be interviewed. *See also Liviz*, 144 N.E.3d at 286 ("Silence in the face of bar counsel's request for information is not . . . a 'response' categorically protected by the privilege against compelled self-incrimination under the Fifth Amendment"). In order to make a proper assertion of her Fifth Amendment privilege against self-incrimination Respondent had to sit for an interview and, during the course of the interview, raise objections to specific questions.

Courts have repeatedly rejected blanket assertions of the Fifth Amendment in the context of judicial branch disciplinary proceedings. *See, e.g., In re Hill*, 149 Vt. 431, 435, 545 A.2d 1019, 1022 (1988) ("[R]espondent may not refuse to appear as a witness before the [Judicial Conduct] Board. Accordingly, the respondent's petition for extraordinary relief to prevent the Board from calling her as a witness must be dismissed. The Board's approach of ruling question by question on respondent's invocation of the privilege against self-incrimination is the proper one unless there is a general ground why the privilege cannot or need not be invoked in these circumstances."); *People v. Smith*, 937 P.2d 724, 729 (Colo. 1997) (rejecting assertion that requiring respondent to be deposed violated Fifth Amendment; hearing board "could properly require the respondent to attend his own deposition, at which time he could decline to answer specific questions if invocation of the privilege against self-incrimination was appropriate"); *In re Morganroth*, 718 F.2d 161, 167 (6th Cir. 1983) ("A blanket assertion of the privilege by a

witness is not sufficient to meet the reasonable cause requirement and the privilege cannot be claimed in advance of the questions"; a respondent "must supply such additional statements under oath and other evidence to the District Court in response to each question propounded so as to enable the District Court to reasonably identify the nature of the criminal charge for which [respondent] fears prosecution, *i.e.*, perjury and to discern a sound basis for the witness' reasonable fear of prosecution); *In re Zisook*, 430 N.E.2d 1037, 1043 (Ill. 1982) (refusing to appear in response to subpoena was inappropriate assertion of Fifth Amendment privilege; "[a]n attorney against whom a disciplinary proceeding is pending does not have a complete immunity from testifying as does a defendant in a criminal case. The attorney must appear as any other witness and assert the claimed privilege as to each incriminating question."); *In re Barber*, 128 A.3d 637, 640 (2015) (no Fifth Amendment right to refuse to take witness stand; respondent was "free to invoke his Fifth Amendment right on a question-by-question basis if, in responding to a question, [he] would be providing evidence that could be used to convict him of a crime.").

In sum, Respondent's willful failure to provide information to facilitate the scheduling of her interview and her subsequent failure to attend the scheduled interview are not protected by the Fifth Amendment. The Panel concludes that Respondent committed multiple violations of Rule 8.1(b) when she willfully failed to cooperate with Disciplinary Counsel's interview requests.[5]

[5] In the petition of misconduct, Disciplinary Counsel alleged two violations: a violation of Rule 8.1(b) and a separate violation under A.O. 9, Rule 7(D) [recently re-codified as Rule 11(D)] for "fail[ing] to furnish information to or respond to a request from disciplinary counsel, without reasonable grounds for doing so." Based on the allegations that were filed in the petition – alleging failure to cooperate in connection with the interview requests – finding a violation of Rule 7(D) would essentially amount to a duplication of the finding of violation by this Panel under Rule 8.1(b). Having found a violation of Rule 8.1(b), there does not appear to be any good reason why the Panel should find a separate violation. Given the similarity of the charges it does not seem fair under the circumstances to find a separate violation. For example, a separate violation would necessarily require application of the aggravating factor of "multiple offenses" under ABA Standard 9.22(d) for what essentially amounted to a duplicate violation.

* * *

The Panel notes that in reaching its conclusion that Respondent violated Rule 8.1(b), it has not considered, to any extent, the fact that Respondent declined to answer specific questions asked of her during the merits hearing based on assertions of her Fifth Amendment privilege. It appears that in the event a witness continues to decline to answer a question on Fifth Amendment grounds after an objection on such grounds is overruled, a final adjudication of the validity of such an assertion must be made by a court of law. *See, e.g., In re Hill*, 149 Vt. At 432-33 (following witness's refusal to answer questions in Judicial Conduct Board proceeding, Supreme Court review requested to review assertions of Fifth Amendment privilege); *see also, e.g., In re Zisook*, 430 N.E.2d at 1042 ("Inasmuch as disciplinary hearings are not presided over by a member of the judiciary, in order to secure a judicial determination as to the propriety of the asserted privilege, we adopt the following procedure. *** [A] witness wishing to claim the privilege must appear, as commanded, and claim the privilege as to each incriminating question. At this point the Commission may seek a judicial determination of the validity of the claimed privilege. To facilitate obtaining a judicial determination, it should not be necessary that the Commission apply to this court. A more expeditious disposition will be had if the Commission requests a judicial determination from the chief judge of the circuit in which the proceeding is being conducted, who will then designate a judge to hear the matter. The witness shall appear before the designated judge, who will then determine whether the assertion of the privilege was justified."). This conclusion also appears to be consistent with the provision in A.O. 9 that requires application to a court to "enforce the attendance and testimony of any witness" who has been subpoenaed to testify in a lawyer disciplinary proceeding. *See* A.O. 9, Rule 19(A)(3); *see also* 3 V.S.A. § 809a(a) (providing for superior court to entertain motion to enforce subpoena

when witness in executive branch administrative hearing "has appeared but . . . has refused to testify or to answer a question").

The Hearing Panel, although entitled to make initial evidentiary rulings on assertions of privilege, is not a court of law. Moreover, Disciplinary Counsel did not seek judicial review of Respondent's continuing refusal to answer questions during the merits hearing; nor did Counsel ask the Hearing Panel to suspend or continue the merits hearing so that she could seek such review. Accordingly, in the absence of judicial review of the validity of Respondent's assertions, the Panel has assigned no relevance or probative effect to her continuing refusals to answer questions.

Nor has the Panel drawn any adverse factual inferences from Respondent's refusal to answer questions during the merits hearing. Although some courts have indicated that it may be permissible to draw an adverse inference in a lawyer disciplinary proceeding from an assertion of the Fifth Amendment, *see, e.g., In re Reis*, 942 N.Y.S.2d 101, 104 (N.Y. App. Div. 2012) (concluding that adverse inferences may be drawn as a general rule and that "there is no reason not to draw such an inference here"), the Vermont Supreme Court has not addressed the issue. Moreover, although Disciplinary Counsel provided some legal briefing on the issue of adverse inferences, she did not request – in either her post-hearing proposed findings of fact or her memorandum of law – that the Panel draw an adverse factual inference from any *specific* question that Respondent refused to answer during the merits hearing. For all these reasons, the Panel has not drawn any adverse inferences from Respondent's refusal to answer questions during the hearing.

SANCTIONS DETERMINATION

The Vermont Rules of Professional Conduct "are 'intended to protect the public from persons unfit to serve as attorneys and to maintain public confidence in the bar.'" *In re PRB Docket No. 2006-167*, 2007 VT 50, ¶ 9, 181 Vt. 625, 925 A.2d 1026 (quoting *In re Berk*, 157 Vt. 524, 532, 602 A.2d 946, 950 (1991)). The purpose of sanctions is not "to punish attorneys, but rather to protect the public from harm and to maintain confidence in our legal institutions by deterring future misconduct." *In re Obregon*, 2016 VT 32, ¶ 19, 201 Vt. 463, 145 A.3d 226 (quoting *In re Hunter*, 167 Vt. 219, 226, 704 A.2d 1154, 1158 (1997)).

Applicability of the ABA Standards for Imposing Lawyer Sanctions

Hearing panels are guided by the ABA Standards when determining appropriate sanctions for violation of the Vermont Rules of Professional Conduct:

> When sanctioning attorney misconduct, we have adopted the *ABA Standards for Imposing Lawyer Discipline* which requires us to weigh the duty violated, the attorney's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating or mitigating factors.

In re Andres, 2004 VT 71, ¶ 14, 177 Vt. 511, 857 A.2d 803. "Depending on the importance of the duty violated, the level of the attorney's culpability, and the extent of the harm caused, the standards provide a presumptive sanction. **** This presumptive sanction can then be altered depending on the existence of aggravating or mitigating factors." *In re Fink*, 2011 VT 42, ¶ 35, 189 Vt. 470, 22 A.3d 461.

The Duty Violated

The ABA Standards recognize a number of duties that are owed by a lawyer to his or her client. *See Standards for Imposing Lawyer Sanctions* (ABA 1986, amended 1992) (*"ABA*

Standards"), Theoretical Framework, at 5. Other duties are owed to the general public, the legal system, and the legal profession. *Id*.

Respondent's failure to respond to Disciplinary Counsel's interview requests and to attend the scheduled interview violated a duty to the legal profession. *See id*. at 6 (the duties associated with Model Rule 8.1 "are not inherent in the relationship between the professional and the community," but rather implicate an ethical concern for "maintaining the integrity of the profession").

Mental State

"The lawyer's mental state may be one of intent, knowledge, or negligence." *ABA Standards*, § 3.0, Commentary, at 27. For purposes of the sanctions inquiry, "[a lawyer's] mental state is [one] of intent, when the lawyer acts with the conscious objective or purpose to accomplish a particular result." *Id.*, Theoretical Framework, at 6. The mental state of "knowledge" is present "when the lawyer acts with conscious awareness of the nature or attendant circumstances of his or her conduct [but] without the conscious objective or purpose to accomplish a particular result." *Id*. The mental state of "negligence" is present "when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation." *Id*.; *see also id.*, at 19 (definitions of "intent," "knowledge," and "negligence").

The Panel concludes that Respondent's state of mind is best characterized, under the factual circumstances of this case, as "knowing." Respondent was fully aware of Disciplinary Counsel's multiple requests for an interview and repeatedly rebuffed those requests. Moreover, her failure to agree to Disciplinary Counsel's requests continued even after the Supreme Court's

decision placing her on interim suspension for knowingly failing to submit to an interview. One might therefore view this conduct as an "intentional" failure to cooperate.

But the Panel also considers the fact that Respondent indicated some willingness to be interviewed – albeit only by telephone and not by the means Disciplinary Counsel requested – and during the phone call with Disciplinary Counsel and her investigator on July 17 did respond to some questions – although Respondent declined to answer various other questions posed to her. The evidence suggests that Respondent was attempting to modify the format of any interview and to avoid answering some of the questioning, but that she was not ignoring altogether the attempts to interview her. Under all the circumstances presented, the Panel concludes that a "knowing" state of mind is the best characterization.

Injury and Potential Injury

The ABA Standards consider "the actual or potential injury caused by the lawyer's misconduct." *ABA Standards*, § 3.0(c), at 26. The term "injury" is defined as "harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. The level of injury can range from 'serious' injury to 'little or no' injury." *Id*., Definitions, at 9. The term "potential injury" refers to harm that is "reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct." *Id*. Under the ABA Standards, "[t]he extent of the injury is defined by the type of duty violated and the extent of actual or potential harm." *Id*. at 6.

As the Supreme Court observed in its interim suspension ruling, Respondent's failure to cooperate with the interview requests "significantly impaired Disciplinary Counsel's ability to fulfill her obligation to protect the public." *In re Legus*, 2020 VT 40, ¶ 5. Disciplinary Counsel's investigation was prompted by the filing of criminal charges that suggested erratic

behavior on the part of Respondent – aiming a loaded handgun at a store clerk – and the inquiry reasonably required not only information relating to Respondent's current practice and clients, but also an assessment of Respondent's health and well-being. *See also id*. (observing that due to Respondent's conduct Disciplinary Counsel "cannot determine if a disability investigation should be opened; and she cannot assess how to protect the public"). Respondent's misconduct harmed the disciplinary system, which is designed to protect the public. *Cf. In re Hongisto*, 2010 VT 51, ¶ 11, 188 Vt. 553, 998 A.2d 1065 (failing to cooperate with disciplinary counsel in violation of Rule 8.4(d) "injured the disciplinary system itself by consuming scarce resources and eroding the public's confidence in the legal profession.")

Presumptive Standard under the ABA Standards

The Panel concludes that § 7.2 of the ABA Standards is applicable in this case. It states as follows: "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public or the legal system." *ABA Standards*, § 7.2. Respondent owed a duty of cooperation to Disciplinary Counsel and violated that duty by refusing to submit to either an in-person or video-conferenced interview and, as a result, caused injury to the public and the legal system. Application of Standard 7.2 is consistent with its application in another disciplinary decision involving non-cooperation with disciplinary counsel. *See In re Jacien*, 2018 VT 35 (Supreme Court entry order adopting PRB Decision No. 212 in its entirety) at 13 (respondent was aware of probationary obligation to report to disciplinary counsel and failed to respond to repeated inquiries).

Aggravating and Mitigating Factors Analysis

Next, the Panel considers any aggravating and mitigating factors and whether they call for increasing or reducing the presumptive standard of suspension. Under the ABA Standards, aggravating standards are "any considerations, or factors that may justify an increase in the degree of discipline to be imposed." *ABA Standards*, § 9.21, at 50. Mitigating factors are "any considerations or factors that may justify a reduction in the degree of discipline to be imposed." *Id*. § 9.31, at 50-51. Following this analysis, the Panel must decide on the ultimate sanction that will be imposed in this proceeding.

(a) Aggravating Factors

The following aggravating factors under the ABA Standards are present:

§ 9.22(c) (pattern of misconduct) – Respondent repeatedly resisted Disciplinary Counsel's attempts to schedule an in-person or video-conferenced interview. The misconduct continued even after the Supreme Court rejected Respondent's blanket assertion of the Fifth Amendment and affirmed Disciplinary Counsel's authority to conduct an interview. The misconduct spanned multiple communications from Disciplinary Counsel to Respondent.

§ 9.22(g) (refusal to acknowledge wrongful nature of conduct) – In the face of a Supreme Court decision advising Respondent that she would have to submit to an interview and multiple communications from Disciplinary Counsel that asserted her authority and detailed two reasonable options for conducting the interview, Respondent remained defiant and attempted to insist on a telephone interview. Respondent repeatedly failed to acknowledge her obligation to cooperate with Disciplinary Counsel's request.[6]

[6] Disciplinary Counsel argues that the Panel can find an additional aggravating factor under ABA Standard 9.22(e) applicable by "draw[ing] the inference that Respondent's conduct, including refusal to answer a question when directed to by the chair and general disrespect for the proceeding" amount to

(b) Mitigating Factors

Section 9.32 of the ABA Standards sets forth a list of mitigating factors. *ABA Standards*, § 9.32, at 51. The Panel concludes that the following mitigating factor applies:

§ 9.32(a) (absence of prior disciplinary record) – Disciplinary Counsel has represented to the Panel that Respondent has no prior disciplinary record.

Respondent did not seek to present any evidence during the merits hearing, and there is no other evidence in the record in support of any other mitigating factor.

(c) Weighing the Aggravating Mitigating Factors

The aggravating factors outnumber the mitigating factors, and the Panel considers the aggravating factors to merit significant weight. At the same time, the Panel gives significant mitigating weight to the absence of any prior disciplinary record. Moreover, although Respondent did not present any evidence during the merits hearing as to the mitigating factor of "personal or emotional problems," *ABA Standards*, § 9.32(c), the Panel wonders whether personal and emotional problems impacted her dealings with Disciplinary Counsel. The pendency of the criminal charges, in which Respondent was representing herself, would be cause

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"bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency." Proposed Findings and Memorandum at 18. This argument is not only vague but otherwise problematic. The Panel cannot attribute bad faith to any of the assertions by Respondent of her Fifth Amendment privilege during the hearing because Disciplinary Counsel never sought judicial review of Respondent's continuing refusal on Fifth Amendment grounds to answer any particular question. In the absence of a judicial determination that any particular assertion was not valid, the Panel cannot attribute bad faith to those continuing refusals. Nor has Disciplinary Counsel demonstrated that Vermont law would allow adverse inferences to be drawn from the continuing refusals under the circumstances of this case, and she has not identified any specific question from which she would have the Panel draw an inference supporting a determination of bad faith obstruction. In addition, the Panel cannot find bad faith obstruction based on Respondent's discontinuance of her attendance at the merits hearing. Even though Respondent moved for a continuance of the hearing (which motion the Panel denied), there is no evidence that the discontinuance of her participation was an attempt to disrupt the proceeding. And the discontinuance of participation might very well have resulted simply due to poor planning for the remote hearing on Respondent's part. The denial of the motion to continue does not prove bad faith.

for stress. In addition, the behavior detailed in the affidavit of probable cause accompanying the criminal information raised the question of whether Respondent was experiencing emotional problems and, in fact, prompted Disciplinary Counsel's desire to ascertain whether a disability proceeding might be appropriate. And, finally, Respondent's appearance for the merits hearing while seated in a car (apparently by herself) and wearing a face mask – and her refusal without any explanation to remove the face mask for the hearing – suggest the possibility of emotional problems. Given all these considerations, the Panel concludes that the presumptive sanction of suspension is appropriate at this time and should not be increased.

* * *

The ABA Standards state that "[g]enerally, suspension should be for a period of time equal to or greater than six months, but in no event should the time period prior to application for reinstatement be more than three years." *ABA Standards*, Part IV, Standards for Imposing Sanctions, at 20. The recommendation of a minimum length of suspension is persuasive but not binding on the Panel. *See, e.g., In re McCarty*, 164 Vt. 604, 605, 665 A.2d 885, 887 (1995) ("periods of suspension of less than six months are appropriate in some circumstances"); *In re Blais*, 174 Vt. 628, 631, 817 A.2d 1266, 1270 (2002) (five-month suspension plus probation imposed).

The Panel must ultimately determine the length of the suspension that will be imposed based on all the considerations presented. Having in mind that "[i]n general, meaningful comparisons of attorney sanction cases are difficult as the behavior that leads to sanction varies so widely between cases," *In re Strouse*, 2011 VT 77, ¶ 43, 190 Vt. 170, 34 A.3d 329 (Dooley, J., dissenting), the case under consideration bears compelling similarities to *In re Jacien*, 2018 VT 35 (adopting PRB Decision No. 212). In *Jacien*, the hearing panel imposed a 9-month

suspension based on respondent's knowing failures to respond to multiple communications from Disciplinary Counsel. – by telephone and email and in writing. Those are the circumstances in the current case as well.

The fact that the respondent in *Jacien* was found to have violated the terms of a prior probation order in addition to the violation of Rule 8.1(b) does not undermine reliance on that case for purposes of establishing an appropriate length of suspension. The circumstances of the current case involve a respondent who failed to cooperate with repeated requests to schedule an interview after having been advised under the Supreme Court's interim suspension order that Respondent would have to cooperate with Disciplinary Counsel's request for an interview. Although the Supreme Court's suspension order was preliminary in nature it clearly put Respondent on notice of her obligation to submit to an interview. Respondent knowingly disregarded that notification.

In sum, the Panel concludes that a 9-month suspension is the appropriate sanction for Respondent's misconduct in this case.

ORDER

It is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Respondent, Carrie J. Legus, Esq., has violated V.R.Pr.C. Rule 8.1(b), as set forth above;

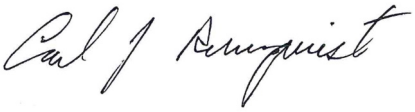
2. Respondent is suspended from the office of attorney and counselor at law for a period of nine (9) months, effective from the date of this decision.

Dated: August 30, 2021

Hearing Panel No. 7

Jesse Bugbee, Esq., Chair

Vanessa Kittell, Esq., Member



Carl J. Rosenquist, Public Member