IN THE COURT OF APPEALS FOR MARYLAND

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND

v.

ALLEN RAY DYER, et al.

MIS. AG NO. 36

September Term 2015

ORAL ARGUMENT HEARING

Thursday, January 6, 2017

BEFORE:

THE HONORABLE MARY ELLEN BARBERA, CHIEF JUDGE
THE HONORABLE CLAYTON GREENE, JR.
THE HONORABLE SALLY D. ADKINS
THE HONORABLE ROBERT N. MCDONALD
THE HONORABLE SHIRLEY M. WATTS
THE HONORABLE MICHELE D. HOTTEN
THE HONORABLE JOSEPH M. GETTY

APPEARANCES:

For the Petitioner:

LYDIA E. LAWLESS, ESQ.
JENNIFER L. THOMPSON, ESQ.
GLENN GROSSMAN, ESQ.

For the Respondent:

ALLEN RAY DYER, ESQ.
SUSAN BAKER GRAY, ESQ.

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C O N T E N T S

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P R O C E E D I N G S

CHIEF JUDGE: I suppose so. All right, very good then, Ms. Lawless.

MS. LAWLESS: Good morning. May it please the Court, Lydia Lawless, assistant Bar counsel on behalf of the Petitioner, Attorney Grievance Commission.

On every day, in every --

CHIEF JUDGE: (Indiscernible).

MS. LAWLESS: Okay, thank you, Your Honor. On every day in every Court in every case in this entire State, Judges make rulings that attorneys disagree with. What attorneys are permitted to do in the face of those adverse rulings are constrained. They're constrained by the procedural and substantive law of this State and they're constrained by the Rules of Professional Conduct.

The undisputed facts of this case are contained in the records of the Circuit Court for Howard County, the Court of Special Appeals of Maryland, this Court, and Bar Council's investigative proceeding. The entirety of those records were admitted into evidence in the disciplinary proceeding and are available for this Court's review.

A review of those undisputed facts, which are the meat and the substance of this disciplinary case compel a conclusion. They compel a conclusion that the Respondents did not constrain their conduct, that the Respondents acted

outside of the rules, both procedural and substantive, and the Rules of Professional Conduct. The Respondents consistently through the underlying proceedings in the Circuit Court and the Appellate Courts, as well as during the disciplinary proceeding, argued that somehow they were not constrained because they were bound or called by a higher purpose or a higher order, that they were somehow defending the constitutional rights of their clients, and therefore did not have to follow the rules that all other practitioners in this State are bound.

Unfortunately, Judge Silkworth agreed with that reasoning and agreed with that argument. That argument, that reasoning, that analysis is flawed. For this Court to adopt that analysis, it would undermine the rule of law in this State, and it would gut the Maryland Lawyers' Rules of Professional Conduct. Simply put, the Respondents were not justified in believing that the rules did not apply to them. Simply put, the Respondents were not justified in disobeying the rules of this State and the rules that govern attorneys' license to practice in this State.

I'd like to talk about that general proposition as it relates to four specific areas that are outlined in Petitioner's exceptions filed in this case.

The first relates to the Respondents' appellate filings, both in the Court of Special Appeals and in this

Court. The second category relates to the Respondents' conduct in the discovery-related matters and the underlying Circuit Court case. The third category relates to the Respondents' conduct regarding the judiciary. And the fourth is the Respondents' conduct during Bar Council's investigation.

Starting with the first category, the appellate filings. The heart of these exceptions focus on the argument that the Respondents' filings in the Court of Special Appeals and the associated filings in this Court were frivolous and in violation of Rule 3.1 of the Maryland Lawyers' Rules of Professional Conduct. That rule prohibits a lawyer from bringing a proceeding or controverting an issue therein unless there is a basis for doing so that is not frivolous.

An action is frivolous, and if an attorney is unable either to make a good faith argument on the merits or the action taken -- of the action taken or is not supported by an argument for an extension, modification, or reversal of existing law. The Petitioner has argued that all of the appellate filings in these underlying cases that resulted from the Circuit Court litigation on the referendum matter, save for the one appeal on the merits of the declaratory -- or of the judicial review matters, were frivolous.

Why were they frivolous? Quite simply, they were

not permitted by the procedural laws of this State. Each and every filing was dismissed. Each and every appeal noted was dismissed. Each every petition for writ of certiorari was dismissed by this Court. The reason that each was dismissed is because they were not permitted by the procedural rules of this State.

Now, dismissal of an appeal or denial of a writ filed in this Court is not on its face a violation of the Rules of Professional Conduct. But when these individual appellate filings are reviewed, the evidence is so clear. The evidence is so compelling that they were not undergirded by any law and there was no argument for a change, modification, or extension of existing law.

And in evaluating these appellate filings, I'd ask the Court to consider the statements that were made by the judiciary. And one may ask, and indeed throughout this proceeding I've asked myself, why would they do this? Why? If they were attempting to advance their clients' interest in getting this case resolved before the election in November of 2014, why would they file seven rounds of appeals or six rounds of appeals? Why?

And if you take -- if you consider the statements that were consistently made about the Circuit Court for Howard County and the Clerk of that Court, the answer is clear. The Respondents believed that their clients could

not get a fair hearing in the Circuit Court for Howard County. They believed that the Trial Court was corrupt. They believed that the Circuit Court was motivated by some bias or improper purpose. They believed that the Circuit Court Judges were working in concert and in cahoots with the Board of Elections and their opponents, the Normandy (ph) parties.

And when that gloss is put on a review of the appellate filings, it makes sense. Over and over and over again, the Respondents inappropriately attempted to rest jurisdiction from the Circuit Court to get this Court, in particular, not necessarily the Court of Special Appeals, this Court to review the judicial review matters in the first instance. That is not permitted. It is not permitted by the procedural rules of our State.

And to allow for some explanation to say, well, they truly and sincerely believed it, in essence applying a subjective standard to the determination of whether or not a filing is meritorious, is incorrect. It would gut Rule 3.1. If an attorney could file whatever they wanted to file and say, well, I believe it to be true. I believe that I have a reason to file this. I believe that my purpose is for the betterment of the people of Howard County, it's not a justification. And it doesn't excuse a complete disregard for following the rules as established in this State.

Notably, Judge Silkworth does not provide any legal analysis or explanation for how the dismissal of any of the underlying appellate cases was wrong, erroneous, in error. He notes that they happened, because they happened. It's undisputed facts in the record below, but does not provide any alternative explanation to say that the dismissals were somehow inappropriate or improper, or that the claims were meritorious. He simply says they had a good faith basis to believe this. They were pursuing the interest of their client. And therefore, it does not run afoul of the law. Again, that analysis is flawed.

Petitioner has argued in exceptions number four through eight the specific facts related to each of the rounds of appellate appeals or appellate filings. They're called rounds because in each instance there was a notice of appeal to the Court of Special Appeals and then a contemporaneous petition to this Court. I'm happy to talk about the facts of any of the sort of the -- get into the facts of any of those underlying cases, but the specific facts, I think, require specific review individually of the pleadings.

The second category of conduct I'd like to address is the Respondents' conduct as it relates to the discovery in the Circuit Court for Howard County. This Court, in Attorney Grievance Commission vs. Kerpelman, the 1980 case

at 228 MD 341, stated, "If people are permitted to pick and choose which orders of Court they propose to obey, our legal system will soon disintegrate and our government of laws will be replaced by anarchy." That is this case. That is this case.

Again, the justification for disobeying and advising and counseling their clients to disobey valid Court orders appears to be a subjective basis that the Respondents had that they didn't believe that that order was valid. And therefore, they were justified in disobeying the order themselves on the part of Ms. Gray in advising and counseling their clients to disobey those Court orders.

I'd ask the Court to pay specific attention to the exceptions. And these exceptions related to the discovery issues are contained in Petitioner's Exception No. 9, which begin at page 23 of the exceptions filed. Again, the facts related to the discovery issue are not in dispute.

Beginning at page 24, on April 30th, 2014, the Respondents filed a motion to quash subpoenas and motion for protective order for notices of deposition that had been issued to their clients and one non-party petition circulator. On May 30th, 2014, on the next page, paragraph 8, the Normandy parties filed an opposition motion to compel discovery.

Turning to the next page, on page 26, paragraph 9,

On June 17th, the parties appeared before Judge Tisdale in the Circuit Court for Howard County, and a full hearing was held on the discovery issues. The Respondents allege that requiring their clients to appear for a deposition would violate their constitutional rights. And the Normandy parties made arguments for why discovery was proper and just and why it was appropriate under the facts and circumstances of this case.

Following that hearing, Judge Tisdale entered an order, at page 27, paragraph 11. The order granted Normandy's motion to compel and directed that the parties appear at duly-noted depositions on ten days notice. Mr. Irskine (ph), on behalf of the Normandy parties, made substantial efforts to attempt to schedule those depositions with the consent of the Respondents.

The Respondents did not assert that they were not appearing for the deposition. They did not advise at that time that they were not appearing for a deposition. They simply didn't respond. Eventually, those depositions were noted without the consent of the Respondents as to the scheduling or the Respondents' claims.

Looking at page 29, paragraph 14, between June 23rd and June 26th, the Normandy parties caused to be served subpoenas to the four individual parties and about 30 non-party petition circulators.

THE COURT: Did Judge Tisdale have opportunity to hold them in contempt?

MS. LAWLESS: Well, eventually, the procedural posture of this case, Your Honor, was that eventually motions for sanctions were filed against the parties for failure to appear at the duly-noted depositions and motions for body (ph) attachments were requested for the non-party witnesses. And by the time that hearing came before Judge Tisdale was the August 17 hearing, if I believe correctly. This Court had already denied the petition for cert on the merits of the case. So the discovery issue was mooted. And so, as a result, at that --

THE COURT: But would a contempt proceeding have been mooted?

MS. LAWLESS: A contempt proceeding for the parties' failure to appear at the deposition?

THE COURT: Yes.

MS. LAWLESS: Well, there was no longer a request for -- so, I mean, Normandy withdrew any request for any sanctions, whether it be sanctions, monetary sanctions or contempt. They never pursued contempt. What they pursued were monetary sanctions and motions -- and then motions for body attachment against the non-party witnesses.

And I'm not sure if I'm sort of talking -- we're talking in different lanes here. But I think that the

argument that could have been made is that the Respondents were attempting to set this up as some sort of test case to test this issue of whether or not there's some sort of First Amendment constitutional protection for petition circulators under these specific facts of this specific case. But they didn't do it. They didn't file what was appropriate to be filed.

You know, if they wanted to do that, --

THE COURT: Which was a motion to what? Narrow the discovery?

MS. LAWLESS: They never filed a motion to narrow the discovery, ever. And they never filed a motion for protective order on behalf of anyone as it relates to the June subpoenas. And this is a very important distinction for this case, because there were two rounds of subpoenas issued.

The first rounds of subpoenas were issued in April. Those were withdrawn. And then there were the cross motion discovery motions. Out of that hearing with the June 17th order of Judge Tisdale saying the parties need to appear, new subpoenas were issued for depositions at the beginning of July of 2014.

The Respondents never filed a single motion in the Circuit Court on behalf of either the parties or the non-parties as it relates to those July depositions. What they

filed was --

THE COURT: But they --

MS. LAWLESS: -- an impermissible interlocutory discovery appeal.

THE COURT: So they did file -- they did request protection under First Amendment at some point?

MS. LAWLESS: Yes.

THE COURT: Regarding discovery generally, right?

MS. LAWLESS: For the parties and for one witness.

THE COURT: Okay. But you're saying they didn't do it the July?

MS. LAWLESS: Correct.

THE COURT: Okay. And had the judge already ruled on the -- on the challenge on First Amendment grounds? Is that what you're saying?

MS. LAWLESS: Yes.

THE COURT: Had already denied it?

MS. LAWLESS: As to the four parties and the one non-party, not for the other approximately 29 witnesses that had been subpoenaed. They had never entered an appearance. They had never filed a single paper. They went directly to the Board of Special Appeals and to this Court.

And so -- and this is what I think part of the problem with this case is is that the case is so procedurally defective that you never get to the merits.

You never get to hear -- the Respondents were so incompetent and so procedurally deficient that they never could vindicate their clients' interests in having these, quote, unquote, "constitutional" issues resolved, because they disregarded the procedural rules and requirements of the Court.

And so, to answer your question what could they have done, what could they have done -- they could have filed a motion for reconsideration. Does this mean my original time -- I'm used to the lights (indiscernible).

THE COURT: We are eating into your rebuttal.

MS. LAWLESS: Okay. They could have filed a motion for reconsideration. They could have filed a motion for protective order for the other witnesses. They could have filed a timely motion to stay if they were going to file an interlocutory appeal for the non-parties on a discovery issue. They didn't do any of those things. They didn't do any of those things.

And what Judge Silkworth basically said was they believed these things to be true. And therefore, all actions they took were justified. And that is just not the way our judicial system can operate. And it is certainly not the way attorneys should be permitted to operate.

I'd like to save the remainder of my time for rebuttal. Before I sit down, if I can just make two quick

corrections to the exceptions that were filed. And they both relate to Petitioner's Exception No. 8, which begins at page 16.

On page 17, the Respondents pointed out in their exceptions -- and I'm looking at the indented paragraph -- right before the indented paragraph where it says, "Judge Tisdale stated." That last sentence where it says, "They argued that their clients wanted to litigate the matter further and that the Court can always order a special election."

This was inappropriately attributed as a finding of Judge Silkworth. This was -- this is language from the proposed findings of fact and conclusions of law that were filed --

THE COURT: I'm sorry. You're on page 17?

MS. LAWLESS: On page 17.

THE COURT: Yeah, okay.

MS. LAWLESS: And the other thing I'd just like to correct is a typographical error in that same exception on page 23 beginning -- the sentence that begins on page 22, "The undisputed fact," the very last sentence, "The undisputed facts support a finding that the Respondents' filing," -- it says in the fifth round of appeals. It should say in the final round of appeals, as it relates to the heading and the substance.

THE COURT: Okay. And when you get back -- when you return for the remaining time, I would like you to address, Counsel, the effect of the findings that Judge Silkworth did not make or did not include in his findings and recognized conclusions of law.

MS. LAWLESS: Yes, Your Honor.

THE COURT: Conclusions of law.

CHIEF JUDGE: All right. Thank you.

And next, we have Ms. Gray.

You're up first. Good morning.

MS. GRAY: Good morning. May it please the Court. I'm Susan Gray. These are my clients. These are Mr. Dyer's clients. These are the people whose First Amendment rights were on the line, and it's extremely distressing to be here, for a number of reasons.

But probably one of the most is what I just heard in this interchange with bar counsel. And that is we never filed a protective order on the behalf of our clients for the second round of appeals. Ms. Lawless knows that's a flat out lie.

We went through this with Judge Silkworth in 16 days of trial. There is a July 2nd motion for protective order for our clients. The title is a motion to stay. But within the body of that motion in the first paragraph is a request for a protective order to stay discovery for the

petition circulators, for the parties and the non-parties.

Under Maryland law, it is the request for relief that controls. If you don't have something in your -- the top of your motion in its label, it doesn't matter. It's the request for relief.

We spent six days of a phenomenally good judge's time going back and forth and cross-examining Mr. Irskine for six days. And if you go back through the binders we gave you, you will find -- and Judge Silkworth was exactly correctly. There is no credibility into the allegations that were made.

You will find, going back and forth on this July 2nd protective order, Judge Silkworth saying, "Ms. Lawless, isn't this a protective order? What is this from July 2nd? It may be characterized as a stay. But isn't this a protective order?" But now, she's arguing to this Court that it's not.

Your Honor, let's step back for a second. This was an incredibly politically charged case. This was a case dealing with the First Amendment rights of our clients, rights that Ms. Lawless called a red herring. The First Amendment a red herring?

Judge Silkworth was an amazing jurist. At the beginning of the trial, he said point blank to all of us you produce your evidence. The underlying facts are not -- or

the underlying testimony and documents don't go to the truth of the matter asserted. I am looking at all of this.

He gave Ms. Lawless the opportunity to produce her facts, and throughout this, she could produce nothing. She alleged that everything we did, everything we did was a problem, presumably including representing the people in the back of this courtroom. We went through all of the pieces of evidence.

We had the opportunity to cross-examine Mr. Irskine. And if you go back and you take that book of the transcript, the first six days, you can open it and it doesn't matter where you open it. Within probably ten lines, you will find Mr. Irskine changing his story, flip-flopping from what Ms. Lawless led him to say initially to finally coming out and, in most cases, telling the truth.

Judge Silkworth saw this. You just heard Ms. Lawless with a bunch of broad allegations. They violated this rule, this rule, this rule. When you plot it out, there are 300 and something violations. No offer to facts whatsoever saying why they were violations but a lot of what they did was wrong, what they did was wrong.

Judge Silkworth, with incredible wisdom and precision, zeroed in on Mr. Irskine and, in some cases, zeroed in on bar counsel and demanded to know what is your proof. Why are you saying this? And bar counsel could

present no evidence whatsoever of anything, other than maybe we did a good job or a reasonable job protecting our clients' First Amendment rights.

As to the notion that these appeals were not preserved, bar counsel also failed to give you one very important piece of information as to the interlocutory appeal, appeals of the petition circulators. When Mr. Irskine chose to issue the second set of subpoenas to about 36 petition circulators, he chose so without having any valid subpoenas outstanding. Judge Silkworth picked up on this.

There was a stay. We filed a protective order on April 30th as to Petitioners, non-party and parties alike. Although that probably doesn't make any difference in that it was a group of people, the organization we were representing. Mr. Irskine then rescinded all of those subpoenas.

Mr. Irskine then filed a motion to compel, not having any subpoenas outstanding. Thus, not having any failure of discovery under the rules. He then filed a motion for a hearing, which we had.

He then could not produce any reason whatsoever for doing discovery, other than, "I couldn't follow all the circulators around while they were getting signatures. So there might be some fraud out there, and I need to be able

to find out what that fraud is." Our parties, four parties, and two circulators then had a motion -- an order compelling discovery.

Everything under the kitchen sink -- and this is a politically challenged referendum. We had circulators who were being asked for all of their information related to the referendum, all of contact people, all of their phone numbers. And these people were running for office.

They were asking for their political strategies. The breadth of this, as Judge Silkworth correctly ruled, was enormous. It was directly related to their speech.

THE COURT: Would it have been appropriate for you to file a motion to limit the breadth of discovery?

MS. GRAY: Your Honor, we tried to do that at the hearing. There was one issue that Mr. Irskine raised, and that was whether the circulators had a full copy of the bill with them. And we -- under the Whitley (ph) case, if Your Honors remember, where you can have information electronically available, I proffered to the Court that the circulators, based on their training, were told they had to have that information because it was up on the web, the full copy of the bill. And they had to have access to that when they were circulating petitions.

And I proffered that and asked the Court -- because that was the only thing, other -- that Mr. Irskine

said he wanted discovery on, other than being able to go out and see if there was fraud. And I proffered to the Court -- I said, "Can we limit this to this one issue?" We had the webmaster for the organization in the audience. And I said, "We'd be glad to have this person testify as to what was there." And the Court did not allow that to happen. So we asked to limit that --

THE COURT: Can you tell -- can you tell me where that appears in the record?

MS. GRAY: It's in the underlying transcript. I think it is Petitioner's Exhibit 54. I'm not sure. And it's in about -- it's two-thirds of the way out. I could get the Court the specific line references. But it's almost at the end of the transcript, middle to the end of it.

THE COURT: Okay.

MS. GRAY: And we explicitly asked for that.

THE COURT: And it's clear this was an oral request. There was no written request.

MS. GRAY: There was no written request. This is -- Your Honors have to understand. My clients -- you know, we're going -- as Mr. Irskine repeatedly said at trial or acknowledged at trial, we were dealing with a case that had millions and millions and millions of dollars at stake.

Our clients had to get this on the ballot. They had to get a resolution of this ASAP, because they needed to

be able to do the grass roots organizing to get this before the public. That's why we came to you initially with the first petitions for certuory. You can hear an issue directly under, I believe it's, Rule 8131. I'm not sure -- as well as the election law article.

You had everything before you. And I, unfortunately, was out of the country when the motion to dismiss was filed. But that was the plan. Get it right to you. Get a decision. Allow these folks and allow the political process to work.

CHIEF JUDGE: Okay. Thank you, Ms. Gray.

MS. GRAY: Thank you.

CHIEF JUDGE: And we will hear from Mr. Dyer.

MR. DYER: Your Honor, I would just as soon reserve my time for rebuttal, if there's no (indiscernible).

CHIEF JUDGE: Well, there won't be rebuttal from your side. You'll have the one opportunity. So if you would like the one, seize it now. Because the moving party, the Attorney Grievance Commission here will have the opportunity to have rebuttal, not you.

MR. DYER: Thank you, Your Honor.

CHIEF JUDGE: Okay? So you have ten minutes. Or excuse me, 20.

(Pause.)

MR. DYER: May it please the Court.

CHIEF JUDGE: Good morning.

MR. DYER: We're not here today to relitigate the underlying referendum litigation. What we are here today is to review the opinion that was rendered by Judge Silkworth in this matter. And this is a relatively rare situation where Judge Silkworth, the hearing judge, found that there was absolutely no violation of the professional rules by either Respondent.

We are here with a set of factual findings that was 110 pages long. And I would just like to mention several of those findings, to place in perspective what this matter is all about. And what it is about is an effort by an opposing counsel in an underlying case to suppress the ability of the clients, of the referendum petitioners to obtain legal counsel by essentially bringing what I would argue is a slap suit against the attorneys. And as such, if this Court finds that either Respondent committed some sort of breach of -- I don't know what it would be, since we -- you know?

But if there's any finding that we breached the rules, then that places a precedent for using the Attorney Grievance Commission as a channel to bring slap suits against the representatives of people who have the right to petition government. We represented those clients pro bono. We represented them pro bono, because the attorneys that are

active in land use matters are all retained by the other side. It's a total conflict of interest for any attorney that has expertise in the -- to get involved with representing citizens that are trying to petition the government.

Plus it's dangerous, as this suit shows. Sixteen days in court. A good judge, a great judge's time. Sixteen days. And for that 16 days, we never did get notice.

One of the reasons we could not get notice is because this Court approved a rule, a rule change, a recent rule change. That's Rule 1975©), motion -- and it's dealing with pleadings and motions in disciplinary actions. And that rule says, "Motions to dismiss the proceeding are not permitted."

How can someone like Judge Silkworth do anything other than spend 16 days relitigating the underlying case? Trying to find -- giving us the opportunity -- the reason this matter was so long was because Judge Silkworth had no other way to provide the least bit of due process for Respondents.

And Judge Silkworth did the right thing. He said however long it takes, I'm going to give you every opportunity to confront witnesses, to look at what is being said by the bar counsel so that we can find out what is happening here. Because Judge Silkworth couldn't tell at

the beginning, and it wasn't just Judge Silkworth, either.

It was also Judge Becker (ph), who recommended moving this matter out of Howard County down to Anne Arundel County. Judge Becker asked bar counsel what's this case about. It looks like there's a lot of important election issues here. And I don't know what it's about. Who said what?

There is allegations that things were said about the Court. I don't see what is here. And bar counsel -- bar counsel's response was well, that's -- that would be giving away my case if I told you right now. And this matter turned from an adversarial process to an inquisition.

THE COURT: Is that in the transcript?

MR. DYER: Yes, it is, Your Honor. You know, that exact wording isn't, but that flow is. And that would be in front of Judge Becker and also in front of Judge Silkworth.

The notion that --

THE COURT: Tell me (indiscernible).

MR. DYER: -- bar counsel does not have to give notice of the operative facts is unconstitutional. There's no due process there. And this rule, which this Court approved, says that they can do that and get away with it.

THE COURT: Mr. Dyer, the question was asked where would we find this in the transcript.

MR. DYER: You would find it in the transcript at

the -- the transcript for Judge Becker was relatively short. And it was about two-thirds of the way through the transcript. It's about a -- maybe a half-hour transcript. I can -- I can -- you know, I can also send the Court, you know, exact pen site.

And for Judge Silkworth, this rule didn't go into effect until July. And our case started before Judge Silkworth before July. So we filed the motion to dismiss, and Judge Silkworth was trying to consider that motion. And bar counsel said, "Your Honor, you -- this is a frivolous motion. They can't file a motion to dismiss."

And after a little bit of back and forth -- and I think that was the motions hearing before Judge Silkworth, which would have been the first day of the 16-day proceeding. Judge Silkworth said, "Well, I need to take a break." And he took a break, and he came back after the break. And it was a fairly prolonged break.

He came back after the break and said well, what we're going to do here is we're not going to look at a motion to dismiss. And I don't know -- you know, he did his research. And this was not infrequent. Judge Silkworth, if he didn't have the answer that he needed the answer to, he would take a break and go look it up.

To be quite honest, that 16 days was wonderful. He was a great judge. And I learned so much in his

courtroom. So I don't recommend going through a grievance process to -- but I'm telling you he's a good judge.

And he gave us time. He gave us the time necessary to find the operative facts. And we never did find the operative facts.

And so, that's why he wrote an opinion that was very clear in what he was -- what he was -- what he was holding. And I'd like to, you know, just get a couple of those items that he held.

He said that the complaint letters were received by Petitioner from William Irskine pending a -- or during a longstanding litigation. So it's -- it's opposing counsel filing a -- filing a complaint with Attorney Grievance Commission during ongoing litigation. And in addition, Mr. Irskine included some directions to the -- to the commission.

And he said that he would -- he would advise the Petitioner to pursue discovery that he had been unable to obtain. In other words, we had protected our clients from what we considered to be First Amendment violations of their right to political speech. This isn't just -- I mean, we understand how important discovery is to the operation of the courts. But we also understand how important elections are and how speech about elections is the -- I mean, there's nothing that should be protected any higher than political

speech. It is the underpinning of our democratic system.

So Mr. Irskine was asking for an end run around our protections in front of -- in front of the Court. And, you know, he received that. And Judge Silkworth said Respondents had a good faith belief that their clients had First Amendment right not to attend depositions noted by Mr. Irskine, one of their opposing counsel under the particular circumstances of this case.

We have a lot of reasons. Irskine shouldn't have even been there. He had no standing. That's one of our starting arguments. But even if he did have standing to be there, he certainly didn't have the standing to be a private attorney general, which is what he was trying to be.

The Board of Elections -- if the Board of Elections had needed to look into whether or not there was fraud, they are empowered with that obligation by the Election Article. Mr. Irskine and his clients were trying to step into the shoes of the Board of Election. And that's very dangerous to allow that in an election issue.

And the pro bono representation provided by Respondents was rendered with legal knowledge, skill, thoroughness, and preparation reasonably necessary for competent legal representation. That's Judge Silkworth. And he came to that conclusion after 16 days of being in court with us. And bar counsel gets up here and tells you

that Ms. Gray and I are boobs, that we can't even get our clients' rights protected. Let me tell you we're here because we were protecting our clients' rights.

And the other thing that I just have to say is we just witnessed the swearing in. That oath of office has a notwithstanding in there that says the Constitution of the United States is number one. That's what you pay attention to.

And there's an inability on the part of bar counsel to recognize that concept. If you look at one of the rules that we're charged with violating, 19-303.4 -- I guess Rule 3.4©) is the proper way to note it. Knowingly -- okay. "An attorney shall not knowingly disobey an obligation under the rules of a tribunal." That's as far as she got.

She argued that. Well, the rest of the sentence is, "except for open refusal based on assertion that no valid obligation exists." That brings in your oath of office. And the professional rules and responsibility are very important, but they pale in comparison to your oath of office. And your oath of office says you protect the Constitution. And we did.

THE COURT: What does the record reflect about how you advised your clients in connection with the decision not to attend the depositions? I just want the record now.

MR. DYER: Well, there's a ruling by Judge Silkworth on that. But I can tell you from the -- from the record, as I -- well, as I remember the situation and as we testified. Both of us -- both of us testified before Judge Silkworth under cross. We were willing to answer any questions.

The clients came to us with concerns, because they had been deposed. These are petition circulators. And let me step back. They weren't our clients. They were petition circulators.

Our clients was the organization that was putting together the referendum. And they recruited volunteer petition circulators. The petition circulators sometimes would collect, you know, a page of signatures, sometimes three or four pages. But the -- just because they weren't really out there making lots and lots of them doesn't mean that they weren't absolutely critical to the process.

Every signature that every circulator obtained was very valuable to the process. And --

THE COURT: Getting to the point of --

MR. DYER: I'm sorry.

THE COURT: I understand --

MR. DYER: I'm talking -- I'm talking to my clients back here. I'm sorry.

What we did was Ms. Gray set up an opportunity to

meet at her house -- well, right next to the house in the cow field right next to the -- to the building. And we first asked them what was happening. Well, we sort of already had a notion for that, because we had seen a lot of the subpoenas.

And I actually explained to the circulators that I believed that they -- that this was political speech. It was protected. And based upon my legal research, they had -- they had a right to not go and attend. And then I said if -- and this -- and this was based upon approval by the -- by the body that was putting the referendum. Because we talked to them before the meeting.

We said if you do not want to give up your First Amendment rights, then we will offer you pro bono services to protect you. We will stand between you and the Court. And that's why I did that.

THE COURT: Did you -- did you tell them there was any risk for them?

MR. DYER: Certainly did. They were all scared to death to begin with. They're talking about bodily attachments. And they said, "What's that mean? Well, that means you're going to get arrested and taken down to the courthouse." And --

THE COURT: Is this in the record?

MR. DYER: I don't think I said in the record that

they were going to get arrested, but I think it was fairly clear in the record that we did advise them of the risk.

THE COURT: That's my question.

MR. DYER: Yeah. And that -- a lot of our -- a lot of our clients were fairly new citizens, naturalized citizens. And they were pretty concerned about things happening in America this way, and I was, too.

THE COURT: So, Mr. Dyer, just to be sure I understand, at some point after that conversation with your clients, then did you -- was your filing the paper to which Ms. Gray referred to earlier in her argument to bye (ph) second, albeit titled motion to stay, in the body of which was a protective -- motion for a protective order?

MR. DYER: I think we already --

THE COURT: Or what?

MR. DYER: -- filed that at that point.

THE COURT: You had?

MR. DYER: Yes, yes, Your Honor. We had the -- we tried to file it. However, Judge Tisdale, as you know, is a retired judge. And he wasn't in our recount (ph) of all that (indiscernible). So we're talking about an election law case that was assigned to a retired judge, and he never got time to hear it.

THE COURT: We would see a docket entry reflecting that filing?

MR. DYER: I believe that was docketed.

UNIDENTIFIED SPEAKER: Yes.

MR. DYER: Yes, that was docketed. We did have -- we did have filings that we never docketed.

This was a very contentious issue. And, in my opinion, it should have never been in the -- in the home county. We're talking about a referendum bringing up, you know, a vote against all of the elected representatives in a county. It seems -- it seems that there's an inherent conflict of interest for the Circuit Court judges, in my opinion.

But so we stood between our clients and the Court and said we will -- we will represent you. And we're still here today representing them, as far as I'm concerned. And I don't -- I don't regret a second of it, not a second. These are good people, and I honestly feel that I am living my oath of office. And that takes precedent over any nitpicking in the professional rules, to me.

So I would just urge you to take your time with -- leisurely read Judge Silkworth's opinion. This man -- I never had the pleasure of being in front of a better judge. And it grieves me, grieves me for the bar counsel to be saying things against Judge Silkworth.

Now, I can understand bar counsel saying a few things about Ms. Gray and I. After all, we're, you know,

we're the subject of the complaint. And that's all fair game. But I don't think that what was said about Judge Silkworth was appropriate at all.

I'd be glad to answer any other questions before I (indiscernible). Thank you.

CHIEF JUDGE: Thank you, Mr. Dyer.

Ms. Lawless?

MS. GRAY: Thank you, Your Honor. May I please (indiscernible) for the one section?

CHIEF JUDGE: Yes. If you would do that for us so that we have that page. Just that, though, Ms. Gray.

MS. GRAY: Okay.

CHIEF JUDGE: And the site?

MS. GRAY: Your Honor, it's the transcript -- and this is for Judge Becker.

CHIEF JUDGE: Understood.

MS. GRAY: And it begins around page 18 and goes through around page 24.

CHIEF JUDGE: All right. Thank you very much, Ms. Gray.

MS. GRAY: I believe that's based on the notes as to where (indiscernible) it is.

CHIEF JUDGE: All right. Thank you.

Ms. Lawless?

MS. LAWLESS: Thank you, Your Honor. And, Your

Honor, before I address the question before I sat down, if I could just correct a few things or respond to a few things that was said.

On the findings of fact at page 53, "Judge Silkworth found the Respondents did not file a second motion for protective order or a motion to quash in the Circuit Court related to the second set of subpoenas issued by Normandy but relied on previous arguments." The record is clear. No motion for protective order was filed as it related to the second set of subpoenas.

THE COURT: But that -- well, do I understand that there was a prior motion?

MS. LAWLESS: There was a motion that was the subject of the --

THE COURT: Of the first?

MS. LAWLESS: Of the -- of the order -- the June 17th order that resulted in Judge Tisdale's order compelling appearance or compelling the appearance at depositions. And I would further note that the motion to stay was only filed as it relates to the four parties, the four individual parties, and two of the petition circulators, neither of whom has ever sought relief prior in the Circuit Court. So neither of whom were -- had ever -- had ever filed a -- Ms. Wasserman (ph) had never filed a motion for a protective order. So she was asking the Court, the Circuit Court to

stay an order to which she was not a party of in the first instance.

And as to Ms. Wong (ph), she was erroneously included in that motion to compel. She was not represented at that hearing.

THE COURT: But without getting into the weeds --

MS. LAWLESS: Yes.

THE COURT: -- too much, they did raise -- they did file a protective order relating to this discovery.

MS. LAWLESS: Who?

THE COURT: There's no question about that.

MS. LAWLESS: For the first round of subpoenas. That was heard. That was considered, and it was denied.

THE COURT: And did Judge Tisdale consider that it had been taken off the table? Well, I guess he did -- yeah. Did Judge Tisdale consider that it had been taken off the table for the second round?

MS. LAWLESS: It was never brought to the table. So how could it have been taken off? I mean, he -- the issue before Judge Tisdale were the subpoenas for the depositions for the four parties and for one non-party petition circulator. That's it. And so, Judge Tisdale never had the opportunity to review the 30 subpoenas for the non-party petition circulators.

This motion to stay was filed. It wasn't just not

ruled on by Judge Tisdale because he didn't get around to it. There was no motion to shorten time to respond. And Judge Tisdale's clerk advised Mr. Dyer that it would not be ruled on in advance of the scheduled deposition date because it could not be ruled on because the 18 days hadn't passed because the Respondents failed to file a motion to shorten time that would have enabled the judge to rule on the motion in advance of the scheduled depositions.

Without getting too much in the weeds with that, I would also just like to address the Judge Becker hearing that was held in the disciplinary case as this matter was originally assigned to him. And there was a motion to recuse that was filed. That hearing was held in the Circuit Court for Howard County on January 22nd, 2016.

And the issue was Judge Becker considering the motion to recuse. And so, the question that was posed to me was what are the statements that were made about the judiciary. Because were they made about me?

Were they made about my colleagues here on the bench? Is it some personal relationship that I would have with these judges that would present some problem with me hearing and considering this matter? That relevant question is posed at -- begins at 38 of that transcript and continues from there.

THE COURT: 38?

MS. LAWLESS: 38 of that transcript, Your Honor.

And to get -- Chief Judge, to get back to your question about the omissions and how the Court should review those, I've outlined the omissions in the highlighted proposed findings of fact and conclusions of law, which is attached as Appendix 2 to the Exceptions. And those omissions of facts, as you will, are divided into two categories. One are facts that are not in dispute.

It's on this day this happened. On this hearing -- at this hearing, the Respondent said one, two, and three. On X day, they filed this. That petition says one, two, and three. So it's undisputed material facts that cannot and have not been controverted.

The second category of the omissions are the statements that this pleading was not supported by fact or law. And that's kind of the heart of the matter, if you will, Your Honor. Because over and over and over in the proposed findings when I addressed the individual section of the proposed findings, this was not supported by fact or law.

And Judge Silkworth simply struck that language in substantively adopting my proposed findings of fact and how to review those. I think you could review them under either standard of review. I've asked the Court for the higher standard of review to review them saying that the failure to

meet those findings was clearly erroneous. And this gets back to my earliest statement, which is Judge Silkworth did not do any legal analysis to explain how these findings were supported by fact or permitted by them.

And so, I think that under that higher standard, it fails. And so, those omissions to make those kind of second level factual findings that something is not supported by fact or law can be reviewed under the clearly erroneous standard as already noted in my exceptions. I also think that they sort of go to the ultimate question about whether or not something is meritorious. Because for something to be meritorious, it has to be supported by fact and/or law. And so, I think it can also be reviewed in the review of the associated rule violations de novo.

THE COURT: You've recommended that the Respondents be disbarred instead of sanctioned.

MS. LAWLESS: I have. I have, Your Honor.

THE COURT: Can you talk about why, in your opinion, that's an appropriate recommendation?

MS. LAWLESS: Yes, Your Honor, I'd be happy to. In our recommendation for sanction, I candidly stated that there is no other case that I have been able to find, either in this jurisdiction or in another that's directly on point with this. This is really an 8.4(d) case, perverting and corrupting the judicial process.

And so, the cases that I cited in support of the recommendation are Mixter (ph). But Mixter was a misrepresentation case in which part I cited the McClain (ph) case, which is very factually comparable to this case, has very similar rule violations. But the sanction that was issued in that case was done under the 8.4(c) analysis and the Vanderlin (ph) standards. And so, the Court never addressed the 8.4(d), the 8.4 -- or the 8.2 statements regarding the judiciary and the frivolous filings.

When you look at this case, when you look at this pattern of conduct that lasted through the pendancy of the underlying litigation and through bar counsel's investigation -- and when you look at the substantial aggravating factors, the fact that the Respondents -- if they were to do it all again would do it the exact, same way. That there is no assurances that the public is protected. There is no assurances that they acknowledged that they are bound by the rules of procedure, that they are required to only file those pleadings which are supported by facts and law and that they acknowledge that they are subject to regulation under the rules adopted by this Court.

And so, without those assurances and given the extent of the misconduct, both of the vastness of it, the amount of it, the period of time over which it lasted and without any assurances that they are remorseful, accept

responsibility, quite simply, bar counsel's position is that they're not fit to be members of the bar. And in this case, unlike the intention dishonesty cases and, you know, the cases that the flagship is a 8.4©), maybe this is an indefinite suspension case. Perhaps it is. I couldn't find an indefinite suspension case that was factually -- you know, factually on point with this case. And it's a distinction without a difference, because if they're ever going to petition for a reinstatement, they have to be able to prove that they acknowledged that there was misconduct in this case.

So in this case -- and I've gotten the question from the bench before about what's the difference between the disbarment and an indefinite suspension. In this case for all intents and purposes, there really isn't one. But I think that there's also a message to the bar is appropriate that this type of conduct, this type of litigation is not acceptable and should not be accepted.

I don't -- I think I only have a minute left, and I would just like to address the 8.2(a), the statements regarding the judiciary. I certainly recognize that this Court declined to reach the issue of whether or not a subjective or objective standard should be applied in this recent Stayolonis (ph) case. Judge Harrell in his dissent strongly argued that an objective standard should be applied

in the context of the Stayolonis case, which was an election case. It was statements made during a contested judicial election where the qualifications and the integrity of the incumbent judge were square at issue. This case is very, very easily distinguished from Stayolonis.

This is not a judicial election case. The substance of the case was under the election law, but this was not a judicial election case. This was not an election case.

THE COURT: I have a question on the 8.1 allegation.

MS. LAWLESS: Yes, Your Honor.

THE COURT: We don't have the letter that you sent to them where the allegation is that bar counsel -- they didn't respond to requests by bar counsel for information. What information are you looking for?

MS. LAWLESS: Oh, Your Honor, all of the letters are in -- are in the record.

THE COURT: I know they're in the record. They're not in what we (indiscernible).

MS. LAWLESS: So the initial complaint was filed by Mr. Irskine.

THE COURT: I understand that.

MS. LAWLESS: Right. And so, it was please respond to the complaint. It's a regular letter that we

send out.

THE COURT: So it was just what's your position?

MS. LAWLESS: What's your position? What --

THE COURT: So it wasn't specific information?

MS. LAWLESS: That is correct.

THE COURT: It wasn't give me your account records?

MS. LAWLESS: That's absolutely --

THE COURT: Or your client records or anything like that?

MS. LAWLESS: That's absolutely correct.

THE COURT: Okay.

MS. LAWLESS: It's we have received this complaint. Please provide your response within 15 days. And then the rest was -- and then the back and forth ensued. So there was never any response during our investigation, never, never. We never got any information about what their position was, why they did and did not do whatever it was that they did in the underlying litigation.

THE COURT: Did you do any investigation when you got the complaint by Mr. Irskine about the circumstances that generated the complaint?

MS. LAWLESS: Yes, I reviewed the underlying files. I mean, that's what this case is. It's the underlying files. It's what they filed, when they filed it,

the procedure that they followed. So I reviewed the Circuit Court file. I reviewed the Court of Special Appeals file, and I reviewed the Court of Appeals file. And I never got an explanation. All I got were this is what was filed.

THE COURT: Was there -- was there a transcript at that point?

MS. LAWLESS: There were multiple -- there are multiple transcripts.

THE COURT: Transcripts of the underlying case? Yeah.

MS. LAWLESS: Some of them I had. Some of them I got as it -- as we progressed through the disciplinary process.

THE COURT: You ordered -- you ordered them?

MS. LAWLESS: Correct, correct. So, you know, I reviewed the records. But I never got the other side of the story during bar counsel's investigation.

If I could just circle back to the 8.2, I would ask the Court to adopt -- and I certainly understand that Judge Silkworth found that the Respondents had -- without saying it, what he says is that they had a reasonable basis to believe that the statements that they made true and therefore, not made with reckless disregard. I would ask the Court to adopt an objective standard as well as (indiscernible) judicial (indiscernible).

CHIEF JUDGE: All right. Thank you, Counsel.

MS. LAWLESS: Thank you.

CHIEF JUDGE: Thank you, Counsel.

(The proceeding concluded.)

CERTIFICATE OF TRANSCRIBER

I hereby certify that the proceedings in the above matter, on January 6, 2017, were recorded by means of electronic sound recording.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 45 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of the case.

In witness whereof, I have affixed my signature this 6th day of January, 2017.

_____

Geoffrey Hunt