IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:	)	
	)	
CARYN H. NADENBUSH	)	**Supreme Court #SC93420**
	)	
Respondent.	)	

INFORMANT'S BRIEF

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Background

Respondent Nadenbush was admitted to Missouri's bar in 2005. She has no prior Missouri disciplinary history. Respondent is currently authorized to practice law in Missouri. She has not elected to take inactive status in Missouri. Respondent is also licensed in Illinois. According to the Illinois Attorney Registration and Disciplinary Commission website, Respondent is not authorized to practice law in Illinois. Her status is "voluntarily inactive."

On June 5, 2013, disciplinary counsel informed the Missouri Supreme Court that Respondent had been disciplined by the Illinois Supreme Court. **App. 2-7.** The Court issued an order to show cause why Respondent should not be disciplined based on the Illinois order of discipline. **App. 52**. Respondent thereafter filed a response to the show cause order. **App. 54-58**. On August 13, 2013, the Court ordered the matter briefed. **App. 59**.

The facts underlying Respondent's Illinois discipline are taken from the Report and Recommendation of the Hearing Board of the Illinois Attorney Registration and Disciplinary Commission.

Hearing Board Findings of Fact

In 2009 and 2010, the Respondent was a partner in the law firm of Hennessy and Roach, and represented employers in workers' compensation cases. Some of those cases were pending before Jennifer Teague, an arbitrator for the Illinois Workers'

Compensation Commission. The Respondent and Teague were also good friends, socialized together, and frequently communicated by e-mail about personal matters. The misconduct charged in this case arises out of ex parte e-mails exchanged between the Respondent and Teague. Those e-mails pertained to cases pending before Teague and in which the Respondent represented one of the parties. **App. 25-26**.

The Blakemore v. Walgreens Matter

In May 2009, the Blakemore v. Walgreens workers' compensation case was pending before Arbitrator Teague. The Respondent represented Walgreens, and attorney Darren Keith Short represented Blakemore. The Respondent admitted in her Answer that the following e-mails were exchanged between her and Teague. **App. 26**.

On May 27, 2009, after part of the trial had been completed, the Respondent sent an ex parte e-mail to Teague, that is, without sending a copy thereof to Short. In her e-mail, the Respondent said that Short wanted to complete the trial on June 3d and that she had no problem with that. The Respondent also said in her e-mail: "Keith Short refuses to discuss settlement with me," "I'm not sure what Keith is wanting at this point," "I think I told you he demanded $50K…then wouldn't accept it after lunch," "then he upped his demand to $80K, but said he hadn't talked to his client yet. WTF??" Teague responded in an ex parte e-mail, and said "I think we should just finish the trial and you say F him," and "he's clearly jerking you around." **App. 26**.

Mr. Short testified he had agreed in advance that the Respondent could contact Teague about scheduling. He also said that, prior to the above e-mail, Teague was not aware of Short's demand for $80,000. **App. 26**.

The Pound v. Henderson Trucking Matter

Pound v. Henderson Trucking was a workers' compensation case pending before Teague from January to June 2010. The Respondent represented Henderson Trucking, and attorney Lindsay Rakers represented Pounds. The Respondent admitted in her Answer that the following e-mails were exchanged between her and Teague. **App. 30**.

On January 29, 2010, Rakers sent an e-mail to the Respondent, pointing out a mistake in a deposition and indicating she would object to the mistaken reference. Without Rakers' knowledge or consent, the Respondent forwarded Rakers' e-mail to Teague and said "She is really starting to annoy me. Either let the report in or don't, but don't tell me I can admit it and then nitpick every line to find things to object to." Teague replied "all you have to do is object to going forward because you need a dep. That will cook her goose and she'll fall apart. She is annoying and a bad lawyer, I think." **App. 30**.

On February 8, 2010, Rakers sent an e-mail to the Respondent asking about the amount of medical that had been paid for Pound's back claims. Without Rakers' knowledge or consent, the Respondent forwarded Rakers' e-mail to Teague, and made the comment "Make it stop." Teague replied "OMG-I assume you are trying to settle." **App. 31**.

On February 17, 2010, Rakers sent another question to the Respondent. Without Rakers' knowledge or consent, the Respondent forwarded Rakers' e-mail to Teague, and made the comment "Why does this have to be so painful?" **App. 31.**

On March 10, 2010, Teague sent an ex parte e-mail to the Respondent, complaining about Rakers' "f'n exhibits - I can't figure out where the god damn records are and I am pissed!" The Respondent replied to Teague "Tell me about it!!! That was cluster trying to go through those and cite stuff." Teague replied to the Respondent "Oh, yes, I know…that's why I was pitching a fit at the arbitration. She basically put in the records twice." **App. 31.**

On March 31, 2010, Rakers sent an e-mail to the Respondent stating "I have authority to demand 30% MAW [man as whole]. Let me know." Without Rakers' knowledge or consent, the Respondent forwarded Rakers' e-mail to Teague, and stated "She's kidding right?" Teague replied "??." The Respondent then sent another ex parte e-mail to Teague, stating "I mean, it's a back sprain." Teague replied "minus like 25." Finally, the Respondent told Teague "That's what I was thinking." **App. 31.**

The Croghan v. Walgreens Matter

The workers' compensation case of Croghan v. Walgreens was filed in 2008. The Respondent represented Walgreens, and attorney Fritz Levenhagen represented the claimant. The case was before Arbitrator Teague in 2010. Croghan's claim was based upon the thoracic outlet syndrome injury. Both Levenhagen and the Respondent described thoracic outlet syndrome as a rare injury. Walgreens disputed the claim on the ground that Croghan's injury was the result of an automobile accident. From the time the case was filed, through May 2010, there had been no conversation about the case in front of Teague, except to continue it. The Respondent admitted in her Answer that the following e-mails were exchanged between her and Teague. **App. 33**.

Attorney Levenhagen scheduled a deposition of an expert witness, Dr. Thompson, at 2:00 p.m. on May 12, 2010. The Respondent attended the deposition. At 1:12 p.m. on May 12, 2010, while the file in the Croghan case was on her desk, the Respondent sent an ex parte e-mail to Teague, asking "what do you think bilateral thoracic syndrome is worth." At 1:16 p.m., Teague replied "40 to 50 MAW [man as whole]??? Let me do a little checking…give me 10." Respondent sent another e-mail to Teague at 1:19 p.m. saying "No hurry. She had full duty release, no problems and is actually better than before (the problem seems to have started following an auto accident)." The next e-mail from Teague to the Respondent was sent at 8:49 a.m. on the following day. Teague's e-mail stated "I did some research in my old decisions. It seems I have written them anywhere from 20 MAW up to 45 MAW. Was there surgery?" The Respondent replied to Teague, "Yes surgery." Finally, Teague replied "I think 20/25 would probably be on par." **App. 33**.

The Respondent testified that "I still don't feel the original e-mail itself, the question, what do you think this is worth, related specifically to this [Croghan] case." The Respondent explained that someone in her office asked her about the value of a thoracic outlet syndrome injury, and she decided to send an e-mail to Teague and asked her. She further explained that "the best I can put together is that I was using the Croghan case to provide [Teague] with an example in order…to get an accurate range of value." **App. 34**.

Fisk Case

The Fisk case was a workers' compensation case before Arbitrator Teague in 2009 and 2010. The Respondent represented the employer, and attorney Mark Hassakis represented the claimant. The Respondent admitted that she and Teague exchanged the following e-mails pertaining to attorney Hassakis. **App. 35-36**.

On October 28, 2010, at 9:27 a.m., Janet Hassakis, the wife and employee of Mark Hassakis, sent an e-mail to the Respondent, with a copy to Teague, stating, in part, that "our goal would be to resolve the cases by year's end." The Respondent then sent an ex parte e-mail to Teague at 9:29 a.m., that is, neither Janet nor Mark Hassakis was sent a copy. In her e-mail, the Respondent stated "that won't happen. It's already November. I have no records and no settlement demand. Not to mention, I've been waiting three months for a response to an offer I made on another case. Think early spring." A few minutes later, at 9:31 a.m., Teague replied to the Respondent by ex parte e-mail, saying, "I think I will force a trial before early spring." **App. 36**.

On June 2, 2011, Administrator's counsel sent a letter to the Respondent requesting further information about the Croghan case, and enclosed the complaint that attorney Levenhagen made against her. Levenhagen complained that the ex parte e-mails exchanged between the Respondent and Teague on May 12 and 13, 2010, pertained to the Croghan case and were inappropriate. In her response to the ARDC, on June 4, 2011, the Respondent said:

> Mr. Levenhagen is accusing me of discussing the Deanna Croghan case with Ms. Teague. As you know from prior review of my e-mails, this case

was not the subject of any of the e-mail correspondence between me and Ms. Teague.

App. 40.

POINT RELIED ON

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE THE ILLINOIS SUPREME COURT DISCIPLINED HER LICENSE FOR VIOLATION OF RULES ANALOGOUS TO MISSOURI RULES 4-3.5(b), 4-8.1(a), 4-8.4(c), AND 4-8.4(d) IN THAT SHE KNOWINGLY COMMUNICATED EX PARTE WITH A JUDGE ABOUT THE MERITS OF PENDING CASES AND DISPARAGED OPPOSING COUNSEL AND MADE A FALSE STATEMENT OF MATERIAL FACT DURING THE DISCIPLINARY INVESTIGATION.

In re Caranchini, 956 S.W. 2d 910 (Mo. banc 1997), cert den. 524 U.S. 940, 118 S Ct. 2347, 141 L.Ed.2d 717

In re Hess, No. SC92923 (Mo. banc Aug. 27, 2013)

In re Ehler, 319 S.W.3d 442 (Mo. banc 2010)

ARGUMENT

I.

THE SUPREME COURT SHOULD DISCIPLINE RESPONDENT BECAUSE THE ILLINOIS SUPREME COURT DISCIPLINED HER LICENSE FOR VIOLATION OF RULES ANALOGOUS TO MISSOURI RULES 4-3.5(b), 4-8.1(a), 4-8.4(c), AND 4-8.4(d) IN THAT SHE KNOWINGLY COMMUNICATED EX PARTE WITH A JUDGE ABOUT THE MERITS OF PENDING CASES AND DISPARAGED OPPOSING COUNSEL AND MADE A FALSE STATEMENT OF MATERIAL FACT DURING THE DISCIPLINARY INVESTIGATION.

The Illinois Supreme Court suspended Respondent from practicing law in Illinois for ninety days and required that she complete a Professionalism Seminar conducted by the Illinois Attorney Registration and Disciplinary Commission. The Illinois Supreme Court approved and confirmed the Illinois Hearing Board's report, which had concluded that Respondent violated four rules of professional conduct, all of which have identical counterparts in Missouri's rules of professional conduct.

Missouri disciplinary counsel sought reciprocal discipline in Missouri for those rule violations, in accordance with the procedure set forth in Supreme Court Rule 5.20.

The Court issued Respondent Nadenbush[1] an order to show cause why the Illinois adjudication of misconduct should not be conclusive for purpose of discipline by the Missouri Supreme Court.

On July 3, 2013, Respondent filed a response to the show cause order. On August 13, 2013, the Court ordered the record filed and the case briefed.

Issues Raised in Response to Show Cause Order

It is important to note that Respondent nowhere asserts that her conduct did not violate the rules. She has admitted sending and receiving the e-mails. She does not take issue with the level of sanction recommended by disciplinary counsel; rather, she asks the Court not to invoke reciprocal discipline. She raises no Constitutional objections to discipline.

In paragraphs 3-7 of her response, Respondent Nadenbush takes issue with the Illinois disciplinary process, e.g., that her counsel was denied a continuance, Illinois disciplinary authorities failed to meet their burden of proof, the hearing board failed to cite evidence favorable to her in its decision. Respondent ascribes to an Illinois ARDC senior disciplinary counsel statements suggesting Respondent had violated no ethical rules and was being unfairly harassed for political reasons. Respondent encloses the

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[1] Although Respondent signed her response to the show cause order as Caryn Haddix, as of the date of this writing (October 9, 2013), she has not reported a name change to the Clerk of the Supreme Court.

alleged statements in quotation marks, but without reference to any sort of transcribed script.

In paragraphs 8-13, Respondent contends that the Missouri Supreme Court should not impose discipline because the Illinois discipline has: caused her to be blackballed from the legal community, cost her her career, slandered her professional reputation, publicly humiliated her, made her destitute, and caused her to seek professional counseling for depression and anxiety. Respondent also argues that reciprocal discipline should not be imposed because she "intends to assume inactive status in Missouri," as she has done in Illinois. She states that she "is no longer engaged in the practice of law, and has not been so engaged in the past 2.5 years." Thus, Respondent argues, Missouri discipline would do nothing but punish her.

Finally, Respondent states she should "receive the same treatment" as her colleagues, who she says were disciplined in Illinois on related matters.

The issues raised by Respondent in her response to the show cause order are discussed below.

Illinois Disciplinary Process Not Fair

Respondent's complaints about the Illinois disciplinary process are issues that she should, could, and for all the record reflects, did, raise in the course of the Illinois proceeding. For Missouri's purposes, it is enough to know that Respondent had the opportunity to raise her objections and present her defense throughout the Illinois disciplinary case. She was represented by counsel in the hearing conducted before the

hearing board. There is no evidence, or reason, to suggest that Respondent was denied any Constitutional protections in the conduct of the Illinois disciplinary proceeding. More importantly, Respondent has never alleged that she was. The factual record developed in the Illinois disciplinary case are binding on Respondent here. In re Caranchini, 956 S.W.2d. 910 (Mo. banc 1997), cert den. 524 U.S. 940, 118 S Ct. 2347, 141 L.Ed.2d 717.

A couple of points are pertinent to Respondent's reference to alleged comments made by Denise Church to Respondent. Ms. Church is a senior disciplinary counsel for the Illinois ARDC. Respondent alleges that Ms. Church made the comments to her at the conclusion of Respondent's April, 2011, sworn statement.

First, Respondent enclosed the remarks in quotation marks, as though they were lifted from transcription. Missouri disciplinary counsel has reason to doubt that is the case. Likewise, it is doubtful that Ms. Church would have told Respondent, at an investigatory stage of the case, that her conduct violated no ethics rules. Second, much of the evidence of the more serious misconduct in this case came to light after the sworn statement was taken, i.e., Respondent's denial that her May 12 and 13, 2010, e-mails had anything to do with Croghan. Thus, any off the record comments made by Ms. Church in April preceded revelation of the more serious misconduct.

Too Much Punishment

Respondent describes in detail the negative consequences she says that the 90-day Illinois suspension has had on her life. Focusing the Court's attention on a Respondent's personal distress does a disservice to the legal profession and the public, for whom the

disciplinary system exists to serve. The purpose of attorney disciplinary proceedings is to protect the public and maintain the integrity of the profession. In re Ehler, 319 S.W.3d 442, 451 (Mo. banc 2010). Absent reciprocal discipline, a lawyer's misconduct in another jurisdiction would go unreported to Missouri residents and unnoted by the legal profession in Missouri. The public, including of course potential clients of Respondent, deserve to have Respondent's disciplinary history available to them, whether it originated in Missouri or elsewhere. Attorney discipline also "serves to educate the members of the bar and the public concerning unethical conduct; such education has a deterring influence." In re Crouppen, 731 S.W.2d 247, 250 (Mo. banc 1987).

It is integral to the proper functioning of the disciplinary system that sanctions be of record. Prior discipline is recognized as a factor to be considered in aggravation of sanction in a progressive disciplinary scheme. ABA *Standards for Imposing Lawyer Sanctions* § 9.22(a). This Court considers prior discipline in its sanction analysis. See In re Ehler, 319 S.W.3d at 452; In re Wiles, 107 S.W.3d 228 (Mo. banc 2003) (per curiam). If discipline is withheld because the lawyer alleges the collateral consequences to her private life are burdensome, none of these purposes of discipline are achieved.

Announced Intention to Elect Inactive Status

The simplest response to Respondent's assertion that this Court should not discipline her because she intends to take inactive status is that she has not, as of the date of this writing, done so. As a licensed Missouri attorney in good standing, Respondent is fully eligible to represent clients here. The public protection and bar integrity purposes

of attorney discipline are present and require a Missouri response to Respondent's Illinois misconduct.

Respondent also argues that any discipline would only serve to punish her because she ceased practicing law when she was discharged by her law firm in February of 2011. Of course, her alleged voluntary cessation of law practice accomplishes neither of the purposes of attorney discipline. Voluntary abstention from practice is not attorney discipline, which must be administered by the Court. In re Zink, 278 S.W.3d 166 (Mo. banc 2009). Neither purported voluntary abstention, nor professed future intention to elect inactive status, should be permitted to supervene a Court ordered sanction.

Consistent Treatment

Finally, Ms. Nadenbush suggests in her response to the show cause order that two of her colleagues, also found to have engaged in ex parte e-mail communications with the Illinois workers' compensation judge, must be getting off much easier than the reprimand level sanction recommended by disciplinary counsel in her case. Both of the attorneys mentioned by Respondent in her response were licensed in Missouri as well as Illinois at the time of the misconduct.

Neither of the other two attorneys referenced by Respondent were alleged, and found, to have lied to disciplinary authorities in the course of the Illinois disciplinary investigations. Thus, the Rule 4-8.1(a) and Rule 4-8.4(c) violations were not present in their cases. Their Illinois and Missouri cases involved less serious misconduct and were resolved accordingly. Indeed, one of the two attorneys elected to go on and is currently on inactive status in Missouri.

Respondent was found by the Illinois Supreme Court to have violated multiple rules of professional conduct, including the rule prohibiting ex parte communications with a judge and the rule prohibiting dishonest conduct. She raises no valid basis in her response to the Court's show cause order for evading an order of discipline from the Missouri Supreme Court.

Illinois Disciplinary Case

The Illinois Hearing Board, after hearing, in a decision approved and confirmed by the Illinois Supreme Court, concluded that Respondent Nadenbush violated the rules set forth and discussed below (Missouri's analogous rules are cited in the subheadings). A brief summary of the facts underlying the rule violations follows recitation of the rule. Conclusions of law from the Illinois Hearing Board's decision, along with Missouri disciplinary counsel's argument, follow.

Rule 4-3.5(b)

> A lawyer shall not: (b) communicate ex parte with such a person[2] during the proceeding unless authorized to do so by law or court order.

[2] The "such person" referred to in the rule is a person serving in an official capacity in the proceeding, such as judges, masters or jurors. Comment 2, Rule 4-3.5.

In an ex parte e-mail with the workers' compensation judge[3] contemporaneously presiding over the case (Blakemore v. Walgreens), dated May 27, 2009, Respondent revealed specifics regarding settlement negotiations ongoing between her and her opposing counsel.

In five e-mails exchanged in January and March of 2010, regarding Pound v. Henderson Trucking, a workers' compensation case contemporaneously pending before the judge, Respondent either forwarded to the judge an e-mail sent to her by opposing counsel (without opposing counsel's knowledge or consent) or replied to the judge's e-mail sent to her. The e-mails touched on settlement matters, evidentiary issues, and comments disparaging opposing counsel's legal abilities as well as the extent of the claimant's injury.

On May 12, 2010, approximately an hour before the doctor's deposition was to commence in the case of Croghan v. Walgreens, Respondent sent an ex parte e-mail to the workers' compensation judge before whom the Croghan case was pending, and asked what the judge thought a bilateral thoracic syndrome was worth. That rare medical condition was the condition from which the Croghan claimant asserted she suffered. Several additional e-mails were exchanged over the next twenty-four hours between

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[3] The Illinois workers' compensation "arbitrator," or judge, with whom the e-mails were exchanged was the same person, Jennifer Teague, with respect to all the e-mails at issue. Ms. Teague is not licensed in Missouri.

Respondent and the judge in which Respondent provided further details congruent with the Croghan case (without identifying the case by name).

In October of 2010, Respondent sent and received ex parte e-mails to and from the workers' compensation judge regarding a claimant named Fisk. In the e-mails, Respondent made unflattering comments regarding opposing counsel's failure to provide her with records and failure to respond to her offer to settle a different case.

Respondent admitted in the course of the Illinois disciplinary case receiving and sending the discussed e-mails. She does not assert in her response to Missouri's reciprocal information that she did not violate Rule 4-3.5(b). Respondent's multiple violations of the Illinois rule are a proper basis for discipline by this Court for violation of Missouri's analogous rule. See, e.g., In re Hess, No. SC92923, slip op. at 8-9 (Mo. banc August 27, 2013). The rule was cited, but not discussed, as a basis for a disciplinary sanction in In re Tackett, 159 S.W.3d 846 (Mo. banc 2005).

Respondent Nadenbush's friendship with Ms. Teague predated Ms. Teague's procurement of her position as an arbitrator, which might account for some blurring of their appreciation of the ethical line that had to be drawn in their communications. The frequency and specificity of their e-mail discussions, however, which touched on disputed issues in four different pending cases and in which they made derogatory comments regarding opposing counsel and their litigating strategies and skills, refute any suggestion that the communications be dismissed as mere carelessness. And, the e-mails were exchanged over an extended period of time – seventeen months. See, generally,

Shepard, "Judicial Professionalism and the Relations between Judges and Lawyers," 14 Notre Dame J. L. Ethics & Pub. Policy 223 (2000).

Respondent appears not to appreciate the seriousness of her misconduct or to acknowledge that she repeatedly crossed the ethical line in her communications with Ms. Teague. The series of e-mails initiated by Respondent on May 12, 2010, only an hour before the doctor's deposition was to begin in the Croghan case, regarding evaluation of the claimed injury in the case and incorporating facts specific to the case, including Respondent's suggestion that the injury "seems to have started following an auto accident," are the clearest examples of knowing ex parte contacts by Respondent that any attorney should appreciate were clearly improper and unethical.

Illinois' legal analysis of the ex parte rule violations follows.

> Rule 3.5(i) of the 1990 Illinois Rules of Professional Conduct, which was in effect in 2009, prohibited an attorney, in an adversary proceeding, from communicating "as to the merits of the cause with a judge or an official before whom the proceeding is pending." It is clear to us that, at the time the above e-mails were exchanged on May 27, 2009, there was an adversary workers' compensation proceeding pending and that Arbitrator Teague was "an official before whom the proceeding is pending." It is also clear that the Respondent's e-mail to Teague went far beyond scheduling, but addressed opposing counsel's conduct and demand. Her e-mail suggested, rather strongly, that the increase in opposing counsel's demand from $50,000 to $80,000 was without a reasonable basis. Her e-mail then

ended with the cryptic comment "WTF??" Certainly the merits of a workers' compensation case include the amount of the award. The Respondent's criticism to the arbitrator about opposing counsel's demand, without his knowledge, went to the merits of the case. Thus, the Respondent violated Rule 3.5(i).

App. 17-18.

Rule 3.5(b) of the Illinois Rules of Professional Conduct, which became effective on January 1, 2010, prohibits an attorney from communicating ex parte "during the proceeding" with the judge "or other official" unless authorized to do so by law or court order. A Comment to the Rule states that "[d]uring the proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding."

It is clear to us that the above ex parte communications were exchanged between the Respondent and Teague during a workers' compensation proceeding, at which Teague was serving in an official capacity as the arbitrator. The ex parte communications were not authorized by law or court order and even discussed the potential award to be made by Teague. Consequently, the Respondent clearly violated Rule 3.5(b).

App. 31-32.

> We find that the Respondent violated Rule 3.5(b) of the Illinois Rules of Professional Conduct (2010), which prohibits an attorney from communicating ex parte "during the proceeding" with the judge "or other official" unless authorized to do so by law or court order. It is clear to us that the above ex parte communications were unauthorized and were exchanged between the Respondent and Teague during the Croghan workers' compensation proceeding, at which Teague was serving in an official capacity as the arbitrator.

App. 35.

Rule 4-8.4(d)

> It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

In many of the ex parte e-mails exchanged between Respondent and Teague, Respondent mentioned salient facts about settlement negotiations and asked for the workers' compensation judge's opinion about the evaluation of specific injuries. She made derogatory remarks about opposing counsel's character and ability to practice law. All of these ex parte discussions pertained to counsel involved in and facts relating to cases then pending before the judge.

By their very nature, ex parte contacts between a lawyer and decision maker deprive the excluded party of the right to respond and be heard. There is a great risk of imparting incomplete, misleading, or false information. Such communication exposes the decision maker to the risk of an erroneous ruling on the law or facts. It is an

invitation to improper influence, if not corruption. See Shaman, Lubet, & Alfini, *Judicial Conduct and Ethics* (1990) § 6.01, p. 149-50. Ms. Nadenbush's ex parte e-mails with the workers' compensation judge, regarding both substantive issues in pending cases and making disparaging comments about opposing counsel, constitute conduct prejudicial to the administration of justice. See also In re Caranchini, 956 S.W.2d at 918, where the Court found that violations of Rules 4-3.3 and 4-3.4 would constitute, likewise, a violation of Rule 4-8.4(d).

Some of Illinois' legal analysis of the Rule 8.4(d) violations follow:

> We also find that the above exchange of ex parte e-mails between the Respondent and Teague was prejudicial to the administration of justice. In her e-mail to Teague, the Respondent complained about her opposing counsel and portrayed him in a negative light. For example, the Respondent said Mr. Short refused to discuss settlement; he made a demand of $50,000, but then would not accept that amount; and he "upped his demand" without even talking with his client. Then, she concluded her e-mail with "WTF." In reply, Teague offered the Respondent advice about how to proceed, "finish the trial" and "say F him." Teague also made the negative comment about Mr. Short that "he's clearly jerking you around."

App. 27.

> When an arbitrator and the attorney for one party make negative or otherwise disparaging remarks about the attorney for the other party, a

serious question is presented as to the neutrality of the arbitrator and the overall fairness of the workers' compensation proceeding before that arbitrator. The Supreme Court has held that the administration of justice "means a fair and impartial tribunal," and anything that "compromises the fairness and impartiality of the tribunal…prejudices the administration of justice." In re Weinstein, 131 Ill. 2d 261, 269, 545 N.E.2d 725 (1989). The court has also stated that "the administration of justice requires a tribunal that is impartial in appearance, as well as in fact." In re Lane, 127 Ill. 2d 90, 106, 535 N.E.2d 725 (1989). Because of the above e-mails, the proceedings before Arbitrator Teague were not "impartial in appearance."

App. 27-28.

The Respondent testified that she did not intend to influence the outcome of any workers' compensation case, and argued there was no proof that any case was adversely affected by her conduct. As stated above, the administration of justice requires the appearance of impartiality and fairness, as well as the fact thereof. In In re Powell, 126 Ill. 2d 15, 533 N.E.2d 831 (1989), the Respondent assisted a judge in obtaining a loan by having a client post the collateral for the loan. The Respondent appeared before the judge on a motion for the disbursement of funds, which was granted. The case was later settled. The Respondent contended that his conduct was not prejudicial to the administration of justice because "his

client deserved to win on the merits" of the foregoing motion. The Supreme Court rejected the Respondent's argument, stating:

> We refuse to read this phrase so narrowly. The administration of justice requires a fair and impartial tribunal. When a party or his attorney performs favors for a judge before whom the attorney or his client is likely to appear, the fairness and impartiality of the tribunal is compromised and the administration of justice is prejudiced. Powell, 126 Ill. 2d at 27.

App. 28-29.

In In re Alexander, 146 Ill. 2d 83, 585 N.E.2d 70 (1991), the Respondent made a loan to a judge, a long-time friend. While the loan was outstanding, the judge appointed the Respondent guardian ad litem in a case. The Respondent was found to have engaged in conduct prejudicial to the administration of justice even though there was "no evidence anyone was prejudiced by [Respondent's] conduct." The Court stated that "it is the appearance of impropriety and the fact that the integrity of the judiciary is impugned as a result of Respondent's conduct which gives rise to a violation," and "the fact no one was prejudiced is not dispositive." Alexander, 146 Ill. 2d at 94-95.

App. 29.

[In the] ex parte e-mails exchanged from January 29, 2010 to March 31, 2010, in the Pound case, both the Respondent and Teague complained about Ms. Rakers, the attorney for the other party, criticized her conduct, made disparaging remarks about her, and discussed the possible value of the case for Rakers' client. As a result, public confidence in the fairness, impartiality, and integrity of workers' compensation proceedings before Teague was compromised, and, the administration of justice was clearly prejudiced. See Powell, 126 Ill. 2d at 27; Alexander, 146 Ill. 2d at 94-95.

App. 32.

When an arbitrator and the attorney for one party communicate ex parte and discuss the facts and possible value of a pending case, there is a serious question about the neutrality of the arbitrator and the overall fairness of the workers' compensation proceedings before that arbitrator. We agree with attorney Levenhagen's testimony that it was "inappropriate and wrong for Ms. Nadenbush to contact arbitrator Teague directly about Ms. Croghan's case without my knowledge and inject her primary defense in the case in front of the arbitrator without me knowing it."

App. 35.

On May 27, 2009, the Respondent sent an e-mail to Teague, in which she described Mark Hassakis, as "an ass." Teague replied to the Respondent "yes, Mark is an ass." Hassakis was not sent a copy of either e-mail. By making disparaging comments to the arbitrator about counsel

for the opposing party, the Respondent engaged in conduct that was prejudicial to the administration of justice.

App. 37.

Rule 4-8.1(a)

[A] lawyer…in connection with a disciplinary matter shall not (a) knowingly make a false statement of material fact.

Rule 4-8.4(c)

It is professional misconduct for a lawyer to (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Rule 4-8.4(d)

It is professional misconduct for a lawyer to (d) engage in conduct that is prejudicial to the administration of justice.

The above three rule violations arose from a statement made by Respondent in a letter to Illinois disciplinary counsel. To understand the basis for the findings that Respondent violated the rules, it is necessary to review the chronology of events.

On May 12 and 13, 2010, the e-mails concerning "bilateral thoracic syndrome" were exchanged between Respondent and the workers' compensation judge. Respondent's sworn statement was taken by Illinois ARDC staff counsel (Denise Church) on April 14, 2011. Respondent testified in her sworn statement that her May 12 e-mail query was a general question and did not pertain to any case she had pending before the workers' compensation judge.

Respondent Nadenbush's opposing counsel in the Croghan case, Fritz Levenhagen, thereafter filed a complaint with the Illinois ARDC, in May of 2011, asserting that the May 2010 e-mails pertained to Croghan and were inappropriate. On June 2, 2011, the ARDC sent a letter to Respondent enclosing the Levenhagen complaint and requesting her response. In the response, on June 4, 2011, Respondent said "Mr. Levenhagen is accusing me of discussing the Deanna Croghan case with Ms. Teague. As you know from prior review of my e-mails, this case was not the subject of any of the e-mail correspondence between me and Ms. Teague."

The Illinois Hearing Board, in findings and conclusions approved and confirmed by the Illinois Supreme Court, found that Nadenbush's statement in the June 4, 2011, letter was knowingly false.

> Contrary to the Respondent's testimony, the evidence clearly and convincingly established that the above e-mails from the Respondent to Teague on May 12 and 13, 2010, pertained specifically to the Croghan case. When she sent the first e-mail to Teague on May 12, 2010, asking Teague what a bilateral thoracic syndrome injury is worth, the Respondent had the file for the Croghan case on her desk and was certainly looking at it, in light of the fact that a deposition in that case was to be taken within an hour. Her contention that, at about the same time, someone in her office had asked her about the value of a thoracic outlet syndrome injury is an unlikely coincidence. A bilateral thoracic syndrome injury is a rare injury, but was the injury claimed in the Croghan case. The Respondent's second

e-mail to Teague on May 12, 2010, said that "she" had a "full duty release," and that the "problem seems to have started following an auto accident." Deana Croghan is a woman, she had received a full duty release, and the employer, Respondent's client, disputed the claim contending that Croghan's condition resulted from a car accident. The Respondent's final e-mail to Teague on that date said that the person had "surgery," which was also a fact in the Croghan case. Furthermore, when attorney Levenhagen subsequently read the foregoing e-mails in February 2011, he recognized them as being about the Croghan case. Thus, we find that the Respondent was knowingly and intentionally inquiring about the Croghan case in her exchange of e-mails with Teague on May 12 and 13, 2010.

App. 34-35.

We also find that the making of a false statement to the ARDC during an investigation is prejudicial to the administration of justice. It is necessary for Administrator's counsel to perform additional work due to an attorney's false representation during a disciplinary investigation.

Therefore, we find that the Administrator proved by clear and convincing evidence that the Respondent committed the following misconduct charged…(a) knowingly made a false statement of material fact in connection with a lawyer disciplinary matter, in violation of Rule 8.1(a)(1) of the Illinois Rules of Professional Conduct (2010); (b) engaged

in dishonesty, fraud, deceit or misrepresentation, in violation of Rule 8.4(c); and (c) engaged in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(d).

App. 40-41.

This Court has disciplined attorneys for lying to Missouri disciplinary authorities. In In re Donaho, 98 S.W.3d 871 (Mo. banc 2003), Donaho represented to the regional committee investigating a disciplinary complaint against him that he had paid restitution to former clients. He even sent the committee copies of money orders to substantiate his claim. He later acknowledged never sending the money orders and, in fact, cashing them in and retaining the money for his own use. The Court indefinitely suspended Donaho's license with no leave to apply for reinstatement for one year, for violation of Rule 4-8.1 (made a false statement of material fact in connection with a disciplinary matter) and many other serious rule violations, including candor to a tribunal (Rule 4-3.3) and dishonest conduct (Rule 4-8.4(c)).

In In re Forge, 747 S.W.2d 141 (Mo. banc 1988), disciplinary authorities were investigating a client complaint that Respondent took $1,500.00 from the client to obtain a trial transcript and file a notice of appeal, failed to do either, and then failed to reimburse the client. In the course of the investigation, Respondent lied to disciplinary authorities about what bank account he deposited the $1,500.00 check in (he deposited it in a personal checking account and spent it) and typed "Trust Account" on a different bank's statement, where he claimed to have deposited the check. Respondent was suspended without leave to apply for reinstatement for six months for commingling the

client's money with his own, for failure to account to the client for the $1,500.00, and for lying to disciplinary authorities.

Sanction

As previously noted, Respondent does not argue for a lesser sanction than the recommended reprimand. Rather, she has asked this Court not to discipline her at all. **App. 58.**

She has provided no legal basis for this Court to not impose reciprocal discipline. Reciprocal discipline is required to protect the public and preserve the integrity of the profession. The alleged consequences of that discipline to Respondent should not dissuade the Court from entering an order necessary to the purposes of lawyer discipline.

Disciplinary counsel recommended a reprimand. See ABA Standard 7.2 and 7.3. Reprimand is, of course, a sanction less onerous than the ninety-day suspension ordered by the Illinois Supreme Court. That recommendation was based on the analysis that Respondent was found to have acted knowingly in violating duties owed the profession, but also after giving considerable weight to the mitigating factors of lack of prior disciplinary history, lack of corrupt motive or intent to obtain favorable ruling from Teague, and substantial emotional and personal problems (all factors found in the Illinois proceeding). **App. 44-45.**

Reprimand was only a recommendation. There is clearly evidence that would support a more serious sanction – most glaringly the dishonesty inherent in Respondent's violation of Rules 4-8.1(a) and 4-8.4(c).

There is also the Illinois finding that "Respondent did not show she was sorry or remorseful for her misconduct and the adverse effect it has had on the legal profession or the Illinois Workers' Compensation Commission. In fact, we found many of her responses to be glib in that regard. The Respondent also failed to demonstrate that she fully understands the nature or seriousness of her misconduct. At most, she ultimately acknowledged that some of her comments in the e-mails were 'inappropriate' and 'less than professional.'"

App. 43-44.

Ms. Nadenbush's response to this Court's show cause order suggests she still has no appreciation for the fact that she has been found to have committed serious professional misconduct. In light of that continuing lack of appreciation, reprimand may be insufficient to assure the Court that Respondent understands and acknowledges her misconduct and will, therefore be unlikely to repeat it, and further damage the integrity of the profession.

CONCLUSION

The Illinois Supreme Court disciplined Respondent because, over a seventeen month period, she exchanged ex parte communications with a workers' compensation judge regarding four cases contemporaneously pending before the judge. The communications touched on substantive issues such as litigation strategy and opposing counsels' perceived deficiencies. The Missouri Supreme Court should likewise discipline Respondent so that the Missouri public is on notice about her conduct and because discipline is part of preserving the integrity of the profession.

Respectfully submitted,

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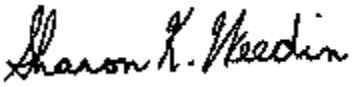
Chief Disciplinary Counsel



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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of October, 2013, the Informant's Brief was sent through the Missouri Supreme Court e-filing system to:

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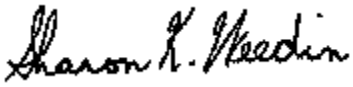


Sharon K. Weedin

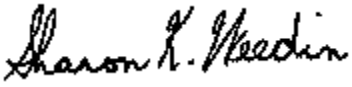
CERTIFICATION: RULE 84.06(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;

2. Complies with the limitations contained in Rule 84.06(b);

3. Contains 7,200 words, according to Microsoft Word, which is the word processing system used to prepare this brief.



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