

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: JOYCE NANINE MCCOOL

NUMBER: 13-DB-059

RECOMMENDATION TO THE LOUISIANA SUPREME COURT



INTRODUCTION

This attorney disciplinary matter arises out of formal charges consisting of one count filed by the Office of Disciplinary Counsel ("ODC") against Joyce Nanine McCool ("Ms. McCool" or "Respondent"), bar roll number 27026. ODC alleges that Respondent is guilty of violating the Rules of Professional Conduct ("Rule(s)"), as follows: Rule 3.5(a) (seeking to influence a judge by means prohibited by law); Rule 3.5(b) (having ex parte communications with a judge during the proceeding); Rule 8.4(a) (violating or attempting to violate the Rules of Professional Conduct); Rule 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation) and Rule 8.4(d) (engaging in conduct that is prejudicial to the administration of justice).<sup>1</sup> The Hearing Committee assigned to this matter concluded that Respondent violated the Rules as charged and recommended a one year and one day suspension from the practice of law. The Committee also recommended that Respondent be required to attend Ethics School.

For the following reasons, the Board adopts the factual findings and legal conclusions of the Committee with one exception, as described below. The Board adopts the Committee's sanction recommendation of a one year and one day suspension and recommends that Respondent be required to attend Ethics School.

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<sup>1</sup> The text of the rules is contained in the attached Appendix.

## PROCEDURAL HISTORY

ODC filed formal charges against Respondent on November 4, 2013. By letter dated November 5, 2013, the formal charges were sent to Respondent's primary registration address via certified mail.<sup>2</sup> The charges were received and signed for on November 6, 2013. On November 20, 2013, Respondent filed her answer to the formal charges denying any misconduct, and Respondent also filed an Exception of Vagueness and a Motion for More Specific Allegations of Misconduct. On November 21, 2013, ODC filed a Memorandum in Opposition to Respondent's Exceptions of Vagueness and Motion for More Specific Allegations. On December 11, 2013, the parties participated in a status conference with the Hearing Committee Chair who heard oral argument regarding Respondent's exception and motion. On December 16, 2013, the Hearing Committee Chair issued an order denying Respondent's Exception of Vagueness and Motion for More Specific Allegations.

On February 6, 2014, Respondent filed a Motion to Compel Response to Discovery Request. On February 10, 2014, ODC filed a Memorandum in Opposition to Respondent's Motion to Compel Response to Discovery Request. On February 11, 2014, the parties participated in a telephone conference with the Hearing Committee Chair regarding Respondent's Motion to Compel Response to Discovery Request, and at the conclusion the Hearing Committee Chair denied Respondent's Motion to Compel Response to Discovery Request.

Subsequently, the hearing on this matter was scheduled for February 27, 2014. On February 17, 2014, Respondent filed with the Louisiana Supreme Court a Petition for Writ of Mandamus and for stay of the hearing scheduled February 27, 2014. On February

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<sup>2</sup> Respondent's primary registration address is 1772 New Orleans St., Mandeville, LA 70448.

21, 2014, the Louisiana Supreme Court denied the stay of the February 27, 2014 hearing and denied Respondent's Writ of Mandamus.

On February 27, 2014, this matter proceeded to hearing; however, the matter did not conclude. The conclusion of this matter was held on March 27, 2014. Deputy Disciplinary Counsel Damon S. Manning appeared at the hearing. Respondent also appeared along with her attorney, Richard Ducote.

On May 2, 2014, the Hearing Committee Chair issued an Order for the parties to redact the identities of the minor children mentioned in this matter. ODC filed a post hearing memorandum on May 27, 2014. Respondent filed the same on May 29, 2014. On May 29, 2014 and June 5 2014, Respondent filed a Motion, and subsequently a supplemental Motion, to reopen the Hearing. ODC filed an opposition to the Motion on June 9, 2014, and the Committee issued an Order on June 17, 2015 denying Respondent's Motion to Reopen the Hearing. The Committee issued its report on June 25, 2014, finding Respondent in violation of all of the Rules alleged in the formal charges and recommending that she be suspended from the practice of law for one year and one day and that she be required to attend Ethics School. ODC filed a notice of no objection to the report on July 22, 2014.

Respondent filed a brief in opposition to the Committee's report on August 4, 2014, and then filed a "corrected" brief in opposition on August 5, 2014. ODC filed a reply brief on August 27, 2014. Oral argument of this matter was heard on September 4, 2014, before Board Panel "C."<sup>3</sup> Deputy Disciplinary Counsel Tammy Northrup appeared on behalf of ODC. Respondent appeared with her attorney Richard Ducote.

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<sup>3</sup> Board Panel "C" was composed of Carl A. Butler (Chairman), Anderson O. Dotson III (Lawyer Member), and Linda P. Spain (Public Member).

## FORMAL CHARGES

The formal charges read, in pertinent part:

### COUNT I

In September of 2011, the Office of Disciplinary Counsel received a complaint filed against Respondent by Judge Deborah Gambrell of the Chancery Court of Marion County, Mississippi. The complaint was assigned Investigative File No. 0028469 and is summarized as follows.

Respondent utilized the internet and social media to disseminate false, misleading and/or inflammatory information about Judge Deborah Gambrell and Judge Dawn Amacker. Respondent solicited and encouraged others to make direct contact with these judges in an effort to influence their decisions in pending domestic litigation. Respondent also made false and misleading statements in multiple motions to recuse Judge Amacker.

Underlying this complaint is the custody/visitation matter of *Michael T. Boyd versus Raven S. Boyd (Maurer)*, Cause No. 2006-0136 G-TH, Chancery Court of Marion County, Mississippi. The litigation is/was very contentious and included allegations by Raven Boyd that Michael Boyd sexually abused their minor children. John Smallwood was initially appointed *Guardian Ad Litem* to investigate the allegations and apparently found no merit. Thereafter, Mr. Smallwood filed a Motion for Temporary Emergency Relief seeking to prevent Raven Boyd from further subjecting the children to the same or similar allegations of sexual abuse. Raven Boyd did not oppose the motion.

On August 13, 2007, Judge James Thomas, Jr. issued an Order Granting Motion for Temporary Relief which stated in part that,

" ... after having been informed that the Defendant does not oppose the petition, the Court finds that the Motion is well taken and should be and is hereby granted."

"Raven Boyd, Wanda Phillips [FN1] and any persons acting on their behalf or at their direction are hereby enjoined from making the same or similar allegations of sexual abuse as to the minor children of the parties herein."

"Raven Boyd, Wanda Phillips and any persons acting on their behalf or at their direction are enjoined from subjecting the minor children to any more medical examinations for the same or similar allegations of sexual abuse."

FN1. Wanda Phillips is Raven's mother.

On June 2, 2008, Judge Thomas issued an Order to Seal File which stated in part,

" ... based upon the nature of allegations made in pleadings filed in this matter and to protect the minor children in this matter, the entire file shall be sealed by the law clerk and not made available to any person until further order of this Court with notice of any such request for disclosure being given to both parties and the Court appointed Guardian Ad Litem herein."

On September 2, 2008, an Agreed Judgment was signed stating in part that,

Order No. "12" states that, "Any videotapes or other recordings made by the parties, or at their behest, or by anyone related to the minor children shall not be disclosed to anyone except counsel of record and the Court, and shall not be made available to anyone except the appropriate investigatory agencies at their request."

Order No. "13" states that, "Neither the parties nor anyone working in concert with them shall make any audio or video recordings of the children in an attempt to investigate or document alleged abuse. This does not include recordings made by a counselor for therapeutic purposes, or any recordings made by law enforcement agencies."

Judge Thomas died in or around October of 2010. On January 11, 2011, Complainant Deborah Gambrell was appointed by Mississippi Governor Haley Barbour to replace Judge Thomas and to serve as Chancellor, Place One, of the Tenth Chancery District of Mississippi. One of the cases inherited by Judge Gambrell was the custody/visitation matter of Michael T. Boyd versus Raven S. Boyd (Maurer).

Meanwhile, back on June 10, 2010, Raven Boyd filed a Motion for Contempt in the Mississippi proceedings alleging that Michael Boyd failed to pay child support; and sought to terminate Michael Boyd's parental rights alleging that he failed to maintain a relationship with the children for one year, failed to pay court ordered child support for almost two years, and molested their children.

On December 14, 2010, the Mississippi Court appointed a new *Guardian Ad Litem* to again investigate the allegations of sexual abuse. According to Respondent, before the *Guardian Ad Litem's* investigation began, and while Raven Boyd's petition to terminate parental rights was still pending, the court ordered that the children be

reintroduced to their father through supervised visitation. Raven Boyd and Respondent both took issue with this Order.

In January of 2011, Raven Boyd's new husband, Dustin Maurer, filed a petition for intra-family adoption in the 22<sup>nd</sup> Judicial District Court, St. Tammany Parish, Louisiana, applying to adopt the two minor children born to Raven and Michael Boyd. Respondent represents Dustin Maurer in the Louisiana proceedings. The matter was allotted to Judge Dawn Amacker who stayed the matter pending the outcome of the proceedings pending in Mississippi. [FN2]

FN2. The Mississippi record is sealed. According to Respondent, some or all of the Louisiana record is also sealed. As a result, much of the procedural history and dates pertaining to the underlying litigation was taken from the writ application filed by Respondent on behalf of Raven Boyd (Maurer) with the Louisiana Supreme Court in August of 2011.

On July 20, 2011, Judge Gambrell held an in-chambers meeting with counsel and the *Guardian Ad Litem* in the Mississippi proceedings. Following the meeting, Judge Gambrell reportedly issued a Temporary Order extending the father's visitation to supervised overnight visitation in his home, with unrestricted standard visitation every other weekend to begin in August, 2011. Raven Boyd and Respondent both took issue with this Temporary Order.

Raven Boyd (Maurer) reportedly obtained additional evidence of alleged sexual abuse by the children's father. Consequently, on August 4, 2011, Respondent filed for *ex parte* relief on Raven's behalf in the 22<sup>nd</sup> Judicial District Court asking the Louisiana court to exercise immediate emergency temporary custody under the Uniform Child Custody and Jurisdiction Enforcement Act. The petition also asked that the previously stayed intra-family adoption be set for hearing on the court's next available date. Judge Amacker reportedly declined to exercise subject matter jurisdiction in the matter.

Respondent, on behalf of Raven [Boyd] Maurer, applied for writs with the Louisiana First Circuit Court of Appeals, who denied same. On August 31, 2011, the Louisiana Supreme Court also denied writs.

The hearing on Raven Boyd's Motion for Contempt and to Terminate Parental Rights in Mississippi was scheduled before Judge Gambrell on August 16, 2011. Judge Gambrell subsequently denied the Motion to Terminate Parental Rights but found Michael Boyd in contempt for failing to pay child support. Judge Gambrell further found that Michael Boyd was entitled to a reduction in child support payments, and she ordered the parties to participate in family counseling and to undergo a forensic review regarding allegations of sexual abuse of the children.

Raven Boyd (Maurer) filed a *pro se* appeal; however, on April 9, 2013, the Court of Appeals of the State of Mississippi dismissed the appeal for lack of jurisdiction, finding Judge Gambrell's judgment was not a final appealable judgment.

As will be discussed below, Respondent and her client, Raven Boyd (Maurer), used the internet and social media to solicit others to sign an online petition and to contact the judges in an attempt to influence their handling of the underlying cases. On August 14, 2011, two days prior to the hearing in Mississippi on Raven Boyd's Motion for Contempt and to Terminate Parental Rights, Heather Lyons [FN3] sent an email to Judge Gambrell's staff stating,

"I live and vote in Forrest county. I will be paying attention to the case filed in la supreme court on Friday due to the fact that Judge Gambrell refused to hear evidence of abuse in the case of little girls who are likely being molested by their father. She has an obligation to protect our most vulnerable children. Please do not let them down judge!"

FN3. Heather Lyons is one of the people who signed the online petition.

Subsequent to the August 16, 2011 hearing in Mississippi, someone sent Judge Gambrell a copy of the online petition that was created and circulated by Respondent and Raven Boyd (Maurer). Judge Gambrell was also alerted to a website <http://www.change.org/petitions/justice-for>"H" (REDACTED) and "Z" (REDACTED) containing the on-line petition entitled, "Justice for "H" (REDACTED) and "Z" (REDACTED). The website instructed people to "sign this petition" and to contact Judge Gambrell and tell her what they think of her handling of the case. According to the change.org website, the online petition was "Started by Bridge to Justice Slidell, LA". [FN4] In August and September of 2011, Judge Gambrel's staff received calls regarding the pending case; and she instructed her staff to ignore the calls.

FN4. Bridge to Justice is a website created by Respondent.

On August 23, 2011, a copy of the online petition was filed with the Marion County Chancery Clerk of Court's Office. The petition states in pertinent part,

"To Judge Deborah Gambrell, we, the undersigned, ask that you renounce jurisdiction in this matter to the Louisiana court because the children have lived exclusively in Louisiana for the past three years. Their schools, teachers, physicians, therapists, little sister and brother and the vast majority of significant contacts are now in Louisiana. There is also an adoption proceeding pending in Louisiana over which Louisiana has

jurisdiction and in the interest of judicial economy, and the best interest of the girls, Louisiana is the more appropriate forum to ensure [that] the 'best interest' of the girls are protected. If you refuse to relinquish jurisdiction to Louisiana, we insist that you remove the Guardian Ad Litem currently assigned to the case, and replace him with one that has the proper training and experience in investigating allegations of child sexual abuse in custody proceedings. We further insist that, in keeping with *S.G. v. D.C.* 13 So. 3d 269 (Miss. 2009), you specifically define the Guardian Ad Litem's role in the suit; require the new Guardian Ad Litem to prepare a written report; require that the report be shared with all parties prior to a hearing; that all proceedings be conducted on the record, with advance notice and opportunity to be heard, and that an evidentiary hearing be conducted to review the allegations of child sexual abuse, and that no visitation be allowed until you have seen all of the evidence."

On August 18, 2011, Raven Boyd, or someone with access to Raven Boyd's fax machine, faxed a copy of the online petition and comments directly to Judge Dawn Amacker's office fax line in Louisiana. Judge Amacker had her administrative assistant return the petition to Respondent with instructions for Respondent to caution Raven Boyd against ex parte communications with the judge. The petition states in pertinent part,

"To Judge Amacker, we, the undersigned, insist that you withdraw the unlawful stay on the adoption proceedings currently pending in your court, and, in accordance with La.Ch.C. art. 1253, a hearing be set with all due speed to allow the girls' stepfather to show why it is in the girls' best interest that they be adopted by him, thereby terminating all parental rights of the girls' biological father."

The website promoting the online petition contains information about the sealed Mississippi proceedings and Louisiana proceedings. It links to audio recordings of Raven Boyd interviewing her minor children about alleged sexual abuse by their father; [FN5] and includes misleading and inflammatory statements designed to provoke outrage towards Judge Gambrell and Judge Amacker, and to elicit a response from the general public. For example, the online petition refers to the audio recordings of the minor children, and other purported evidence of abuse, and states,

"Now consider that no judge has ever heard those recordings. Why? Because for 4.5 years, they have simply refuse (sic) to do so. On August 16, 2011, Judge Deborah Gambrell in the Chancery Court of Marion County,



Mississippi, once again refused to admit all of Raven's evidence, including these recordings, and ordered that H (REDACTED) and Z (REDACTED) have visits with their father in the house where they both report having been molested by their father in the past."

FN5 Release of the audio recording was a direct violation of the September 2, 2008 Agreed Judgment.

Although Respondent claimed Judge Gambrell refused to listen to or admit the audio recordings into evidence during the August 16, 2011 hearing, Respondent later acknowledged that the audio recordings were not offered into evidence on August 16, 2011. In fact, the audio recordings were not even brought to court that day. Furthermore, the audio recordings have never been offered into evidence in any proceeding before Judge Gambrell in Mississippi or Judge Amacker in Louisiana.

The online petition goes on to state,

"Judge Dawn Amacker in the 22<sup>nd</sup> Judicial District Court for the Parish of St. Tammany in Louisiana is also refusing to hear any evidence or to protect H (REDACTED) and Z (REDACTED), even though the law requires her to have a hearing and to take evidence ..."

H (REDACTED) still loves her daddy. She just wants him to stop what he is doing to her. She does not feel safe with him alone. She said as much in her journal, but Judge Gambrell refused to allow it as evidence and Judge Amacker just ignored her ... "

Although Respondent claimed Judge Amacker "refused" to hear any evidence, refused to protect the children, and "just ignored" the evidence, Judge Amacker actually stayed the Louisiana proceedings and declined to exercise subject matter jurisdiction in deference to the proceedings pending in Mississippi. Furthermore, both the Louisiana First Circuit Court of Appeals and the Louisiana Supreme Court chose not to disturb Judge Amacker's ruling and denied writs in this matter.

After misrepresenting and spinning the facts and procedural history of the Mississippi and Louisiana cases, Respondent's online petition then tells interested persons what to do about their outrage.

"Sign our petition telling the judges that there can be no justice for H (REDACTED) and Z (REDACTED) or any child, if the law and evidence is ignored. Tell them they must look at the evidence before they make a decision that will affect the rest of H (REDACTED) and Z

(REDACTED)'s lives. Ask yourself, what if these were your daughters?"

"Have questions want to do more to help? Email us at [bridge2justice@gmail.com](mailto:bridge2justice@gmail.com) and someone will respond within 24 hours. Want to see more, go to <http://db.tt/Zz2250q> and read the writ submitted to the Louisiana Supreme court on August 12, 2011.

**"Horried? Call the judges and let them know."**  
(emphasis added)

Respondent not only stirred emotions with information and misinformation regarding sealed proceedings, she incited others to make direct contact with the judges in an attempt to influence their decisions in the case. To assist others in making direct contact with the judges, the website listed the contact information for Judge Gambrell, Judge Amacker, their staff, and the Louisiana Supreme Court. Respondent admits it was "probably" her idea to list the judges' and courts' contact information in the online petition. [FN6]

FN6 Transcript of Respondent's 3/20/2012 sworn statement, p. 46.

Respondent admits the online petition was a "brainstorming" idea hatched by her, Raven Boyd (Maurer) and others. Respondent stated, "it was a group brainstorming session but I participated in it. I was there." [FN7] Respondent and others decided to use social media to apply pressure on the judges following Judge Gambrell's July, 2011 Order reestablishing the children's unsupervised visitation with their father. [FN8] The group met at either Respondent's house or office where they typed the petition and uploaded it to the website. [FN9] Respondent used the [change.org](http://change.org) website and the [bridgetojustice](http://bridgetojustice.com) website to facilitate the online petition. The [bridgetojustice](http://bridgetojustice.com) website was created by Respondent as a nonprofit organization to bring about change through social activity.

FN7. *Id.* at p. 28

FN8. *Id.* at pp. 28-29

FN9. Transcript of Respondent's 3/20/12 sworn statement, pp. 31-32.

Respondent admits the online petition was intended to provide information and to elicit reaction from others and have them voice their thoughts directly to the judges. [FN10] Respondent further admits the online petition and solicitation of others to contact Judge Gambrell and Judge Amacker " ... was a campaign to influence the judges to apply the law and look at the evidence ... " [FN11] Although Respondent and her client availed themselves of the appeal process in Mississippi and Louisiana, they nevertheless utilized social media to apply pressure to the judges in an attempt to expedite the achievement of their goals. [FN12]

FN10. *Id.* at pp. 51-52  
FN11. *Id.* at pp. 78-79  
FN12. *Id.* at pp. 56-57

As previously stated, the online petition with signatures and comments was ultimately faxed to Judge Gambrell and Judge Amacker. Respondent believes the petition was faxed either by her client, Raven Boyd (Maurer), or Raven's mother, Wanda Phillips. [FN13]

FN13. *Id.* at pp. 52-53

Respondent also used her Twitter account at [www.twitter.com/naninemccool](http://www.twitter.com/naninemccool) to promote the audio recordings of the minor children being interviewed by their mother about alleged sexual abuse, [FN14] as well as to promote information and misinformation about Judge Gambrell's and Judge Amacker's handling of the underlying cases. For example:

On December 11, 2011, Respondent tweeted, "Judge Gambrell at it again - turned a 4 YO child over to a validated abuser - PLEASE TELL ME WHAT IT WILL TAKE FOR EVERYONE TO SAY 'ENOUGH'."

On August 24, 2011, Respondent tweeted to @TheLensNOLA "focus ur lens on Y Judge Amacker won't protect these girls ... " Respondent provided a link to the audio recordings and the online petition.

On August 24, 2011, Respondent tweeted to @RonThibodeauxTP "ask Judge Amacker why she won't listen ... " Respondent provided a link to the audio recordings and the online petition.

On August 17, 2011, Respondent re-tweeted, "Make judges protect H (REDACTED) and Z (REDACTED) from abuse by their father!..." Respondent provided a link to the online petition.

On August 16, 2011 [the day Judge Gambrell held a hearing in the Mississippi proceedings], Respondent tweeted, "Judges are supposed to know shit about ... the law ... aren't they. And like evidence and shit? Due process?" Respondent provided a link to the online petition.

On August 16, 2011, Respondent tweeted, "GIMME GIMME GIMME Evidence! Want some? I got it. Think u

can convince a judge to look at it? Sign this petition:"  
Respondent provided a link to the online petition.

On August 16, 2011, Respondent tweeted, "I am SO going 2 have 2 change jobs after this @russellcrowe come on! I'm risking sanctions by the LA supreme court; u could be a HUGE help."

FN14. As previously stated, release of the audio recordings was a direct violation of the September 2, 2008 Agreed Judgment.

Respondent likewise participated in and/or promoted other social media activities in an attempt to influence the courts' handling of Raven Boyd's cases. On the website <http://www.thepetitionsite.com/1/make-louisiana-and-mississippi-courts-protect> H (REDACTED) and Z (REDACTED) Respondent posted and/or promoted an article entitled, "Make Louisiana and Mississippi Courts protect H (REDACTED) and Z (REDACTED)!", wherein she states,

"Target: LA Supreme Court, Judge Dawn Amacker, Judge Deborah Gambrell."

"Sponsored by: Bridge to Justice, LC3."

"Insist that Judge Amacker and Judge Gambrell do their jobs! If you want more info, go to [bridgetojustice.com](http://bridgetojustice.com) and read the writ application to the LA supreme court."

**"Please sign the petition, circulate it to all of your friends and families and call Judge Amacker and Judge Gambrell during the hours of 8:30 to 5:00 starting Monday, August 15 to ask why they won't follow the law and protect these children. Let them know you're watching and expect them to do their job and most of all, make sure these precious little girls are safe!"**

Respondent then listed the names and contact information for Judge Gambrell, Judge Amacker, their staff, and the Louisiana Supreme Court, and concluded the article stating,

**"Call the Louisiana Supreme Court and tell them you want the law to protect these girls!"** (emphasis added)

"(504) 310-2300"

"ask about the writ pending that was filed by attorney Nanine McCool on Friday, August 12, 2011."

On the website [www.thepetitionsite.com/4/make-judges-protect-H \(REDACTED\)-and-Z \(REDACTED\)-from-abuse-by-their-father/](http://www.thepetitionsite.com/4/make-judges-protect-H-REDACTED-and-Z-REDACTED-from-abuse-by-their-father/) Respondent posted and/or promoted an article entitled, "Help get justice for H (REDACTED) and Z (REDACTED)!", wherein she provided information and/or misinformation about sealed Mississippi proceedings and asked readers to sign their online petition and to call the judges directly to voice their outrage.

On the website <http://www.eyeseeonline.com/>, on August 17, 2011, Respondent posted an article entitled "Justice for H (REDACTED) and Z (REDACTED)" wherein, while referencing Judge Gambrell, Respondent stated,

" ... Let's turn this around and be H (REDACTED)'s hero. Please sign the Care2 petition **and continue to call Judge Gambrell to ask her why she is unwilling to afford H (REDACTED) and Z (REDACTED) simple justice.**" (emphasis added)

**"You can sign the petition and lend your voice to this cause here. Or, you can contact directly ... "** Respondent then listed the names and contact information for Judge Gambrell, Judge Amacker, their staff, and the Louisiana Supreme Court. (emphasis added)

Respondent ended the article by stating, **"Call the Louisiana Supreme Court and tell them you want the law to protect these girls! (504) 310-2300"** (emphasis added)

"Ask about the writ pending that was filed by attorney Nanine McCool on Friday, August 12, 2011."

On the website <http://sheeplessinamerica.blogspot.com/>, on August 25, 2011, Respondent posted a blog/article entitled "Justice for H (REDACTED) and Z (REDACTED)", wherein she discussed the underlying case and stated, **"Horried? Call the judges and let them know:"** (emphasis added) Respondent then listed the names and contact information for Judge Gambrell, Judge Amacker, their staff, and the Louisiana Supreme Court.

On September 14, 2011, Judge Gambrell signed an Order commanding Respondent to appear before the Chancery Court of Marion County, Mississippi on October 5, 2011 at 9:00a.m.,

"to show cause as to why [she] should not be held in contempt of this Court's prior Orders by disclosing information from a 'sealed' Chancery Court file or in the alternative, to disclose how audio transcriptions came into [her] possession after they were placed under seal by the Chancery Court of Marion County, Mississippi on May 22, 2008 by Court Order as well as an Agreed Order executed on the 2<sup>nd</sup> day of September, 2008... "

"That it has come to this Court's attention that the protected audio recordings are being disseminated via social medial (sic) networks ..."

Respondent received a copy of the notice of the contempt hearing by mail; however, because she was not properly served, and because she does not believe the Mississippi Court has jurisdiction over her, Respondent chose not to appear. [FN15]

FN15 Transcript of Respondent's 3/20/12 sworn statement, pp. 62-63.

On October 6, 2011, Judge Gambrell signed an Order of Contempt stating that,

"IT IS THEREFORE ORDERED that the said Joyce Nanine McCool is in contempt of this court for having failed to appear or respond and is hereby placed into the custody of the Sheriff of Marion County, Mississippi for a period of ten (10) days where she shall remain until further Order of the Court."

Respondent is aware that a warrant for her arrest is reportedly pending in Mississippi, but stated she has no plans to travel to Mississippi or go to jail. [FN16]

FN16. *Id.* at pp. 63-64.

In September of 2011, Judge Gambrell filed a disciplinary complaint against Respondent. Judge Amacker has also provided information in connection with ODC's investigation.

Respondent is a Louisiana licensed attorney who practices in the 22<sup>nd</sup> Judicial District where she has/had other cases pending before Judge Dawn Amacker. As a result of Judge Amacker's "participation" in ODC's investigation, Respondent sought to recuse her from other matters wherein Respondent is counsel of record. In so doing, Respondent made false statements regarding Judge Amacker's previous orders of recusal, as follows:

On May 13, 2012, Respondent filed an Expedited Consideration Requested Motion to Recuse Judge Amacker in the matter of, *Elizabeth Varley Keister versus Robert Scott Keister*.

On June 5, 2012, in *Keister versus Keister*, Judge Amacker signed an Order stating,

**"The Court hereby voluntarily recuses itself due to the possibility that the judge may be called as a witness in the proceedings referenced by counsel, and out of an abundance of caution and to avoid the appearance of impropriety, the matter shall be referred to another judge of the district court for trial through the random process of assignment in accordance with the provisions of Code of Civil Procedure Article 253.1."** (emphasis added)

On June 28, 2012, Respondent filed a Motion to Recuse Judge Amacker in the matter of, *Scott Edward Cullen versus Kristiann Marie Probst Cullen*, wherein she falsely stated,

**"The Court has voluntarily and expressly admitted its extreme bias and conflict in recusing itself in two other cases,** which grounds are equally applicable in the case at bar." (emphasis added)

On June 28, 2012, in *Cullen versus Cullen*, Judge Amacker signed an Order again clearly stating,

**"The Court hereby voluntarily recuses itself due to the possibility that the judge may be called as a witness in proceedings in which counsel for mover is a party, and out of an abundance of caution and to avoid the appearance of impropriety, the matter shall be referred to the judge of Div. 'K'."** (emphasis added)

On January 3, 2013, Respondent filed a Motion to Recuse Judge Amacker in the matter of, *Becky Nevle Russell versus Timothy Russell*, wherein she again falsely stated,

**"The Court has voluntarily and expressly admitted its extreme bias and conflict in recusing itself in several other cases,** which grounds are equally applicable in the case at bar." (emphasis added)

Respondent disseminated false, misleading and/or inflammatory information through the internet and social media about Judge Deborah Gambrell and Judge Dawn Amacker in pending cases wherein Respondent was counsel of record and/or had a personal interest. Respondent also made false and misleading statements in multiple

motions to recuse Judge Amacker. Respondent's conduct violated Rule 8.4(c) (engaged in conduct involving dishonesty, fraud, deceit or misrepresentation).

Pursuant to Rule 3.5(a), Respondent is prohibited from seeking to influence a judge by means prohibited by law. Pursuant to Rule 3.5(b), Respondent is prohibited from having ex parte communications with a judge during the proceeding. Furthermore, pursuant to Rule 8.4(a), Respondent is prohibited from violating the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another. Respondent used the internet and social media to elicit outrage in the general public and to encourage others to make direct contact with judges in an effort to influence their handling of pending cases. Respondent's conduct violated Rule 3.5(a) and (b) personally, and/or violated Rule 8.4(a) by committing misconduct through the acts of others.

Although Respondent and her client availed themselves of the appeal process in Mississippi and Louisiana, Respondent also utilized the internet and social media in an attempt to influence the judges and expedite achievement of her goals in the case. Respondent's overall conduct as outlined above was prejudicial to the administration of justice and violated Rule 8.4(d).

### **THE HEARING COMMITTEE'S REPORT**

As noted above, the Committee issued its report on June 24, 2014. The Committee found as follows:

#### **FINDINGS OF FACT**

Respondent represented Raven Boyd (Maurer) ("Raven") and her current husband in certain proceedings, including an intra-family adoption proceeding in Louisiana. Raven was also involved in a custody/visitation battle with her former husband in Mississippi. Judge Deborah Gambrell presided over the Mississippi proceedings and Judge Dawn Amacker presided over the Louisiana proceedings during the relevant time frame.

During the course of these proceedings, there were certain rulings made by Judge Gambrell (in Mississippi) regarding the custody and visitation of the minor children, [FN19] and involving allegations of sexual abuse against Raven's former husband and the children's father. [FN20] Judge Amacker (in Louisiana) also made certain rulings, including declining to exercise subject jurisdiction in the adoption matter pending the outcome of the Mississippi proceedings.

FN19 For the protection of the minor children, their names have been (REDACTED).



FN20 Not to diminish the seriousness of the allegations, but to date no law enforcement agency or court has found Michael Boyd guilty of this alleged conduct.

When Respondent disagreed with rulings made by Judge Gambrell and Judge Amacker, she turned to the internet and social media to disseminate information about Judge Gambrell's and Judge Amacker's rulings, and actively solicited the public to contact these judges. Respondent argues that she used the internet and social media to encourage members of the public to remind the judges to "do justice," "apply the law," "listen to the evidence," and "protect children." [FN21] First of all, the Committee Chair notes that *even if* the Respondent had limited her conduct to encouraging the public to contact these judges and remind them to "do justice," "apply the law," "listen to the evidence," and "protect children," she still would likely be in violation of the Rules of Professional Conduct, seeking to influence a judge by means prohibited by law (Rule 3.5(a)); communicating *ex parte* with judges during the proceedings (Rule 3.5(b)); knowingly assisting or inducing another to violate the rules of professional conduct, or doing so through acts of another (Rule 8.4(a)); and engaging in conduct prejudicial to the administration of justice (Rule 8.4(d)). The Committee, however, makes no finding on whether the Rules of Professional Conduct would have been violated by such conduct, because the Committee finds that the Respondent's conduct went far beyond encouraging the public to tell the judges to "do justice," "apply the law," "listen to the evidence," and "protect children."

FN21 Respondent's Post-Hearing Memorandum, at 2.

The record is clear and convincing that Respondent engaged in the following misconduct and rule violations.

**I. Respondent's Conduct Violated Rule 3.5(a), Rule 3.5(b) and Rule 8.4(a)**

Respondent used the internet, an online petition and social media to spread information, some of which was false, misleading and inflammatory, about Judge Gambrell's and Judge Amacker's handling and rulings in pending litigation. Respondent circulated contact information for Judge Gambrell and Judge Amacker and solicited and encouraged others to make direct, *ex parte* contact with the judges to express their feelings about the pending cases, and attempt to influence the outcome of the pending cases. The clear intent of Respondent's online campaign was an attempt to influence the judges' future rulings in the respective cases, and to do so through improper *ex parte* communication directed at the judges.

In online petitions, blogs, articles, etc., Respondent discussed litigation *pending* before Judge Gambrell, Judge Amacker and the Louisiana Supreme Court; posted contact information for the judges, their staff and the Supreme Court; and issued the following in violation of Rules 3.5(a), Rule 3.5(b) and Rule 8.4(a):

- Please sign the petition, circulate it to all of your friends and families and call Judge Amacker and Judge Gambrell during the hours of 8:30 to 5:00 starting Monday, August 15 to ask why they won't follow the law and protect these children. Let them know you're watching and expect them to do their job and most of all, make sure these precious little girls are safe! (ODC-12A)
- Call the Louisiana Supreme Court and tell them you want the law to protect these girls (504) 310-2300 [A]sk about the writ pending that was filed by attorney Nanine McCool on Friday, August 12, 2011. (ODC-12A)
- Let's turn this around and be [H's] hero. Please sign the Care2 petition and continue to call Judge Gambrell to ask her why she is unwilling to afford [H] and [Z] simple justice. (ODC-12B)
- You can sign the petition and lend your voice to this cause here. Or, you can contact directly. Contact information is: [provided contact information for the judges and their staff]. (ODC-12B)
- Sign our petition telling the judges that there can be no justice for [H] and [Z], or any child, if the law and evidence is ignored. Tell them they must look at the evidence before they make a decision that will affect the rest of [H] and [Z's] lives. Ask yourself, what if these were your daughters? ...Horrorified? Call the judges and let them know. (ODC-12C)

## **II. Respondent's Conduct Violated Rule 8.4(c)**

Respondent also disseminated false, misleading and inflammatory information on the internet and through social media about Judge Gambrell and Judge Amacker and their handling of these pending domestic proceedings, and issued the following in violation of Rule 8.4(c): Respondent posted an online article entitled, "Make Louisiana and Mississippi Courts protect HB and ZB!" (ODC-12A) Respondent's article

alleged that the minor children were being sexually abused by their father, and stated that:

In spite of overwhelming evidence that the girls have been abused by their father, the judge in Mississippi, Judge Deborah Gambrell, of Chancery Court of Marion County, Mississippi, refuses to even look at the evidence, and has now ordered the girls be sent to unsupervised visitation with their father.

Respondent's statement is false, misleading and inflammatory. Based on Respondent's own views and opinion, she characterized the evidence as "overwhelming" and criticized Judge Gambrell for "refus[ing] to even look at the evidence." As Judge Gambrell testified, she had her reasons (as judges usually do) for the evidentiary rulings made in connection with the proceeding. Respondent telling her readers that Judge Gambrell "refused to even look at the evidence" is a gross mischaracterization of what happened.

In this same online article (ODC-12A), Respondent stated that, "Judge Dawn Amacker ... in Louisiana also refused to protect the girls, even though she has the power and authority to protect them ... " Again, Respondent's statement is a misrepresentation and is inflammatory. Judge Amacker did not refuse to protect the minor children, but rather she stayed proceedings in Louisiana based on the fact related proceedings were already pending in Mississippi.

On August 17, 2011, Respondent posted an online article entitled "Justice for [H] and [Z]." (OCD-12B) Respondent's article alleged that the minor children were being sexually abused by their father, and stated the children's mother had evidence of the abuse, including audio recording and video evidence. Respondent referenced an August 16, 2011 hearing before Judge Gambrell, and stated:

In a hearing before Judge Deborah Gambrell of the Chancery Court for Marion County in Mississippi yesterday, all of Raven's evidence of abuse was excluded from consideration on one legal technicality or another... Judge Gambrell's solution to this irrefutable evidence that [H] and her sister are suffering as a direct result of an order she issued prematurely and without due process on July 20, sending the girls for visitation with their father in the house where he repeatedly abused them, was to exclude it as evidence.

Respondent's statement is a misrepresentation. While Judge Gambrell made rulings on evidence (again, as all judges do), these rulings were not based on her whim, nor were they made to enforce a prior unlawful order or to facilitate continued abuse, as characterized by Respondent.

On August 25, 2011, Respondent posted an online blog on the "Sheep-Free Zone" entitled "Justice for [H] and [Z]." (ODC-12C) Respondent's blog linked to audio recordings of the minor children reportedly talking to their mother, Raven, about alleged sexual abuse by their father. [FN22] Respondent's blog stated:

Now consider that no judge has ever heard those recordings. Why? Because for 4.5 years, the judges have simply refuse (sic) to do so. On August 16, 2011, Judge Deborah Gambrell in the Chancery Court of Marion County, Mississippi, once again refused to admit all of Raven's evidence, including these recordings, and ordered that [H] and [Z] have visits with their father in the house where they both report having been molested by their father in the past.

FN22 Pursuant to a September 2, 2008 Agreed Judgment in the Mississippi proceedings, the parties agreed and were ordered not to disclose the subject video or audio recordings to anyone except counsel of record and the court, and not to make said recordings available to anyone except the appropriate investigatory agencies at their request.

Respondent's statement is false. The audio recordings in question were not offered into evidence on August 16, 2011; therefore, Judge Gambrell could not have "refused to admit" them. In fact, Respondent admitted these recordings were not even brought to the August 16, 2011 hearing. Furthermore, these audio recordings have never been offered into evidence at any hearing before Judge Gambrell.

In this same blog (ODC-12C), Respondent stated:

Judge Dawn Amacker in the 22<sup>nd</sup> Judicial District Court for the Parish of St. Tammany in Louisiana is also refusing to hear any evidence or to protect [H] and [Z], even though the law requires her to have a hearing and to take evidence.

Respondent's statement is false and misleading. Due to the fact related domestic proceedings were already pending in Mississippi, Judge

Amacker stayed a subsequently filed intra-family adoption filed in Louisiana by Raven's new husband. Later, Raven sought *ex parte* immediate, emergency adoption set for hearing. Judge Amacker declined to exercise subject matter jurisdiction or to lift the stay at the time. Both the Louisiana First Circuit and the Louisiana Supreme Court denied writs, upholding Judge Amacker's ruling.

In addition to making false, misleading and inflammatory statements about Judge Gambrell and Judge Amacker, Respondent also instructed others to sign and circulate an online petition, and to call the judges and let them know they are "watching" them and are "horrified" by their rulings (See Section I, discussing violations of Rules 3.5(a), 3.5(b) and 8.4(a)).

Respondent also made false statements about Judge Amacker in multiple motions to recuse. Specifically, the Respondent filed motions to recuse Judge Amacker in unrelated proceedings. In response, Judge Amacker signed orders stating the following:

The Court hereby voluntarily recuses itself due to the possibility that the judge may be called as a witness in the proceedings referenced by counsel, and out of an abundance of caution and to avoid the appearance of impropriety ...ODC-13B (Order in *Keister v. Keister*) and ODC-13D (Order in *Cullen v. Cullen*)

Notwithstanding the Judge's reasons stated for her recusal, Respondent (in filing other motions for recusal), stated:

The Court has voluntarily and expressly admitted its extreme bias and conflict in recusing itself in two other cases, which grounds are equally applicable in the case at bar. ODC-13C (motion to recuse filed in *Cullen v. Cullen*) and ODC-13E (motion to recuse filed in *Russell v. Russell*)

Respondent's statement that Judge Amacker "voluntarily and expressly admitted [her] extreme bias and conflict" in recusing herself in other cases is blatantly false.

### **III. Respondent's Conduct Violated Rule 8.4(d)**

Respondent used the internet and social media in an effort to influence Judge Gambrell's and Judge Amacker's future rulings in pending litigation. Respondent's conduct threatened the independence and integrity of the court and was clearly prejudicial to the administration of justice.

Respondent also used her Twitter account to publish multiple tweets linking the audio recordings of the minor children discussing alleged sexual abuse; to publish false, misleading and inflammatory information about Judge Gambrell and Judge Amacker, and to promote the online petition, all of which was designed to intimidate and influence the judges' future rulings in the underlying proceedings.

Respondent knowingly if not intentionally embarked on a campaign using internet, social media and *ex parte* communication specifically designed to intimidate and to influence the judges' future rulings in pending litigation. Her online campaign to influence judges in pending litigation threatened the independence and integrity of the judiciary. Respondent's conduct also caused the judges concern for their personal safety.

The hearing committee found that the Office of Disciplinary Counsel proved by clear and convincing evidence a violation of the following rules: Rule 3.5(a); Rule 3.5(b); Rule 8.4(a); Rule 8.4(c); and Rule 8.4(d). The Committee recommended that Respondent be suspended from the practice of law for one year and one day, be required to attend Ethics School and be assessed with all costs and expenses associated with these proceedings.

## ANALYSIS

### **I. The Standard of Review**

The powers and duties of the Disciplinary Board are defined in § 2 of the Louisiana Supreme Court Rule XIX, Rules for Lawyer Disciplinary Enforcement. Rule XIX, § 2(G)(2)(a) states that the Board is “to perform appellate review functions, consisting of review of the findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges...and prepare and forward to the court its own findings, if any, and recommendations.” Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of “manifest

error.” *Arceneaux v. Domingue*, 365 So. 2d 1330 (La. 1978); *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989). The Board conducts a *de novo* review of the hearing committee’s application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004, Recommendation of the Louisiana Attorney Disciplinary Board (1/22/1992).

**A. Manifest Error Inquiry**

The Committee’s findings of fact are supported by the record and are not manifestly erroneous.

**B. De Novo Review**

The Committee correctly applied the Rules of Professional Conduct to the facts, with one exception. The Board declines to find a violation of Rule 3.5(b) (having ex parte communications with a judge during the proceeding). Each Rule is discussed below.

**Rule 8.4(c):** Rule 8.4(c) prohibits lawyers from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Respondent disseminated false, misleading and inflammatory information on the internet and through social media about Judge Gambrell and Judge Amacker and their handling of pending domestic proceedings in Louisiana and Mississippi. Respondent admits that she and “others” created an online petition posted on a website which claimed that both judges refused to admit all of her client’s evidence including audio recordings of her client interviewing her minor children about the alleged sexual abuse by their father. Although Respondent claimed that Judge Gambrell refused to listen to or admit the audio recordings into evidence during a August 16, 2011 hearing, the record indicates that the audio recordings have never been offered

into evidence in any proceeding before Judge Gambrell in Mississippi or Judge Amacker in Louisiana.

The website created by Respondent and “others” which promoted the online petition contained information about the sealed Mississippi proceedings and Louisiana proceedings. Releasing information contained within the sealed record was in direct violation of the June 2, 2008 Order to Seal File issued by Judge Thomas (predecessor to Judge Gambrell).<sup>4</sup>

The website also linked to the audio recordings of the minor children discussing the alleged abuse by their father. Release of the audio recording by Respondent was in direct violation of Judge Thomas’ September 2, 2008 Agreed Judgment.<sup>5</sup> Additionally, Respondent used her Twitter account at [www.twitter.com/naninemccool](http://www.twitter.com/naninemccool) to promote the audio recordings of the minor children being interviewed by their mother about alleged sexual abuse, again, an action in direct violation of a court order. Although Respondent

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<sup>4</sup> On June 2, 2008, Judge Thomas issued an Order to Seal File which stated in part,

" ... based upon the nature of allegations made in pleadings filed in this matter and to protect the minor children in this matter, the entire file shall be sealed by the law clerk and not made available to any person until further order of this Court with notice of any such request for disclosure being given to both parties and the Court appointed Guardian Ad Litem herein."

<sup>5</sup> On September 2, 2008, an Agreed Judgment was signed stating in part that,

Order No. "12" states that, "Any videotapes or other recordings made by the parties, or at their behest, or by anyone related to the minor children shall not be disclosed to anyone except counsel of record and the Court, and shall not be made available to anyone except the appropriate investigatory agencies at their request."

Order No. "13" states that, "Neither the parties nor anyone working in concert with them shall make any audio or video recordings of the children in an attempt to investigate or document alleged abuse. This does not include recordings made by a counselor for therapeutic purposes, or any recordings made by law enforcement agencies."



was commanded by Order to appear before Judge Gambrell on October 5, 2011 to show cause why she should not be held in contempt of the Court's prior orders, Respondent failed to appear because she did not believe that Mississippi had jurisdiction over her.<sup>6</sup> An Order holding Respondent in contempt of court was issued on October 6, 2011. Respondent is aware that a warrant for her arrest is reportedly pending in Mississippi, but stated she has no plans to travel to Mississippi or go to jail.<sup>7</sup>

Respondent also made false statements about Judge Amacker in multiple motions to recuse which she filed in other unrelated proceedings in Louisiana. *See* ODC 13.

Through the internet and social media, Respondent, on multiple occasions, defied court orders and published false statements about Judge Gambrell and Judge Amacker's handling of domestic proceedings pending before them. As such she is in violation of Rule 8.4(c).

**Rule 8.4(d):** Rule 8.4(d) prohibits lawyers from engaging in conduct prejudicial to the administration of justice. The proscription against conduct that is prejudicial to the administration of justice most often applies to litigation-related misconduct. *Louisiana State Bar Ass'n v. Harrington*, 585 So.2d 514, 520, n. 4 (La.1990) (citing examples). However, Rule 8.4(d) also reaches conduct that is uncivil, undignified, or unprofessional, regardless of whether it is directly connected to a legal proceeding. *See, e.g., In re Ashy*, 98-0662 (La.12/1/98), 721 So.2d 859 (attorney who made unwanted sexual advances toward a client was found to have violated Rule 8.4(d), among other provisions of the Rules of Professional Conduct). In the matter at hand, Respondent's actions touch both

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<sup>6</sup> Transcript of Respondent's 3/20/12 sworn statement, pp. 62-63. Although Respondent received a copy of the notice of the contempt hearing by mail, she stated that she was not properly served and therefore chose not to appear. *Id.*

<sup>7</sup> *Id.* at pp. 63-64.

ends of the spectrum of a Rule 8.4(d) violation as her conduct was undignified and unprofessional and was also litigation-related.

Respondent used the internet and social media in an effort to influence Judge Gambrell's and Judge Amacker's future rulings in pending litigation. Respondent's conduct threatened the independence and integrity of the court and was clearly prejudicial to the administration of justice. Respondent also used her Twitter account to publish multiple tweets linking the audio recordings of the Boyds' minor children discussing alleged sexual abuse; to publish false, misleading and inflammatory information about Judge Gambrell and Judge Amacker, and to promote the online petition, all of which was designed to intimidate and/or influence the judges' future rulings in the underlying proceedings. Therefore Respondent's conduct in this matter was prejudicial to the administration of justice in violation of Rule 8.4(d).

**Rule 3.5(a):** Rule 3.5(a) prohibits a lawyer from seeking to influence a judge, prospective juror or other official by means prohibited by law. Respondent used an online petition and social media to spread information, some of which was false, misleading and inflammatory, about Judge Gambrell's and Judge Amacker's handling and rulings in pending litigation. The clear intent of Respondent's online campaign was an attempt to influence the judges' future rulings in the respective cases.<sup>8</sup> The question is, did she do so “by means prohibited by law”?<sup>9</sup> The Board finds that by violating Rule 8.4

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<sup>8</sup> Transcript of Respondent's 3/20/12 sworn statement, pp. 56-57.

<sup>9</sup> The question of what “by means prohibited by law” means was addressed in the *Harrington* case, a matter in which a lawyer was charged with several ethics violations, including a violation of Rule 3.5, based upon an *ex parte* contact with a judge. The commissioner appointed to conduct a hearing and to make findings reasoned that the phrase ‘by means prohibited by law’ must be construed narrowly to include only such activities as would amount to obstruction of justice, public bribery, or other criminal acts. The Louisiana Supreme Court disagreed, stating:

(c) and (d) of the Rules of Professional Conduct as outlined above, Respondent sought to influence the judges by means prohibited by law. Therefore, the Board agrees with the hearing committee's assessment that Respondent violated Rule 3.5(a).

**Rule 3.5(b):** Rule 3.5(b) prohibits a lawyer from engaging in *ex parte* communications with a judge during a proceeding. Respondent circulated contact information for Judge Gambrell and Judge Amacker and solicited and encouraged the general public to make direct contact with the judges to express their opinions about a matter in front of Judge Amacker where Respondent was counsel of record, and with Judge Gambrell in a matter where Respondent was not counsel of record but was assisting one of the parties. The Board declines to find a Rule 3.5(b) violation as Respondent did not have direct *ex parte* communications with either judge. Instead, she encouraged members of the general public to contact the judges.

In the *Harrington* case, the general scope of Rule 3.5(b) was addressed by the Louisiana Supreme Court. *Id.* at 521-22. There, an attorney who was not counsel of record for either party in a criminal case made an *ex parte* telephone call to the judge who was to preside at a bond hearing, and divulged negative information about the criminal defendant. The hearing commissioner in the disciplinary case concluded that the prohibition against *ex parte* contacts in Rule 3.5 should be limited to “only those *ex parte*

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We have held the Code of Professional Responsibility, superseded on January 1, 1987, by the Rules of Professional Conduct, has the force and effect of substantive law (5)27. Similarly, the Code of Judicial Conduct, adopted by this Court, has the force of law. Canon 3A(4) provides “[e]xcept as permitted by law, a judge should not permit private or *ex parte* interviews, arguments or communications designed to influence his judicial action in any case, either civil or criminal.” We hold an attempt to induce a judge to violate this Canon is a means prohibited by law.

*Id.* at 522.

communications seeking to influence a judge on a matter in which the attorney is counsel for one of the parties.” The Louisiana Supreme Court disagreed, stating that the attorney was presumed to be familiar with the Code of Judicial Conduct and its prohibition against *ex parte* contacts. It also added: “He should have known his telephone call, designed to influence the judge in a matter pending before him the same day, could not have been ‘permitted by law.’” *Id.* at 522. The Board notes that the *Harrington* matter dealt with attorney-judge contact, while the matter at hand deals with a lawyer provoking non-lawyer members of the public to contact a judge. Because of this distinction, the Board declines to find that Respondent, in this particular circumstance, in fact had *ex parte* communications with either judge. As such, the Board declines to find a Rule 3.5(b) violation in this matter.

**Rule 8.4(a):** By violating the above Rules the Respondent also violated Rule 8.4(a), which states that it is a violation of this rule for a lawyer to “violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.” Although the Board declined to find a violation of Rule 3.5(b) (*ex parte* communications with a judge during the proceeding), the Board finds that Respondent did attempt to communicate with Judges Amacker and Gambrell “through the acts of another”. By using the internet and social media to prompt the general public to make direct contact with the judges regarding a matter pending before them, she encouraged the public to do what she is forbidden to do by the Rule 3.5(b). As such, the Board finds Respondents conduct in direct violation of Rule 8.4(a).

## **II. THE APPROPRIATE SANCTION**

### **A. Application of Rule XIX, § 10(C) Factors**

Louisiana Supreme Court Rule XIX, § 10(C) states that in imposing a sanction after a finding of lawyer misconduct, the Court or Board shall consider the following factors:

1. whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
2. whether the lawyer acted intentionally, knowingly, or negligently;
3. the amount of actual or potential injury caused by the lawyer's misconduct; and
4. the existence of any aggravating or mitigating factors.

Respondent by her own admission was unhappy with the decisions rendered in the matters she was litigating. After her legal procedural options were exhausted, she decided to launch a social media campaign to influence the presiding judges. Consequently, Respondent knowingly, if not intentionally, spearheaded a social media blitz in an attempt to influence the judiciary.

Respondent violated a duty owed to the public and the legal system by making false, misleading and inflammatory statements about two judges, which was done as part of a pattern of conduct intended to influence the judges' future rulings in pending litigation. The Board finds the presence of the following aggravating factors: dishonest or selfish motive, a pattern of misconduct, multiple offenses, refusal to acknowledge the wrongful nature of the conduct and substantial experience in the practice of law (admitted on October 6, 2000). The record supports the mitigating factor of absence of prior discipline.

## **B. The ABA Standards and Case Law**

The *ABA Standards for Imposing Lawyers Sanctions* suggests suspension as the baseline sanction in this matter. ABA Standard 6.22 provides for suspension “when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.”

While there is no Louisiana case directly analogous, a review of applicable case law indicates that the baseline sanction for Respondent’s conduct is a suspension. In *In re Simon*, 04-2946 (La. 6/29/05), 913 So.2d 816, respondent was sanctioned with a six month suspension, all but thirty days deferred, and required to attend Ethics School for making false statements about judges in a hypothetical attached to an appellate brief and for describing a judge’s ruling as violating “principles of ‘honesty and fundamental fairness.’” *Id.* at p. 16 and 826. The Court found Simon violated Rule 8.2(a) (attacking the integrity of a judge).

In *In re Karst*, 428 So.2d 406 (La. 1983), the Court suspended an attorney for one year for violating Rule of 8.2(a) (then DR 8-102(B)). Mr. Karst accused a judge of being dishonest, corrupt and engaging in fraud and misconduct. He then caused his unfounded accusations to be disseminated throughout the community via publication in the local newspaper.

In the instant matter, Respondent made false and misleading statements on the internet and in pleadings. As demonstrated by the cases cited above, the discipline for similar misconduct ranges from suspensions of six months to twelve months. One troubling fact that distinguishes Ms. McCool’s misconduct from these other cases is that she used the internet and social media to facilitate her misconduct. Consequently, the

offending language remains present and accessible on the internet today. Furthermore, Respondent has expressed no remorse for her conduct claiming instead it is protected free speech. In addition, Respondent also directly violated several court Orders by releasing and promoting the aforementioned audio recordings which were part of a sealed court record.

Therefore the Board adopts the Committee's recommendation that Respondent be suspended for one year and one day, attend the Louisiana State Bar's Ethics School, and pay all costs associated with these proceedings.

### **CONCLUSION**

The Board adopts the factual findings and legal conclusions of the Committee with one exception. The record clearly shows that Respondent violated Rules 3.5(a) and 8.4(a)(c)(d) of the Rules of Professional Conduct. The Board declines to find a violation of Rule 3.5(b). For her misconduct, the Board adopts the Committee's recommendation of a one year and one day suspension. Additionally, the Board recommends required attendance at the LSBA's Ethics School. Finally, the Board recommends that Respondent be assessed with the costs and expenses of these proceedings.

## RECOMMENDATION

The Board recommends that Respondent, Joyce Nanine McCool be suspended from the practice of law for one year and one day. The Board also recommends that Respondent successfully complete the Louisiana State Bar Association's Ethics School. Finally, the Board recommends that Respondent be assessed with all costs and expenses of these proceedings in accordance with Rule XIX, Section 10.1(A).

### LOUISIANA ATTORNEY DISCIPLINARY BOARD

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BY:



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Carl A. Butler

FOR THE ADJUDICATIVE COMMITTEE



## APPENDIX

### **RULE 3.5. IMPARTIALITY AND DECORUM OF THE TRIBUNAL**

A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order...

### **RULE 8.4. MISCONDUCT**

It is professional misconduct for a lawyer to:

- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; ...  
\*\*\*
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) Engage in conduct that is prejudicial to the administration of justice...