NO. 18-1342

In the Supreme Court of the United States

ANDREW NDUBISI UCHEOMUMU,

Petitioner,

v.

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of Maryland

PETITION FOR A WRIT OF CERTIORARI

W. SHERMAN ROGERS
COUNSEL FOR PETITIONER
ATTORNEY AT LAW
2900 VAN NESS STREET, N.W.
SUITE 405
WASHINGTON, DC 20008
(202) 806-8035
SROGERS@LAW.HOWARD.EDU

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QUESTIONS PRESENTED

1. Whether the State of Maryland violated Petitioner's 14th Amendment due process rights in an attorney disciplinary proceeding resulting in Petitioner's disbarment where, contrary to this Court's holding in *In re Ruffalo*, 390 U.S. 544, 550-51 (1961), the State charged Petitioner with violations of law on one basis but, after the trial, the State found Petitioner guilty of violations of law on another basis on which it had never charged Petitioner.

2. Whether the State of Maryland violated Petitioner's 14th Amendment due process rights in an attorney disciplinary proceeding resulting in Petitioner's disbarment where, contrary to this Court's holding in *Willner v. Comm. on Character & Fitness*, 373 U.S. 96, 103 (1963), the prosecutor withheld tens to hundreds of pages of potentially exculpatory and mitigating documents that were necessary for Petitioner to prepare his defense and cross-examination of the sole prosecution witness, and whether the disclosure rule this Court enunciated in *Brady v. Maryland*, 373 U.S. 83, 87 (1963) applies in attorney disciplinary cases, which are quasi-criminal.

PARTIES INVOLVED

The style of the case identifies the parties involved. Petitioner Andrew Ndubisi Ucheomumu is an individual Maryland resident who is an attorney formerly licensed to practice law in Maryland. Respondent Attorney Grievance Commission of Maryland is an administrative agency in the judicial branch of Maryland State Government, which receives, investigates, and where indicated, prosecutes complaints for professional misconduct and incapacity against Maryland attorneys.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Andrew Ndubisi Ucheomumu, respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeals of Maryland in this case.

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland (App.1a-57a) is reported. *Atty. Griev. Comm'n. of Md. v. Ucheomumu*, 462 Md. 280, 200 A.3d 282 (2018). The lower court's order denying Petitioner's motion for reconsideration (App.58a) is not reported. The referee's opinion (App.62a-102a) is not reported.

JURISDICTION

The Court of Appeals of Maryland entered its judgment on November 16, 2018. Petitioner filed a motion for reconsideration in that Court on December 17, 2018, which the Court denied in an order entered on January 18, 2019. This Court has jurisdiction to review the decision of the Court of Appeals of Maryland pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISION INVOLVED

- U.S. Const. amend. XIV, § 1

  "[N]or shall any state deprive any person of life, liberty, or property, without due process of law . . . "

STATEMENT OF THE CASE

In this case, the State of Maryland charged the Petitioner with committing violations of law on one basis, but after the trial, the State found Petitioner guilty on another basis upon which he was not even charged. Specifically, as set forth *infra*, the State charged Petitioner, a former Maryland attorney, with violations of law on the basis that he "never communicated with [his former client] about ordering the transcripts or requested from her funds so that he could obtain the transcripts,"[1] but after the trial, the State found Petitioner guilty of violations of law and disbarred him on the basis that he "requested from [his former client] money to cover the cost of obtaining transcripts, and she paid him $3,000 [for ordering the transcripts]."[2] As in *Sheppard v. Rees*, 909 F.2d 1234, 1237 (9th Cir. 1990), "the prosecutor ambushed the [Petitioner] with a new theory of culpability after the evidence was already in . . . [the prose-

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1 (App.105a at ¶¶7-9, 118a-119a).

2 (App.2a).

cutor's] new theory . . . was neither subject to adversarial testing, nor defined in advance of the proceeding." This was contrary to this Court's holding in *Ruffalo*, 390 U.S. at 550-51, which was that attorney disciplinary cases are "adversary proceedings of a quasi-criminal nature. The charge must be known before the proceedings commence. They become a trap when, after [the proceedings] are underway, the charges are amended. . . ."

As in *Ruffalo*, "the feature of [this] case that was particularly offensive was that the change [in the charges] was such that the very evidence put on by the [P]etitioner in defense of the original charges became, under the revised charges, [viewed as] inculpatory."[3]

Furthermore, apart from amending the charges after the trial was over in a manner that altered the "character of the offense," the prosecutor also withheld a substantial number of documents which, in addition to being potentially exculpatory and mitigating, were necessary for Petitioner to prepare his cross-examination of the lone prosecution witness. Thus, the prosecutor's actions effectuated a deprivation of the Petitioner's right of confrontation as set forth by this Court in *Willner v. Comm. on Character & Fitness*, 373 U.S. 96, 103 (1963). The prosecutor's actions were further inconsistent with the disclosure requirement this Court enunciated in *Brady v. Maryland*, 373 U.S. 83, 87 (1963). In addition, the Court of Appeals of Mary-

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[3] *Zauderer v. Office of Disciplinary Counsel of Supreme Court*, 471 U.S. 626, 655 n. 18 (1985) (citing *Ruffalo*, 390 U.S. at 551) (emphasis added).

land failed to address the Petitioner's constitutional issues before disbarring him, which is contrary to this Court's holding in *Youngblood v. West Virginia*, 547 U.S. 867 (2006).

Petitioner asks this Court to (1) vacate the lower court's judgment convicting him of misconduct violations and disbarring him; (2) remand the proceedings and direct that the Petitioner be afforded a new trial; and (3) hold that the *Brady* disclosure rule is applicable to quasi-criminal attorney disciplinary proceedings.

A. The Petitioner Represents a Client in a Failed Custody Appeal, Which Results in the Filing of a Grievance with the Respondent

On November 3, 2014, Shannan D. Martin ("Martin") entered into an Attorney Engagement Agreement (the "AEA") with the Petitioner to prosecute an appeal she filed *pro se* in a child custody case. (App. 5a-6a). Under the terms of the AEA, Martin agreed to pay Petitioner $10,500 for his attorney's fees with $5,500 due upon signing and $1,000 payable every month thereafter until the balance was paid in full. (App.64a). Further, the AEA expressly provided that Martin was responsible for paying for the cost of the transcripts and any other litigation expenses. (App. 64a).[4] There is no dispute that Martin failed to comply with the AEA, and instead paid Petitioner $3,000 on November 3, 2014, $200 on November 19, 2014. and $3,000 on December 10, 2014. (App.66a). Martin marked all three payments with the notation "legal

[4] In Maryland, the appellant must order trial transcripts and file them in the record of the case within a certain amount of time. Md. Rule 8-411(b).

fees"[5] and, up through the end of the trial, there was no dispute that Martin made all three payments to compensate Petitioner for his legal services and not to order any transcripts. (App.107a-108a).[6]

Furthermore, there is no dispute that Martin believed that her trial counsel, Ayo Stevens ("Stevens") had copies of the trial transcripts from her custody case,[7] and immediately after the execution of the AEA, Petitioner wrote to Stevens to obtain Martin's case file. (App.147a-148a). There is further no dispute that Stevens never sent Martin's case file to Petitioner. (App.75a).[8] Ultimately, the transcripts were not filed in the record of the case during the requisite time, and Martin's custody appeal was dismissed. (App.71a).

Martin hired successor counsel,[9] and thereafter, filed a grievance against Petitioner with the Respondent. (App.74a). In connection with her grievance, Martin had various communications with and sent additional information to the Respondent's representatives. For example, Respondent's investigator propounded three rounds of questions to Martin (these are referred to

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5 (App.142a).

6 Respondent's investigator even documented that Martin's successor counsel had concluded that Petitioner provided Martin with legal services, which were itemized in an accounting statement to have been worth more than $10,000. (App.149a-150a, 10a).

7 (App.137a, 142a).

8 The evidence introduced at the trial, showed Martin owed Stevens substantial legal fees at the time Petitioner requested Martin's case file. (App.145a-146a).

9 (App.149a-150a).

hereafter as the "Round 1 Questions", the "Round 2 Questions", and the "Round 3 Questions"). (App.140a-143a). The communications also included an email that Martin sent to Respondent's former employee on June 28, 2016 (hereinafter the "June 28th Email"). The June 28th Email contained 27 attachments. (App.120a-128a).[10]

B. The Respondent Accuses the Petitioner of Wrongdoing Arising from His Representation of Martin, and Departs from Its Ordinary and Routine Practice of Furnishing an Accused Attorney with All Third-Party Communications

On November 18, 2016, Respondent filed a *Petition for Disciplinary or Remedial Action* (the "Charging Document") against the Petitioner in the Court of Appeals of Maryland. (App.62a).[11] Respondent alleged that, in the course of representing Martin, Petitioner violated various then-extant Maryland Lawyers' Rules of Professional Conduct (MLRPC). Very importantly, the Respondent asserted that Petitioner violated various MLRPC on the basis that,

> Apart from the statement contained in the [Petitioner]'s employment agreement that

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[10] The Respondent routinely and ordinarily provides an attorney, who is the subject of a grievance or investigation, copies of all correspondence between Respondent's employees and any third party (such as Martin). (App.152a-153a).

[11] In June 2017, Respondent filed an amendment to the Charging Document. The amendment was not material to any issues presented here. Nonetheless, the June 2017 version of the Charging Document was the operative version, and a copy appears in the Appendix. (App.103a-117a).

> Ms. Martin was responsible for the cost of any transcripts, the [Petitioner] never communicated with Ms. Martin about ordering the transcripts or requested from her funds so that he could obtain the transcripts.

(App.118a-119a) (emphasis added); *See also* 105a at ¶¶7-9.

The Court of Appeals of Maryland assigned the Honorable Tiffany Anderson, Associate Judge of the Circuit Court for Prince George's County ("Judge Anderson"), as a referee to adjudicate the charges. (App.4a). A bench trial was scheduled to begin on January 3, 2018. (App.120a-135a). Prior to that date, during discovery, the prosecutor in the case, Jennifer Thompson ("Thompson"),[12] on behalf of the Respondent, provided responses to discovery requests propounded by the Petitioner. (*See e.g.*, App.119a). The discovery responses included documents in the Respondent's possession. Thompson provided Martin's responses to the Round 1 Questions, but she withheld Martin's responses to the Round 2 Questions and the Round 3 Questions.[13] Thompson did not even disclose that she had withheld any responsive documents or that she had otherwise departed from her employer's routine practice of providing an accused attorney copies of all correspondence between the Respondent's employees and any third parties. (*See* App.120a-135a).

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[12] Thompson is an attorney employed by the Respondent in the position of Assistant Bar Counsel. *Id.*

[13] Martin testified that she provided responses to all three rounds of questions. (App.143a-144a).

On January 3, 2018, the first day of the scheduled trial, Petitioner further discovered that, notwithstanding her employer's routine practice, Thompson had also withheld 15 of the 27 attachments to the June 28th Email. (App.120a-135a). Judge Anderson asked Thompson to provide an explanation for her withholding of the attachments. *Id.* In response, Thompson claimed that she withheld as many as eight of the attachments because they were communications between Martin and her successor counsel, and that she (Thompson) was concerned about Martin's attorney-client privilege with her successor counsel. *Id.* Judge Anderson then ordered Thompson to produce a privilege log documenting all the materials she withheld,[14] but notwithstanding the well-settled law in Maryland (and everywhere else) that a voluntary disclosure of attorney-client communications (such as Martin's disclosure of the communications to the Respondent's employee) effectuates a waiver of the privilege with respect to the communications disclosed and the subject matter thereof,[15] Judge Anderson declined to compel Thompson to produce the withheld attachments or any of the other documents that Thompson had withheld. (*See* App.5a).

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14 *Id.*

15 *See e.g.*, *Parler & Wobber v. Miles & Stockbridge, P.C.*, 359 Md. 671, 692 (2000) (quoting *Harrison v. State*, 276 Md. 122, 138 (1975)) ("[A] voluntary disclosure deprives a subsequent claim of privilege . . . "); *Blair v. State*, 130 Md. App. 571, 611-12 (2000) (Disclosure waives privilege as to all information related to the same subject matter).

C. The Respondent Forces Petitioner into a Three-Day Trial Without Having the Benefit of Countless Documents Withheld by the Prosecutor

Later in January 2018, the Respondent forced Petitioner into a three-day bench trial without having the benefit of any of the documents Thompson withheld. (App.62a-63a). Martin was the only prosecution witness at the trial. During her direct examination by Thompson at the trial, Martin testified in relevant part:

> [THOMPSON]: Did Mr. Ucheomumu ever ask you to, quote, deposit money to order the transcripts?
>
> [MARTIN]: No, he did not.
>
> * * *
>
> [THOMPSON]: So, Mr. Ucheomumu's claim that the funds you paid were specifically for the legal services? Did he ever tell you that?
>
> [MARTIN]: His legal services that I hired him for was to write the appeal, yes.

(App.138a-139a) (emphasis added).

Martin repeated permutations of the above-trial testimony at various junctures throughout the trial. (*See generally* App.136a-144a). The testimony above was consistent with the basis upon which the Respondent had charged the Petitioner with misconduct. (*See* App.118a-119a; 105a at ¶¶7-9). As such, the Petitioner prepared to defend himself against the core allegations that he had never advised Martin about the trans-

cripts or asked her to deposit money to order them.[16] In defense of the allegation, Petitioner introduced an exhibit showing that, on December 8, 2014, he had sent Martin a text message (the "December 8th Text Message") asking how her funding was coming along and advising that the transcripts needed to be ordered as soon as possible. (App.141a-142a). Martin testified as follows on cross-examination by the Petitioner:

> [PETITIONER] Q. Can you read this text message?
>
> [MARTIN] A. December 8th?
>
> [PETITIONER] Q. Yes.
>
> [MARTIN] A. Yes. It says, Shannan, how is your funding coming? I need to order the transcript ASAP without any further delay.
>
> * * *
>
> [PETITIONER] Q. Did you pay when I sent you this? Did you write any check and say for transcript deposit, ever?
>
> [MARTIN] A. Transcript deposit?
>
> [PETITIONER] Q. Right.
>
> [MARTIN] A. No. I put for legal fees, that's what it was for. (emphasis added).

Id. (emphasis added).

Based upon the Charging Document and Martin's testimony, Petitioner believed there was no dispute that Martin's three payments to him had been for the

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[16] Note also Petitioner was hampered in his ability to fully prepare his cross-examination of Martin due to Thompson's withholding of the documents.

legal services and that none of those payments had been intended for a transcript deposit. (*See generally* App.103a-119a). Since he had already introduced evidence showing he communicated with Martin about ordering the transcript and since Martin already testified that he had never requested any money from her (and thus that she had not paid) for the transcripts, Petitioner did not have any reason to testify himself or put on additional evidence regarding the December 8th Text Message or the purpose of Martin's payment to him on December 10, 2014 (the "December 10th Payment").[17]

D. The Respondent Blindsides the Petitioner with a New Theory of Culpability After the Trial Is Over, and the Evidence Is Closed; the Referee Accepts the New Theory

After the trial was over and with the evidence closed, Thompson utilized the very evidence offered by the Petitioner in defense of the original charges (*i.e.*, the December 8th Text Message) in order to blindside him with a new theory of culpability in her post-trial filings.[18] Namely, Thompson's new theory was that Martin made the December 10th Payment, in response to the December 8th Text Message, for the specific purpose of ordering the transcript, and that the Petitioner had failed to use the money for that

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[17] Note that at no time during the trial did Thompson request Petitioner's consent or seek a continuance to amend the charges based upon the December 8th Text Message or any other new evidence that had purportedly been elicited at the trial.

[18] Note that Petitioner did not consent to any post-trial amendment of the charges.

purpose.[19] Based upon the notion that he was paid for the transcripts on December 10, 2014, Thompson asserted that the Petitioner had lied to the Court of Special Appeals of Maryland, the Respondent, and Martin about the failure to order the transcripts and the identity of the party who was responsible for the failure of Martin's appeal. *Id.* Although it was contrary to Martin's testimony,[20] Judge Anderson adopted Thompson's new theory of culpability in her opinion and relied on the very evidence offered by the Petitioner in defense of the original charges in order to find that:

> On December 8, 2014, the [Petitioner] sent a text message to Ms. Martin requesting funds to order the transcripts. Such funds were paid by Ms. Martin to the [Petitioner] on December 10, 2014.

(App.97a) (emphasis added). Judge Anderson repeated various permutations of this finding throughout the opinion and used them as the basis for concluding that the Petitioner had committed multiple violations of the MLRPC. (*See* App.66a, 73a, 81a, 87a, 91a, 95a).

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[19] *See* e.*g.*, *AGC's Proposed Findings of Fact and Conclusions of Law* at pp. 6, 13, 17, 20, 24. found at Circuit Court for Prince George's County Maryland, CAE17-07944, Doc#100, filed February 16, 2018. *See also AGC's Reply to Ucheomumu's Proposed Findings of Fact and Conclusions of Law* at pp.10-11, found at Circuit Court for Prince George's County Maryland, CAE17-07944. Doc#102, filed March 12, 2018.

[20] (*See e.g.*, App.138a-139a).

E. The Court of Appeals of Maryland Declines to Follow Its Own Precedents and Fails to Address the Petitioner's Constitutional Issues Before Disbarring Him

In April 2018, the Clerk of the Circuit Court for Prince George's County sent Judge Anderson's opinion to the Court of Appeals. On July 16, 2018, the Petitioner filed a motion to compel (the "Motion to Compel") the Respondent to produce the withheld documents citing the Court of Appeals' decision in *Matter of White*, 458 Md. 60, 67 (2018) in which the Court ordered the Maryland Commission on Judicial Disabilities to produce an unredacted version of a single document that the Commission had withheld in a judicial disciplinary proceeding.[21] Notwithstanding its decision in *White* and that the Respondent offered no cogent rebuttal to the Motion to Compel, the Court of Appeals denied the Petitioner's motion without any opinion or explanation and without overruling or distinguishing its precedent in *White*. (App.60a).

Thereafter, Petitioner filed exceptions to the referee's opinion in which, among other things, he raised the due process issues presented here and sought remand for a new trial. (*See* App.5a). On November 16, 2018, the Court of Appeals issued its opinion and judgment. (App.1a-57a). In the opinion, the Court overruled the Petitioner's exceptions and adopted the findings and conclusions of Judge Anderson, which had been predicated on the new theory of culpability Thompson first espoused after the trial was over. *See*

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[21] In *White*, the Court of Appeals noted that judicial disciplinary proceedings are analogous to attorney disciplinary proceedings. 458 Md. at 94.

generally Id. The Court framed the lynchpin finding as follows:

> [Petitioner] requested from Martin [on December 8, 2014] money to cover the cost of obtaining transcripts, and she paid him $3,000 [on December 10, 2014]. [Petitioner], however, never ordered the transcripts . . .

(App.2a) (emphasis added). Citing back to the lynchpin finding, the Court went on to conclude that the Petitioner lied to the Court of Special Appeals of Maryland, the Respondent, and Martin regarding the reason the transcript was not ordered and the identity of the party responsible for the failure of Martin's appeal. (App.1a-57a). On this purported basis, the Court convicted the Petitioner of various MLRPC violations and disbarred him. *Id*. With respect to the due process arguments raised by the Petitioner, the Court asserted that it had already disposed of these with its one-line order denying the Motion to Compel, and as such, it purported to "decline to yet again consider arguments of which [it] had already disposed." (App.13a). In reality, the Court had never addressed the due process arguments raised by Petitioner. Rather, it merely cast them aside. (*See* App.13a, 60a). On December 17, 2018, the Petitioner filed a motion for reconsideration of the judgment seeking, *inter alia*, a remand for new trial. (*See* App.58a-59a). The Court of Appeals denied the motion on January 18, 2019. *Id*.

REASONS FOR GRANTING THE WRIT

"[A]ttorney disciplinary proceedings are subject to due process scrutiny." *In re Bithoney*, 486 F.2d 319, 323 (1st Cir. 1973) (citing *In re Ruffalo*, 390 U.S. 544 (1968)). "[I]n view of the gravity of the punishment which may be meted out . . . which includes stiff fines, or even suspension or disbarment with all of the consequential damage which that entails, the test which must be employed as to the constitutionality of the disciplinary machinery to be used must be a very severe one." *Id.*

I. RESPONDENT VIOLATED PETITIONER'S DUE PROCESS RIGHTS IN AN ATTORNEY DISCIPLINARY PROCEEDING RESULTING IN PETITIONER'S DISBARMENT WHERE IT CHARGED PETITIONER WITH MISCONDUCT ON ONE BASIS AND PETITIONER WAS FOUND GUILTY OF MISCONDUCT ON ANOTHER BASIS UPON WHICH HE WAS NOT CHARGED

"A State cannot exclude a person from the practice of law or from any other occupation . . . for reasons that contravene the Due Process or Equal Protection Clause[s] of the Fourteenth Amendment." *Schware v. Bd. of Bar Exam'rs*, 353 U.S. 232, 238-39 (1957). The prosecutor's post-trial amendment of the charges, in a manner that altered the "character of the offense," rendered Petitioner's trial unfair and meaningless and violated his due process rights of notice and opportunity to defend. Attorney disciplinary cases are "adversary proceedings of a quasi-criminal nature." *Ruffalo*, 390 U.S. at 550-51 (emphasis added). "[B]efore

a judgment disbarring an attorney is rendered he should have notice of the grounds of complaint against him and ample opportunity of explanation and defence" (sic). *Ex parte Robinson*, 86 U.S. (19 Wall.) 505, 512 (1873). "This is a rule of natural justice, and should be equally followed when proceedings are taken to deprive him of his right to practice his profession, as when they are taken to reach his real or personal property." *Id.* The principle that there must be citation before hearing, and hearing or opportunity of being heard before judgment, is essential to the security of all private rights. Without its observance no one would be safe from oppression wherever power may be lodged. *Id.*

To comply with due process requirements, a hearing must be held "at a meaningful time and in a meaningful manner." *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). "A hearing is not meaningful if a[n] [accused] is given inadequate information about the basis of the charges against him." *Taylor v. Rodriguez*, 238 F.3d 188, 193 (2d. Cir. 2001). For a hearing to be meaningful, "the charge must be known before the proceedings commence" so the accused has a reasonable opportunity to prepare his defense. *Ruffalo*, 390 U.S. at 550-51 (emphasis added). The charging document must "set forth the alleged misconduct with particularity." *In re Gault*, 387 U.S. 1, 33 (1967). "[A]bsence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprive [the accused] of procedural due process." *Atty. Griev. Comm'n. v. Costanzo*, 432 Md. 233, 256 (2013) (citing *Ruffalo*, 390 U.S. at 551)).

To satisfy the requirements of procedural due process, the charging document commencing the disciplinary proceeding must specify (a) the RPC alleged to have been violated;[22] and (b) "the factual allegations against which the attorney must defend." *Atty. Griev. Comm'n. v. Myers*, 333 Md. 440, 444-45 (1994) (citing *Atty. Griev. Comm'n. v. McBurney*, 282 Md. 116, 123-24 (1978)). The factual allegations against which the attorney must defend are those "which must be proved [by clear and convincing evidence] to make the act[s] complained of [an offense]." *Thanos v. State*, 282 Md. 709, 714-16 (1978). *See also Atty. Griev. Comm'n. v. Walman*, 280 Md. 453, 463-64 (1977); Md. Rule 16-757(b) (Implying the charging document contains factual allegations which if proved, by clear and convincing evidence, would render the conduct complained of a violation of the charged RPC). The "facts which must be proved to make the act complained of [an offense]" comprise what is known as the "character of the offense." *See Thanos*, 282 Md. at 714-16; *see also Grin v. Shine*, 187 U.S. 181, 190 (1902); *Tapscott v. State*, 106 Md. App. 109, 134 (1995).

"[A] fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding . . . " *Rees*, 909 F.2d at 1237 (emphasis added). In sum, all facts comprising the "character of the offense" are matters of substance in the charging document and they must be known before the proceedings commence. *Thanos*, 282 Md. at 714. The proceedings "become a trap when, after they are underway, the charges are amended" in a manner that has the

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[22] *Costanzo*, 432 Md. at 256.

effect of altering the "character of the offense;" such amendment, if performed without the accused's consent, would violate his "constitutional right to be informed of the accusation against him in time to prepare his defense." *Ruffalo*, 390 U.S. at 551; *Thanos*, 282 Md. at 716.

In this case, the prosecutor constructively amended the charges after the trial was over by relying upon facts in her post-trial filings that were not charged to support a finding of culpability. As in *Ruffalo*, "the feature of [this] case that was particularly offensive was that the change [in the charges] was such that the very evidence put on by the [P]etitioner in defense of the original charges became, under the revised charges, [viewed as] inculpatory." *Zauderer*, 471 U.S. at 655 n. 18 (citing *Ruffalo*, 390 U.S. at 551) (emphasis added). "Thus, in [this] case [as in *Ruffalo*], the original charges functioned as a trap, for they lulled the [P]etitioner into presenting evidence [*i.e.*, the December 8th Text Message] that irrevocably assured his disbarment under charges not yet made." *Id.* (emphasis added; internal citations, brackets and quotation marks omitted).[23]

The prosecutor's attempt to pivot after the trial from a theory of culpability on the basis that "[Peti-

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[23] *See also Walman*, 280 Md. at 463-64 (Holding proposed constructive post-trial amendment altering character of offense would violate the defendant's procedural due process rights); *see also Atty. Griev. Comm'n. v. Stanalonis*, 445 Md. 129, 142 (2015) (Recognizing attempt to amend charges post-trial in a manner that altered the character of the offense, by pivoting from a theory of culpability based upon an intentional misrepresentation to a theory of culpability based upon reckless disregard, presented a notice problem).

tioner] never communicated with Ms. Martin about ordering the transcripts or requested from her funds so that he could obtain the transcripts" to a theory of culpability on the basis that "[Petitioner] requested from Martin [on December 8, 2014] money to cover the cost of obtaining transcripts, and she paid him $3,000 [on December 10, 2014]" represents a clear change in the "character of the offense" after the trial proceedings had already ended, and cannot constitutionally serve as the basis for convicting Petitioner of any MLRPC violations and disbarring him.[24]

II. RESPONDENT VIOLATED PETITIONER'S DUE PROCESS RIGHTS IN AN ATTORNEY DISCIPLINARY PROCEEDING RESULTING IN PETITIONER'S DISBARMENT WHERE THE PROSECUTOR WITHHELD LARGE NUMBERS OF POTENTIALLY EXCULPATORY AND MITIGATING DOCUMENTS

Similar to *Youngblood v. West Virginia*, 547 U.S. 867 (2006),[25] the Court of Appeals of Maryland erred

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[24] In failing to address the Petitioner's due process argument regarding the prosecutor's post-trial amendment of charges in a manner that altered the "character of the offense," the Court of Appeals did not purport to distinguish or overrule any of its own precedents (*Thanos*, *Walman*, etc.) recognizing that such post-trial amendment would constitute a violation of an accused's due process rights. Note also that, in accepting Thompson's new theory of culpability, both the referee and the Court of Appeals ignored Martin's trial testimony that she had not been asked to deposit (and thus had not paid) money to order the transcripts.

[25] In *Youngblood*, this Court vacated the judgment of the West Virginia Supreme Court and remanded the case in a *per curiam* opinion for further proceedings. The Court held that (1) the accused clearly had presented, to the trial court and the West Virginia Supreme Court, a federal constitutional claim under

by not giving fair consideration to Petitioner's due process arguments surrounding the prosecutor's withholding of potentially exculpatory and mitigating evidence. In denying the Motion to Compel without any explanation and in refusing to address the Petitioner's argument in its final opinion, the Court skirted the due process issues resulting from the prosecutor's withholding of countless documents.[26]

A. Respondent Seriously Impaired the Petitioner's Ability to Prepare an Effective Cross-Examination of the Sole Prosecution Witness by Withholding Documents, Thereby Infringing Upon His Due Process Right of Confrontation

The prosecutor's withholding of potentially exculpatory evidence, including *inter alia*, 15 of the 27 attachments to the June 28th Email as well as Martin's responses to the Round 2 Questions and the Round 3 Questions violated the Petitioner's due process rights. In *Willner v. Comm. on Character & Fitness*, 373 U.S. 96, 103 (1963), this Court noted, "We have emphasized in recent years that procedural due process often requires confrontation and cross-examination of those whose word deprives a person of his livelihood . . . We think the need for confrontation is a necessary con-

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Brady; and (2) it would be better to have the benefit of the views of the full West Virginia Supreme Court on the *Brady* issue in the event this Court had to address the issue on the merits. *Id.* at 868.

[26] The Court further forewent a prime opportunity to at least mitigate the defects, which resulted from the prosecutor's withholding of the documents, in the proceedings before the referee.

clusion from the requirements of procedural due process" (emphasis added).

Here, Martin was the only witness upon whose word the prosecutor sought to deprive Petitioner of his livelihood. Petitioner's opportunity to confront Martin was effectively rendered hollow and meaningless because Thompson withheld key documents regarding the events at issue that were necessary to ensure an effective cross-examination. This is especially true in a case where the trial occurred years after the events at issue, and the withheld documents, which included emails that were contemporaneous with those events, would likely have been useful in refreshing Martin's recollection about what happened and ensuring that the record elicited at the trial was as accurate as possible.[27]

In the total analysis, contrary to this Court's holdings in *Schware* and *Willner*, the State violated the Petitioner's due process rights by withholding potentially exculpatory and mitigating evidence that was necessary for the Petitioner to confront the sole witness against him.

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[27] No one doubts that the prosecutor would not withhold documents that are helpful to her case or even neutral. Common sense dictates that the only reason for the prosecutor to withhold documents is because they are helpful to the accused.

B. The Prosecutor's Withholding of Documents Was Contrary to the *Brady* Disclosure Rule, Which Should Be Held to Apply in Attorney Disciplinary Proceedings

"[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady*, 373 U.S. at 87.[28] The American Bar Association (ABA) has adopted model rules for disciplinary proceedings that include a *Brady* requirement. Rule 22 of the ABA Model Rules for Judicial Disciplinary Enforcement addresses discovery in judicial disciplinary proceedings and provides in relevant part:

> Exculpatory Evidence. Disciplinary counsel shall provide respondent with exculpatory evidence relevant to the formal charges.[29]

At present, at least three states have adopted the ABA's proposal and incorporate a *Brady*-like disclosure requirement into their rules governing disciplinary proceedings.[30] This Court may further take

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[28] In *Kyles v. Whitley*, 514 U.S. 419, 437 (1995), this Court reversed a murder conviction upon discovering that the state had withheld evidence in violation of *Brady*.

[29] https://www.americanbar.org/groups/professional_responsibility/model_rules_judicial_disciplinary_enforcement/rule22/ (last accessed April 15, 2019).

[30] The states are Arizona, Delaware, and Minnesota. (*See* App. 155a). Although some states are already applying the *Brady* disclosure rule in disciplinary proceedings and others may be considering doing so, this Court should not count on all the states to do so themselves through the legislative process because

judicial notice that, ironically, the Court of Appeals of Maryland's own Standing Committee on Rules of Practice and Procedure (the "Maryland Rules Committee") believes that the adoption of a *Brady*-type disclosure requirement in disciplinary proceedings is "an important assurance of basic fairness" (emphasis added).[31] As such, the Maryland Rules Committee has even included an overarching *Brady*-type disclosure requirement in a proposed overhaul of the rules governing judicial disciplinary proceedings, which is currently pending before the Court of Appeals. (App.155a -157a).[32]

Just as the Maryland Rules Committee recognized, *Brady* clearly presents "an important assurance of basic fairness," and for that reason and others presented below, this Court should hold that the rule applies in all attorney disciplinary proceedings.

"the gravity of the punishment which may be meted out [in disciplinary proceedings] . . . which includes stiff fines, or even suspension or disbarment with all of the consequential damage which that entails," is too grave to not require the mandatory disclosure of exculpatory evidence in disciplinary proceedings. *See Bithoney*, 486 F.2d at 323 *supra.*

[31] (App.155a).

[32] *See also* https://www.courts.state.md.us/sites/default/files/rules/reports/199threport.pdf (last accessed April 15, 2019).

1. Attorney Disciplinary Proceedings Are Quite Similar to Criminal Proceedings and Due to Their Similarity, the *Ruffalo* Standard Is Often Cited in Criminal Cases

Attorney disciplinary proceedings are "quasi-criminal in nature"[33] and share many attributes with criminal proceedings. For this reason, the *Ruffalo* standard has often been cited in criminal cases. For example, citing *Ruffalo* and other cases, the United States District Court for the Southern District of Ohio noted in relevant part:

> [W]hatever charging method the state employs must give the criminal defendant fair notice of the charges against him to permit adequate preparation of his defense. This requires that the offense be described with some precision and certainty so as to apprise the accused of the offense with which he stands charged. Such definiteness and certainty are required as will enable a presumptively innocent man to prepare for trial.

Steele v. Warden, No. 2:13-cv-1267, 2015 U.S. Dist. LEXIS 65320, at *31-32 (S.D. Ohio May 18, 2015) (internal citations omitted). In other words, the standard developed in *Ruffalo* for attorney disciplinary proceedings is analogous to the standard for notice in criminal cases. It therefore is logical that the *Brady*

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[33] *Ruffalo*, 390 U.S. at 551.

disclosure rule would be applicable in attorney disciplinary proceedings as well.[34]

2. *Brady* Is an Important and Necessary Safeguard for Accused Persons in Attorney and Judicial Disciplinary Cases Where Prosecutors Enjoy the Same Absolute Immunity from Civil Liability as in Regular Criminal Proceedings

Courts have repeatedly ruled that prosecutors in attorney disciplinary proceedings enjoy the same absolute immunity for conduct performed in a judicial capacity as prosecutors in regular criminal proceedings. "[T]his Court finds that bar counsel prosecutors are afforded absolute immunity for conduct performed in a judicial capacity." *Hekyong Pak v. Ridgell*, No. RDB-10-01421, 2011 U.S. Dist. LEXIS 84057, at *20 (D. Md. Aug. 1, 2011), *aff'd. per curiam*, 476 Fed. Appx. 750 (4th Cir. Md., 2012), *cert. denied*, 568 U.S. 1162 (2013). *See also Clulow v. State of Oklahoma*, 700 F.2d 1291, 1298 (10th Cir. 1983) ("[B]ar officials charged with the duties of investigating, drawing up, and presenting cases involving attorney discipline enjoy absolute immunity from damage claims for such functions."); *Simons v. Bellinger*, 643 F.2d 774 (D.C. Cir. 1980) (granting absolute immunity to members of the Committee on Unauthorized Practice of Law,

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[34] Note that *Brady* has been held to apply in juvenile delinquency proceedings, which are another type of civil proceedings that are quasi-criminal in nature. *See e.g.*, *Matter of Evan U.*, 664 N.Y.S.2d 189, 192 (N.Y. App. Div. 1997); *Matter of C.L.W.*, 467 A.2d 706, 711 (D.C. 1983); *T.C. v. State*, 364 S.W.3d 53, 63 (Ark. 2010); *State ex rel. L.V.*, 66 So. 3d 558, 561-62 (La. Ct. App. 2011); *In re R.D.*, 44 A.3d 657, 675 (Pa. 2012).

who investigate violations, determine who is prosecuted, and direct the prosecution); *Hirsh v. Justices of the Supreme Court of the State of California*, 67 F.3d 708, 715 (9th Cir. 1995) (granting bar prosecutors absolute immunity for their role in attorney disciplinary system).

In *Pak*, the plaintiff, Hekyong Pak, filed suit in the U.S. District Court for the District of Maryland seeking, *inter alia*, damages for violations of 42 U.S.C. § 1983 by the prosecutor in Pak's attorney disciplinary proceeding. The Court dismissed Pak's damages claims holding that "bar counsel prosecutors are afforded absolute immunity for conduct performed in a judicial capacity." *Pak*, *supra*, at *20. The Court in *Pak* went so far as to note that "[p]rosecutorial immunity applies even when a prosecutor fabricates evidence so long as the prosecutor is acting in a semi-judicial capacity." *Id.* (quoting *Carter v. Burch*, 34 F.3d 257, 262-63 (4th Cir. 1997)) (emphasis in the original). As cases like *Pak* demonstrate, without the *Brady* disclosure rule, prosecutors in attorney disciplinary proceedings can withhold documents with impunity.[35] Prosecutors in bar disciplinary proceedings should not be able to withhold documents with impunity, since it increases the chances for an innocent person to be found guilty and does not further the pur-

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[35] Indeed, the withholding of documents by Maryland prosecutors in attorney disciplinary proceedings does not appear to be limited to the case *sub judice*. *See e.g.*, *Atty. Griev. Comm'n of Md. v. Donnelly*, 458 Md. 237, 271 (2018) (noting the prosecutor was alleged to have withheld documents, which the Court of Appeals described as "troubling," but did not otherwise take any action to prevent recurrence).

pose of attorney disciplinary proceedings, which is protection of the public.[36]

3. Just Like Criminal Proceedings, Attorney Disciplinary Proceedings Are Highly-Punitive and Stigmatizing, and Thus, Require Various Constitutional Safeguards Including Disclosure of Exculpatory Evidence

Disbarment is a career death penalty and can severely impair a disbarred attorney from gaining other employment, and as such, disbarment proceedings, just like regular criminal proceedings, require various constitutional safeguards. *See Bithoney*, 486 F.2d at 323. Just as convicted criminals have difficulties securing employment, who would want to hire someone that is branded as being "unethical" by the highest court of a state? Just as this Court recognized in *Ruffalo* that "disbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer,"[37] many states' highest courts have recognized that "[a]ny disbarred attorney suffers both personally and professionally." *In re Moynihan*, 113 Wn.2d 219, 224 (1989) (quoting *In re Rosellini*, 108 Wn.2d 350, 358 (1987)). *See Office of Disciplinary Counsel v. Keller*, 509 Pa. 573, 586 (1986) ("While disbarment could do no more, we recognized therein that the public interest required the entry of the order of disbarment

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[36] *See Ruffalo*, 390 U.S. at 550-51 (recognizing that disbarment is intended to protect the public). It does not help to protect the public when an innocent person is found guilty of misconduct violations and disbarred in an attorney disciplinary proceeding.

[37] 390 U.S. at 550-51.

and its attendant stigma to a previously unblemished reputation"); *Atty. Griev. Comm'n v. Burghardt*, 442 Md. 151, 161 n.3 (2015) (recognizing the stigma that attaches to the sanction of disbarment). *See also Atty. Griev. Comm'n. v. Smith (In re Smith)*, 317 B.R. 302, 312 (Bnkr. D. Md. 2004) ("[A]n attorney disciplinary proceeding, although not criminal, is penal in nature. Sanctions are imposed and costs assessed to serve the goal of protecting the public through deterrence and rehabilitation").[38]

In light of the fact that attorney disciplinary cases are *quasi*-criminal in nature, and the fact that bar prosecutors are accorded the same absolute prosecutorial immunity as prosecutors in regular criminal cases, and the fact that a person can be deprived of his/her ability to earn a living, just as the Maryland Rules Committee recently recognized, the *Brady* disclosure rule presents "an important assurance of basic fairness," that should extend to attorney disciplinary cases. Given the propensity of Maryland prosecutors to withhold exculpatory evidence in attorney disciplinary cases, at the present time (some fifty-six years after *Brady*), this Court should once again grant *certiorari* in a case from Maryland and hold that, just like in criminal cases, the *Brady* disclosure rule applies in attorney disciplinary cases.

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[38] In determining that an attorney disciplinary proceeding is "penal in nature," the United States Bankruptcy Court for the District of Maryland concluded that a monetary judgment awarded by the Court of Appeals of Maryland in favor of the Respondent, as the result of a disciplinary proceeding, was not dischargeable.

CONCLUSION

For the reasons set forth herein, this Court should GRANT certiorari, vacate the judgment of the Court of Appeals of Maryland convicting Petitioner of ethics violations and disbarring him, remand this case for a new trial, and hold that the *Brady* disclosure rule applies in attorney disciplinary proceedings.

Respectfully submitted,

W. SHERMAN ROGERS
COUNSEL FOR PETITIONER
ATTORNEY AT LAW
2900 VAN NESS STREET, N.W.
SUITE 405
WASHINGTON, DC 20008
(202) 806-8035
SROGERS@LAW.HOWARD.EDU

APRIL 18, 2019

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OPINION OF THE COURT OF APPEALS OF MARYLAND (NOVEMBER 16, 2018)

IN THE COURT OF APPEALS OF MARYLAND

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND,

v.

ANDREW NDUBISI UCHEOMUMU.

Misc. Docket AG No. 58

Circuit Court for Prince George's County
Case No. CAEI 7-07944

Before: BARBERA, C.J., GREENE, ADKINS* MCDONALD, WATTS, HOTTEN, GETTY, JJ.

Opinion by Watts, J.

This attorney discipline proceeding involves a lawyer who, among other misconduct, caused an appeal in his client's case to be dismissed and lied to his client, Bar Counsel, and the Court of Special Appeals in an attempt to deflect the blame for the appeal's dismissal.

* Adkins, J., now retired, participated in the hearing and conference of this case while an active member of this Court; after being recalled pursuant to the Md. Constitution, Article IV, Section 3A, she also participated in the decision and adoption of this opinion.

Shannan Martin retained Andrew Ndubisi Ucheomumu, Respondent, a member of the Bar of Maryland, to represent her in an appeal. For an appeal to proceed, transcripts of relevant proceedings in the trial court need to be ordered by a certain deadline. In this case, after the deadline passed, Ucheomumu requested from Martin money to cover the cost of obtaining transcripts, and she paid him $3,000. Ucheomumu, however, never ordered the transcripts or advised Martin to do so. The Court of Special Appeals issued an order directing Martin to show cause why the appeal should not be dismissed for failure to file the transcripts. Ucheomumu filed a motion for extension of time to file the transcripts in which he falsely stated that one of the reasons why there had been a delay in filing the transcripts was that Martin's previous counsel had not provided him with them.

Martin terminated Ucheomumu's representation. Although Ucheomumu had not earned the total of $6,200 that Martin had paid him, he did not refund the $6,200. Additionally, after the Court of Special Appeals denied the motion for extension of time and dismissed the appeal, Ucheomumu falsely advised Martin that she was responsible for the appeal's dismissal. Martin filed a complaint against Ucheomumu with Bar Counsel. In his response to Martin's complaint, Ucheomumu falsely stated that he had advised Martin to order the transcripts, that she had never paid him so that he could order the transcripts, and that the Court of Special Appeals had dismissed the appeal because Martin had failed to order the transcripts.

On November 18, 2016, on behalf of the Attorney Grievance Commission, Petitioner, Bar Counsel filed in this Court a "Petition for Disciplinary or Remedial

Action" against Ucheomumu, charging him with violating Maryland Lawyers' Rules of Professional Conduct ("MLRPC")[1] 1.1 (Competence), 1.2(a) (Allocation of Authority Between Client and Lawyer), 1.3 (Diligence), 1.4 (Communication), 1.5(a) (Reasonable Fees), 1.5(b) (Communication of Fees), 1.8(a), 1.8(h) (Conflict of Interest; Current Clients; Specific Rules), 1.15(a), 1.15(b), 1.15(c) (Safekeeping Property), 1.16(d) (Terminating Representation), 3.3(a)(l) (Candor Toward the Tribunal), 8.1(a) (Disciplinary Matters), 8.4(c) (Dishonesty, Fraud, Deceit, or Misrepresentation), 8.4(d) (Conduct That Is Prejudicial to the Administration of Justice), and 8.4(a) (Violating or Attempting to Violate the MLRPC), and current Maryland Rule 19-408 (Commingling of Funds).[2]

On November 22, 2016, this Court designated the Honorable David A. Boynton of the Circuit Court for Montgomery County to hear this attorney discipline proceeding. On March 29, 2017, Ucheomumu filed in this Court a "Motion for Change of Venue and to Amend Order Designating Judg[e.]" On March 31, 2017, this Court issued an Order granting the Motion for Change

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[1] Effective July 1, 2016, the MLRPC were renamed the Maryland Attorneys' Rules of Professional Conduct, or MARPC, and renumbered. We will refer to the MLRPC because the misconduct at issue occurred before this change.

[2] On June 12, 2017, Bar Counsel filed in this Court an "Amended Petition for Disciplinary or Remedial Action," charging Ucheomumu with violating former Maryland Rule 16-607 (Commingling of Funds), as opposed to current Maryland Rule 19-408. The charges in the two Petitions for Disciplinary or Remedial Action were otherwise identical. Before a hearing judge, Bar Counsel withdrew the charges that Ucheomumu had violated former Maryland Rule 16-607 and MLRPC 1.15(b).

of Venue. On April 12, 2017, this Court designated the Honorable Tiffany H. Anderson ("the hearing judge") of the Circuit Court for Prince George's County to hear this attorney discipline proceeding.

On December 22, 2017, Ucheomumu filed in this Court a "Motion to Dismiss Improperly-Filed and Unauthorized Charges[] and Request for Oral Argument[,]" a brief in support thereof, and a Motion to Seal as to one of the exhibits that he attached to the brief. On December 28, 2017, Ucheomumu filed in this Court an "Emergency Motion to Stay Trial Court Proceedings[,]" a "Motion for Issuance of Additional Briefing Schedule as to Questions of Law Capable of Repetition, but Consistently Evading Review, or in the Alternative, Motion for Appropriate Reli[e]f[,]" and a brief in support of the motions. On January 2, 2018, this Court issued an Order granting the Motion to Seal and denying the Motion to Dismiss and the Motion for Issuance.

On January 10, 16, and 17, 2018, the hearing judge conducted a hearing.[3] On April 25, 2018, the hearing judge filed in this Court an opinion including findings of fact and conclusions of law, concluding that Ucheomumu had violated MLRPC 1.1, 1.2(a), 1.3, 1.4, 1.5, 1.15(a), 1.15(c), 1.16, 3.3, 8.1, 8.4(c), 8.4(d), and 8.4

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[3] The Petitions for Disciplinary or Remedial Action also charged Ucheomumu with violating various MLRPC involving another client in a separate matter. After the hearing, however, Bar Counsel withdrew the charges with respect to the allegations concerning Ucheomumu's representation of the second client.

(a), and had attempted to violate MLRPC 1.8(h)(l) and 1.8(h)(2) in violation of MLRPC 8.4(a).[4]

On July 16, 2018, Ucheomumu filed in this Court a "Motion to Compel Production of Documents [Bar Counsel] Improperly[ ]Withheld During the Trial Court Proceedings; and Exceptions to Trial Court Rulings Regarding Such Documents" and a "Motion to Unseal Records and Deposition and Vacate Non-Dissemination Order[.]" On August 23, 2018, this Court issued an Order denying the Motion to Compel and the Motion to Unseal. On September 7, 2018, Ucheomumu filed in this Court motions for reconsideration of this Court's denial of the Motion to Compel and the Motion to Unseal. On the same date, this Court issued an Order denying the motions for reconsideration.

On October 4, 2018, we heard oral argument. For the below reasons, we disbar Ucheomumu.

BACKGROUND

The hearing judge found the following facts, which we summarize.

On June 16, 2009, this Court admitted Ucheomumu to the Bar of Maryland. At all relevant times, Ucheomumu was a solo practitioner with a virtual office in Montgomery County.

On July 31, 2014, in a child custody case, the Circuit Court for Prince George's County issued an order that was unfavorable to Martin. On November 3, 2014, Ucheomumu and Martin signed an "Attorney Engagement Agreement," which stated as follows.

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[4] The hearing judge did not address whether Ucheomumu violated, or attempted to violate, MLRPC 1.8(a). Accordingly, neither do we.

Martin had "filed a pro se appeal and need[ed] the legal services of [Ucheomumu's firm] to handle the Appeal Brief and oral argument[.]" Martin would pay Ucheomumu a flat fee of $10,500, and would also pay the filing fees and the cost of obtaining transcripts. Ucheomumu's firm would "deposit any and all" payments "in [its] general operating account, and not in a trust account." If, "[a]fter starting the work," Ucheomumu's firm withdrew from the representation "due to any conflict," Martin would receive a refund on a "pro[]rata basis[,] or" her payments would be applied to "outstanding legal bills." The Attorney Engagement Agreement did not specify an hourly rate, or explain how the amount of any "outstanding legal bills[,]" or the amount of any refund on "a pro[ ]rata basis[,]" would be calculated. Ucheomumu did not advise Martin to seek independent counsel to review the Attorney Engagement Agreement's statement that he would not deposit unearned funds into an attorney trust account.

After Martin retained Ucheomumu to represent her in the appeal, she requested from him legal advice that pertained to the child custody case, but that was outside the scope of his representation of her in the appeal. Specifically, Martin requested from Ucheomumu legal advice regarding visitation with her children. Ucheomumu reviewed e-mails and other documents that pertained to the child custody case, and, on Martin's behalf, made phone calls and engaged in negotiation with opposing counsel regarding visitation with her children. The Attorney Engagement Agreement did not mention the costs of these legal services. There was no evidence that Ucheomumu and Martin entered into a separate or amended retainer agreement that

addressed the costs of these legal services. Ucheomumu did not advise Martin that he applied at least some of her payments for the appeal toward the costs of these legal services.

On November 3, 2014, Martin paid Ucheomumu $3,000, which he deposited into his attorney trust account; he drafted a Notice of Appeal and advised Martin to file it in the circuit court; and she did so. On November 4, 2014, Ucheomumu e-mailed Martin's previous counsel in an attempt to obtain her case file. Martin's previous counsel never provided any documents to Ucheomumu. On November 7, 2014, Ucheomumu filed a Civil Appeal Information Report on Martin's behalf, and withdrew $1,000 from his attorney trust account. On November 19, 2014, Martin paid Ucheomumu $200, which he did not deposit into his attorney trust account.

On November 20, 2014, the Court of Special Appeals issued an order to proceed, stating that there would be no prehearing conference, and that the appeal would be governed by Maryland Rule 8-207(a), which provides for expedited appeals in child custody and visitation cases. *See* Md. R. 8-207(a)(l)(B). In November 2014, Maryland Rule 8-41 1(b)(1) stated that, generally, "[t]he appellant shall order the transcript within ten days . . . after [] the date of an order . . . that the appeal proceed without a prehearing conference, . . . unless a different time is fixed by that order[.]" (Paragraph break omitted). Here, ten days after the date of the order to proceed was November 30, 2014, which was a Sunday; thus, the transcripts of the relevant proceedings in the circuit court needed to be ordered by

December 1, 2014, the next business day.[5] *See* Md. R. 1-203(a)(l). Ucheomumu never ordered the transcripts, never advised Martin to do so, and never filed a timely motion for extension of time to file the transcripts.

On December 2, 2014, Ucheomumu withdrew $2,000 from his attorney trust account. On December 8, 2014, a week after the date on which the transcripts were to be ordered, Ucheomumu sent a text message to Martin, requesting a payment for the purpose of "order[ing] the transcript[s] ASAP without any further delay." This was the only occasion on which Ucheomumu requested a payment to cover the cost of obtaining transcripts. Ucheomumu did not inform Martin that he had missed the December 1, 2014 deadline for ordering the transcripts. On December 10, 2014, for the purpose of covering the cost of obtaining the transcripts, Martin paid Ucheomumu $3,000, which he did not deposit into his attorney trust account. Ucheomumu never earned $6,200 in attorney's fees that Martin had paid him, as he failed to take any action to advance the appeal, he never ordered the transcripts that were necessary to the appeal, and his legal services pertaining to visitation with Martin's children were not a significant undertaking. Additionally, Ucheomumu never drafted a brief on Martin's behalf.

At some point, Ucheomumu contacted a transcription company. On January 15, 2015, the transcription company responded to Ucheomumu, confirming the existence of transcripts of two days of a trial. The

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[5] The hearing judge inadvertently stated that the deadline was November 30, 2014.

hearing judge did not find that Ucheomumu took any action in response.

On February 2, 2015, the Court of Special Appeals issued an order directing Martin to show cause why the appeal should not be dismissed for failure to file the transcripts. On February 24, 2015, Ucheomumu e-mailed Martin, stating that he lacked the transcripts. Ucheomumu did not inform Martin of the show cause order, or advise her that the Court of Special Appeals would dismiss the appeal for failure to file the transcripts.

On February 27, 2015, in the Court of Special Appeals, Ucheomumu filed an "Appellant[']s Motion for Extension of Time to Order Transcript[s] and File Appellant's Brief." In the Motion for Extension, Ucheomumu requested a two-month extension of the deadline for filing Martin's brief, and represented that there had been a delay in ordering the transcripts because: (1) the circuit court had been closed for multiple days; (2) he was uncertain of how long the trial had been due to confusing information on the docket; and (3) he had not received Martin's case file from her previous counsel, who, he believed, had copies of the transcripts. Ucheomumu knowingly made a false statement by stating that there had been a delay in ordering the transcripts because he had not received Martin's case file from her previous counsel. By requesting from Martin on December 8, 2014 a payment for the cost of obtaining transcripts, Ucheomumu indicated that, as of that date, he was no longer waiting for Martin's previous counsel to provide the transcripts, and instead planned to use a payment from Martin to order the transcripts himself. Ucheomumu "misled []

the Court of Special Appeals . . . in an attempt to explain his failure to order the transcripts."

On March 10, 2015, Martin requested a copy of the Motion for Extension, but she did not hear back from Ucheomumu. On March 11, 2015, Martin again requested a copy of the Motion for Extension, and again did not hear back from Ucheomumu. Subsequently, Martin requested that Ucheomumu provide copies of all of the documents that he had drafted on her behalf. Ucheomumu never did so.

On March 18, 2015, Martin terminated Ucheomumu's representation, sought a refund, and requested an accounting of all of the legal services that he had performed for her. At some point, Martin hired new counsel to represent her in the appeal. On March 20, 2015, Ucheomumu provided Martin with an invoice that indicated that she owed him $10,944.50 based on an hourly rate of $295. This was the first occasion on which Ucheomumu indicated that he would charge Martin an hourly rate. On the same date, Ucheomumu offered to refund Martin $1,200, but did not explain how he calculated that amount. Martin declined Ucheomumu's offer and requested that the two of them discuss the payments. Ucheomumu e-mailed Martin and her new counsel, again offering to refund Martin $1,200—on the condition that she would sign a release that was attached to the e-mail, and that would preclude her from suing him. Ucheomumu did not advise Martin to seek independent counsel to review the release. Martin declined Ucheomumu's second offer.

On March 25, 2015, the Court of Special Appeals issued an order denying the Motion for Extension and dismissing the appeal. Ucheomumu's inaction caused the appeal's dismissal. On March 30, 2015, Ucheomumu

e-mailed the order and the Attorney Engagement Agreement to Martin and stated:

> Our agreement specifically specified that you are responsible for paying the transcripts; see attached. I told you many times to deposit the money for the transcript[s] and you told me that your grand[ ]father was going to loan you money, but that did not materialize. I specifically did not want to let the Court of Special Appeals know that you have not paid for the transcripts because it is my duty to protect you.

(Cleaned up).

On April 1, 2015, in the Court of Special Appeals, Martin's new counsel filed a Motion to Reinstate. On April 6, 2015, in the Court of Special Appeals, Martin's new counsel filed transcripts of certain circuit court proceedings. On April 14, 2015, the Court of Special Appeals denied the Motion to Reinstate. Martin's new counsel then filed in this Court a petition for a writ of *certiorari*, which this Court denied.

On April 13, 2015, Martin filed a complaint against Ucheomumu with Bar Counsel. On June 10, 2015, Ucheomumu provided to Bar Counsel a response to Martin's complaint in which he falsely stated that he had advised Martin to order the transcripts, that she had never paid him so that he could order the transcripts, and that the Court of Special Appeals had dismissed the appeal because Martin had failed to order the transcripts.

According to the hearing judge, Ucheomumu's misconduct was aggravated by prior attorney discipline, a dishonest or selfish motive, a pattern of misconduct,

multiple violations of the MLRPC, and false statements during this attorney discipline proceeding. Ucheomumu's misconduct was mitigated by his "provision of some legal services [that were] related to" visitation with Martin's children.

STANDARD OF REVIEW

In an attorney discipline proceeding, this Court reviews for clear error a hearing judge's findings of fact, and reviews without deference a hearing judge's conclusions of law. *See* Md. R. 19-741(b)(2)(B) ("The Court [of Appeals] shall give due regard to the opportunity of the hearing judge to assess the credibility of witnesses."); *Attorney Grievance Comm'n v. Slate*, 457 Md. 610, 626, 180 A.3d 134, 144 (2018) ("This Court reviews for clear error a hearing judge's findings of fact." (Cleaned up)); Md. R. 19-741 (b)(1) ("The Court of Appeals shall review de novo the [hearing] judge's conclusions of law."). This Court determines whether clear and convincing evidence establishes that a lawyer violated an MLRPC. *See* Md. R. 19-727(c) ("Bar Counsel has the burden of proving the averments of the [P]etition [for Disciplinary or Remedial Action] by clear and convincing evidence.").

DISCUSSION

(A) Ucheomumu's Requests for Dismissal or Remand

In his "Exceptions to the Hearing Judge's Findings of Fact and Conclusions of Law and Recommendation for Disposition[,]" Ucheomumu requests that we dismiss this attorney discipline proceeding "due to [Bar Counsel]'s discovery misconduct as set forth in the Motion to Compel[.]" In his Exceptions, Ucheomumu

repeats multiple contentions that he made in the Motion to Compel, as well as the Motion to Unseal and the Motion to Dismiss. Specifically, in both his Exceptions and the Motion to Compel, Ucheomumu argued that Bar Counsel improperly failed to answer interrogatories under oath, Bar Counsel improperly withheld certain documents, and those documents were similar to a memorandum that this Court stated was not attorney work product in *Matter of White*, 458 Md. 60, 92, 181 A.3d 750, 768 (2018). In both his Exceptions and the Motion to Unseal, Ucheomumu argued that the hearing judge improperly sealed the transcript of his deposition of the Attorney Grievance Commission's Executive Secretary. And, in both his Exceptions and the Motion to Dismiss, Ucheomumu argued that the Peer Review Panel was improperly comprised of individuals from Montgomery County rather than individuals from Prince George's County.

This Court denied the Motion to Compel, the Motion to Unseal, the Motion to Dismiss, and the motions for reconsideration of this Court's denials of the Motion to Compel and the Motion to Unseal. Ucheomumu's exceptions, which raise the same arguments that were made in the Motions to Compel, Unseal, and Dismiss, are overruled. We decline to yet again consider arguments of which we have already disposed.

In his Exceptions, Ucheomumu contends that the hearing judge erred in limiting his deposition of the Attorney Grievance Commission's Executive Secretary by denying him the opportunity to ask about "fundamental topics[,] such as the factual basis for its contentions in the Petition for Disciplinary or Remedial Action, . . . or [Bar Counsel's] compliance with its discovery obligations." Ucheomumu also argues that the

hearing judge made several errors at the hearing, such as "[i]mproperly [h]urr[ying him] along[,]" not taking judicial notice of certain documents, and denying him the "opportunity to introduce evidence inuring to unauthorized charges[.]" Ucheomumu seeks dismissal of this attorney discipline proceeding on these grounds. Upon a careful review of the record, we discern no procedural error or abuse of discretion on the hearing judge's part, and we decline to dismiss this attorney discipline proceeding.

In his Exceptions, Ucheomumu also requests that we remand this attorney discipline proceeding so that the hearing judge "can consider [ ] newly-discovered evidence"— namely, a purported November 3, 2014 e-mail in which Ucheomumu stated to Martin: "We need to . . . order the transcript[s] . . . as quickly as possible"; purported records of telephone calls and text messages between Ucheomumu and Martin from October 2014 to March 2015; and the testimony of "a witness who [allegedly] has knowledge of attempted settlement negotiations in the" child custody case. None of this proffered evidence causes us to conclude that the hearing judge's findings of fact are clearly erroneous. In the purported November 3, 2014 e-mail, Ucheomumu did not advise Martin to order the transcripts, nor did Ucheomumu indicate that Martin was responsible for ordering the transcripts; significantly, in a December 8, 2014 text message, he stated to Martin: "I need to order the transcript[s] ASAP without any further delay." Ucheomumu does not draw our attention to the content of any of the purported telephonic conversations and text messages, or proffer that any of them contradict the hearing judge's findings that Ucheomumu failed to inform Martin of the December 1,

2014 deadline for ordering the transcripts, and failed to inform Martin that he had missed the deadline. Testimony regarding settlement negotiations in the child custody case would be of no consequence because Bar Counsel did not charge Ucheomumu with any misconduct that arose out of the alleged settlement negotiations. We decline Ucheomumu's request to remand the attorney discipline proceeding.

(B) Findings of Fact

Bar Counsel does not except to any of the hearing judge's findings of fact. Ucheomumu raises fifteen exceptions to the hearing judge's findings of fact. We overrule all but one of the exceptions.

First, Ucheomumu excepts to the hearing judge's finding that, on December 8, 2014, he requested from Martin money to cover the cost of obtaining transcripts. The hearing judge admitted into evidence a series of text messages between Ucheomumu and Martin, including a December 8, 2014 text message in which he stated: "Shannan, how is your funding coming? I need to order the transcript[s] ASAP without any further delay." Ucheomumu contends that, in his text message, he did not expressly ask Martin for money. Ucheomumu's contention is without merit. Given that Ucheomumu asked Martin how her "funding [was] coming[,]" and, in the next sentence, informed her that he "need[ed] to order the transcript[s,]" the hearing judge did not clearly err in determining that the text message was a request for money to cover the cost of obtaining transcripts.

Second, Ucheomumu excepts to the hearing judge's finding that the purpose of Martin's $3,000 payment on December 10, 2014 was to cover the cost of obtaining

the transcripts. Contrary to Ucheomumu's position, the evidence supports the hearing judge's finding. As mentioned previously, on December 8, 2014, Ucheomumu sent Martin a text message, requesting money to cover the cost of obtaining transcripts. On the same day, Martin replied, stating: "I was just informed that it should be wired to my account within 72 hours." On December 10, 2014, Martin paid Ucheomumu $3,000. The timing of Martin's payment—just two days after the date on which Ucheomumu requested from her money to cover the cost of obtaining transcripts, and that Martin stated that she would receive money within 72 hours—supports the hearing judge's finding that the purpose of the payment was to cover the cost of obtaining the transcripts.

Third, Ucheomumu excepts to the hearing judge's finding that, after Martin terminated his representation, he billed her for legal services that were outside the scope of his representation of her in the appeal. Ucheomumu argues that the $10,500 flat fee covered all of the legal services that he provided to Martin, including services related to visitation with her children; that he calculated the $10,944.50 balance due in the invoice in response to her request for an accounting; and that he did not attempt to collect the balance due. Ucheomumu's logic is faulty. The Attorney Engagement Agreement stated that Ucheomumu would represent Martin in the appeal for a flat fee of $10,500, and did not contemplate that he would provide any other legal services to her. Yet, after Martin terminated Ucheomumu's representation, he provided her with an invoice with a balance due of $10,944.50. Given that Ucheomumu could not have provided Martin with more than $10,500's worth of legal services

in the appeal, as he never ordered transcripts of the circuit court proceedings, filed briefs, or appeared at any oral argument, he necessarily billed her $10,944.50 for legal services that were not related to his representation of her in the appeal, or services that he did not perform at all.

Fourth and fifth, Ucheomumu excepts to the hearing judge's findings that he never earned the $6,200 that Martin had paid him, that he failed to deposit and maintain the funds in an attorney trust account until earned, and that he failed to take any action to advance the appeal. The evidence provides ample support for the hearing judge's findings. Martin retained Ucheomumu to represent her in the appeal, draft and file a brief on her behalf, and participate in oral argument. Ucheomumu never drafted a brief on Martin's behalf, and there was no oral argument because the Court of Special Appeals dismissed the appeal for failure to file the transcripts of proceedings in the circuit court. The transcripts were never filed because Ucheomumu never ordered them and never advised Martin to do so. Ucheomumu was responsible for the appeal's dismissal, and he did not earn $6,200 for work that he failed to perform. Ucheomumu clearly did not earn the $6,200 by performing such perfunctory tasks as e-mailing Martin's previous counsel, drafting a notice of appeal, filing a Civil Appeal Information Report, and filing an untimely Motion for Extension. Nor did Ucheomumu earn the $6,200 by performing legal services that were related to visitation with Martin's children, as the hearing judge found, and this work was outside the scope of Ucheomumu's representation in the appeal. Specifically, Ucheomumu reviewed e-mails and other documents that pertained

to the child custody case, and, on Martin's behalf, made phone calls and engaged in negotiation regarding visitation with her children. The hearing judge found that Ucheomumu's legal services pertaining to visitation with Martin's children were not a significant undertaking. The hearing judge also found that, although Ucheomumu deposited into an attorney trust account the initial $3,000 that Martin had paid him, he withdrew those funds from the attorney trust account, and he did not deposit into an attorney trust account the additional $3,200 that Martin paid him. The hearing judge did not clearly err in finding that Ucheomumu never earned the $6,200, and that he failed to deposit and maintain the funds in an attorney trust account until earned.

Sixth, Ucheomumu excepts to the hearing judge's finding that he did not advise Martin to seek independent counsel to review the Attorney Engagement Agreement's statement that he would not deposit unearned funds into an attorney trust account. Ucheomumu asserts that there is no evidence that he did not provide such advice. Ucheomumu's assertion is a red herring. MLRPC 1.15(c) required Ucheomumu to obtain Martin's "informed consent, confirmed in writing, to" his practice of not depositing unearned funds into an attorney trust account. Comment 6 to MLRPC 1.0 addresses informed consent, in pertinent part, as follows: "In some circumstances[,] it may be appropriate for a lawyer to advise a client . . . to seek the advice of another lawyer." Ucheomumu failed to put into writing advice of Martin's right to seek independent counsel, or a statement that he had orally provided such advice. And Ucheomumu simply makes a

bald allegation that the hearing judge clearly erred with respect to the finding.

Seventh, although Ucheomumu does not challenge the hearing judge's finding that he never ordered the transcripts or advised Martin to do so, he contends that he promptly attempted to obtain the transcripts from her previous counsel. Ucheomumu's contention does not undermine the hearing judge's finding. On November 4, 2014, in an attempt to obtain Martin's case file, Ucheomumu e-mailed her previous counsel, who, he believed, had copies of the transcripts. Regardless of whether Ucheomumu's belief was accurate, Martin's previous counsel never provided the transcripts. As of November 20, 2014, when the Court of Special Appeals issued an order to proceed—which triggered a ten-day deadline for ordering the transcripts, *see* Md. R. 8-411 (b)(1)—it was incumbent on Ucheomumu to promptly order the transcripts.

Eighth, Ucheomumu excepts to the hearing judge's finding that his inaction caused the appeal's dismissal. Ucheomumu argues that he could not have been responsible for the appeal's dismissal, as the appeal was "a nullity" because Martin prematurely filed a notice of appeal while a motion to alter or amend the judgment was pending. Ucheomumu is wrong. The hearing judge admitted into evidence the child custody case's docket entries. According to a docket entry dated July 24, 2014, at a hearing, the circuit court awarded the opposing party primary physical and sole legal custody of Martin's children. According to a docket entry dated September 22, 2014, Martin filed a motion to alter or amend the judgment. And, according to a docket entry dated October 3, 2014, the circuit court issued an order in which it again awarded

the opposing party primary physical and sole legal custody of Martin's children. The order was a final judgment, regardless of whether the circuit court expressly denied the motion to alter or amend. Indeed, another docket entry dated October 3, 2014 stated that the child custody case was closed. Martin needed to file a notice of appeal within thirty days of the ruling disposing of the motion to alter or amend. *See* Md. 8-202(c). The date that was thirty days from October 3, 2014-namely, November 2, 2014—was a Sunday, so the deadline for the filing of the appeal was the next day. *See* Md. R. 1-203(a)(l). On November 3, 2014, Martin filed a timely Notice of Appeal. In short, the appeal was not "a nullity," and its dismissal was Ucheomumu's fault.

Ninth, Ucheomumu excepts to the hearing judge's finding that he did not advise Martin to seek independent counsel to review the release that he had e-mailed to Martin and her new counsel. Ucheomumu also states that Martin testified that he orally advised her to discuss the release with her new counsel. In light of the record confirming Martin's testimony, we sustain Ucheomumu's exception.

Tenth, Ucheomumu excepts to the hearing judge's finding that he never complied with Martin's requests for a copy of the Motion for Extension. Contrary to Ucheomumu's position, the evidence supports the hearing judge's finding. The hearing judge admitted into evidence a series of e-mails between Ucheomumu and Martin with the subject "Date[.]" On March 10, 2015, Martin e-mailed Ucheomumu, stating in pertinent part: "How does the exten[s]ion process work? . . . Please forward me a copy of what you filed." On March 11, 2015, at 7:41 a.m., Martin e-mailed Ucheomumu, stat-

ing: "Please respond." At 10:08 p.m., Martin e-mailed Ucheomumu, stating in pertinent part: "I did not receive a copy of the exten[s]ion [that] you filed. If you were not able to figure out how to e[-]mail it, please leave a sealed envelope copy at the concierge desk tomorrow[.]" Martin's 10:08 p.m. e-mail is the last in the series. In other words, the record demonstrates that Ucheomumu never replied to Martin's requests for a copy of the Motion for Extension. Additionally, Martin testified that she did not recall ever receiving a copy of the Motion for Extension. Martin's testimony, and the e-mails between Martin and Ucheomumu, demonstrate that the hearing judge did not clearly err in finding that he failed to provide her with a copy of the Motion for Extension.

Eleventh, Ucheomumu excepts to the hearing judge's finding that he made a false statement by representing in the Motion for Extension that there had been a delay in ordering the transcripts because he had not received Martin's case file from her previous counsel. The hearing judge found that, in the Motion for Extension, Ucheomumu

> stated that the delay in filing the transcripts . . . was due to: (1) the uncertainty concerning the length of the [ ] trial[,] and[,] specifically [,] whether the trial spanned two or three days; (2) [Ucheomumu]'s inability to obtain [ ] Martin's [case] file from her [previous counsel]; and (3) the [circuit court] experiencing several closures. Although[ ] the reasons for the delay [that were] proffered by [Ucheomumu] are not persuasive[—]and, in fact, did not convince the Court of Special Appeals to grant the [Motion for E]xtension—[ ] there

is not clear and convincing evidence that they are knowingly false statements. The evidence presented was not clear and convincing with regard to [Ucheomumu]'s proffer in the [M]otion [for Extension] that his uncertainty of the trial dates caused him to do further research on the issue, and him thereby violating [MLRPC 3.3]. Additionally, no such ruling was made by the Court of Special Appeals [i]n the denial of [the M]otion [for Extension].

[Ucheomumu]'s inability to obtain [ ] Martin's [case] file from her [previous counsel] may or may not have delayed the filing because[,] as proffered in [the Motion for Extension, Ucheomumu] believed [that] Martin's previous [counsel] already had copies of the transcript[s]. However, this argument falls short because[,] in [Ucheomumu]'s December 08, 2014 [text message to] Martin[,] he specifically ask[ed] her for $3,000.00 for the purpose of ordering the transcripts. Therefore, as of December 8, 2014[, Ucheomumu] was no longer waiting for [ ] Martin's [previous counsel] to provide the transcripts, as he indicated he would order them with [ ] Martin's $3,000.00 payment. [ ] Martin made the payment as requested[] on December 10, 2014, yet the Motion for Extension [ ] was not filed until February 27, 2015, almost three months later. It is clear from [Ucheomumu]'s [text message] on December 08, 2014 that he was no longer waiting for copies of the transcripts from [ ] Martin's [previous counsel]. When [Ucheomumu] received the second $3,000.00

> payment for the purpose of ordering the transcripts, there was no evidence of any impediment that would cause a delay in ordering them.
>
> This representation made by [Ucheomumu] within [the M]otion [Extension] is a knowingly false statement of fact[.]

(Cleaned up).

Ucheomumu asserts that the hearing judge contradicted herself by finding both that "there [wa]s not clear and convincing evidence that [Ucheomumu's statements we]re knowingly false[,]" and that Ucheomumu made "a knowingly false statement of fact[.]" In context, it is clear that, when the hearing judge found that "there [wa]s not clear and convincing evidence that [Ucheomumu's statements we]re knowingly false[,]" she was referring to Ucheomumu's statements that he was uncertain of how long the trial had been, and that the circuit court had been closed for multiple days. Indeed, immediately after making this finding, the hearing judge stated that there was not "clear and convincing" evidence that Ucheomumu's statement in the Motion for Extension about "his uncertainty of the trial dates" was a violation of MLRPC 3.3—*i.e.*, a false statement. And, elsewhere in the opinion, the hearing judge observed that the circuit court was closed every day between February 19, 2015 and March 8, 2015. A fair reading of the hearing judge's remarks leads to the conclusion that the hearing judge's finding of dishonesty pertained to Ucheomumu's statement that there had been a delay in ordering the transcripts because he had not received Martin's case file from her previous counsel.

Alternatively, Ucheomumu maintains that the hearing judge's finding that he made a false statement in the Motion for Extension was clearly erroneous because the hearing judge clearly erred in finding that he requested from Martin money to cover the cost of obtaining transcripts on December 8, 2014, and that the purpose of Martin's $3,000 payment on December 10, 2014 was to cover the cost of obtaining the transcripts. In his twelfth exception, Ucheomumu makes the same argument in challenging the hearing judge's finding that he made a false statement to Bar Counsel when he represented that he had advised Martin to order the transcripts, that she had never paid him so that he could order the transcripts, and that the Court of Special Appeals dismissed the appeal because Martin had failed to order the transcripts. As explained above, the hearing judge did not clearly err in making the findings of fact to which Ucheomumu excepts.

Thirteenth, Ucheomumu excepts to the hearing judge's finding that he made misrepresentations to Martin. The hearing judge found that Ucheomumu

> Misled . . . Martin in an attempt to explain his failure to order the transcripts. Ultimately, [the] appeal was dismissed because [Ucheomumu] did not order the transcripts. . . .[Ucheomumu] tried to disclaim his responsibility for the dismissal of the appeal by placing blame on [ ] Martin for the delay in the order, via an e[-]mail. This Court finds [that Ucheomumu] made several knowing and intentional misrepresentations and omissions . . . to [ ] Martin[.]

Ucheomumu contends that the hearing judge's opinion leaves unclear the misrepresentations that he made to Martin. We disagree. The hearing judge found that Ucheomumu "misled . . . Martin in an attempt to explain his failure to order the transcripts." The hearing judge explained that Ucheomumu was responsible for the appeal's dismissal, yet he blamed Martin for it in an e-mail. The hearing judge found that, on March 30, 2015, Ucheomumu e-mailed to Martin the order in which the Court of Special Appeals dismissed the appeal, and he stated to her: "[Y]ou have not paid for the transcripts[.]" Ucheomumu's statement was false, as the purpose of Martin's $3,000 payment on December 10, 2014 was to cover the cost of obtaining the transcripts. By e-mailing the order to Martin and stating that she had not paid for the transcripts, Ucheomumu not only lied about her alleged failure to pay for the transcripts, but also falsely implied that she was responsible for the appeal's dismissal.

Fourteenth, Ucheomumu excepts to the hearing judge's finding that he "did not instruct [ ] Martin to order the transcripts by the [December 1], 2014 deadline." Ucheomumu argues that, in the Amended Petition for Disciplinary or Remedial Action, Bar Counsel did not allege that he failed to advise Martin to order the transcripts by a certain date, and instead simply alleged that he never advised Martin to order the transcripts. Ucheomumu's claim of lack of notice is without merit. In the Amended Petition for Disciplinary or Remedial Action, Bar Counsel alleged: "On November 20, 2014, the Court of Special Appeals ordered [ ] Martin's appeal to proceed without a pre-hearing conference. Maryland Rule 8-411(b) requires that an appellant order the transcripts of the underlying proceedings

within ten [ ] days from the date of that Order." (Emphasis added). The Amended Petition for Disciplinary or Remedial Action indicated that Ucheomumu allegedly failed to meet the deadline of December 1, 2014—the day after November 30, 2014, which was a Sunday that was ten days after November 20, 2014, when the Court of Special Appeals issued the order to proceed.

Fifteenth, Ucheomumu excepts to the hearing judge's failure to find that he communicated with Martin on multiple occasions from October 2014 to March 2015. Ucheomumu does not proffer that any of his communications contradict the hearing judge's findings that Ucheomumu failed to inform Martin of the December 1, 2014 deadline for ordering the transcripts, and failed to inform Martin that he had missed the December 1, 2014 deadline. And, at various points within the opinion, the hearing judge discussed communications between Ucheomumu and Martin that occurred between October 2014 and March 2015—namely, Ucheomumu's December 8, 2014 text message to Martin, her November 3, 2014, November 19, 2014, and December 10, 2014 payments to him, and his February 24, 2015 e-mail to her. We decline to find that the hearing judge clearly erred in failing to determine that Ucheomumu communicated with Martin numerous times between October 2014 and March 2015.

(C) Conclusions of Law

Bar Counsel does not except to any of the hearing judge's conclusions of law. Ucheomumu excepts to all of the hearing judge's conclusions of law. We reverse the hearing judge's conclusions that Ucheomumu attempted to violate MLRPC 1.8(h)(1) and 1.8(h)(2),

thereby violating MLRPC 8.4(a), and uphold the rest the hearing judge's conclusions of law.

MLRPC 1.1 (Competence), 1.2(a) (Allocation of Authority Between Client and Lawyer), and 1.3 (Diligence)

"A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." MLRPC 1.1. "A lawyer shall act with reasonable diligence and promptness in representing a client." MLRPC 1.3. MLRPC 1.2(a) states in pertinent part:

> [A] lawyer shall abide by a client's decisions concerning the objectives of the representation and, when appropriate, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.

Clear and convincing evidence supports the hearing judge's conclusion that Ucheomumu violated MLRPC 1.1, 1.2(a), and 1.3. The Attorney Engagement Agreement set forth the objectives of Ucheomumu's representation of Martin in the appeal—namely, that he would draft a brief and participate in oral argument on her behalf. On November 20, 2014, the Court of Special Appeals issued an order to proceed, meaning that the transcripts of the relevant proceedings in the circuit court needed to be ordered by December 1, 2014. Ucheomumu never ordered the transcripts, never advised Martin to do so, and never filed a timely motion for extension of time to file the transcripts. As a result, the Court of Special Appeals dismissed the

appeal, and there was no oral argument. Ucheomumu never drafted a brief on Martin's behalf. Ucheomumu's inaction constituted a failure of competence and diligence, as well as a failure to accomplish the objectives of his representation of Martin.

MLRPC 1.4 (Communication)

MLRPC 1.4 states:

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in [MLRPC] 1.0(f), is required by [the MLRPC];

(2) keep the client reasonably informed about the status of the matter;

(3) promptly comply with reasonable requests for information; and

(4) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the [MLRPC] or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.[6]

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6 Without specifying a section, the hearing judge concluded that Ucheomumu violated MLRPC 1.4. The hearing judge stated that Ucheomumu violated MLRPC 1.4 "when he did not keep [ ] Martin reasonably informed[,]" "by failing to promptly comply with [ ] Martin's reasonable requests for information[,]" and "by failing to inform [ ] Martin about any additional hourly costs of his legal services outside of the original $10,500.00 flat fee[.]" These

Clear and convincing evidence supports the hearing judge's conclusion that Ucheomumu violated MLRPC 1.4(a)(2). On November 20, 2014, the Court of Special Appeals issued an order to proceed, meaning that the transcripts of the relevant proceedings in the circuit court needed to be ordered by December 1, 2014. *See* Md. R. 8-411 (b)(1) (2014), 1-203(a)(l). Ucheomumu did not inform Martin of the December 1, 2014 deadline. On December 8, 2014, Ucheomumu sent Martin a text message, requesting money to cover the cost of obtaining transcripts. Ucheomumu did not inform Martin that he had missed the December 1, 2014 deadline for ordering the transcripts. On February 2, 2015, the Court of Special Appeals issued an order directing Martin to show cause why the appeal should not be dismissed for failure to file the transcripts. Ucheomumu did not inform Martin of the show cause order, or advise her that the Court of Special Appeals would dismiss the appeal for failure to file the transcripts. By not advising Martin of the December 1, 2014 deadline, his failure to meet it, his failure's possible consequences, and the show cause order, Ucheomumu failed to keep Martin reasonably informed about the appeal's status.

Clear and convincing evidence supports the hearing judge's conclusion that Ucheomumu violated MLRPC 1.4(a)(3). On two occasions, Martin requested a copy of the Motion for Extension, but she did not hear back from Ucheomumu. Subsequently, Martin requested that Ucheomumu provide copies of all of the documents that he had drafted on her behalf. Ucheomumu never did so.

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conclusions are consistent with violations of MLRPC 1.4(a)(2), 1.4(a)(3), and 1.4(b), respectively.

Clear and convincing evidence supports the hearing judge's conclusion that Ucheomumu violated MLRPC 1.4(b). The Attorney Engagement Agreement stated that Ucheomumu would represent Martin in the appeal for a flat fee of $10,500, and that, if, "[a]fter starting the work," Ucheomumu's firm withdrew from the representation "due to any conflict," Martin would receive a refund on a "pro[ ]rata basis[,] or" her payments would be applied to "outstanding legal bills." The Attorney Engagement Agreement did not specify an hourly rate or explain how the amount of any "outstanding legal bills[,]" or the amount of any refund on "a pro[ ]rata basis[,]" would be calculated. After Martin terminated Ucheomumu's representation, sought a refund, and requested an accounting of all of the legal services that he had performed for her, he provided her with an invoice that indicated that she owed him $10,944.50 based on an hourly rate of $295. This was the first occasion on which Ucheomumu indicated that he would charge Martin an hourly rate. By failing to explain to Martin before the representation began that he would charge an hourly rate, and that he would charge more than the $10,500 flat fee, Ucheomumu failed to explain his manner of billing to the extent reasonably necessary to permit Martin to make an informed decision regarding whether to retain him.

MLRPC 1.5(a) (Reasonable Fees) and 1.5(b) (Communication of Fees)

MLRPC 1.5 states in pertinent part:

> (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to

> be considered in determining the reasonableness of a fee include the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment of the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.
>
> (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client. [7]

(Some paragraph breaks omitted).

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7 Without specifying a section, the hearing judge concluded that Ucheomumu violated MLRPC 1.5. Bar Counsel specifically charged Ucheomumu with violating—and, in the opinion, the hearing judge mentioned only—MLRPC 1.5(a) and 1.5(b). The hearing judge concluded that Ucheomumu charged "unreasonable" fees and "fail[ed] to fully communicate the basis or rate of his fees[,]" which constitute violations of MLRPC 1.5(a) and 1.5(b), respectively.

Clear and convincing evidence supports the hearing judge's conclusion that Ucheomumu violated MLRPC 1.5(a). Martin paid Ucheomumu a total of $6,200 to represent her in the appeal. The Court of Special Appeals dismissed the appeal due to Ucheomumu's failure to order the transcripts or advise Martin to do so. Ucheomumu did not draft a brief on Martin's behalf or appear at oral argument. Although Ucheomumu provided legal services pertaining to visitation with Martin's children, those were not a significant undertaking on his part. The $6,200 that Ucheomumu collected constituted an unreasonable fee.

Clear and convincing evidence supports the hearing judge's conclusion that Ucheomumu violated MLRPC 1.5(b). The conduct that constitutes a violation of MLRPC 1.4(b), which is discussed above, also constitutes a violation of MLRPC 1.5(b).

MLRPC 1.15(a) and 1.15(c) (Safekeeping Property)

MLRPC 1.15 states in pertinent part:

> (a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained pursuant to Title 16, Chapter 600 of the Maryland Rules[.]
>
> * * *
>
> (c) Unless the client gives informed consent, confirmed in writing, to a different arrangement, a lawyer shall deposit legal fees and expenses that have been paid in advance into a client trust account and may withdraw those funds for

> the lawyer's own benefit only as fees are earned or expenses incurred.

Clear and convincing evidence supports the hearing judge's conclusions that Ucheomumu violated MLRPC 1.15(a) and 1.15(c). The Attorney Engagement Agreement stated that Ucheomumu's firm would "deposit any and all" payments "in [its] general operating account, and not in a trust account." Ucheomumu did not advise Martin to seek independent counsel to review the Attorney Engagement Agreement's statement that he would not deposit unearned funds into an attorney trust account. Ucheomumu failed to obtain Martin's informed consent not to deposit unearned funds into an attorney trust account. Martin paid Ucheomumu a total of $6,200 in payments that he either failed to deposit into, or deposited and subsequently withdrew from, his attorney trust account. Ucheomumu never earned the $6,200; thus, he violated MLRPC 1.15(a) and 1.15(c) by failing to maintain that $6,200 in his attorney trust account.

MLRPC 1.16(d) (Terminating Representation)

MLRPC 1.16(d) states:

> Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of another lawyer, surrendering papers and property to which the client is entitled[,] and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer

> may retain papers relating to the client to the extent permitted by other law.[8]

Clear and convincing evidence supports the hearing judge's conclusion that Ucheomumu violated MLRPC 1.16(d). Ucheomumu never earned the $6,200 that Martin had paid him. Yet, after Martin terminated Ucheomumu's representation, he offered to refund only $1,200. Additionally, when Ucheomumu repeated his offer to refund $1,200, he conditioned the offer on Martin signing a release that would preclude her from suing him.

MLRPC 3.3(a)(1) (Candor Toward the Tribunal), 8.1(a) (Disciplinary Matters), 8.4(c) (Dishonesty, Fraud, Deceit, or Misrepresentation), and 8.4(d) (Conduct That Is Prejudicial to the Administration of Justice)

"A lawyer shall not knowingly[] make a false statement of fact or law to a tribunal[.]" MLRPC 3.3 (a)(l). "[A] lawyer . . . in connection with a disciplinary matter[] shall not[] knowingly make a false statement of material fact[.]" MLRPC 8.1(a).[9] "It is professional misconduct for a lawyer to . . . engage in conduct invol-

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8 Without specifying a section, the hearing judge concluded that Ucheomumu violated MLRPC 1.16. Given that Bar Counsel specifically charged Ucheomumu with violating, and the hearing judge quoted only, MLRPC 1.16(d), it is evident that the hearing judge concluded that Ucheomumu violated MLRPC 1.16(d).

9 Without specifying sections, the hearing judge concluded that Ucheomumu violated MLRPC 3.3 and 8.1. Given that Bar Counsel specifically charged Ucheomumu with violating, and the hearing judge quoted only, MLRPC 3.3(a)(1) and 8.1(a), it is evident that the hearing judge concluded that Ucheomumu violated MLRPC 3.3(a)(1) and 8.1(a).

ving dishonesty, fraud, deceit or misrepresentation[.]" MLRPC 8.4(c). "It is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice[.]" MLRPC 8.4(d). "Generally, a lawyer violates MLRPC 8.4(d) where the lawyer's conduct would negatively impact the perception of the legal profession of a reasonable member of the public." *Slate*, 457 Md. at 645, 180 A.3d at 155 (cleaned up).

The hearing judge concluded that Ucheomumu violated MLRPC 3.3(a)(l) and 8.4(c) by falsely representing to the Court of Special Appeals that there had been a delay in ordering the transcripts because he had not received Martin's case file from her previous counsel. The hearing judge concluded that Ucheomumu violated MLRPC 8.1 (a) and 8.4(c) by falsely representing to Bar Counsel that he had advised Martin to order the transcripts, that she had never paid him so that he could order the transcripts, and that the Court of Special Appeals had dismissed the appeal because Martin had failed to order the transcripts. The hearing judge concluded that Ucheomumu also violated MLRPC 8.4(c) by falsely representing to Martin that she was responsible for the appeal's dismissal. The hearing judge concluded that Ucheomumu violated MLRPC 8.4(d) through his "conduct toward" Martin, Bar Counsel, and the Court of Special Appeals. We uphold all of these conclusions.

Clear and convincing evidence supports the hearing judge's conclusions that Ucheomumu violated MLRPC 3.3(a)(1) and 8.4(c) by falsely representing to the Court of Special Appeals that there had been a delay in ordering the transcripts because he had not received Martin's case file from her previous counsel.

On November 4, 2014, Ucheomumu e-mailed Martin's previous counsel in an attempt to obtain her case file. Ucheomumu believed that Martin's previous counsel had copies of the transcripts. Martin's previous counsel, however, never provided any documents to Ucheomumu. Ucheomumu never ordered the transcripts, never advised Martin to do so, and never filed a timely motion for extension of time to file the transcripts. As a result of Ucheomumu's inaction, the transcripts were not ordered by the December 1, 2014 deadline. On December 8, 2014, Ucheomumu sent Martin a text message, stating: "Shannan, how is your funding coming? I need to order the transcript[s] ASAP without any further delay." (Emphasis added). As the hearing judge explained, by stating that he "need[ed] to order the transcript[s]" himself, Ucheomumu indicated that, as of that date, he was no longer waiting for Martin's previous counsel to provide the transcripts. Almost two months later, on February 2, 2015, the Court of Special Appeals issued an order directing Martin to show cause why the appeal should not be dismissed for failure to file the transcripts. On February 27, 2015, Ucheomumu filed the Motion for Extension, in which, instead of acknowledging that he was at fault for the failure to order the transcripts, he falsely represented that one of the reasons for the delay in ordering the transcripts was that Martin's previous counsel had not provided her case file. Whereas the truth was that Ucheomumu was responsible for ordering the transcripts—a fact that he had expressly acknowledged almost two months earlier—he instead blamed Martin's previous counsel for the failure to order the transcripts. As the hearing judge found, Ucheomumu "misled . . . the Court of Special Appeals . . . in an attempt to explain his failure to order the transcripts."

Clear and convincing evidence supports the hearing judge's conclusions that Ucheomumu violated MLRPC 8.1(a) and 8.4(c) by falsely representing to Bar Counsel that he had advised Martin to order the transcripts, that she had never paid him so that he could order the transcripts, and that the Court of Special Appeals had dismissed the appeal because she had failed to order the transcripts. Ucheomumu's first statement was false because he never advised Martin to order the transcripts. Ucheomumu's second statement was false because, on December 10, 2014, Martin paid him $3,000 for the purpose of covering the cost of obtaining the transcripts. Ucheomumu's third statement was false because he, not Martin, was responsible for both the failure to order the transcripts and the appeal's dismissal.

Clear and convincing evidence supports the hearing judge's conclusion that Ucheomumu violated MLRPC 8.4(c) by falsely representing to Martin that she was responsible for the appeal's dismissal. On March 30, 2015, Ucheomumu e-mailed to Martin the order in which the Court of Special Appeals dismissed the appeal, and he falsely stated: "[Y]ou have not paid for the transcripts[.]"

Clear and convincing evidence supports the hearing judge's conclusion that Ucheomumu violated MLRPC 8.4(d). Ucheomumu's false statements to Martin, Bar Counsel, and the Court of Special Appeals would certainly "negatively impact the perception of the legal profession of a reasonable member of the public." *Slate*, 457 Md. at 645, 180 A.3d at 155 (cleaned up).

MLRPC 8.4(a) (Violating or Attempting to Violate the MLRPC) and 1.8(h) (Conflict of Interest; Current Clients; Specific Rules)

"It is professional misconduct for a lawyer to[ ] violate or attempt to violate the" MLRPC. MLRPC 8.4(a). MLRPC 1.8(h) states:

> A lawyer shall not:
>
> (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or
>
> (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

Clear and convincing evidence supports the hearing judge's conclusion that Ucheomumu violated MLRPC 8.4(a) by violating other MLRPC. As discussed above, Ucheomumu violated MLRPC 1.1, 1.2(a), 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(b), 1.5(a), 1.5(b), 1.15(a), 1.15(c), 1.16(d), 3.3(a)(l), 8.1(a), 8.4(c), and 8.4(d).

The hearing judge also concluded that Ucheomumu violated MLRPC 8.4(a) by attempting to violate MLRPC 1.8(h)(1) and MLRPC 1.8(h)(2). We reverse these conclusions.

After Martin terminated Ucheomumu's representation and hired new counsel to represent her in the appeal, Ucheomumu e-mailed Martin and her new counsel, offering to refund her $1,200 on the condi-

tion that she would sign a release that was attached to the e-mail, and that would preclude her from suing him. Ucheomumu did not advise Martin in writing to seek independent counsel to review the release, but mailed the written release to Martin and her new counsel.

These circumstances do not constitute clear and convincing evidence of an attempt to violate MLRPC 1.8(h)(1). Ucheomumu e-mailed the release to both Martin and her new counsel. To be sure, the hearing judge found that Martin retained new counsel to represent her in the appeal—not to represent her in her dealings with Ucheomumu. That said, the hearing judge did not find that Martin's new counsel did not or could not review, and/or advise her regarding, the release.

As to MLRPC 1.8(h)(2), Ucheomumu e-mailed the release to Martin and her new counsel, and Martin testified that Ucheomumu orally advised her to discuss the release with her new counsel. Although Ucheomumu did not advise Martin in writing of the desirability of consulting with independent legal counsel about the release, under these circumstances, we decline to find an attempted violation of MLRPC 1.8(h)(2).

(D) Sanction

Bar Counsel recommends that we disbar Ucheomumu, who does not expressly recommend a sanction in the event that we deny his requests to dismiss this attorney discipline proceeding or remand for a new hearing.

> In *Slate*, 457 Md. at 646-47, 180 A.3d at 155-56, this Court stated:

This Court sanctions a lawyer not to punish the lawyer, but instead to protect the public and the public's confidence in the legal profession. This Court accomplishes these goals by: (1) deterring other lawyers from engaging in similar misconduct; and (2) suspending or disbarring a lawyer who is unfit to continue to practice law.

In determining an appropriate sanction for a lawyer's misconduct, this Court considers: (1) the MLRPC that the lawyer violated; (2) the lawyer's mental state; (3) the injury that the lawyer's misconduct caused or could have caused; and (4) aggravating factors and/or mitigating factors.

Aggravating factors include: (1) prior attorney discipline; (2) a dishonest or selfish motive; (3) a pattern of misconduct; (4) multiple violations of the MLRPC; (5) bad faith obstruction of the attorney discipline proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; (6) submission of false evidence, false statements, or other deceptive practices during the attorney discipline proceeding; (7) a refusal to acknowledge the misconduct's wrongful nature; (8) the victim's vulnerability; (9) substantial experience in the practice of law; (10) indifference to making restitution or rectifying the misconduct's consequences; (11) illegal conduct, including that involving the use of controlled substances; and (12) likelihood of repetition of the misconduct.

> Mitigating factors include: (1) the absence of prior attorney discipline; (2) the absence of a dishonest or selfish motive; (3) personal or emotional problems; (4) timely good faith efforts to make restitution or to rectify the misconduct's consequences; (5) full and free disclosure to Bar Counsel or a cooperative attitude toward the attorney discipline proceeding; (6) inexperience in the practice of law; (7) character or reputation; (8) a physical disability; (9) a mental disability or chemical dependency, including alcoholism or drug abuse, where: (a) there is medical evidence that the lawyer is affected by a chemical dependency or mental disability; (b) the chemical dependency or mental disability caused the misconduct; (c) the lawyer's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and (d) the recovery arrested the misconduct, and the misconduct's recurrence is unlikely; (10) delay in the attorney discipline proceeding; (11) the imposition of other penalties or sanctions; (12) remorse; (13) remoteness of prior violations of the MLRPC; and (14) unlikelihood of repetition of the misconduct.

(Cleaned up).

In *Attorney Grievance Comm'n v. Aita*, 458 Md. 101, 140, 134-35, 139, 181 A.3d 774, 796, 795, 792-93 (2018), this Court unanimously disbarred Anna Aita, who violated MLRPC 1.1, 1.3, 1.4(a)(2), 1.4(a)(3), 1.4 (b), 1.5(a), 1.15(a), 1.15(c), 1.15(d), 1.16(d), 3.3(a)(1), 8.4 (c), and 8.4(d), and former Maryland Rules 16-604

(Trust Account—Required Deposits) and 16-606.1 (Attorney Trust Account Record-Keeping). Aita represented two clients in separate immigration cases. *See id.* at 108, 181 A.3d at 777. Aita failed to deposit unearned funds from both clients into an attorney trust account. *See id.* at 110, 113, 181 A.3d at 779, 781.

In the first immigration case, Aita filed an application for cancellation of removal. *See id.* at 110, 181 A.3d at 779. Aita's client provided documents that would have supported the application, but she failed to file them. *See id.* at 110, 118, 181 A.3d at 779, 783. After a hearing was scheduled, Aita failed to inform her client of the hearing. *See id.* at 122, 181 A.3d at 785. Neither Aita nor her client attended the hearing; Aita arranged for another lawyer, who knew nothing about the first immigration case, to substitute for her. *See id.* at 122, 118, 181 A.3d at 785, 783. An Immigration Court ordered Aita's client removed from the United States. *See id.* at 111, 181 A.3d at 779. Aita's client sent her two text messages, to which she failed to respond. *See id.* at 111, 181 A.3d at 779. On her client's behalf, Aita filed a motion to reopen in which she falsely represented that her client failed to appear at the hearing because his car broke down. *See id.* at 112, 181 A.3d at 780. The Immigration Court granted the motion to reopen and scheduled another hearing. *See id.* at 112, 181 A.3d at 780. Aita failed to inform her client of the second hearing, which neither she nor her client attended. *See id.* at 112, 181 A.3d at 780. Once again, the Immigration Court ordered Aita's client removed from the United States. *See id.* at 112, 181 A.3d at 780. Aita's client's partner paid her to file a second motion to reopen, but she never did so. *See id.* at 112, 181 A.3d at 780. Aita's client

retained new counsel, to whom she did not provide her client's case file until after Bar Counsel requested that she do so. *See id.* at 112-13, 181 A.3d at 780.

In the second immigration case, Aita's client retained her to file an application for suspension of removal, and to represent her at a hearing. *See id.* at 113, 181 A.3d at 780-81. Aita, however, never filed anything on her client's behalf, and failed to attend the hearing; Aita arranged for another lawyer, who knew nothing about the second immigration case, to substitute for her. *See id.* at 114-15, 181 A.3d at 781.

This Court noted nine aggravating factors: a dishonest or selfish motive; a pattern of misconduct; multiple violations of the MLRPC; submission of false evidence, false statements, or other deceptive practices during the attorney discipline proceeding; a refusal to acknowledge the misconduct's wrongful nature; the victims' vulnerability; substantial experience in the practice of law; indifference to making restitution or rectifying the misconduct's consequences; and likelihood of repetition of the misconduct. *See id.* at 139, 181 A.3d at 795. This Court noted two mitigating factors: the absence of prior attorney discipline, and character or reputation. *See id.* at 139, 181 A.3d at 795.

Here, Ucheomumu violated MLRPC 1.1, 1.2(a), and 1.3 by never ordering the transcripts, never advising Martin to do so, and not filing a timely motion for extension of time to file the transcripts. Ucheomumu violated MLRPC 1.4(a)(2) by not advising Martin of the deadline for ordering the transcripts, his failure to meet it, his failure's possible consequences, and the show cause order. Ucheomumu violated MLRPC 1.4(a)(3) by failing to comply with Martin's requests for copies of certain documents. Ucheomumu violated

MLRPC 1.4(b) and 1.5(b) by failing to communicate that he would charge an hourly rate. Ucheomumu violated MLRPC 1.5(a) by collecting, and failing to earn, the $6,200 that Martin paid him. Ucheomumu violated MLRPC 1.15(a) and 1.15(c) by failing to deposit unearned funds into, and withdrawing unearned funds from, his attorney trust account. Ucheomumu violated MLRPC 1.16(d) by failing to refund unearned funds and attempting to get Martin to sign the release that would preclude her from suing him. Ucheomumu violated MLRPC 3.3(a)(1), 8.4(c), and 8.4(d) by falsely representing to the Court of Special Appeals that there had been a delay in ordering the transcripts because he had not received Martin's case file from her previous counsel. Ucheomumu violated MLRPC 8.1(a), 8.4(c), and 8.4(d) by falsely representing to Bar Counsel that he had advised Martin to order the transcripts, that she had never paid him so that he could order the transcripts, and that the Court of Special Appeals had dismissed the appeal because Martin had failed to order the transcripts. Ucheomumu violated MLRPC 8.4(c) and 8.4(d) by falsely representing to Martin that she was responsible for the appeal's dismissal.

The hearing judge found that Ucheomumu's misrepresentations to Martin and Bar Counsel were "knowing and intentional[,]" and that he made "a knowingly false statement of fact" to the Court of Special Appeals. Ucheomumu's misconduct injured Martin, in that he caused the appeal's dismissal. Notably, Martin's new counsel's attempts to salvage the appeal were unsuccessful; Martin's new counsel filed a Motion to Reinstate, which the Court of Special Appeals denied, and then filed a petition for a writ of *certio-*

rari, which this Court denied. Thus, because of Ucheomumu, Martin lost the opportunity to challenge on appeal an order that was unfavorable to her in a child custody case.

We note seven aggravating factors. First, Ucheomumu has prior attorney discipline. Although the discipline was imposed after the events that underlie this case, the prior misconduct that resulted in that discipline occurred before the misconduct in this case. Just two years ago, in *Attorney Grievance Comm'n v. Ucheomumu*, 450 Md. 675, 717, 150 A.3d 825, 849-50 (2016), this Court unanimously indefinitely suspended Ucheomumu from the practice of law in Maryland with the right to apply for reinstatement after ninety days, with reinstatement conditioned on him "provid[ing] the Attorney Grievance Commission and Bar Counsel with appropriate documentation showing the existence and maintenance of an attorney trust account." To date, Ucheomumu has not been reinstated.

In *Ucheomumu*, *id.* at 701-12, 150 A.3d at 840-47, this Court concluded that Ucheomumu violated MLRPC 1.1 (Competence), 1.4(b) (Communication), 1.5(a) (Unreasonable Fees), 1.15(a), 1.15(c) (Safekeeping Property), 1.16(d) (Termination of Representation), 3.1 (Meritorious Claims and Contentions), 3.4(a), 3.4(d) (Fairness to Opposing Party and Counsel), and 8.4(d) (Conduct That Is Prejudicial to the Administration of Justice), former Maryland Rules 16-604 (Trust Account —Required Deposits) and 16-606.1 (Attorney Trust Account Record-Keeping), and Md. Code Ann., Bus. Occ. & Prof. (1989, 2010 Repl. Vol.) § 10-306 (Trust Money Restrictions).

Ucheomumu's facts are as follows. In July 2010, an individual asked Ucheomumu to represent an LLC that he controlled. *See id.* at 685, 150 A.3d at 831. Ucheomumu drafted a retainer agreement, which the individual signed on the LLC's behalf. *See id.* at 685, 150 A.3d at 831. The retainer agreement stated that the LLC would pay Ucheomumu a nonrefundable retainer in the amount of $10,000, and that he would bill the LLC $195 an hour. *See id.* at 686, 150 A.3d at 831.

From July 2010 through December 2012, Ucheomumu performed various legal services for the individual and two LLCs that he controlled. *See id.* at 686-87, 150 A.3d at 831-32. During this timeframe, Ucheomumu did not maintain an attorney trust account. *See id.* at 686, 150 A.3d at 831. Ucheomumu deposited all of the individual's and the LLCs' payments into his general bank account. *See id.* at 686-87, 150 A.3d at 831-32. The payments included funds that were earmarked for third parties, such as other lawyers. *See id.* at 687, 150 A.3d at 832. Aside from his bank records and a single invoice, Ucheomumu did not keep contemporaneous records of the individual's and the LLCs' payments. *See id.* at 686, 150 A.3d at 831.

On behalf of one of the LLCs, Ucheomumu filed a complaint against a company that had paid the LLC an advance fee for a loan, not received any funds from the LLC, unsuccessfully sought a refund of the advance fee, and then allegedly falsely accused the LLC of mishandling the loan. *See id.* at 689, 150 A.3d at 833. Ucheomumu did not conduct any "pertinent factual investigation before filing the complaint." *Id.* at 689, 150 A.3d at 833. Ucheomumu failed to appear at a pretrial conference, and was sanctioned. *See id.*

at 689, 150 A.3d at 833. Ucheomumu responded to discovery requests with frivolous objections, and was again sanctioned. *See id.* at 689-90, 150 A.3d at 833. The individual who controlled the LLCs requested invoices and a complete copy of his file, which Ucheomumu failed to provide. *See id.* at 692, 150 A.3d at 835.

Significantly, in *Ucheomumu*, *id.* at 686-87, 150 A.3d at 831-32, Ucheomumu's misconduct occurred between July 2010 and December 2012, which was nearly two years before November 2014, when he began engaging in the misconduct that gave rise to this attorney discipline proceeding. As such, Ucheomumu's instant misconduct was not an aberration; instead, it was simply the latest in a pattern of misconduct that has spanned multiple years.

That brings us to the second, third, and fourth aggravating factors—namely, that Ucheomumu committed multiple violations of the MLRPC, demonstrated a pattern of misconduct, and is likely to repeat his misconduct. Both in this attorney discipline proceeding and in *Ucheomumu, id.* at 701-12, 150 A.3d at 840-47, Ucheomumu violated MLRPC 1.1, 1.4(b), 1.5 (a), 1.15(a), 1.15(c), 1.16(d), and 8.4(d). Given that Ucheomumu has violated all of these MLRPC on two occasions, it is likely that he would continue to do so if given the opportunity.

Fifth, sixth, and seventh, Ucheomumu had selfish motives, refused to acknowledge his misconduct's wrongful nature, and showed indifference to making restitution. Martin retained Ucheomumu to represent her in the appeal, and paid him a total of $6,200. Ucheomumu caused the appeal's dismissal by failing to order the transcripts. Thus, Ucheomumu never

earned the $6,200 that Martin had paid him. But, after Martin terminated Ucheomumu's representation, he did not refund the $6,200. Instead, on two occasions, Ucheomumu offered to refund only $1,200—and his second offer was conditioned on Martin signing a release that would preclude her from suing him. In other words, despite having engaged in inaction that ultimately caused the appeal's dismissal, Ucheomumu attempted to permanently deprive Martin of $5,000 of the $6,200 that she had paid him, as well as any amount that she could recover by suing him. And, after the Court of Special Appeals dismissed the appeal, Ucheomumu misrepresented to Martin that she was responsible for the appeal's dismissal, when, in fact, it was his fault. By offering a negligible refund and falsely blaming Martin for his own mistakes, Ucheomumu showed indifference to making restitution, refused to acknowledge his misconduct's wrongful nature, and demonstrated that he had the selfish motives of keeping unearned funds and deflecting blame for the appeal's dismissal.[10]

The hearing judge reasoned that Ucheomumu's misconduct was mitigated by his "provision of some legal services [that were] related to" visitation with Martin's children. Although this circumstance does not correspond to any of the mitigating factors that this Court or the American Bar Association has recognized, *see Slate*, 457 Md. at 647, 180 A.3d at 156; Ameri-

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[10] Unlike the hearing judge, we do not determine that Ucheomumu's misconduct is aggravated by false statements during this attorney discipline proceeding. Rather than constituting a factor that aggravates his misconduct, Ucheomumu's misrepresentations to Bar Counsel are themselves instances of misconduct —namely, violations of MLRPC 8.1(a), 8.4(c), and 8.4(d).

can Bar Association's Standard for Imposing Lawyer Sanctions 9.32, we accept the hearing judge's finding.[11] As to other mitigating factors, although Ucheomumu became a lawyer in 2009 and "was a newly admitted attorney at the time of" his misconduct from 2010 to 2012 in *Ucheomumu*, 450 Md. at 714, 150 A.3d at 848, he had been a member of the Bar of Maryland for more than five years at the time of the 2014 misconduct that gave rise to this attorney discipline proceeding. Thus, the mitigating factor of inexperience in the practice of law does not apply. Although the hearing judge in *Ucheomumu* expressly found credible testimony about Ucheomumu's character, *see id.* at

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[11] Although we accept the hearing judge's finding that Ucheomumu's misconduct is mitigated by his provision of legal services related to visitation with Martin's children, we give this mitigating factor little weight. The Attorney Engagement Agreement stated that Ucheomumu would represent Martin in the appeal for $10,500. The Attorney Engagement Agreement did not contemplate that Ucheomumu would provide legal services related to visitation with Martin's children. After Martin terminated Ucheomumu's representation, he provided her with an invoice that indicated that she owed him $10,944.50 based on an hourly rate of $295. As discussed above in our analysis of Ucheomumu's exceptions to the hearing judge's findings of fact, given that he could not have provided Martin with more than $10,500's worth of legal services in the appeal—as he never ordered transcripts of the circuit court proceedings, filed briefs, or appeared at any oral argument—he necessarily billed her for legal services that were not related to his representation of her in the appeal. Because Ucheomumu evidently attempted to charge Martin for legal services that were related to visitation with her children, and that were not mentioned in the Attorney Engagement Agreement, his provision of those legal services does little to mitigate his misconduct. That said, in an appropriate case, a lawyer's provision of legal services, above and beyond what a retainer agreement requires him or her to provide, might constitute a mitigating factor that is entitled to more than minimal weight.

715, 150 A.3d at 848, the hearing judge in this attorney discipline proceeding made no findings about his character. Thus, the mitigating factor of good character is not applicable. Finally, we disagree with Ucheomumu to the extent that he contends that his misconduct is mitigated by delay in this attorney discipline proceeding because of "Martin's inability to recall events that [had] happened almost four years earlier[.]" Martin's recollection was sufficient for the hearing judge to make detailed findings of fact regarding Ucheomumu's misconduct.

We agree with Bar Counsel that disbarment is the appropriate sanction for Ucheomumu's misconduct. "Disbarment follows as a matter of course[ ] when a member of the bar is shown to be willfully dishonest for personal gain by means of fraud, deceit, cheating[,] or like conduct, absent the most compelling extenuating circumstances[.]" *Attorney Grievance Comm'n v. Peters-Hamlin*, 447 Md. 520, 544-45, 136 A.3d 374, 388 (2016) (cleaned up). After failing to order the transcripts, Ucheomumu falsely represented to the Court of Special Appeals that Martin's previous counsel was to blame for the delay in ordering the transcripts, and he falsely represented to Martin and Bar Counsel that she was to blame. Ucheomumu made these misrepresentations because he had the selfish motive of keeping the $6,200 that Martin had paid him. In other words, Ucheomumu was "willfully dishonest for personal gain[.]" *Id.* at 545, 136 A.3d at 388 (citation omitted).

As this Court has repeatedly stated, "[h]onesty and dishonesty are, or are not, present in an attorney's character." *Attorney Grievance Comm'n v. Smith*, 457 Md. 159, 223, 177 A.3d 640, 678 (2018) (quoting *Attorney Grievance Comm'n v. Vanderlinde*, 364 Md. 376,

418, 773 A.2d 463, 488 (2001)). Ucheomumu made false statements to Martin, Bar Counsel, and the Court of Special Appeals. Tellingly, in an e-mail to Martin, Ucheomumu stated: "I specifically did not want to let the Court of Special Appeals know that you have not paid for the transcripts because it is my duty to protect you." Ucheomumu's statement that Martin had "not paid for the transcripts" was false because she had paid him $3,000 for the purpose of covering the cost of obtaining the transcripts. Even more importantly, Ucheomumu's statement about "not want[ing] to let the Court of Special Appeals know" about a significant purported fact reflects a striking willingness to deceive a court.

Given the absence of significant mitigating factors, much less "compelling extenuating circumstances[,]" *Peters-Hamlin*, 447 Md. at 545, 136 A.3d at 388 (cleaned up), Ucheomumu's multiple false statements, without more, would justify disbarment. It is even clearer that disbarment is the appropriate sanction when we take into account Ucheomumu's various other forms of misconduct, including failures of competence, diligence, and communication, collecting an unreasonable fee, and failing to maintain unearned funds in an attorney trust account. Worse still, there are seven aggravating factors, including prior attorney discipline, a pattern of misconduct, and likelihood of repetition of misconduct. Considered together, all of these circumstances merit disbarment.

Ucheomumu's misconduct is similar to that of Aita, whom this Court unanimously disbarred. *See Aita*, 458 Md. at 140, 181 A.3d at 796. Both lawyers failed to perform extremely simple tasks; Ucheomumu failed to order transcripts, and Aita failed to inform her client

of a hearing. *See id.* at 122, 181 A.3d at 785. Afterward, both lawyers filed motions in which they lied in attempts to cover up their mistakes; Ucheomumu filed a Motion for Extension in which he blamed Martin's previous counsel for the delay in ordering the transcripts, and Aita filed a motion to reopen in which she blamed car trouble for her client's failure to appear at the hearing. *See id.* at 112, 181 A.3d at 780. Both lawyers' inaction resulted in the worst possible outcomes in their clients' cases; Ucheomumu's inaction caused the appeal's dismissal, and Aita's inaction caused the Immigration Court to order her client removed from the United States. *See id.* at 111-12, 181 A.3d at 779-80. Both lawyers failed to protect their clients' interests after the representations terminated; Ucheomumu failed to refund the $6,200 that Martin had paid him, and Aita did not provide her client's case file to his new counsel until after Bar Counsel requested that she do so. *See id.* at 113, 181 A.3d at 780. Both lawyers failed to file important documents that their clients had retained them to file; Ucheomumu never drafted a brief on Martin's behalf, and Aita failed to file an application for suspension of removal. *See id.* at 113-14, 181 A.3d at 780-81. Both lawyers charged fees that were unreasonable in light of their failure to file important documents. *See id.* at 135, 181 A.3d at 793. Both lawyers failed to maintain unearned funds in an attorney trust account. *See id.* at 110, 113, 181 A.3d at 779, 781. And, both lawyers failed to keep their clients reasonably informed about the status of their cases, failed to respond to their clients' requests for updates about their cases, and failed to properly communicate matters to their clients. *See id.* at 134, 181 A.3d at 792-93.

Significantly, with the exception of MLRPC 1.15 (d), Ucheomumu violated all of the MLRPC that Aita did—namely, MLRPC 1.1, 1.3, 1.4(a)(2), 1.4(a)(3), 1.4 (b), 1.5(a), 1.15(a), 1.15(c), 1.16(d), 3.3(a)(1), 8.4(c), and 8.4(d). *See id.* at 134-35, 139, 181 A.3d at 795, 792-93. In addition, unlike Aita, Ucheomumu violated MLRPC 1.2(a), 1.5(b), and 8.1(a).

To be sure, Aita's misconduct involved two clients, *see id.* at 108, 181 A.3d at 777, whereas Ucheomumu's misconduct involves one client. Aita violated MLRPC 1.15(d) and former Maryland Rules 16-604 and 16-606.1, *see id.* at 139, 181 A.3d at 795, whereas Ucheomumu did not. And, there were nine aggravating factors in *Aita*, *id.* at 139, 181 A.3d at 795, whereas there are seven aggravating factors here. That said, this attorney discipline proceeding's circumstances warrant disbarment just as *Aita*'s did. Whereas Aita lied only to an immigration court, *see id.* at 136, 181 A.3d at 794, Ucheomumu lied to Martin, Bar Counsel, and the Court of Special Appeals. Unlike Aita, Ucheomumu failed to properly communicate how he would charge fees. And, whereas Aita had no prior attorney discipline, *see id.* at 139, 181 A.3d at 795, this Court has unanimously indefinitely suspended Ucheomumu from the practice of law in Maryland with the right to apply for reinstatement after ninety days, with reinstatement conditioned on him "provid[ing] the Attorney Grievance Commission and Bar Counsel with appropriate documentation showing the existence and maintenance of an attorney trust account[,]" *Ucheomumu*, 450 Md. at 717, 150 A.3d at 849-50.

A continuation of Ucheomumu's existing indefinite suspension would be an inadequate sanction because his instant misconduct is more egregious than his

previous misconduct. In *Ucheomumu*, *id.* at 683-84, 712, 150 A.3d at 830, 847, Bar Counsel did not charge Ucheomumu with violating MLRPC 3.3, and this Court concluded that he did not violate MLRPC 8.4(c); by contrast, here, Ucheomumu violated both MLRPC 3.3 (a)(1) and 8.4(c) by lying to Martin, Bar Counsel, and the Court of Special Appeals. In *Ucheomumu, id.* at 716, 150 A.3d at 849, other than stating that Ucheomumu had "engaged in serious, wide-ranging misconduct, and violated numerous MLRPC, two Maryland Rules, and one provision of the Code of Maryland[,]" this Court did not specifically note any aggravating factors; by contrast, here, there are seven aggravating factors, including selfish motives, a refusal to acknowledge the misconduct's wrongful nature, and likelihood of repetition of the misconduct.

We agree with Assistant Bar Counsel's assertion at oral argument that this attorney discipline proceeding is distinguishable from *Attorney Grievance Comm'n v. Hecht*, 459 Md. 133, 158, 148-55, 184 A.3d 429, 444, 438-42 (2018), in which this Court indefinitely suspended from the practice of law in Maryland, with the right to apply for reinstatement after twelve months, Ross Hecht, who violated MLRPC 1.1, 1.3, 1.4(a), 1.4 (b), 1.16(a), 1.16(d), 3.2, 3.3, 3.4(d), 4.1, 5.5(a), 5.5(b), 8.1 (a), 8.4(b), 8.4(c), and 8.4(d). In a civil case, Hecht filed a complaint on behalf of two clients, who were friends with his wife. *See id.* at 139, 158, 184 A.3d at 433, 444. In a separate attorney discipline proceeding, with his consent, this Court suspended Hecht from the practice of law in Maryland with the right to apply for reinstatement after six months. *See Attorney Grievance Comm'n v. Hecht*, 431 Md. 443, 66 A.3d 46 (2013). Hecht shut down his law practice and e-mailed

his two clients about his suspension, but he was uncertain of whether they received the e-mail. *See Hecht*, 459 Md. at 139-40, 184 A.3d at 433.

Months later, Hecht learned that his clients had not retained new counsel or responded to the opposing party's discovery requests, which upset and worried Hecht. *See id.* at 140, 184 A.3d at 433. One of Hecht's clients asked about the case's status; in response, Hecht did not disclose his suspension, but provided the name of another lawyer and suggested that she meet him to determine whether he could serve as the clients' new counsel. *See id.* at 140, 184 A.3d at 433. Hecht made three additional unsuccessful attempts to secure new counsel for his clients. *See id.* at 144, 184 A.3d at 436. Meanwhile, Hecht drafted discovery documents, e-mailed them to opposing counsel, and attended proceedings though he sat in the gallery, did not cross the bar of the courtroom, and did not address the trial court. *See id.* at 140-44, 184 A.3d at 433-35.

Opposing counsel scheduled a deposition of Hecht's clients, one of whom informed Hecht that she was unavailable on the scheduled date. *See id.* at 144, 184 A.3d at 435. Hecht failed to inform opposing counsel of his client's unavailability until after the deposition was scheduled to begin. *See id.* at 144, 184 A.3d at 435. The opposing party filed a motion to dismiss, which the trial court granted. *See id.* at 144, 184 A.3d at 435-36. Hecht paid his clients $30,000 as restitution for the case's dismissal. *See id.* at 144, 184 A.3d at 436. Hecht acknowledged his mistakes, and was remorseful for them. *See id.* at 144, 184 A.3d at 436. Multiple character witnesses, including two

circuit court judges, testified that Hecht was competent and truthful. *See id.* at 144-45, 184 A.3d at 436.

For various reasons, *Hecht* is materially distinguishable from this attorney discipline proceeding. In *Hecht*, 459 Md. at 157, 184 A.3d at 443, there were only four aggravating factors: prior attorney discipline, multiple violations of the MLRPC, a pattern of misconduct, and substantial experience in the practice of law. By contrast, here, there are seven aggravating factors: prior attorney discipline, multiple violations of the MLRPC, a pattern of misconduct, likelihood of repetition of misconduct, selfish motives, a refusal to acknowledge the misconduct's wrongful nature, and indifference to making restitution.

While there were "several mitigating factors" in *Hecht, id.* at 158, 184 A.3d at 443, there is only one here. Indeed, in many respects, *Hecht* and this attorney discipline proceeding are the exact opposite with regard to mitigating factors. Whereas the lawyer in Hecht "repeatedly admitted that he made mistakes" and "expressed remorse for" them, *id.* at 158, 184 A.3d at 443-44, Ucheomumu has refused to acknowledge his misconduct's wrongful nature. Whereas Hecht "did not profit from [his clients'] case," *id.* at 158, 184 A.3d at 444, Ucheomumu collected from Martin $6,200 that he never earned or refunded. Whereas Hecht paid his clients "$30,000 of his own money as restitution" after the trial court dismissed their case, *id.* at 158, 184 A.3d at 444, Ucheomumu showed indifference to making restitution after he caused the appeal's dismissal. Whereas Hecht "made numerous unsuccessful efforts to get new counsel to represent" his clients, *id.* at 158, 184 A.3d at 444, the only attempt that Ucheomumu made to remedy his failure to order the

transcripts was to file an untimely Motion for Extension in which he lied to the Court of Special Appeals. And, whereas Hecht made a "wrong decision, predicated on worry and a sense of loyalty for his wife's friends," *id.* at 158, 184 A.3d at 444, Ucheomumu failed to complete an extremely simple task—namely, ordering the transcripts—and then lied to Martin, Bar Counsel, and the Court of Special Appeals in an attempt to deflect the blame for his mistake.

In light of all of these significant differences between *Hecht* and this attorney discipline proceeding, *Hecht* furnishes no support for the proposition that Ucheomumu's many serious violations of the MLRPC warrant a sanction that is less than disbarment. Given U cheomumu's multiple misrepresentations and other serious misconduct, and the seven aggravating factors, disbarment is warranted and necessary to protect the public.

For the above reasons, we disbar Ucheomumu.

IT IS SO ORDERED; RESPONDENT SHALL PAY ALL COSTS AS TAXED BY THE CLERK OF THIS COURT, INCLUDING COSTS OF ALL TRANSCRIPTS, PURSUANT TO MARYLAND RULE 19-709 (d), FOR WHICH SUM JUDGMENT IS ENTERED IN FAVOR OF THE ATTORNEY GRIEVANCE COMMISSION AGAINST ANDREW NDUBISI UCHEOMUMU.

ORDER OF THE COURT OF APPEALS OF MARYLAND DENYING MOTION FOR RECONSIDERATION (JANUARY 18, 2019)

IN THE COURT OF APPEALS OF MARYLAND

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND,

Petitioner,

v.

ANDREW NDUBISI UCHEOMUMU,

Respondent.

Misc. Docket AG No. 58

Before: Mary Ellen BARBERA, Chief Judge

WHEREAS, on November 16, 2018, the Court issued an opinion in the above entitled case, *Attorney Grievance Comm'n v. Andrew Ndubisi Ucheomumu*, ___ Md. ___, ___ A.3d ___, AG No. 58, Sept. Term, 2016, 2018 WL 6005211, at *23 (Md. Nov. 16, 2018), unanimously disbarring Respondent;

WHEREAS, on December 3, 2018, Respondent filed a Response and Objection to Petitioner's Second Amended Statement of Costs and Motion for Reconsideration of Amount of Costs Awarded to Petitioner ("the First Motion");

WHEREAS, on December 12, 2018, the Court, having considered the First Motion and the responses filed thereto, issued an Order denying the First Motion;

WHEREAS, on December 17, 2018, Respondent filed a Motion for Reconsideration on the Merits ("the Second Motion");

WHEREAS, the Second Motion contained frivolous claims and claims that had been previously raised and decided;

WHEREAS, on December 29, 2018, Respondent filed a Supplement to the Motion for Reconsideration on the Merits ("the Supplement"), raising contentions that he could have made, but did not make, in the First Motion or the Second Motion;

WHEREAS, the Court having considered Respondent's Second Motion and the Supplement in the above entitled case, it is this 18th day of January, 2019,

ORDERED, by the Court of Appeals of Maryland, that the Second Motion and the Supplement be, and they are hereby, DENIED.

/s/ Mary Ellen Barbera
Chief Judge

ORDER OF THE COURT OF APPEALS OF MARYLAND DENYING MOTION TO COMPEL (AUGUST 23, 2018)

IN THE COURT OF APPEALS OF MARYLAND

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND,

Petitioner,

v.

ANDREW N. UCHEOMUMU,

Respondent.

Misc. Docket AG No. 58

Before: Mary Ellen BARBERA, Chief Judge

The Court having considered the Respondent's Motion to Compel Production of Documents Petitioner Improperly-Withheld During the Trial Court Proceedings; and Exceptions to Trial Court Rulings Regarding Such Documents, Respondent's Motion to Unseal Records and Deposition and Vacate Non-Dissemination Order and Respondent's Motion for Extension of Time to File Final Exceptions to the Hearing Judge's Findings of Fact and Conclusions of Law and Recommendations for Disposition and the responses filed thereto, it is this 23rd day of August, 2018, by the Court of Appeals of Maryland:

ORDERED, by the Court of Appeals of Maryland, that the Motion to Compel Production of Documents Petitioner Improperly-Withheld During the Trial Court Proceedings; and Exceptions to Trial Court Rulings Regarding Such Documents and Respondent's Motion to Unseal Records and Deposition and Vacate Non-Dissemination Order be, and the same hereby are, DENIED; and it is further

ORDERED, that the time for Respondent's Motion for Extension of Time to File Final Exceptions to the Hearing Judge's Findings of Fact and Conclusions of Law and Recommendations for Disposition is hereby extended until September 6, 2018.

/s/ Mary Ellen Barbera
Chief Judge

FINDINGS OF FACT AND CONCLUSIONS OF LAW (APRIL 25, 2018)

IN THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY, MARYLAND

ATTORNEY GRIEVANCE
COMMISSION OF MARYLAND,

Petitioner,

v.

ANDREW NDUBISI UCHEOMUMU,

Respondent.

Case No.: CAE17-07944

In the Court of Appeals of Maryland
Misc. Docket AG No. 58

Before: Tiffany H. ANDERSON,
Associate Judge, Seventh Judicial Circuit

This matter came before this Court pursuant to Maryland Rule 19-722 (a) and the April 12, 2017 Order of the Court of Appeals, transferring the matter from Montgomery County to Prince George's County. The Attorney Grievance Commission of Maryland (hereinafter referred to as "Petitioner"), through Bar Counsel, filed its Petition for Disciplinary or Remedial Action in the Court of Appeals of Maryland on November 18, 2016, against the Respondent. On March 31, 2017, the

Respondent timely filed his response to the Petition and simultaneously moved to transfer venue from the Circuit Court for Montgomery County to the Circuit Court for Prince George's County. The Petitioner then filed an Amended Petition for Disciplinary or Remedial Action in the Court of Appeals and the Respondent, again, timely responded on July 20, 2017. The trial occurred on three non-consecutive days beginning on January 10, 2018, continuing on January 16, 2018, and concluding on January 17, 2018.

BACKGROUND

Andrew Ndubisi Ucheomumu (hereinafter referred to as "Respondent") is a member of the Maryland Bar and was admitted to practice on June 16, 2009. The Respondent is not licensed to practice law in any other jurisdiction. During all times relevant to these matters, the Respondent was a solo practitioner with a virtual office in Montgomery County, Maryland. On November 18, 2016, the Attorney Grievance Commission of Maryland filed a Petition addressing allegations surrounding the Respondent's legal representation of Shannan Martin (hereinafter referred to as "Ms. Martin").

FINDINGS OF FACT

The following facts were proven at trial by clear and convincing evidence.

RESPONDENT'S RETAINER AGREEMENT WITH MS. MARTIN

On November 2, 2014, Ms. Martin was in discussion with the Respondent prior to her retaining him, Respondent's Ex. 5 p. 1-4. On November 3, 2014, Ms.

Martin signed a retainer agreement entitled Attorney Engagement Agreement. It indicated she would pay the Respondent a flat fee of $10,500.00 "to handle the Appeal Brief, and oral argument," Petitioner's Ex. 3 at Paragraph 1, in an appeal of a July 31, 2014 decision issued by the Prince George's Circuit Court in the matter of *Kevin McBride v. Shannan Martin*, Case No. CAP09-00919. *Id.* at Paragraph 1. Under the terms of the retainer agreement, Ms. Martin was required to make an initial payment of $5,500.00, and subsequent monthly payments of $1,000.00 for five months until the total fee was paid. *Id.* at Paragraph 2. However, the agreement did not specify how the fees would be used for the appeal. Instead, the agreement included a disclaimer that the Ucheomumu Law Group, LLC would "deposit any and all" payments "in their general operating account, and not in a trust account." *Id.* at Paragraph 4. The terms further stipulated that the Ucheomumu Law Group, LLC was free to use the payments "as they wish." *Id.* The agreement did not discuss an hourly billing rate, or fee structure, and was silent as to the cost of other services the Respondent would render during his representation of Ms. Martin. The only cost listed was that of the flat fee of $10,500.00 and the terms of its payment. In addition, the retainer agreement mandated that Ms. Martin cover the cost of extraneous expenses, including filing fees and the cost of obtaining transcripts. *Id.* at Paragraph 6.

The termination clause in the Attorney Engagement Agreement stated "all our payments are nonrefundable unless The Ucheomumu Law Group, LLC on their own withdraws" representation. Petitioner's Ex. 3 at Paragraph 5. The termination clause further

stipulated that "[a]fter starting the work, if the Ucheomumu Law Group, LLC on their own withdraws due to any conflict," that Ms. Martin would receive a refund on a "pro-rata basis or" in the alternative, Ms. Martin's refund would be applied to "outstanding legal bills." *Id.* However, it did not describe the billing rate that applied to the "pro-rata" refund, nor did it further detail how any outstanding legal costs would be determined. *Id.* The last paragraph of the agreement dictates that "[t]his is the entire engagement agreement and there is nothing further outside of this agreement and the parties intended this to be legally bound." *Id.* at Paragraph 7.

FILING THE APPEAL

On November 3, 2014, the date on which the parties executed their retainer agreement, Ms. Martin made her first payment of $3,000.00. Petitioner's Ex. 4 at p. 1. On that date the Respondent advised Ms. Martin to file a Notice of Appeal, which she then filed in the Circuit Court for Prince George's County. Petitioner's Ex. 2; Respondent's Ex. 5 at p. 4-5. Later, on November 3, 2014, after Ms. Martin inquired about her next steps, the Respondent advised "I will do the rest. 1 sent you the retainer agreement today." Respondent's Ex. 5 at p. 5. On November 4, 2014, the Respondent contacted Ms. Martin's previous counsel in an effort to obtain any case files related to the underlying matter. Respondent's Ex. 14. On November 5, 2014, Ms. Martin emailed documents and other information she believed would be useful for her appeal to the Respondent. Petitioner's Ex. 5; Respondent's Ex. 17 at p. 1-2. On November 6, 2014, the Respondent emailed Ms. Martin and asked that she upload her

documents to a different platform so he could review them. Respondent's Ex. 17 at p. 1. On November 7, 2014, the Respondent filed a Civil Appeal Information Report, on behalf of Ms. Martin, in accordance with Maryland Rule 8-205, Petitioner's Ex. 6. On November 12, 2014, the Respondent strategized over email with Ms. Martin after reviewing her documents and indicated what he believed to be the most successful approach on appeal. Respondent's Ex. 19 at p. 9. On November, 19, 2014, Ms. Martin made another payment to the Respondent. Petitioner's Ex. 4 at p. 2. It was for $200.00. Id. She simultaneously sent additional information for the appeal to the Respondent. Respondent's Ex. 20.

On November 20, 2014, the Court of Special Appeals issued an Order to the Respondent indicating the appeal would proceed in accordance with then Maryland Rule 8-207(a) and that no pre-hearing conference would be held. Pursuant to then Maryland Rule 8-411(b), the Respondent had ten (10) days, after the issuance of the November 20, 2014 Order from the Court of Special Appeals, to obtain the transcripts of the pertinent Circuit Court hearings. The Respondent did not order the required transcripts and the Respondent did not instruct Ms. Martin to order the transcripts by the November 30, 2014 deadline.

On December 8, 2014, the Respondent sent a text message to Ms. Martin and requested further payment for the transcript order. Respondent's Ex. 5 at 10. He did so without informing Ms. Martin that he had missed the November 30, 2014 deadline. On December 10, 2014, Ms. Martin paid the Respondent a third and final payment of $3,000.00. Petitioner's Ex. 4 at p. 3. During the time the Respondent was retained to handle Ms.

Martin's appeal, he simultaneously provided other legal services to her when she requested legal help and/or advice regarding her on-going child custody litigation. Respondent's Ex. 5; Ex. 19 at p. 9; Ex. 25-26. There is evidence through email correspondence and text messages between the Respondent and Ms. Martin that she requested advice and counsel regarding visitation and access with her children, that he was making phone calls on her behalf, and reviewing emails and other documents related to Ms. Martin's on-going child custody litigation. Respondent's Ex. 5; Ex. 19 at p. 9; Ex. 25-26. However, there was no evidence provided regarding a separate or amended retainer agreement pertaining to Ms. Martin's on-going child custody litigation which was separate from her appeal.

Regarding the appeal, the Respondent never ordered Ms. Martin's transcripts, nor did he direct Ms. Martin to obtain the transcripts, or ever indicate to Ms. Martin that he was using her retainer agreement payments for other additional legal services he was rendering, instead of for the appeal, as the retainer agreement stated. Additionally, on January 15, 2015, the Respondent received a response from the transcription company, whom he previously contacted, confirming the existence of transcripts for two trial dates regarding Ms. Martin's underlying proceeding. Respondent's Ex. 24. There is no evidence of when or how the Respondent originally contacted the transcription company. Although, the information regarding these two trial dates was given to the Respondent he never ordered the transcripts for those two dates, nor did he direct Ms. Martin to do so. *Id.*

On January 29, 2015, the Respondent received a notice from the Court of Special Appeals which provided

a deadline for the submission of Ms. Martin's appellate brief and the date of the oral argument. On February 2, 2015, the Court of Special Appeals issued a Show Cause Order to the Respondent, requiring Ms. Martin to explain her failure to submit the necessary transcripts to avoid the dismissal of her case. On February 24, 2015, the Respondent emailed Ms. Martin stating he still did not have the transcripts from her underlying proceeding. Respondent's Ex. 27 at p. 1. He failed to address the Show Cause Order issued by the Court of Special Appeals. *Id.* The next day, on February 25, 2015, Ms. Martin replied to the Respondent's email and affirmatively asked the Respondent to "instruct" her on how to "independently" move forward with the transcript order. *Id.* at p. 2. However, there was no evidence that the Respondent ever responded via email or otherwise instructed Ms. Martin on what if anything she needed to do regarding ordering transcripts.

Additionally, the Respondent did not communicate with Ms. Martin regarding his receipt of the Show Cause Order from the Court of Special Appeals. There was never any communication to Ms. Martin that there was a risk her appeal would be dismissed for failure to comply. On February 27, 2015, in response to the Show Cause Order, the Respondent filed "Appellants Motion for Extension of Time to Order Transcript and File Appellant's Brier (hereinafter Respondent's Motion for Extension of Time), which explained the delay in the transcript order and sought an extension of two (2) months for the filing of the appellate brief. Petitioner's Ex. 16. In the Respondent's request for a Motion for the Extension of Time, he indicated the delay in the transcript order was the result of the following circumstances: (1) uncertainty regarding the length of

the Circuit Court trial because of confusing docket information; (2) an inability to retrieve the case file from the previous counsel; (3) multiple closures of the Prince George's County Courthouse. In addition, the Respondent's motion implied he was "ordering the audio recording of all the hearings starting from February 12, 2014 to the time of the appeal to decide which hearing is an actual trial." *Id* at p. 2 Paragraph 5. After filing the Motion for Extension of Time, the Respondent never ordered any transcripts or audio recordings, nor was there evidence that he directed Ms. Martin to do so.

On March 10, 2015, Ms. Martin contacted the Respondent and asked for a copy of the Motion for Extension of Time. Respondent's Ex. 27 at p. 4. The next day, March 11, 2015, she reiterated her request and received no response from the Respondent. Petitioner's Ex. 17 at p. 2. The Respondent then met with Ms. Martin and informed her that he had not yet received her file from her previous attorney, but stated that "everything was fine with [her] case." Petitioner's Ex. 24 at p. 3. Ms. Martin subsequently requested copies of all documents drafted by the Respondent on her behalf, however, as evidenced by her continued email and text messages as late as March 20, 2015 none were ever provided. Respondent's Ex. 5 at p. 30; Petitioner's Ex. 17 at p. 2.

MS. MARTIN'S TERMINATION OF THE RESPONDENT'S LEGAL SERVICES

On March 18, 2015, Ms. Martin terminated the services of the Respondent, sought a refund and requested an invoice with an accounting of all the work performed. Petitioner's Ex. 19; Respondent's Ex. 5 at

p. 30. She also retained a new attorney to carry out her appeal. On March 20, 2015, the Respondent submitted an accounting to Ms. Martin which indicated she owed the Respondent over $6,000.00 for his legal services. Petitioner's Ex. 19-20. The invoice was accompanied by an explanation from the Respondent regarding the delay in the transcript order. The Respondent stated:

> [T]he reason the transcript has not been ordered is because you kept claiming there were three trial dates, but the court reporters were able to find only two. Since the trial was very disjointed, I wanted to order the CD and listen to every recording to determine the trial dates myself. Furthermore, I wanted to buy as much time as possible to allow negotiated settlement to bear fruit because I do not think that you will succeed on appeal. Petitioner's Ex, 19.

In the aforementioned communication, the Respondent for the first time explained the delay in the transcript order, advised Ms. Martin that he did not believe she would succeed on appeal, and articulated his negotiation strategy. The Respondent then offered to refund Ms. Martin $1,200.00 of the $6,200.00 she paid for the Respondent's services without an explanation of the refund calculation. She declined this offer on March 20, 2015. Respondent's Ex. 5 at p. 29. Ms. Martin requested that the Respondent review the invoice and requested the parties meet a second time to discuss the outstanding payments. At this point, the Respondent extended a conditional refund of $1,200.00 to Ms. Martin upon the execution of a written release that precluded her from bringing any future legal

action against him. January 10, 2018 Tr. 173. The second refund offer and the written release were emailed by the Respondent to Ms. Martin, as well as her newly retained attorney. Petitioner's Ex. 24; January 10, 2018 Tr. 173. However, there is no evidence the Respondent ever explicitly advised Ms. Martin that she should review the release with independent counsel. Ultimately, Ms. Martin refused the refund offer and did not sign the written release provided by the Respondent.

DISMISSAL OF THE APPEAL

On March 25, 2015, the Court of Special Appeals denied the Respondent's Motion for Extension of Time and dismissed Ms. Martin's appeal. On March 30, 2015, the Respondent sent the denial Order to Ms. Martin via email and he further addressed the dismissal by stating:

> Our agreement specifically specified that you are responsible for paying the transcripts; *see attached.*[1] I told you many times to deposit the money for the transcript and you told me that your grand father [sic] was going to loan you money, but that did not materialize. I specifically did not want to let the Court of Special Appeals know that you have not paid for the transcripts because it is my duty to protect you. Petitioners Ex. 23.

While representing Ms. Martin, the Respondent requested the deposit of additional funds to order the

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[1] The Respondent attached the Court of Special Appeals Order which dismissed Ms. Martin's appeal and the Attorney Engagement Agreement.

transcripts only once, on December 8, 2014. Thereafter, the Respondent never made any subsequent requests for payment related to ordering transcripts, or for any other services.

In another communication on March 30, 2015, the Respondent reasserted his belief that Ms. Martin had not paid for the transcripts, stating:

> You have never paid me for the transcript, and our agreement specifically stated that you are 100% responsible for the costs including the costs of the transcripts. I asked you repeatedly last year to pay for your transcripts, and you said that your grandfather [sic] was going to loan you money, but apparently it did not pan out. The funds you paid me are specifically for my legal services which were reflected in my invoice. Petitioners Ex. 24.

However, prior to this March 30, 2015 communication, the Respondent never explained to Ms. Martin that the fees she paid were not being applied toward her transcript order, but were instead being used to cover the cost of the other legal services he performed.

On April 1, 2015, Ms. Martin's newly retained attorney filed a Motion to Reinstate with the Court of Special Appeals, and on April 6, 2015, her new attorney submitted the Circuit Court hearing transcripts from February 12, 2014 and July 22, 2014. Petitioner's Ex. 25 at p.6. On April 14, 2015, the Court of Special Appeals denied Ms. Martin's Motion to Reinstate, at which point her new attorney filed a Writ of Certiorari in the Court of Appeals. This motion was subsequently denied as well.

ATTORNEY TRUST ACCOUNT

On November 3, 2014, Ms. Martin made her first payment to the Respondent, by submitting a check for $3,000.00, which the Respondent deposited into his attorney trust account. Petitioner's Ex. 31 at p. 2. Thereafter, the Respondent maintained a balance of $3,308.68 in his trust account. *Id.* On November 7, 2014, the Respondent withdrew $1,000.00 from his attorney trust account. Petitioner's Ex. 31 at p. 2. On November 19, 2014, Ms. Martin made her second payment by submitting a check for $200.00. Petitioner's Ex. 4 at p. 2. However, although the check was cashed, the Respondent did not deposit this payment into his attorney trust account. *Id.* No other funds were deposited in the Respondent's attorney trust account for the remainder of this month. *Id.*

On December 2, 2014, the Respondent withdrew $2,000.00 from his attorney trust account. Petitioner's Ex. 33 at p. 2. The Respondent contacted Ms. Martin on December 8, 2014, and requested that she make another payment. Respondent's Ex. 5 at 10. On December 10, 2014, Ms. Martin made a third and final payment to the Respondent by submitting a check for $3,000.00. Petitioner's Ex. 4 at p. 3. This check was also cashed, but similarly with the $200.00 check, the Respondent never deposited this check into his attorney trust account. Petitioner's Ex. 33 at p. 2. No other funds were deposited into the Respondent's attorney trust account for the remainder of this month, *Id.*

BAR COUNSEL INVESTIGATION

The Respondent is a member of the Maryland Bar and was admitted to practice on June 16, 2009. On December 15, 2016, the Court of Appeals filed an Opin-

ion and Order indefinitely suspending the Respondent from the practice of law as a result of his failure to maintain a trust account between 2010 and 2012. *Attorney Grievance Commission v. Ucheomumu*, 450 Md. 675 (2016). On April 13, 2015, Ms. Martin filed a complaint against the Respondent with the Attorney Grievance Commission. Petitioner's Ex. 29. On June 10, 2015, the Respondent filed his response to Ms. Martin's complaint with Bar Counsel. Petitioners Ex. 30. In his response, the Respondent argued that his client's appeal was dismissed for the following three reasons: (1) uncertainty regarding the length of the Circuit Court trial because of confusing docket information; (2) an inability to retrieve the case file from the previous counsel; (3) multiple closures of the Prince George's County Courthouse. Petitioner's Ex. 16.

CONCLUSIONS OF LAW

Pursuant to the Maryland Lawyers' Rules of Professional Conduct (MLRPC) 19-727(c), Petitioner has the burden of proving the violations of the cited rules by clear and convincing evidence. This Court has applied this standard in determining whether the Respondent violated any of the following Rules of Professional Conduct. The Respondent's conduct took place before July 2016 and before the adoption of the new rules. Therefore, his conduct is governed by MLRPC, as adopted by formal Maryland Rule 16-812.

Rule 1.1—Competence

Rule 1.1 provides, in part:

> A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thorough-

> ness and preparation reasonably necessary for the representation.

Compliance with MLRPC 1.1 mandates that an attorney must prepare to advocate on their client's behalf and thoroughly pursue their client's claims to the extent reasonably necessary for the representation. The Respondent, as the lawyer, was obligated to take the reasonably necessary steps to prepare for his client's appeal by obtaining her case file from her previous counsel, and by requesting the transcripts and audio recordings from the Prince George's Circuit Court proceedings. Further, the thoroughness and preparation components of MLRPC 1.1 required the Respondent to adequately prepare and give adequate attention to the matters he was retained to complete. It therefore required the Respondent to order those transcripts he was aware of and follow-up on the status of any additional the transcript orders. It also mandates that the Respondent timely file the appropriate motions in order to preserve his client's right to appeal.

i. Duty to Prepare

This Court finds the Respondent violated Rule 1.1 when he failed to obtain his client's past case file or court file, and any of the trial transcripts or court files. Once the Respondent's representation of Ms. Martin began on November 3, 2014, his duty to prepare for the appeal was triggered. The Respondent did begin the preparation of his client's appeal when he initially drafted a Notice of Appeal on her behalf and contacted her previous attorney by email. Respondent's Ex. 14. However, the Respondent failed to submit a transcript order or instruct Ms. Martin to place an order before

the November 30, 2014 deadline, ultimately causing the dismissal of his client's appeal.

ii. Thoroughness Requirement

This Court further finds the Respondent violated Rule 1.1 when he did not contact Ms. Martin regarding the timely ordering of the transcript associated with her case. Additionally, this Court finds the Respondent violated Rule 1.1 when he did not timely file for an extension to request transcripts for his client's appeal. The Respondent communicated with Ms. Martin on multiple occasions throughout November 2014 but never advised her to order the transcripts before the November 30, 2014 deadline. The Respondent did not discuss the transcript order with Ms. Martin again until December 8, 2014. Further, when the Respondent became aware of extenuating circumstances that were going to prevent him from ordering the transcripts, he did not timely file a Motion for Extension of Time. One was not filed until February 27, 2015, twenty-five (25) days after the Court of Special Appeals issued a Show Cause Order demanding an explanation for the delay in the transcript order.

This Court finds the testimony of Ms. Martin to be credible, and based on the testimony and evidence, this Court finds that Bar Counsel has proven a violation of MLRPC 1.1 by clear and convincing evidence.

Rule 1.2—Scope of Representation and Allocation of Authority Between Client and Attorney

Rule 1.2 provides, in part:

> (a) Subject to sections (c) and (d) of this Rule, a lawyer shall abide by a client's deci-

> sions concerning the objectives of the representation and, when appropriate, shall consult with the client as to the means by which they are to be pursued A lawyer may take such action on behalf of the client as impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the attorney, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

MLRPC 1.2(a) regulates the attorney-client relationship and directs attorneys to abide by their clients' decisions with regard to the objectives of the representation. Additionally, this rule allows attorneys to take implied action on behalf of their clients in furtherance of their client's objectives. The Respondent, as Ms. Martin's attorney, was required to take actions to further the articulated goals of his client's appellate litigation by handling her appeal. The Respondent and Ms. Martin entered into a contract for legal services related to an appellate challenge of a custody ruling that did not favor Ms. Martin. For those services, Ms. Martin paid the Respondent a total of $6,200.00 of the agreed upon flat fee of $10,500.00. While the literal terms of the parties' retainer agreement stated Ms. Martin "filed a pro se appeal and needs the legal services of the Ucheomumu Law group, LLC to handle the Appeal Brief and oral argument," Petitioner's Ex. 3 at Paragraph 1, the parties' actions indicate that their actual interaction was more broad. Through admitted evidence, both the Respondent and Ms. Martin acknowledged that during the course of their profes-

sional relationship, the Respondent provided additional legal services that were generally related to the underlying family matter from which Ms. Martin's appeal emerged, but these services were not detailed within the four corners of the Attorney Engagement Agreement, Petitioner's Ex. 3, nor were such services detailed in a new retainer agreement.

i. The Client's Objectives

This Court finds that the Respondent violated Rule 1.2 by failing to properly handle the appeal initially filed by his client. The Respondent was retained to assist Ms. Martin with filing her appeal. This Court finds the Respondent failed to draft an appellate brief on Ms. Martin's behalf and failed to place a timely order for the trial transcripts. These non-actions thereby precluded the Respondent from following through with the appeal as he was retained to do. The Respondent did not to adhere to his client's objectives when he failed to ever order the transcripts or file the appellate brief. Although the Respondent claims within his email correspondence to have provided some legal services to Ms. Martin related to her underlying custody case for which the appeal was being filed, the Court nonetheless finds a violation of MRLPC Rule 1.2(a) because the Respondent's inaction caused Ms. Martin's appeal to be dismissed. The Respondent did not adhere to the deadlines proscribed by the Maryland Court of Special Appeals regarding filing the transcripts, he untimely responded to the Show Cause Order issued by the Court of Special Appeals, and he did not provide any compelling reasons in response to the Show Cause Order in his Motion for the Extension of Time. The services the emails purport occurred did not further Ms. Martin's appeal.

Based on the testimony and evidence presented, this Court finds that Bar Counsel has proven a violation of MLRPC 1.2 (a) by clear and convincing evidence.

Rule. 1.3—Dilligence

Rule 1.3 provides:

> A lawyer shall act with reasonable diligence and promptness in representation of a client.

MLRPC 1.3 mandates an attorney pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the attorney. Under this rule the Respondent was required to work on Ms. Martin's appeal in a timely and diligent manner, and without procrastination, as to protect the client's interests.

This Court finds that the Respondent violated Rule 1.3 by failing to promptly order the necessary transcripts. On November 3, 2014, the Respondent was retained to handle an appeal. The Respondent should have been aware that he should promptly order a transcript in order to proceed with the appeal. Moreover, three months after the Respondent missed the November 30, 2014 transcript filing deadline, the Respondent filed an untimely Motion for Extension of Time, with the Court of Special Appeals, to obtain the necessary transcripts. This Court finds the Respondent never placed a transcript order, instructed his client to do so, or submitted any transcripts to the Court of Special Appeals during his representation of Ms. Martin November 3, 2014 to March 18, 2015. The transcripts were only ordered, and subsequently submitted to the Court of Special Appeals, on April 6,

2015 by Ms. Martin's newly retained attorney, almost six months after the filing deadline. Petitioner's Ex. 26.

Based on the testimony and evidence presented, this Court finds that Bar Counsel has proven a violation of MLRPC 1.3 by clear and convincing evidence.

Rule 1.4—Communication

Rule 1.4 provides, in part:

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(f), is required by these Rules;

(2) keep the client reasonably informed about the status of the matter;

(3) promptly comply with reasonable requests for information; and

(4) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Maryland Lawyers' Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Under MRLPC 1.4, attorneys are directed to provide reasonable communication to their clients and keep them abreast of any developments as they arise. This process ensures clients will make informed decisions throughout their matter. Here, the Respondent

was obligated to communicate with Ms. Martin on the status of her appeal, to promptly reply to her requests for information, and to reasonably explain issues or consequences regarding the failure to order transcripts in a timely manner. These actions would have allowed so Ms. Martin to choose the appropriate course of action regarding her appeal.

i. Promptly Informing the Client of any Decision and Circumstance and Updating the Client on the Status of her Appeal

This Court finds the Respondent violated Rule 1.4 when he did not keep Ms. Martin reasonably informed about the status of the transcript orders, the deadlines imposed by the Court of Special Appeals, the Show Cause Order, or the overall status of her appeal. On November 20, 2014, the Respondent received notice from the Court of Special Appeals that November 30, 2014 was the required deadline for filing the transcripts related to the appeal. The Respondent did not contact Ms. Martin to inform her about the impending deadline, the Show Cause Order, the possible consequences associated with a denial of his Motion for Extension of Time with the Court of Special Appeals and its ramifications. On December 8, 2014, the Respondent requested funds from Ms. Martin "to order the transcript ASAP without any further delay." Respondent's Ex. 5 at p. 10. Evidence and testimony revealed that on December 10, 2014, Ms. Martin remitted $3,000.00 for the purpose of obtaining the transcripts. *Id.* At no time did the Respondent notify Ms. Martin that the deadline to file the transcripts with the Court of Special Appeals had already passed. At various times during the parties' professional relationship the Respondent mentioned ordering transcripts and/or

recordings, however the Respondent never specifically provided any information to Ms. Martin related to the transcript submission deadline or the adverse consequences to her appeal for failure to timely file such transcripts. No evidence was ever presented at trial that the transcripts or audio recordings were ever ordered.

On February 2, 2015, the Court of Special Appeals issued a Show Cause Order directing Ms. Martin to show cause why her appeal should not be dismissed for failure to file the transcripts. On February 27, 2015, the Respondent filed a Motion for Extension of Time in response to the Show Cause Order, however no evidence was ever presented that the Respondent ever contacted Ms. Martin to inform her about the Show Cause Order. He also failed to advise her of the possibility of a dismissal of her appeal because the November 30, 2014 deadline was ignored. On March 18, 2015, when Ms. Martin terminated the Respondent's services, the Respondent still failed to inform Ms. Martin about the status, if any, of the transcripts.

ii. Compliance with Reasonable Requests for Information

This Court finds that the Respondent violated Rule 1.4 by failing to promptly comply with Ms. Martin's reasonable requests for information. On March 10, 2015, Ms. Martin contacted the Respondent and asked him for a copy of the motion for extension. On March 11, 2015, Ms. Martin again reiterated her request, with still no response or evidence of compliance by the Respondent. On March 30, 2015, Ms. Martin attended a client meeting with the Respondent where she again requested copies of all the documents drafted

on her behalf by the Respondent. She was never provided with any of those documents.

iii. Consultation with Client Regarding Limitation of Attorney and Assistance Not Permitted by the MLRPC

This Court finds the Respondent violated Rule 1.4 by failing to inform Ms. Martin about any additional hourly costs of his legal services outside of the original $10,500.00 flat fee agreed to within the Attorney Engagement Agreement. Once Ms. Martin terminated the Respondent on March 18, 2015, the Respondent generated a billing invoice that reflected a balance due of 10,944.50, calculated at a rate of $295.00 per hour, according to the invoice. The parties' retainer agreement does not mention the application of an hourly billing rate, nor did the Respondent ever advise Ms. Martin of his hourly billing rate. The Respondent's retainer agreement also fails to mention any circumstances that would trigger the application of an hourly rate. The invoice generated and sent to Ms. Martin on March 20, 2015 is the Respondent's first communication with Ms. Martin regarding any hourly billing rate that would apply for any additional work performed.

Based on the testimony and evidence presented, this Court finds that Bar Counsel has proven a violation of MLRPC 1.4 by clear and convincing evidence.

Rule 1.5—Fees

Rule 1.5 provides, in part:

> (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an un-

reasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment of the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or

rate of the fee or expenses shall also be communicated to the client.

Pursuant to MRLPC 1.5, attorneys are compelled to charge fees that are reasonable under the circumstance, promptly communicate their fee structure, and notify their clients about any changes in said structure. Under this rule, the Respondent's fee charged should have accounted for the labor required to complete the task and achieve the results for which the Respondent was retained. The Respondent should have communicated any circumstances where additional fees would or could be charged. The Respondent was required by this rule, to notify his client regarding any changes in the basis or rate of his fee.

i. Reasonableness of the Fee

This Court finds the Respondent violated rule 1.5 by billing Ms. Martin $10,944.50 after her termination of his services, when he was unable to follow through with her appellate litigation. Ms. Martin was required to pay a flat fee of $10,500.00 for the Ucheomumu Law Group, LLC, "to handle . . . [her] Appeal Brief and oral argument." Petitioner's Ex. 3. Through email correspondence and phone calls which occurred after the signing of the retainer agreement on November 02, 2014, Ms. Martin and the Respondent communicated regarding legal advice related to Ms. Martin's underlying family matter. There was no agreement pertaining to representation beyond the appeal that was evidenced in writing or proven otherwise. The parties never discussed a fee for these additional services. As stated earlier, the Respondent's Attorney Engagement Agreement provides only that Ms. Martin "filed a pro se appeal and needs the legal services of

the Ucheomumu Law group, LLC to handle the Appeal Brief and oral argument." *Id.* As of March 18, 2015, the date of Ms. Martin's termination of the Respondent's services, Ms. Martin had paid the Respondent a total of $6,200.00.[2]

The evidence at trial was that the Respondent told Ms. Martin to file her Notice of Appeal, that he submitted a Civil Appeal Information Report, communicated with his client's previous counsel to acquire more information about her case, and filed a Motion for Extension of Time—to further Ms. Martin's appellate litigation. The Respondent also proffers through documents that he negotiated visitation for his client, made phone calls on her behalf, and reviewed documents related to her custody litigation, although outside of the scope of his Attorney Engagement Agreement. However, there is no evidence the Respondent ever took any other significant steps toward the reason for which he was retained to handle Ms. Martin's appeal. He never filed transcripts with the Court of Special Appeals for the underlying proceedings that generated the appeal, nor did he ever file an appellate brief or engage in oral arguments as he was required to do per the agreement. These non-actions ultimately resulted in the Court of Special Appeals dismissing Ms. Martin's appeal. At the end of the

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[2] The Court will note that as of the March 18, 2015 termination of services date, Ms. Martin had only paid $6,200.00 for the Respondent's legal services, and not the $10,500.00 as stated within the Attorney Engagement Agreement. However, there is no evidence of any communication by either party of a change or deviation from the original fee, nor is there any evidence of the Respondent attempting to collect any additional funds from Ms. Martin subsequent to receiving those payments totaling $6,200.00

parties' professional relationship, and after Ms. Martin's request for a refund, the Respondent generated an invoice in the amount of $10,944.50. Petitioner's Ex. 19-20. The Respondent sent an invoice for this amount based on what he described as his hourly rate. *Id.*

Under the factors laid out within Rule 1.5, the Respondent's original fee was reasonable. Significant time and labor would have been required to carry out this representation. In addition, the date of Ms. Martin's retainer of the Respondent placed the Respondent under serious time constraints to meet the November 30, 2014 transcript filing deadline. Pursuant to Rule 1.5, the reasonableness of a fee charged by an attorney is based in part on the results obtained.

By November 20, 2014, the date the Court of Special Appeals indicated the appeal would proceed in accordance with Maryland Rule 8-207 (a) and indicated the Respondent had ten (10) days to obtain the transcript of the Circuit Court proceedings, Ms. Martin had paid $3,200.00 toward her fees. However, as of November 30, 2014, the deadline for filing the transcripts, no transcripts were filed a no Motion for Extension of Time was filed. Only the initial work of the Respondent telling Ms. Martin to file her Notice of Appeal and the Respondent submitting a Civil Appeal Information Report had been done in furtherance of Ms. Martin's appeal. On December 8, 2014, eight days after the due date for the trial transcripts, the Respondent requested an additional $3,000.00 from Ms. Martin as payment for the transcript order. He neglected to mention the missed November 30, 2014 transcript deadline during this request. Ms. Martin remitted payment of $3,000.00 to the Respondent on December 10, 2014. Petitioner's Ex. 4 at p. 3.

Although, Ms. Martin paid a total of $6,200.00 to the Respondent by December 10, 2014, no significant or meaningful steps were ever taken by the Respondent to ensure her appeal would remain viable. At this point the fee paid by Ms. Martin and any additional fees later charged became unreasonable. The purpose of her signed Attorney Engagement Agreement with the Respondent was not being fulfilled, and the important time sensitive matter of filing the Circuit Court transcripts was never completed by the Respondent.

ii. Communication of the Basis or Rate of the Fee

This Court finds the Respondent violated Rule 1.5 by failing to fully communicate the basis or rate of his fees. Prior to the termination of his representation, the Respondent never advised Ms. Martin of the basis or rate of his fee, other than the original flat rate stated in the Attorney Engagement Agreement. He never mentioned an hourly billing rate, nor did he ever advise her that the work performed and the legal advice given regarding on-going visitation and access issues involving Ms. Martin's minor children would constitute work outside the scope of the original Attorney Engagement Agreement, and thereby caused additional fees to be charged. Likewise, Ms. Martin was also never advised by the Respondent that upon termination of his services she would be charged for work performed on an hourly basis.

This Court finds that the services and costs reflected on the Respondent's billing invoice submitted to Ms. Martin after his termination, were never communicated to Ms. Martin prior to this invoice. Therefore, they were not communicated to his client before or within a reasonable time after commencing his rep-

resentation. Based on the testimony and evidence presented, this Court finds that Bar Counsel has proven a violation of MLRPC 1.5 by clear and convincing evidence.

Rule 1.15—Safekeeping Property

Rule 1.15 provides, in part:

> (a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained pursuant to Title 16, Chapter 600 of the Maryland Rules, and records shall be created and maintained in accordance with the Rules in that Chapter. Other property shall be identified specifically as such and appropriately safeguarded, and records of its receipt and distribution shall be created and maintained. Complete records of the account funds and of other property shall be kept by the lawyer and shall be preserved for a period of at least five years after the date the record was created.
>
> (b) A lawyer may deposit the lawyer's own funds in a client trust account only as permitted by Rule 16-607(b).
>
> (c) Unless the client gives informed consent, confirmed in writing, to a different arrangement, a lawyer shall deposit legal fees and expenses that have been paid in advance into a client trust account and may withdraw those funds for the lawyer's own benefit only as fees are earned or expenses incurred.

Rule MRLPC 1.15 regulates the way in which attorneys accept payment from their clients. Under Rule 1.15, attorneys must deposit all payment from clients into a trust account. The Rule further mandates that attorneys keep their earned fees separate from unearned fees. This Rule required the Respondent to deposit all of the funds he received from Ms. Martin into his trust account and to immediately withdraw all payment as payments were earned.

i. Depositing and Withdrawing Funds

This Court finds the Respondent violated Rule 1.15 by failing to deposit and keep all of Ms. Martin's payments in a trust account until they were earned. This Court further finds the Respondent violated Rule 1.15 by failing to safeguard those funds. On November 3, 2014, Ms. Martin paid the Respondent $3,000.00 via check, a payment that the Respondent deposited into his attorney trust account. On November 7, 2014, the Respondent withdrew $1,000.00 from his attorney trust account after he had performed preliminary work for Ms. Martin's appeal. On November 19, 2014, Ms. Martin paid the Respondent $200.00 by check, a fee that the Respondent never deposited into his trust account in clear violation of Rule 1.15. On December 2, 2014, the Respondent withdrew another $2,000.00 from his trust account. This amounted to $3,000.00 in payments from Ms. Martin being removed from the trust account, and $200.00 not deposited as of December 2, 2014. However, as stated under the fees section under Rule 1.5, the only work the Respondent provided in furtherance of the appeal as of December 2, 2014, after the deadline to file transcripts with the Court of Special Appeals, was advising Ms. Martin to file a Notice of Appeal, submitting a Civil Information Report,

and contacting her prior attorney by email. On December 8, 2014, the Respondent requested an additional $3,000.00 from Ms. Martin for the purpose of ordering transcripts, although after the deadline to present the transcripts to the Court of Special Appeals had passed. Ms. Martin paid the Respondent $3,000.00, as requested, on December 10, 2014. However, the evidence is clear the Respondent failed to deposit and monitor those funds within his attorney trust account. The Respondent failed to complete those steps necessary to fulfil the legal services for which he was retained. He also failed to undertake any actions that advanced the interests of Ms. Martin's appeal, the sole reason Ms. Martin entered into the Attorney Engagement Agreement with the Respondent.

Although, the Respondent deposited Ms. Martin's first payment of $3,000.00 into his attorney trust account, he failed to maintain those funds in the account until earned when the Respondent made a withdrawal on November 7, 2014. The Respondent failed to deposit the November 19, 2014 payment of $200.00 and the $3,000.00 payment made on December 10, 2014, a payment which was specifically for the purpose of ordering the transcripts. Again, no evidence was ever produced that the Respondent ever ordered or filed any transcripts with the Court of Special Appeals. He therefore did not earn the $6,200.00 paid by Ms. Martin for the purpose of handling her appeal. Although, the Respondent was simultaneously providing other legal services to Ms. Martin related to access and visitation with her minor children, those services were never contained within the Attorney Engagement Agreement. The work performed, as evidenced, does not represent a significant or substan-

tial undertaking by the Respondent on Ms. Martin's behalf in order to justify removing the funds from his attorney trust account. By never depositing the $200.00 or the second $3,000.00 payment by Ms. Martin into his attorney trust account, the Respondent clearly violated Rule 1.15.

This Court finds the Respondent did not earn Ms. Martin's funds, therefore he could not have been in violation of Rule 1.15(b) as noted by the Petitioner. Further, since this Court has found the Respondent did not earn Ms. Martin's funds the Petitioner has requested to withdraw their claims that the Respondent violated Rule 1.15(b) and Maryland Rule 16-607. The Court therefore will allow the withdrawal of those claims based on its finding. Further, this Court finds that the Respondent violated Rule 1.15(c) because he failed to advise Ms. Martin to seek counsel with regard to the Attorney Engagement Agreement clause that stipulated the Respondent could deposit unearned fees in a non-attorney trust account, and should have done so in order to comply with Rule 1.15 (c). Therefore, he violated Rule 1.15 (c) by failing to deposit those unearned fees into his attorney trust account.

Based on the testimony and evidence presented, this Court finds that Bar Counsel has proven a violation of MLRPC 1.15(a) by clear and convincing evidence.

Rule 1.16—Declining or Terminating Representation

Rule 1.16 provides, in part:

> (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing

> time for employment of another lawyer, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

An attorney should not accept representation in a matter unless such representation can be performed competently, promptly, without improper conflict of interest and to completion. The Respondent failed to order the transcripts from the underlying Circuit Court proceeding, failed to inform Ms. Martin of the Show Cause Order issued by the Court of Special Appeals, and failed to adequately represent Ms. Martin in the matter for which he was retained. This ultimately resulted in Ms. Martin terminating the Respondent's representation in her case and the dismissal of her appeal. The Respondent did not earn all of the fees paid to him by Ms. Martin. Therefore, at the termination of Respondent's representation he was required to return all unearned legal fees to Ms. Martin, He failed to do so. The Respondent only conditionally offered to return $1,200.00 to Ms. Martin if she agreed to sign a written release which precluded her from bringing any future legal action against the Respondent, contrary to Rule 1.16.

Based on the testimony and evidence presented, this Court finds that Bar Counsel has proven a violation of MLRPC 1.16 by clear and convincing evidence.

Rule 3.3—Candor Toward the Tribunal

Rule 3.3 provides, in part:

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the attorney;

This rule governs the conduct of attorneys as officers of the court and upholds the integrity of the judicial process. Legal arguments based on a knowingly false representation of law would constitute a false statement to a tribunal. In the Respondent's February 27, 2015 Motion for Extension of Time to Order Transcript and File Appellants Brief filed with the Court of Special Appeals, he provides several reasons for his delay in filing the transcripts. Petitioner's Ex. 16. The Respondent stated that the delay in filing the transcripts of the underlying proceedings was due to: (1) the uncertainty concerning the length of the underlying trial and specifically whether the trial spanned two or three days; (2) the Respondent's inability to obtain Ms. Martin's file from her initial trial attorney; and (3) the Prince George's County Court system experiencing several closures. Although, the reasons for the delay proffered by the Respondent are not persuasive and, in fact, did not convince the Court of Special Appeals to grant the extension—there is not clear and convincing evidence that they are knowingly false statements. *Id.* The evidence presented was not clear and convincing with regard to the Respondent's proffer in the motion that his uncertainty of the trial dates caused him to do further research on the issue, and him thereby violating the rule. Additionally, no such ruling was made by the Court of Special Appeals on the denial of his motion.

The Respondent's inability to obtain Ms. Martin's file from her original trial attorney may or may not have delayed the filing because as proffered in the Respondent's motion the Respondent believed Ms. Martin's previous attorney already had copies of the transcript. However, this argument falls short because in the Respondent's December 08, 2014 correspondence with Ms. Martin he specifically asks her for $3,000.00 for the purpose of ordering the transcripts. Therefore, as of December 8, 2014 the Respondent was no longer waiting for Ms. Martin's original attorney to provide the transcripts, as he indicated he would order them with Ms. Martin's $3,000.00 payment. Ms. Martin made the payment as requested, on December 10, 2014, yet the Motion for Extension of Time was not filed until February 27, 2015, almost three months later. It is clear from the Respondent's correspondence on December 08, 2014 that he was no longer waiting for copies of the transcripts from Ms. Martin's original attorney. When the Respondent received the second $3,000.00 payment for the purpose of ordering the transcripts, there was no evidence of any impediment that would cause a delay in ordering them.

This representation made by the Respondent within his motion is a knowingly false statement of fact made to a tribunal, in this case, the Court of Special Appeals. Additionally, this Court took judicial notice of the fact that the Prince George's County District and Circuit Court were closed everyday between February 19, 2015 and March 8, 2015. However, such closures or even any one day weather related closings would not have impacted the Respondents ability to file the Motion for Extension with the Court of Special Appeals, sometime prior to February 27,

2015. There was no evidence presented that indicated any other significant court closures from December 8, 2014 through his filing on February 27, 2015.

The Court thereby finds that based on the testimony and evidence presented, this Court finds that Bar Counsel has proven a violation of MLRPC 3.3 by clear and convincing evidence.

Rule 8.1—Bar Admission and Disciplinary Matters

Rule 8.1 provides, in part:

> An applicant for admission or reinstatement to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not: (a) knowingly make a false statement of material fact;

MRLPC 8.1 requires that attorneys responding in connection to a disciplinary matter avoid making knowingly false statements to the Bar as well as to attorneys. The Respondent received a letter from the Attorney Grievance Commission on December 2, 2015, notifying him that he was being investigated in this disciplinary matter and requesting that he respond to Ms. Martin's complaint. Petitioner's Ex. 35. In response to Ms. Martin's April 13, 2015 complaint with the Attorney Grievance Commission this Court finds the Respondent made knowingly false statements. In his response he states: (1) the cause of dismissal of Ms. Martin's appeal was her failure to order the transcripts; (2) the Respondent instructed Ms. Martin to order the transcripts of the underlying proceedings; and (3) that Ms. Martin never deposited any funds with the Respondent so that he could order the transcripts. Petitioner's Ex. 16. As stated previously, other

than when the Respondent and Ms. Martin entered into their attorney client relationship through the Attorney Engagement Agreement, where it stated that she cover the cost of obtaining transcripts and other expenses, there was no reference to Ms. Martin ordering transcripts. Petitioner's Ex. 3. Then again, on December 8, 2014 the Respondent requested Ms. Martin make a $3,000.00 payment to cover the costs of him ordering the transcripts.

This Court finds there was no evidence presented that the Respondent ever directed Ms. Martin to order the transcripts herself. The Respondent failed to clearly specify who was responsible for ordering the transcripts and made representations to Ms. Martin that suggested he would be responsible for the order. Respondent's Ex. 5 at p. 10; Ex. 27 at p. 1. On December 8, 2014, the Respondent sent a text message to Ms. Martin requesting funds to order the transcripts. Respondent's Ex. 5 at p. 10. Such funds were paid by Ms. Martin to the Respondent on December 10, 2014. Petitioner's Ex. 4 at p. 3. However, the evidence is clear and convincing that the Respondent never deposited those funds into his attorney trust accounts, and never ordered the transcript or requested Ms. Martin do so. There is no evidence that after December 8, 2014 the Respondent ever requested any additional funds from Ms. Martin for transcripts, in furtherance of her appeal, or for any other reason. No such request was made until Ms. Martin requested a termination of the Respondent's services on March 18, 2015. There is also no evidence the Respondent instructed Ms. Martin to order the transcripts, nor did he give her any instructions on how to do so or of their cost.

This Court finds the Respondent violated Rule 8.1 when he responded to Ms. Martin's complaint and stated he had not received money for the transcript order, and that Ms. Martin caused the dismissal of her appeal by not ordering transcripts. This is contrary to the evidence presented at trial which revealed the Respondent never instructed Ms. Martin to do so. From November 20, 2014 when the Court of Special Appeals alerted the Respondent that he had ten (10) days to file the transcripts, until the Respondent filed the Motion for Extension of Time on February 27, 2015 with the Court of Special Appeals, the Respondent never communicated to Ms. Martin that her appeal was in danger of being dismissed, nor did he instruct her to order the transcripts after receiving a $3,000.00 payment from her on December 10, 2014. As stated previously, this Court finds clear and convincing evidence that this payment was made upon the Respondent's request so he could order the transcripts for Ms. Martin's appeal.

This Court finds the Respondent knowingly misrepresented the true reasons for the dismissal of Ms. Martins appeal by stating in his response to Ms. Martin's complaint that she was responsible for ordering transcripts. This Court finds that based on the testimony and evidence Bar Counsel has proven by clear and convincing evidence a violation of MLRPC 8.1.

Rule 8.4—Misconduct

Rule 8.4 provides, in part:

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Maryland Attorneys' 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;

Under MRLPC 8.4, attorneys are directed to abide by the rules of professional conduct and to avoid dishonesty. The Respondent was retained by Ms. Martin to handle and argue her appeal before the Court of Special Appeals. Ms. Martin paid the Respondent a total of $6,200.00 to provide that service. Upon receipt of funds from Ms. Martin, the Respondent failed to deposit and maintain the funds in his attorney trust account until the funds were earned or expenses were incurred. Further, the Respondent failed to take meaningful action to advance Ms. Martin's appeal because he failed to order the required transcripts of the underlying proceedings and failed to adequately communicate with Ms. Martin about the status of her appeal, all in violation of the Maryland Attorney's Rules of Professional Conduct and MLRPC 8.4(a).

Additionally, the Respondent misled both the Court of Special Appeals and Ms. Martin in an attempt to explain his failure to order the transcripts. Ultimately, Ms. Martin's appeal was dismissed because the Respondent did not order the transcripts from her underlying proceeding. Once Ms. Martin terminated the Respondent he generated an invoice for services based on a fee formula which was not stated in the Attorney Engagement Agreement, or ever articulated

to Ms. Martin by the Respondent before he produced the invoice. The Respondent refused to refund any portion of Ms. Martin's fees unless she signed an agreement that precluded her from seeking future legal action against the Respondent. Additionally, the Respondent tried to disclaim his responsibility for the dismissal of the appeal by placing blame on Ms. Martin for the delay in the order, via an email. This Court finds the Respondent made several knowing and intentional misrepresentations and omissions to Bar Counsel, as well as to Ms. Martin in violation of Rule 8.4(c). This Court further finds the Respondent's conduct toward Ms. Martin, the Court of Special Appeals, and Bar Counsel was prejudicial to the administration of justice in violation of Rule 8.4(d).

i. Respondent's Refund and Contingent Client Waiver

The Respondent attempted to violate Rule 1.8(h)(1) & (2) after the termination of the representation in violation of Rule 8.4(a), Rule 1.8(h) provides, in part:

> (h) A lawyer shall not:
>
> (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or
>
> (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

After Ms. Martin terminated the Respondent, the parties met to discuss a refund. At that time the Respondent offered to refund Ms. Martin $1,200.00, conditioned on her consent to a written release. The language of the release required Ms. Martin to forgo her ability to take legal action against the Respondent in the future. However, Ms. Martin refused to sign the release and as a result, the Respondent did not refund any of Ms. Martin's fee. Additionally, the Respondent did not advise Ms. Martin to seek legal representation for the review of this release, nor did he inquire if she had received any legal representation for the review of the conditional release. In his attempt to limit his potential liability the Respondent further violated Rule 8.4.

Based on the testimony and evidence presented, this Court finds that Bar Counsel has proven a violation of MLRPC 8.4 by clear and convincing evidence.

AGGRAVATING FACTORS

The Court finds clear and convincing evidence of the following aggravating factors:

(1) Prior disciplinary offenses;

(2) A dishonest or selfish motive;

(3) A pattern of misconduct;

(4) Multiple offenses;

(5) Submission of false statements during the disciplinary process.

MITIGATING FACTORS

The Court finds clear and convincing evidence of the following mitigating factors:

(1) Respondent's provision of some legal services related to Ms. Martin's underlying family matter (although these services and fees associated with such services were never agreed to by the parties, nor were the terms of any fee or an hourly rate ever discussed).

CONCLUSION

This Court finds clear and convincing evidence that the Respondent violated the Maryland Lawyers' Rules of Professional Conduct, specifically Rules: 1.1, 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 3.3, 8.1, and 8.4.

Respectfully Submitted,

/s/ Tiffany H. Anderson
Associate Judge,
Seventh Judicial Circuit

Date: April 18, 2017

AMENDED PETITION FOR DISCIPLINARY OR REMEDIAL ACTION (JUNE 12, 2017)

IN THE COURT OF APPEALS OF MARYLAND

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND,

Petitioner,

v.

ANDREW N. UCHEOMUMU,

Respondent.

Misc. Docket AG No. 58

The Attorney Grievance Commission of Maryland, by Raymond A. Hein, Acting Bar Counsel, and Jennifer L. Thompson, Assistant Bar Counsel, its attorneys, files this Amended Petition for Disciplinary or Remedial Action against Andrew Ndubisi Ucheomumu, Respondent, and represents to the Court as follows:

1. On August 22, 2016, Bar Counsel received direction from the Attorney Grievance Commission to file this petition pursuant to Maryland Rule 19-720(f).

2. The Respondent, Andrew Ndubisi Ucheomumu, was admitted to the Maryland Bar on June 16, 2009. At all times relevant hereto, the Respondent maintained an office for the practice of law in Montgomery County. By an Opinion and Order of the Court of Appeals filed

December 15, 2016, the Respondent was indefinitely suspended from the practice of law in Maryland. He currently remains suspended.

Complaint of Shannan Martin

3. On July 31, 2014, the Prince George's County Circuit Court, in *McBride v. Martin*, Case No. CAP09-00919, issued an order divesting Shannan Martin of custody of her two children. The order was entered on the docket on October 3, 2014.

4. On November 3, 2014, Ms. Martin retained the Respondent to appeal the July 31, 2014 order. Ms. Martin signed the Respondent's retainer agreement and agreed to pay him a flat fee of $10,500.00 for the representation. The retainer agreement provided that Ms. Martin would be responsible for paying expenses, including the cost of obtaining any transcripts.

5. On November 3, 2014, the Respondent noted Ms. Martin's appeal to the Court of Special Appeals without the transcripts of the underlying proceedings. While the Respondent prepared the notice pleading, Ms. Martin filed the pleading *pro se* and paid the filing fee.

6. After November 3, 2014, upon information and belief, the Respondent performed little to no work on Ms. Martin's appeal.

7. On November 20, 2014, the Court of Special Appeals ordered Ms. Martin's appeal to proceed without a pre-hearing conference. Maryland Rule 8-411(b) requires that an appellant order the transcripts of the underlying proceedings within ten (10) days from the date of that Order.

8. The Respondent failed to either order the transcripts of the underlying proceedings or instruct Ms. Martin to order the transcripts of the underlying proceedings.

9. The Respondent failed to inform Ms. Martin that he needed additional funds in order to obtain the transcripts.

10. The Respondent failed to obtain a cost estimate for transcription services.

11. On February 2, 2015, the Court of Special Appeals issued an order directing the Respondent to show cause why Ms. Martin's appeal should not be dismissed for failure to file the transcripts.

12. The Respondent failed to advise Ms. Martin about the court's February 2, 2015 order to show cause.

13. On March 2, 2015, the Respondent filed with the Court of Special Appeals a Motion for an Extension of Time. In the Motion, he misrepresented to the Court that the delay in filing the transcripts was due to: (1) the uncertainty concerning the length of the underlying trial, i.e., whether the trial spanned two or three days; (2) the Respondent's inability to obtain Ms. Martin's file from her trial attorney; and (3) the Prince George's County Circuit Court's multiple courthouse closures.

14. On or about March 18, 2015, upon learning that the Respondent had not ordered the transcripts, Ms. Martin terminated the Respondent's representation and retained a new attorney.

15. On March 20, 2016, the Respondent wrote to Ms. Martin and explained the following:

> I do not believe that you will succeed on appeal, because the basis for terminating your custody was not only as a result of finding cavities in your children's teeth. Furthermore, the reason the transcript has not been ordered is because you kept claiming that there were three trial dates, but the court reporters were able to find only two. Since the trial was very disjointed, I wanted to order the CD and listen to every recording to determine the trial dates myself. Furthermore, I wanted to buy as much time as possible to allow negotiated settlement to bear fruit because I do not think that you will succeed on appeal.

16. The March 20 correspondence was the first time the Respondent informed Ms. Martin of his belief that her appeal would not be successful.

17. On March 25, 2016, the Court of Special Appeals denied the Respondent's Motion and dismissed Ms. Martin's appeal.

18. Thereafter, on March 30, 2016, the Respondent twice emailed Ms. Martin. In each email, he misrepresented to her that the cause of the dismissal was her failure to pay for the transcripts despite his multiple requests for her to do so.

19. On April 1, 2015, Ms. Martin, through her new counsel, filed with the Court of Special Appeals a Motion to Reinstate the appeal. On April 14, 2015, the Court denied Ms. Martin's motion.

20. On or about May 15, 2015, Ms. Martin, through counsel, filed with the Court of Appeals a

Petition for Writ of Certiorari. The Court of Appeals denied the petition on July 31, 2015.

Fees & Trust Account Violations

21. On November 3, 2014, Ms. Martin signed the Respondent's retainer agreement and agreed to pay him a flat fee of $10,500.00 for his representation. The terms of the agreement required Ms. Martin to make an initial payment to the Respondent of $5,500.00 and $1,000.00 payments each month thereafter, until the $10,500.00 fee was paid in full.

22. Ms. Martin, instead, paid to the Respondent $3,000.00 as her initial payment on November 3, 2014. She made a second payment in the amount of $200.00 on November 19, 2014. On December 10, 2014, Ms. Martin made a third payment of $3,000.00.

23. The Respondent's retainer agreement stated that Ms. Martin's funds would be deposited into the Respondent's general operating account and not into an attorney trust account. The Respondent failed, however, to inform Ms. Martin of the material risks associated with depositing unearned attorney's fees into a non-attorney trust account.

24. The retainer agreement further provided:

> I also understand that all our payments are non-refundable unless The Ucheomumu Law Group, LLC on their own withdraws from representing me in this appeal. If The Ucheomumu Law Group, LLC. [sic] on their own withdraws from representing me in this appeal before doing the work, I understand that I will be refunded my money. After starting the work, if the Ucheomumu Law

> Group, LLC on their own withdraws due to conflict, I will be refunded on a *pro-rata* basis or the payment shall be applied to our outstanding legal bills.

The Respondent failed to advise Ms. Martin of his hourly billing rate and failed to advise Ms. Martin that upon her termination of the Respondent's services, the Respondent would be entitled to collect fees for work performed on an hourly basis.

25. On November 3, 2014, the Respondent deposited Ms. Martin's payment of $3,000.00 into his attorney trust account.

26. The Respondent failed to deposit and maintain Ms. Martin's November 19, 2014 payment of $200.00 in an attorney trust account until earned.

27. The Respondent failed to deposit and maintain Ms. Martin's December 10, 2014 payment of $3,000.00 in an attorney trust account until earned.

28. After Ms. Martin terminated the Respondent's services in March 2015, the Respondent fabricated an invoice in which he misrepresented that he spent 37.1 hours working on Ms. Martin's case. The invoice demanded payment of $10,944.50, calculated at a billing rate of $295.00/hour.

29. The Respondent offered to return to Ms. Martin $1,200.00 if she would agree to sign a release. The Respondent failed to advise Ms. Martin to seek the advice of independent counsel.

30. Throughout the pendency of the Respondent's representation of Ms. Martin, the Respondent performed little to no work on Ms. Martin's appeal and failed to take any action that benefitted Ms. Martin

or advanced her interests. To that end, the fees collected by the Respondent from Ms. Martin were unreasonable.

Bar Counsel's Investigation

31. In or about April 2015, Ms. Martin filed a complaint with Bar Counsel.

32. In response to Bar Counsel's request for information, the Respondent misrepresented that he had "informed Ms. Martin that after filing the Notice of Appeal, she should go upstairs and order her transcript" and that "the dismissal of her appeal was because of Ms. Martin's own failure to order the transcripts, as she was told . . ."

33. Additionally, the Respondent misrepresented to Bar Counsel that he had deposited Ms. Martin's November 3, 2014 payment of $3,000 into his "business account." In the Respondent's letter to Bar Counsel of June 6, 2015, he states that "[t]he November 3, 2014 check that [Ms. Martin] brought on November 5, 2014 was made out to me personally, and consistent with the amount of work already performed, I endorsed and deposited the check in my business account because I have already performed work that exceeded the amount she paid."

34. Petitioner represents and charges that the Respondent, by his acts and omissions as described herein, engaged in professional misconduct and violated the following Maryland Lawyers' Rules of Professional Conduct, as then enacted:

Rule 1.1. Competence

An attorney shall provide competent representation to a client. Competent representation requires the

legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Attorney

(a) Subject to sections (c) and (d) of this Rule, an attorney shall abide by a client's decisions concerning the objectives of the representation and, when appropriate, shall consult with the client as to the means by which they are to be pursued. An attorney may take such action on behalf of the client as is impliedly authorized to carry out the representation. An attorney shall abide by a client's decision whether to settle a matter. In a criminal case, the attorney shall abide by the client's decision, after consultation with the attorney, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

Rule 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4. Communication

(a) An attorney shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0, is required by these Rules;

(2) keep the client reasonably informed about the status of the matter;

(3) promptly comply with reasonable requests for information; and

(4) consult with the client about any relevant limitation on the attorney's conduct when the attorney knows that the client expects assistance not permitted by the Maryland Attorneys' Rules of Professional Conduct or other law.

(b) An attorney shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.5. Fees

(a) An attorney shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.,

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment of the attorney;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the attorney or attorneys performing the services; and

(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the attorney will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also he communicated to the client.

Rule 1.8. Conflict of Interest; Current Clients; Specific Rules

(a) An attorney shall not enter into a business transaction with a client unless:

(1) the transaction and terms on which the attorney acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek independent legal advice on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the attorney's role in the transaction, including whether the attor-

ney is representing the client in the transaction.

(h) An attorney shall not:

(1) make an agreement prospectively limiting the attorney's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal advice in connection therewith.

Rule 1.15. Safekeeping Property

(a) An attorney shall hold property of clients or third persons that is in an attorney's possession in connection with a representation separate from the attorney's own property. Funds shall be kept in a separate account maintained pursuant to Title 16. Chapter 600 of the Maryland Rules, and records shall be created and maintained in accordance with the Rules in that Chapter. Other property shall be identified specifically as such and appropriately safeguarded, and records of its receipt and distribution shall be created and maintained. Complete records of the account funds and of other property shall be kept by the attorney and shall be preserved for a period of at least five years after the date the record was created.

(b) An attorney may deposit the attorney's own funds in a client trust account only as permitted by Rule 16-607(b).

(c) Unless the client gives informed consent, confirmed in writing, to a different arrangement, an attorney shall deposit legal fees and expenses that have been paid in advance into a client trust account and may withdraw those funds for the attorney's own benefit only as fees are earned or expenses incurred.

Rule 1.16. Declining or Terminating Representation

(d) Upon termination of representation. an attorney shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of another attorney. surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The attorney may retain papers relating to the client to the extent permitted by other law.

Rule 3.3. Candor Toward the Tribunal.

(a) An attorney shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the attorney.

Rule 8.1. Bar Admission and Disciplinary Matters

An applicant for admission or reinstatement to the bar, or an attorney in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact: or

Rule 8.4. Misconduct

(a) violate or attempt to violate the Maryland Attorneys' 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.

Rule 16-607. Commingling of Funds

(a) General Prohibition. An attorney or law firm may deposit in an attorney trust account only those funds required to be deposited in that account by Rule 16-404 or permitted to be so deposited by section (b) of this Rule.

(b) Exceptions.

(1) An attorney or law firm shall either (A) deposit into an attorney trust account funds to pay any fees, service charges, or minimum balance required by the financial institution to open or maintain the account, including those fees that cannot be charged against interest due to the Maryland Legal Services Corporation Fund pursuant to Rule 16-610 (b)(1)(D), or (B) enter into an agreement with the financial institution to have any fees or charges deducted from an operating account maintained by the attorney or law firm. The attorney or law firm may deposit into an attorney trust account any funds expected to be advanced on behalf of a

client and expected to be reimbursed to the attorney by the client.

(2) An attorney or law firm may deposit into an attorney trust account funds belonging in part to a client and in part presently or potentially to the attorney or law firm. The portion belonging to the attorney or law firm shall be withdrawn promptly when the attorney or law firm becomes entitled to the funds, but any portion disputed by the client shall remain in the account until the dispute is resolved.

(3) Funds of a client or beneficial owner may be pooled and commingled in an attorney trust account with the funds held for other clients or beneficial owners.

{ The Complaint of Alexander Okeke is not included, since this complaint was dismissed }

WHEREFORE, Petitioner requests that this Honorable Court:

A. Take such disciplinary action against the Respondent as it deems appropriate;

B. Assess against the Respondent, in the form of a money judgment, the reasonable costs of these proceedings, both arising subsequently to the filing of these charges and necessarily incurred in investigating the same prior to the filing thereof; and

C. Take such other and further action as this Court may deem appropriate under the circumstances.

Respectfully submitted,

/s/ Raymond A. Hein
Acting Bar Counsel

/s/ Jennifer L. Thompson
Assistant Bar Counsel
Attorney Grievance
Commission of Maryland
200 Harry S. Truman Parkway,
Suite 300
Annapolis, MD 21401
(410) 514-7051
jennifer.thompson@agc.maryland.gov
Attorneys for Petitioner

RESPONSE TO UCHEOMUMU'S FIRST SET OF INTERROGATORIES, INTERROGATORY NUMBER 15 (MAY 5, 2017)

IN THE COURT OF APPEALS OF MARYLAND

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND,

Petitioner,

v.

ANDREW N. UCHEOMUMU,

Respondent.

Misc. Docket AG No. 0058

In the Circuit Court for Prince George's County
Case No. CAE 17-07944

[. . .]

INTERROGATORY NO. 15: If you contend that the Respondent violated Maryland Lawyers' Rules of Professional Conduct 1.4 on Ms. Shannon Martin's complaint, describe in detail the factual and legal basis for this contention.

ANSWER: Apart from the statement contained in the Respondent's employment agreement that Ms. Martin was responsible for the cost of any transcripts, the Respondent never communicated with Ms.

Martin about ordering the transcripts or requested from her funds so that he could obtain the transcripts. The Respondent never informed Ms. Martin that if the transcripts were not filed in the Court of Special Appeals, her appeal could be dismissed. Likewise. the Respondent failed to inform Ms. Martin that on February 2, 2015, the Court of Special Appeals issued a Show Cause Order directing Ms. Martin to show cause why her appeal should not be dismissed for failure to file the transcripts of the underlying proceeding. On March 20, 2016, the Respondent emailed Ms. Martin informing her of his belief that her appeal would not be successful. Prior to that date, the Respondent had never so advised Ms. Martin. After Ms. Martin terminated the Respondent's services, the Respondent generated a billing invoice that reflected a balance due of $10,944.50 calculated at an hourly rate of $295.00. Prior to the creation of the invoice, the Respondent had advised Ms. Martin neither of his hourly billing rate nor that upon her termination of his services, he would be entitled to collect fees for work performed on an hourly basis.

[. . .]

/s/ Jennifer L. Thompson
Assistant Bar Counsel
Attorney Grievance
Commission of Maryland
200 Harry S. Truman Parkway, Suite 300
Annapolis, MD 21401
(410) 514-7051
jennifer.thompson@agc.maryland.gov
Attorneys for Petitioner

TRANSCRIPT EXCERPTS REGARDING JENNIFER THOMPSON'S WITHHOLDING OF DOCUMENTS (JANUARY 3, 2018)

IN THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY, MARYLAND

ATTORNEY GRIEVANCE
COMMISSION OF MARYLAND,

Petitioner,

v.

ANDREW NDUBISI UCHEOMUMU,

Respondent.

Case No.: CAE17-07944

Misc. Docket AG No. 58

Before: The Honorable Tiffany Hanna ANDERSON,
Associate Judge

[January 3, 2018 Transcript, p. 82]

THE COURT: Documents with regard to this June 28, 2016?

MS. THOMPSON: That is correct. That email with seven of the attached documents were submitted to Mr. Ucheomumu in discovery in May of 2017. We did not hear anything from Mr. Ucheomumu.

He did not bring up they were missing attachments to that production.

THE COURT: What is your response to the privileged argument and the cases he just cited?

MS. THOMPSON: If I can finish up my timeline here. When I was preparing for trial and I went back through all of the documents sent to Mr. Ucheomumu, it became apparent to me that I inadvertently failed to produce some of the rest of the attachments to that email. So on December 14th, I produced additional attachments. And I believe there was five additional attachments attached to that email. Those were attached via email on December 14th.

THE COURT: You said December 14, 2017.

MS. THOMPSON: Correct, 2017, the additional—the additional five emails.

THE COURT: So seven first and then another five, which makes 12?

MS. THOMPSON: Yes. I will say, what I produced to Mr. Ucheomumu in December 2014 were actually —

THE COURT: I'm sorry. When?

MS. THOMPSON: I'm sorry. What did I say?

THE COURT: You said December 2014.

MS. THOMPSON: I'm sorry. December 14, 2017, were emails exchanged between Ms. Martin and Mr. Ucheomumu that I requested from Mr. Ucheomumu that he failed to produce.

THE COURT: These are documents he had in his possession?

MS. THOMPSON: Of course, and did not turn over to bar counsel.

THE COURT: So what about the other documents?

MS. THOMPSON: There are a few attachments, one is the retainer agreement. Mr. Ucheomumu has that. One of which was a Court of Appeals order denying the petition. Mr. Ucheomumu has that. We produced that. Two of those were blank pages. There are three or four emails between Ms. Martin and her successor counsel that we did not produce because we were concerned with attorney-client privilege communication.

THE COURT: Are you saying that out of those 27 attachments, only four were not produced?

MS. THOMPSON: I believe it's either four or three, four, or five. I don't have the exact number.

THE COURT: What is your argument then with regard to this Rule that he is citing, 2-402(e) and these cases that he cited? What is your argument?

MS. THOMPSON: Your Honor, what I can say to that, is that I do not know if Ms. Martin intended to eradicate her attorney-client privilege when she submitted those documentations to bar counsel.

THE COURT: Attorney-client privilege with another attorney, you mean?

MS. THOMPSON: Yes.

THE COURT: Mr. Stevens?

MS. THOMPSON: No, Ms. Anukem.

THE COURT: Okay. Another attorney?

MS. THOMPSON: Yes. And I don't feel it's appropriate or proper to stand here today and waive that privilege on her behalf. Your Honor, Ms. Martin is here to testify.

THE COURT: So I guess it's—you still need to identify the documents then.

MS. THOMPSON: I don't have any problem.

THE COURT: The documents need to be identified. You agree with what the Rule says?

MS. THOMPSON: Yes, Your Honor. And I don't have any problem doing that. Again, this wasn't brought up until very recently that Mr. Ucheomumu demanded these be identified. And I don't have any problem doing that.

THE COURT: Okay. Let's do that then. Identify the documents.

MS. THOMPSON: Do you want me to do that on the record here?

THE COURT: I want you to identify what you believe those outstanding documents to be and then I can—if that's the case, it says subject to protection shall describe the nature of the documents, electronically stored communication or things not produced or disclosed in a manner that without revealing the privilege or protected information, will enable the parties to assess the applicability to the privilege or protection. They need to know what the motion is without revealing the privilege—or what the document is without revealing the privilege is what it says. So you need to do that.

MS. THOMPSON: Of course, Your Honor, you want me to do it orally on the record or something I should be—

THE COURT: Yes, you can do it orally, so we can move forward.

[. . .]

MR. RHEINSTEIN: One of the things that we asked Ms. Thompson to do on November 30th and when Mr. Ucheomumu asked them to do by way of Motion to Compel was to comply with Maryland Rule 2-402 (e)(1) by itemizing things she withheld. She has just told us three or four things that she has withhold, pursuant to what she believes to be a claim of privilege or protection.

THE COURT: Do you have those written down now?

MS. THOMPSON: I have those.

MR. RHEINSTEIN: Here is the problem, we just discovered those with this email thing, you know, that's one example. We don't know, sitting here, what else Ms. Thompson has withheld. And because—

THE COURT: —So what are you requesting then?

MR. RHEINSTEIN: I'm requesting to ask, is there anything else that Ms. Thompson has withheld, because she thinks it might be privileged or protected. But she thinks it might be, but did not produce. Is there anything else in her file related to this case that you withheld, because you think it might be privileged or protected?

Because if there is, she did not itemize it. So we don't know whether the claim is valid. The point

is there may be exculpatory material in that file. And I can explain why I think it might be exculpatory and why we are doing this.

I'm specifically asking on this record, we know now about these three or four emails. Since she hasn't described what she withheld we don't know what exists and what doesn't exist. I can go back to the timeline and proffer for you other things I think have been withheld wrongly, but I think Ms. Thompson—

THE COURT: —This not a new motion. It's a motion to reconsideration only what has been placed in his motion.

MR. UCHEOMUMU: Which was incorporated by reference that she produce a description of anything she withheld.

THE COURT: That's what we are talking about now, yes.

MR. RHEINSTEIN: Right. She has only described what was attached to this email, not anything else she may have withheld.

THE COURT: What is your response?

MS. THOMPSON: Your Honor, I don't have the entire file. There are hundreds of pages of documentation. I don't have the whole thing in front of me. And I don't know what was not produced right off the top of my head. I cannot account that was not produced pursuant to confidentiality.

THE COURT: Besides everything I already ruled on with regard to peer review, is there anything not

produced to them that is subject to this rule that he cited.

MS. THOMPSON: Your Honor, I don't have—I cannot make an accurate representation to the Court. I do not have the file in front of me.

MR. RHEINSTEIN: That's a huge problem.

THE COURT: How should I respond to him? I don't know what either one of you is requesting. He is requesting that you answer if there is anything else. You are answering there is not. What is the Court to do today?

MS. THOMPSON: Your Honor, what I will proffer to the Court is there is absolutely no exculpatory evidence that has not been produced to the Respondent. Secondly, Your Honor, I'm going to read off, pursuant to Your Honor's request, the logistic information related to the documents not produced in attached to the email.

I can go back through the file and identify other documents not produced pursuant to privilege or confidentiality if, Your Honor, so orders.

THE COURT: What do you have now?

MS. THOMPSON: I have what was not produced as attached.

THE COURT: Read what you have.

MS. THOMPSON: Okay. Your Honor, attachment scan number 4004 was an email from Ms. Martin to her successor counsel, dated March 20, 2015, that was not produced. Scan 005 there is an email from Ms. Martin to her successor counsel, which is a continuation of scan number four. Then there

is an email from Ms. Martin to another attorney, dated March 27, 2015. And then there is another email from Ms. Martin to Ms. Anukem, her successor counsel, dated April 20, 2015.

THE COURT: Fifteen?

MS. THOMPSON: Yes.

THE COURT: You said successor.

Okay. I'm sorry, for this case. Understood. Go ahead. I was looking at the date of the email. I was confused for a moment. Go right ahead.

MS. THOMPSON: Scan 008, Your Honor, is an email, dated March 31st, 2015, from Ms. Anukem to Ms. Martin.

THE COURT: Who is also operating as her counsel or no?

MS. THOMPSON: I'm sorry.

THE COURT: Ms. Anukem was operating as her counsel or not?

MS. THOMPSON: That is correct.

MR. RHEINSTEIN: What was the date?

MS. THOMPSON: March 31st, 2015.

Scan 015, Your Honor, there are several emails on this page, dated March 20, 2015, between Ms. Martin and her attorney Ms. Anukem. Page 16 is the same, March 20, 2015, emails between Ms. Martin and her attorney, Ms. Anukem. Page 017 is the same, March 20, 2015, emails between Ms. Martin and Ms. Anukem. And 018 and 019 are more of the same, March 20, 2015, between Ms. Martin and Ms. Anukem.

MR. RHEINSTEIN: That's more than three or four.

MS. THOMPSON: I didn't have the list in front of me when I said that, Your Honor.

THE COURT: How many is that?

MR. RHEINSTEIN: Well, let me recap.

THE COURT: No. I asked for her to tell me how many.

MS. THOMPSON: I believe eight, Your Honor.

THE COURT: Okay. Thank you.

[. . .]

MS. THOMPSON: Mr. Rheinstein request I produce a written log of everything I said orally on the record, I don't have a problem doing that.

MR. RHEINSTEIN: Not just what she said orally, everything she didn't produce. Let me go back to the timeline.

THE COURT: We are going to break for lunch see you-all back at 1:05.

(Court stood in recess at 12:03 p.m.)
(Court reconvened at 1:31 p.m.)

THE COURT: All right. So before we continue, where are we with the other documents that you say that you have but you have not provided, because they were privileged or confidential in some way?

MS. THOMPSON: Your Honor, I believe where we were was that I stated to, Your Honor, I don't have a file in front of me. I cannot recall for Your Honor right off the top of my head at this moment which documents were not produced due to privilege.

THE COURT: But you agree that the Rule applies, correct?

MS. THOMPSON: Yes, Your Honor, if you are speaking about Rule 2-402—

THE COURT: I'm assuming that over lunch you would have called someone to find out what else there was. At this point, I think, if that's the case, they need to at least know, as the Rule says, what documents you decided not to turn over because of privilege or confidentiality in some way without disclosing the confidential nature of the document. And I think we need to take a break until then.

[. . .]

THE COURT: —Let me do this before you finish that.

Mr. Hein, I'm assuming you can respond to the rest of his arguments and that Ms. Thompson can go and find out what she needs to do and get the rest of the information I requested, because the Court needs to look at that and determine whether or not there is any basis for him asking for this.

MR. HEIN: Yes, Your Honor. I feel like I can address the arguments being made by Mr. Rheinstein.

THE COURT: Because it's 1:45. I want to feel like we've accomplished something today.

So, Ms. Thompson, if you can go and do what you need to do to get an accurate listing of all of the documents that you've decided were confidential or privileged in some way that were not turned over.

MS. THOMPSON: Yes, Your Honor. That's not something I can probably return with today. This is a very—

THE COURT: —I need to know exactly what you can return with today, so you can comply with the Rule, which you say applies in this case and agree you have not complied with. I need you to do as much as we can today while we are here. Call your office and figure out what you need to do to do that.

MS. THOMPSON: Okay.

[. . .]

THE COURT: Thank you.

Ms. Thompson, what do you have for us?

MS. THOMPSON: Yes, Your Honor. I have gone through all of the documents in the file with the secretary at our office. Before I present certain evidence to the Court, I would like to speak to Mr. Hein for three minutes. Is that possible?

THE COURT: Sure.

(Court stood in recess at 3:20 p.m.)
(Court reconvened at 3:33 p.m.)

THE COURT: Where are we? Are there documents?

MS. THOMPSON: I have gone through our electronic system and identified all of the documents withheld pursuant to privilege or—

THE COURT: —How many documents?

MS. THOMPSON: Well, Your Honor, I was first going to go through with the Court the different cate-

gories of the documents withheld. Is that appropriate?

THE COURT: Sure. I'm asking how many? Are we talking about more than 20 documents, more than 100 documents? Where are we?

MS. THOMPSON: Let me just count. I would say about 20 or 30 but those—I will read the category based on work.

THE COURT: And give him a copy afterward.

MS. THOMPSON: Your Honor, I just scribbled this down. I'd prefer, if I'm going to give him a copy, to type it up appropriately.

THE COURT: Sure. Put it on the record. Go ahead.

MS. THOMPSON: Any internal memorandum drafted by the attorneys in the office, the assistant bar counsel, any of those were withheld due to privilege.

THE COURT: So I thought you were naming specifically what it is you left out as the Rule requires.

MS. THOMPSON: Yes, Your Honor. I can do that specifically. But, like I said, there are several maybe close to thirty or forty, I'd prefer to do that in writing.

THE COURT: When can you get him that in writing?

MS. THOMPSON: I can have that done today.

THE COURT: We can't move forward with anything until he gets this information, because I can't make a ruling as to whether or not it is privileged and should have been turned over. If he is entitled to it he needs it before we start trial. If

he is not entitled to it then I make a ruling he is not entitled to it. But I can't do that until you say what the documents are.

MS. THOMPSON: Okay. Your Honor, I don't have any problem reading out document by document, if you prefer it that way.

THE COURT: It's 3:20, unless we are ending today, there is nothing else I can do until my motion—my ruling on the motion cannot be made until we discuss what these documents are, because that's what left from the motion that's been argued, these documents.

MS. THOMPSON: Okay, Your Honor. May I stay seated?

THE COURT: You may.

MS. THOMPSON: Okay.

MR. RHEINSTEIN: Can you tell me the category? I'm going to write these down, if you and tell me the category with respect to each.

MS. THOMPSON: So am I reading the category or documents?

MR. RHEINSTEIN: Tell me which category.

THE COURT: I just need the names of the document.

MR. RHEINSTEIN: Whatever is easiest.

THE COURT: If you prefer to tell the categories you may, however, you want to present it. I need the list of what the documents are to find out whether or not they comply with the Rule or something was not turned over should not be considered confidential or can be considered exculpatory.

MS. THOMPSON: The first one is an internal memorandum called the docket sheet, that includes—

THE COURT: Internal memorandum, involving who?

MS. THOMPSON: This is starting with Ms. Martin's complaint to the Office of Bar Counsel. There are two complaints subject in the PDL Mr. Okeke and Ms. Martin. I'm going to start with Ms. Martin's complaint.

THE COURT: Okay.

MS. THOMPSON: This relates to, so once a case is docketed formally there is an internal memorandum put in the file that includes the assistant bar counsel's work product. That was withheld based on work product privilege. The next is a—

THE COURT: Yes.

MR. RHEINSTEIN: I guess, can I argue as to that or no because—

THE COURT: Not at this point. She is going to list the documents we need to get the list out.

MR. RHEINSTEIN: Got it. Go ahead.

THE COURT: Let's stop. There is nothing else we can do. Type it up give, it to him. It doesn't make sense to try to do anything else. He is going to try to write it down. He still has to respond. It makes sense to type it up, give it to him today. And get it to him by 6:00 today.

MS. THOMPSON: I will head right back to the office and do it.

THE COURT: Okay. And then is anyone available tomorrow, briefly, just for this, for me to make a

ruling on this, so that we can start the trial on—what is the next date, the 16th?

MR. UCHEOMUMU: Yes, Your Honor.

THE COURT: Is everyone available tomorrow?

MS. THOMPSON: If I can have one second to check my calendar.

THE COURT: I recall somebody had something, which is why we couldn't make this the second day but perhaps very briefly for an hour.

MS. THOMPSON: I'm free, Your Honor.

THE COURT: Okay, in the morning?

MS. THOMPSON: Yes.

THE COURT: I have—what did I do with the docket you gave me. I would say 11:00.

MS. THOMPSON: That's fine with me, Your Honor.

MR. UCHEOMUMU: Okay.

That's fine, Your Honor.

[. . .]

THE COURT: 7:30. She is going to give you the documents by 7:30. Please provide your email address to her.

MR. RHEINSTEIN: She has that information.

THE COURT: Give it to her to make sure so there is no issue about you not receiving it or her not sending it. And you will come back tomorrow for that limited purpose about those documents and to as to whether or not she has complied now with the Rule.

All right. Anything else before we end for the day?

MS. THOMPSON: Not from us, Your Honor.

MR. RHEINSTEIN: No, Your Honor.

THE COURT: Thank you. So everyone will need to take their things, because I have the other matter and they are going to have a lot of documents as well. So you can't leave your things.

(Court stood in recess.)
(The proceedings concluded at 3:56 p.m.)

DIRECT TESTIMONY OF SHANNAN MARTIN
RELEVANT TRANSCRIPT EXCERPTS
(JANUARY 10, 2018)

IN THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY, MARYLAND

ATTORNEY GRIEVANCE
COMMISSION OF MARYLAND,

Petitioner,

v.

ANDREW N. UCHEOMUMU,

Respondent.

Case No.: CAE17-07944

Misc. Docket AG No. 0058

Before: The Honorable Tiffany Hanna ANDERSON,
Associate Judge

[January 10, 2018 Transcript, p. 2-177]

BY MS. THOMPSON:

Q. Ms. Martin, during that period of time, November 2014 through February of 2015, about how many conversations did you have with Mr. Ucheomumu by way of either phone, e-mail, text, or any other method?

A. Maybe 50.

Q. 5-0?

A. Yes.

Are you saying from November to February—

Q. February of 2015?

A. I think that is reasonable to say about 50, but I'm not certain of the exact amount.

Q. At any point during that period of time, did Mr. Ucheomumu instruct you to order the transcripts of the underlying proceedings?

A. No, he did not.

Q. At that point during that period, did Mr. Ucheomumu request any additional funds to order the transcripts?

A. No, he did not.

Q. At any point during that period, did Mr. Ucheomumu provide you an estimate for the cost of the transcripts?

A. No, he did not.

Q. Okay. Can you elaborate on that?

A. Yes. Mr. Ucheomumu communicated with me, I believe, it was in a phone conversation. I don't recall which month, but he said that—he asked me, he said, "How many trial dates were there?" And I could not confirm whether there were two or—two or three exactly. But I do recall mentioning to him that I believed that the transcript was ordered already by my prior attorney. He could probably confirm that with him. He would definitely—he would definitely know. He was my attorney.

But he never—Mr. Ucheomumu never said that he didn't, like, move forward and order what he knew to be available, because I did mention it was two or three. He never mentioned to me that he was going to go ahead and order at least two and get started on that and try to find out whether there—he never told me that he had actually gotten them.

I was under the impression that he was going to get at least the two, if it—if I mentioned to him that two—there were at least two dates. So I was under the impression that he was going to work with what he had with Ayo or get it ordered. He never told me anything outside of that.

Q. Did Mr. Ucheomumu ever ask you to, quote, deposit money to order the transcripts?

A. No, he did not. As a matter of fact, I asked him on a couple of different occasions, "What's going on with the transcript? What's going on with the transcript? What's going on with the transcript? And what's going on with my case? What's going on with my appeal?"

He never said, not once, that he was waiting on me to do anything in regard to any transcripts.

[. . .]

Q. When you paid Mr. Ucheomumu in November and December of 2014, did he explain to you for what purpose he would use those funds?

A. To handle my appeal. That's what I was informed. That was my understanding.

Q. So Mr. Ucheomumu's claim that the funds you paid were specifically for the legal services? Did he ever tell you that?

A. His legal services that I hired him for was to write the appeal, yes. I paid him to get the appeal done, yes. Whatever it took to get the appeal done, that's what it was for.

Q. Okay. Understood.

[. . .]

CROSS EXAMINATION OF SHANNAN MARTIN, RELEVANT TRANSCRIPT EXCERPTS (JANUARY 16, 2018)

IN THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY, MARYLAND

ATTORNEY GRIEVANCE
COMMISSION OF MARYLAND,

Petitioner,

v.

ANDREW N. UCHEOMUMU,

Respondent.

Case No.: CAE17-07944

Misc. Docket AG No. 0058

Before: The Honorable Tiffany Hanna ANDERSON,
Associate Judge

[January 16, 2018 Transcript p. II-63]

BY MR. UCHEOMUMU:

Q. You were asked in that email, in that question, if you paid $110 fee. Was there any mention of transcript fee by the Court or Mr. Ocheomumu?

A. Was there any mention of—I'm sorry. I don't understand the question.

Q. It's on your Exhibit 1.

THE COURT: She said she doesn't understand the question. What is the question, Mr. Ucheomumu?

BY MR. UCHEOMUMU:

Q. Did you *see* that question?

A. Number 4.

Q. It is Number 3, on Exhibit 1.

THE COURT: Number 3, if you paid the $110 filing fee, was there any mention of the transcript fee by the Court or Mr. Ocheomumu; is that the question you are referencing, Mr. Ucheomumu?

MR. UCHEOMUMU: Correct.

THE COURT: Ma'am, answer the question.

THE WITNESS: Okay. What is your question about this?

BY MR. UCHEOMUMU:

Q. What was your answer?

A. I believe that I told her that I did pay the $110 filing fee that handles that. Was there a mention of transcript fees by the Court or Mr. Ocheomumu, I probably said, no.

BY MR. UCHEOMUMU:

Q. Can you read this text message?

A. December 8th?

Q. Yes.

A. Yes. It says, Shannan, how is your funding coming? I need to order the transcript ASAP without any further delay.

Q. Correct.

THE COURT: Which exhibit number, I'm sorry, is that?

MR. UCHEOMUMU: Exhibit Number 5.

THE COURT: Plaintiff's.

MR. UCHEOMUMU: Respondent's, Your Honor.

BY MR. UCHEOMUMU:

Q. Did you pay when I sent you this? Did you write any check and say for transcript deposit, ever?

A. Transcript deposit?

Q. Right.

A. No. I put for legal fees, that's what it was for.

BY MR. UCHEOMUMU:

Q. Back to the transcript, isn't it true that you knew that Ayo has two of the transcripts already with him, Ayo Stevens, your previous counsel?

A. I did think that Ayo did have that transcript.

Q. Did you communicate that to me in any way, shape or form?

A. You are the attorney. You told me that you were going to get my documents related to my case from Ayo Stevens. He is across the street. And I asked you about it. I asked you about it. And please, repeatedly, I'm going to try to get those documents from him. I'm going to try to get everything it was referred to as documents. Now, my understanding that it was any and all case documents, records related to my case you wouldn't just go there and get documents you would get everything.

Q. Do you *see* those questions? Is that an email from you to JaCinda Stanton to you?

A. That's what it appears to be.

Q. Did you *see* it?

A. I probably did.

Q. Did you answer those questions?

THE COURT: I'm sorry. Maybe I have the wrong something in here for 11. I have file copy from the Court of Special Appeals for number 11.

MR. UCHEOMUMU: No, that's Petitioner's.

THE COURT: I'm sorry. Okay. Go ahead. I see.

BY MR. UCHEOMUMU:

Q. Did you answer any of those questions?

A. I probably did, if she asked me to.

Q. So were you provided an answer?

MS. THOMPSON: Objection.

BY MR. UCHEOMUMU:

Q. Do you have the answer to that?

A. I didn't understand your question.

MS. THOMPSON: Mr. Ocheomumu, looked at me and said we were never provided the answer. How would Ms. Martin know what bar counsel provided to Mr. Ucheomumu.

THE COURT: She wouldn't. It's sustain.

BY MR. UCHEOMUMU:

Q. You gave the answer to bar counsel, correct?

A. If someone from bar counsel asked me for questions I tried my best to write it up and provide it to them, yes.

MR. UCHEOMUMU: Thank you. I move Exhibit 11 into evidence.

THE COURT: As I said, it's already in evidence.

MR. UCHEOMUMU: I'm sorry.

THE COURT: That's why I was telling you ahead of time, you could question her but it was already in evidence.

MR. UCHEOMUMU: Did we move in Exhibit 13?

THE COURT: Thirteen and 14 are already in evidence?

MR. UCHEOMUMU: Okay.

EMAIL FROM MR. STEVENS TO MS. MARTIN DEMANDING PAYMENT OF BILL (NOVEMBER 11, 2014)

From: <ayo@gostevenslaw.com>

Date: Tue, Nov 11, 2014 at 10:08 AM

Subject: status of case

To: Shannan Martin <shannan1@gmail.com>

Cc: Linda Thomas <linda@gostevenslaw.com>

Shannan,

It has come to my attention that on November 3, 2014, you filed a Notice of Appeal, pro se.

As you know, I had previously filed a Motion to Alter or Amend Judge Woodard's Judgment on your behalf. As I have previously informed you on more than one occasion, you had 30 days from the date of entry of Judge Woodard's disposition of your Motion to Alter or Amend to note your appeal. Your unilateral action of prematurely noting your appeal has divested the Circuit Court of jurisdiction in this matter. In other words, your pro se filing has rendered the Motion to Alter or Amend moot. Judge Woodard cannot rule on the motion.

It has also come to my attention that you may have retained counsel to handle the appeal. If this is true, in light of the fact that you have not satisfied my bill, I can only assume that you used my money in part to retain your new counsel. In addition, it may be that under Maryland Rule I remain your attorney of record with the Court of Special Appeals, You may want to discuss that issue with your new counsel.

Finally, I am hereby requesting that you remit payment to satisfy my outstanding bill in full on or before Friday, November 14, 2014. In the event you fail to do so, please know that I am 100% committed to collecting my fees, interest and any applicable attorney's fees I incur in doing so.

Ayo M. Stevens, Esquire
Law Offices of Ayo M. Stevens, LLC
5407 Water Street, Suite 105 Upper
Marlboro, Maryland 20772
(301) 952-8383
(301) 952-1222 facsimile
ayo@gostevenslaw.com

LETTER FROM MR. UCHEOMUMU TO MR. STEVENS REQUESTING A COPY OF THE RECORD (NOVEMBER 4, 2014)

THE UCHEOMUMU LAW GROUP LLC
Reply to:
4938 Hampden Lane, #133
Bethesda, MD 20814
5425 Wisconsin Avenue, Suite 600,
Chevy Chase, MD 20815
Phone: +301-633-0079
Fax: +301-830-6094

November 4, 2014

Mr. Ayo M. Stevens, Esq.
Law Offices pf Ayo M. Stevens, LLC
5407 Water St. #105
Upper Marlboro, MD 20772

Re: *McBride v. Martin*, CAP 09-00919

Dear Mr. Stevens:

This office has been retained by Ms. Shannan Martin to handle her appeal on this matter. I also noticed that you filed a motion to withdraw but I did not see where it was granted or denied by the Circuit Court; thus I was not sure if you are still on the case. Nevertheless, our relationship with Ms. Martin at this point is limited to handling the appeal only.

Hence, I will highly appreciate it if you will be kind enough to send me a copy of the client's file as soon as possible; time being of the essence. Thank you Counsel for your immediate attention to this matter.

If you have any question, please feel free to contact me.

Very truly yours,

/s/ Andrew Ndubisi Ucheomumu (Mazi), Esq., LL.M.

MEMORANDUM FROM BAR INVESTIGATOR RICHARD D. LISKO (JULY 15, 2015)

MEMORANDUM

July 15, 2015

TO: JaCina N. Stanton, Assistant Bar Counsel

FROM: Richard D. Lisko, Investigator

RE: BC Docket No. 2015-0802
Shannan Martin/Andrew Ndubisi Ucheomumu, Esquire

On July 14, 2014 Investigator Richard Lisko spoke to Jennifer Anukem, Esquire, by telephone (202-250-9296) regarding this complaint. Ms. Anukem was hired by the Complainant to appeal a child custody case that was first handled by the Respondent. The Complainant was referred to Ms. Anukem by another client from a divorce case.

Ms. Anukem said that she was retained by the Complainant in late March 2015 to file an appeal to a child custody order. The Respondent had previously been retained by the Complainant for this purpose. At the time that she was retained, the Complainant's appeal had already been dismissed by the Court of Special Appeals for a lack of required transcripts. Since that time she has obtained transcripts of the previous hearings and submitted them to the appropriate court. She has also filed a Writ of Certiorari in the Court of Appeals to review the decision of the Court of Special Appeals entered on March 25, 2015. A decision on that filing has not been rendered as of this date.

Ms. Anukem said that the dismissal of the Complainant's appeal has severely limited the Complainant's options in this matter. If the Court of Appeals does not grant the pending request by the Complainant, her only other option is to seek a modification of the current child custody agreement. Ms. Anukem indicated that effort would be difficult with an uncertain outcome.

When asked about the Respondent's handling of the Complainant's case, Ms. Anukem replied that she thought the Respondent's handling of Complainant's funds was unusual. She explained that it is the duty of an attorney to advance a case first without regard to payment. She said that in this case, the Respondent paid himself before ensuring that the case was being properly advanced. In this case, the Respondent knew that the appeal could not be heard without transcripts from the previous hearings.

Further, the Respondent had a family matter occur during the course of this case which caused him to be out of town for some time. This further delayed the process of obtaining transcripts.

She also said that when she reviewed the Respondent's billing statement provided by the Complainant, she noticed that at the time that the transcripts were needed, the Respondent had not spent down the Complainant's retainer and sufficient funds were available to pay for them. However, she said the billing statement expenses appeared legitimate and the Respondent actually performed the work. Therefore he likely believed that he earned his fee. However, this action did not leave any available funds for the transcripts.

Ms Anukem said that it also appears the Respondent maintained constant communication with the Complainant and opposing counsel. However, she also added that, in her opinion, the Respondent did not act as a fiduciary for the Complainant.

FORMER BAR COUNSEL AND ASSISTANT BAR COUNSEL'S MOTION TO QUASH AND PROTECTIVE ORDER, RELEVANT EXCERPT (SEPTEMBER 19, 2017)

IN THE COURT OF APPEALS
OF MARYLAND

ATTORNEY GRIEVANCE
COMMISSION OF MARYLAND,

Petitioner,

v.

ANDREW NDUBISI UCHEOMUMU,

Respondent.

September Term, 2016

Misc. Docket AG No. 58

Circuit Court for Prince George's County

No. CAE17-07944

[. . .]

9. Here, Mr. Ucheomumu can use interrogatories, requests for documents, and requests for admissions to identify all facts supporting a charge in the petition, test legal contentions, obtain documents, and ascertain "the truth of any relevant matters of fact set forth in

the request [for admissions]."[1] Md. Rules 2-412, 2-424. Likewise, he can depose the actual fact witnesses in the case, including the person who filed the complaint against him.

[. . .]

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[1] The Office of Bar Counsel routinely provides a Respondent with: 1) all correspondence to/from any third party; 2) if an assigned investigator conducts interviews, the investigator's report of the interviews; 3) if an assigned investigator conducts an analysis of the Respondent's bank records, that analysis is provided; and 4) documents gathered during the investigation (e.g., court records, transcripts, bank records, etc.).

[. . .]

PROPOSED RULE 18-433, EXCERPT FROM THE 199TH REPORT OF THE RULES COMMITTEE OF THE COURT OF APPEALS OF MARYLAND

DIVISION 5. FILING OF CHARGES; PROCEEDINGS BEFORE COMMISSION
Rules 18-431 Through 18-438

Rule 18-433 (Discovery)

This Rule is new but is derived, in part, from current Rule 18-407 and incorporates changes included in the Committee's 191st Report. There are several new changes. Subsection (a)(3) confirms a ruling in *White* that Investigative Counsel has an obligation to respond to discovery requests from the judge but places a reciprocal obligation on the judge as well. Subsection (a)(4) imposes a continuing duty on the parties to supplement disclosable information. Subsection (a)(5) is new and is taken from ABA Model Rule 22. It requires the Commission to preclude a party from calling a witness, other than a rebuttal witness, or otherwise presenting evidence upon findings that (1) the witness or evidence was subject to disclosure, (2) the party failed to disclose the witness or evidence in a timely manner, and (3) that failure was prejudicial to the other party.

Also new is section (c), which is an overarching Brady-type requirement that Investigative Counsel disclose all evidence of which he or she is aware that (1) directly negates any allegation in the charges, (2) would be admissible to impeach a witness intended to be called by Investigative Counsel, or (3) would be

admissible to mitigate a permissible sanction. Section (c) was derived from ABA Model Rule 22 and comparable Rules in Arizona, Delaware, and Minnesota. The Committee believes it is an important assurance of basic fairness.

MARYLAND RULES OF PROCEDURE
TITLE 18 - JUDGES AND JUDICIAL APPOINTEES
CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE
Division 5. Filing of Charges; Proceedings Before Commission

Rule 18-433. Discovery

(a) Generally

(1) Except as otherwise provided in this Rule, discovery is governed by the relevant Rules in Title 2, Chapter 400.

(2) The Chair of the Commission, rather than a court, may limit the scope of discovery, enter protective orders permitted by Rule 2-403, and resolve other discovery issues.

Cross reference: For the issuance of subpoenas pertaining to discovery proceedings, see Rule 18-409.1 (b).

(3) Investigative Counsel and the judge have the obligation to respond to the other's discovery requests addressed to them.

(4) Investigative Counsel, the Commission, and the judge have a continuing duty to supplement information required to be disclosed under this Rule.

(5) The Commission shall preclude a party from calling a witness, other than a rebuttal witness, or otherwise presenting evidence upon a finding, after the opportunity for a hearing if one is requested, that

(1) the witness or evidence was subject to disclosure under this Rule, (2) the party, without substantial justification, failed to disclose the witness or evidence in a timely manner, and (3) failure was prejudicial to the other party. For purposes of this Rule, the parties are Investigative Counsel and the judge against whom charges have been filed.

(b) Open File

Upon request by the judge or the judge's attorney, at any time after service of charges upon the judge (1) the Executive Secretary of the Commission shall allow the judge or attorney to inspect and copy the entire Commission record,(2) Investigative Counsel shall (A) allow the judge or attorney to inspect and copy all evidence accumulated during the investigation and all statements as defined in Rule 2-402 (f), (B) provide summaries or reports of all oral statements for which contemporaneously recorded substantially verbatim recitals do not exist, and (C) certify to the judge in writing that, except for material that constitutes attorney work product or that is subject to a lawful privilege or protective order issued by the Commission, the material disclosed constitutes the complete record of Investigative Counsel as of the date of inspection.

(c) Exculpatory Evidence

Whether as part of the disclosures pursuant to section (b) of this Rule or otherwise, no later than 30 days prior to the scheduled hearing, Investigative Counsel shall disclose to the judge all statements or other evidence of which Investigative Counsel is aware that (1) directly negates any allegation in the charges, (2) would be admissible to impeach a witness intended

to be called by Investigative Counsel, or (3) would be admissible to mitigate a permissible sanction.

(d) Witnesses

No later than 30 days prior to the scheduled hearing, Investigative Counsel shall provide to the judge the names and addresses of all persons, other than a rebuttal witness, Investigative Counsel intends to call at the hearing. No later than 25 days prior to the scheduled hearing, the judge shall provide to Investigative Counsel the names and addresses of all persons, other than a rebuttal witness, the judge intends to call at the hearing.

Source: This Rule is in part derived from former Rule 18-407 (g) (2018) and is in part new.

CERTIFICATE OF WORD COUNT

No. TBD

Andrew Ndubisi Ucheomumu,

Petitioner(s),

v.

Attorney Grievance Comm. of Maryland,

Respondent(s).

STATE OF MASSACHUSETTS)
COUNTY OF NORFOLK) SS.:

Being duly sworn, I depose and say:

1. That I am over the age of 18 years and am not a party to this action. I am an employee of the Supreme Court Press, the preparer of the document, with mailing address at 1089 Commonwealth Avenue, Suite 283, Boston, MA 02215.

2. That, as required by Supreme Court Rule 33.1(h), I certify that the ANDREW UCHEOMUMU PETITION FOR WRIT OF CERTIORARI contains 7796 words, including the parts of the brief that are required or exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

April 18, 2019

SCP Tracking: Ucheomumu-145 Fleet Street, Suite 324-Cover White

CERTIFICATE OF SERVICE

No. TBD

Andrew Ndubisi Ucheomumu

Petitioner(s)

v.

Attorney Grievance Comm. of Maryland

Respondent(s)

STATE OF MASSACHUSETTS)
COUNTY OF NORFOLK) SS.:

Being duly sworn, I depose and say under penalty of perjury:

1. That I am over the age of 18 years and am not a party to this action. I am an employee of the Supreme Court Press, the preparer of the document, with mailing address at 1089 Commonwealth Avenue, Suite 283, Boston, MA 02215.

2. On the undersigned date, I served the parties in the above captioned matter with the ANDREW UCHEOMUMU PETITION FOR WRIT OF CERTIORARI, by mailing three (3) true and correct copies of the same by USPS Priority mail, postage prepaid for delivery to the following addresses:

Jennifer L. Thompson
Assistant Bar Counsel
Maryland Atty Grievance Commission
200 Harry S. Truman Parkway, Suite 300
Annapolis, MD 21401
(410) 514-7051
Counsel for Respondent

April 18, 2019

SCP Tracking: Ucheomumu-145 Fleet Street, Suite 324-Cover White