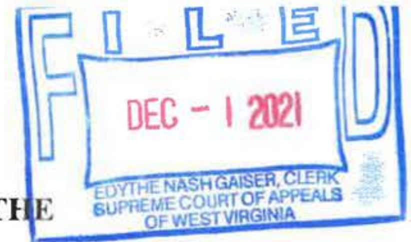

IN THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

LAWYER DISCIPLINARY BOARD,

Petitioner,

DO NOT REMOVE FROM FILE

vs. **No. 20-0908**

LEAH PERRY MACIA,

Respondent.

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BRIEF OF THE OFFICE OF LAWYER DISCIPLINARY COUNSEL

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I. STATEMENT OF THE CASE

A. Nature of Proceedings and Recommendation of the Hearing Panel Subcommittee

Formal charges were filed against Leah Perry Macia (hereinafter "Respondent") with the Clerk of the Supreme Court of Appeals (hereinafter "Supreme Court") on or about November 18, 2020, and served upon Respondent via certified mail on November 23, 2020. Chief Disciplinary Counsel filed her mandatory discovery on or about December 15, 2020. Respondent's answer to the Statement of Charges was due to be filed on or before December 28, 2020. Respondent's answer to the Statement of Charges was received on or about January 8, 2021, after receiving a short extension of time.

Thereafter, this matter proceeded to hearing in Charleston, West Virginia, on May 25, 2021. The Hearing Panel Subcommittee (hereinafter "HPS") was comprised of Nicole A. Cofer, Esquire, Chairperson, Suzanne Williams-McAuliffe, Esquire, and Rachel Scudiere, Layperson. Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel, appeared on behalf of the Office of Lawyer Disciplinary Counsel (hereinafter "ODC"). Respondent appeared in person and by and through counsel, Jeffrey Foster, Esquire, who appeared via Teams. The HPS heard testimony from Respondent. In addition, ODC Exhibits 1-10, Respondent's Exhibits 1-3, and the Joint Exhibit 1 were admitted into evidence.

On or about September 30, 2021, the HPS issued its decision in this matter and filed its "Report of the Hearing Panel Subcommittee" (hereinafter "Report") with the Supreme Court. The HPS found that the evidence established that Respondent violated Rules 3.3(a)(1); 8.4(b); and

8.4(d) of the Rules of Professional Conduct (hereinafter "RPC"). The HPS issued the following recommendation as the appropriate sanction:

1. That Respondent's law license should be suspended for a period of one (1) year;
2. That Respondent will serve thirty (30) days of the one (1) year suspension;
3. That Respondent will issue a written apology to the Circuit Court Judge for her misconduct;
4. That at the conclusion of the thirty (30) days of suspension, assuming Respondent has satisfied all conditions to return to practice including the issuance of the written apology and the execution of all probation documents, Respondent will be subject to automatic reinstatement, and the remaining period of suspension will be held in abeyance while Respondent is on probation with supervised practice by an experienced lawyer for a period of one (1) year;
5. That any breach of the terms of probation will result in the filing of a petition to the Supreme Court of Appeals; and
6. That Respondent shall pay the costs incurred in this disciplinary proceeding.

On or about October 1, 2021, upon submission of the HPS report and the record in the matter, ODC filed its objection to the HPS report pursuant to Rule 3.11 of the Rules of Lawyer Disciplinary Procedure.

B. Stipulated Findings of Fact

Leah Perry Macia (hereinafter "Respondent") is a lawyer who practices in Charleston, West Virginia. Respondent was admitted to The West Virginia State Bar on October 13, 1998, after successful passage of the Bar Exam. As such, she is subject to the disciplinary jurisdiction of

the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board.

Count I
Complaint of the Office of Disciplinary Counsel
I.D. No. 19-03-416

This complaint was opened after receiving an order from the Circuit Court of Kanawha County, West Virginia holding Respondent in direct criminal contempt of court for her actions in a criminal matter. Respondent, who is employed by the Kanawha County Public Defender's Office, was appointed by the Circuit Court of Kanawha County, West Virginia to represent Charles W. McClanahan in the criminal action case styled State of West Virginia v. Charles W. McClanahan, Case No. 19-F-292, in the Circuit Court of Kanawha County, West Virginia.

On or about July 31, 2019, Respondent and her client appeared for the purpose of a sentencing hearing pursuant to her client's acceptance of a plea to felony burglary. As part of the plea, the State recommended the Court suspend her client's sentence and impose a period of probation. Respondent also requested the Court show her client leniency and sentence her client to probation so that he could enter a treatment program. To support this argument, Respondent affirmatively stated that if the Court granted her client probation he could immediately report to a long-term, residential treatment facility. Specifically, Respondent stated:

> ... He would go–he is– if the Court would allow it, if he is sentenced to probation, he does have a place waiting for him at Prestera. He would go to Prestera Riverside today, then he would to PARC East, and he would – until a bed is open at Harbor House, then he would be admitted to a 28 day inpatient program followed thereby – thereafter by a three to six month inpatient program.

The Court during sentencing expressed concern about the client's criminal record, but stated he believed the defendant had a fairly significant drug problem. When the Court attempted

to clarify the proposed treatment plan, the following exchange occurred between Respondent and Court:

THE COURT:	And I actually couldn't follow where all he's going and when he's going, by why don't you outline that for me one more time so I can think about that again?
RESPONDENT:	He has a place waiting for him at Prestera, the Riverside facility. And that's where that he would go for intake. Then he would go from there to the PARC East Prestera.
THE COURT:	And is there a bed available?
(A Private conference was had between the defendant and defense counsel.)	
RESPONDENT:	I'm sorry, I got that reversed, your Honor. Sorry. PARC East is where he would go for intake, and then he would be housed at Riverside, impatient for 28-day impatient.
THE COURT:	And is that a guaranteed bed?
RESPONDENT:	I'm sorry?
THE COURT:	Is that a guaranteed bed?
RESPONDENT:	Yes, it is, your Honor.
THE COURT:	For the entire six or seven months?
RESPONDENT:	Yes. Upon completion of the "28," yeah.
THE COURT:	The bed is guaranteed?
RESPONDENT:	Yeah.

The Court sentenced Respondent's client to prison for a term of 1-15 years. The sentence was suspended, and he was placed on probation for a period five years with the condition that he enroll in the drug rehabilitation program that Respondent described for a period of seven (7) months and, upon release he would be placed on home confinement.

Following the sentencing hearing, the Court was advised by a probation officer that no placement was available for the criminal defendant at Prestera Center. The probation officer stated he contacted the Prestera Center and was advised that no referral had been made on Respondent's client's behalf.

The Court subsequently held another hearing on or about August 1, 2019, wherein Respondent was advised of the information provided by the probation officer. The following exchange occurred:

RESPONDENT:	Well, your Honor, I- it is correct that they [Prestera] don't have any materials from me because I'm not the one, nor is the Kanawha County Defender's Office, the one who contacted Prestera about him in this instance. It was, it was done through his mother. I think I may have contacted them at some point, but not - anyway, it was his mother and - who con- who initiated the process. I called yesterday before the hearing to confirm, and I was told yes, he was and he was - they had a place for him. I-
THE COURT:	Well, who did you speak to, because I need to, to deal with them as well.
RESPONDENT:	I do not know who it was I spoke to initially, because the person I asked for - I asked to speak to Joyce, who is - I can't - I'm sorry, I can't remember her name right now - who is our - the contact I'm used to dealing with her, and I've never had any miscommunication with her; and if I call her, the person has a spot. I called for her. That's who I thought I was talking to it turned - I learned subsequently that she isn't there anymore, and I don't know who it that I ended up speaking to yesterday morning.

The Court then questioned the criminal defendant who admitted under oath that he didn't tell Respondent that a treatment placement was guaranteed. The Court found that the criminal defendant misled the Court by failing to correct the statements about the immediacy of the treatment placement. The Court found the client in breach and vacated the earlier order and sentenced the client to 1-15 years in the penitentiary.

The Court entered a rule to show cause against Respondent ordering her "to show cause regarding why she could not be held in contempt of Court" regarding the misrepresentations made during the July 31, 2019, hearing. A rule to show cause hearing was held on August 16, 2019. Respondent appeared, in person, and with counsel. The State called Margaret Welch and Storm Smith, two administrative employees from Prestera, who were answering phones at PARC East on July 31, 2019, and both testified that neither recalled anyone calling and asking for "Joyce"

Ms. Smith further testified that Respondent came to PARC East on July 31, 2019, and inquired if her client had a bed. Ms. Smith testified that she phoned Riverside and informed Respondent there was no bed for her client. The State then called Allycia Stennet, the clinical supervisor at Prestera, who testified that on July 31, 2019, she received a call from Probation about a referral for Respondent's client. She confirmed in writing to probation that she verified no such referral had been made. She further testified that a referral was made on August 1, 2019, and the defendant had been accepted in to a 28-day program but clarified that long term placement was not guaranteed. She also testified that a woman named "Joyce" had previously worked at PARC East a receptionist but had left the employ about a month and a half prior.

The State called Jostin Holmes, the residential supervisor at Prestera's PARC East, who testified that after searching all the referrals for the different residential sites, that prior to July 31, 2019, there had been no referral made for Respondent's client. He further testified that the defendant's mother contacted Riverside on July 31, but the staff advised the mother he would have to go through the referral process. Mr. Holmes testified that no referral was generated, and no placement of the defendant was guaranteed on that date but testified the following day a referral was made, and placement was secured at Riverside's 28-day program.

Respondent also testified at the rule to show cause hearing. Respondent maintained that based upon the circumstances, including the representation of the defendant's mother and her client's representations, that she had a good faith belief her client had definite placement in the facility. On August 29, 2019, and August 30, 2019, the State and Respondent, by and through counsel, filed their written pleadings. The Court entered and Order on September 16, 2019, Respondent to be in direct criminal contempt of court in violation of West Virginia Code §61-5-26 and assessed her a fine of fifty dollars ($50.00).

The Court found Respondent's testimony was not credible. Additionally, the Court determined that even in Respondent's testimony was credible, that she failed to ensure the accuracy of the information even to a "minimal degree" before conveying the same to the Court. The Court made the finding that "no placement existed" for Mr. McClanahan at the Prestera Center despite Respondent's repeated representations that her client had "guaranteed bed" at Prestera during the July 31, 2019 hearing.

The Court further found that Respondent's misrepresentations were "reckless and irresponsible" and "threatened to 'obstruct or interrupt the administration of justice,' as [the defendant] was granted probation at the dispositional hearing and was permitted to enroll in treatment program at which he lacked a placement." Respondent by and through counsel filed an appeal to the Supreme Court of Appeals on or about October 16, 2019.

This Court issued a 3-2 Memorandum Decision on or about December 7, 2020, which affirmed the Circuit Court's decision. State of West Virginia v. Charles W. McClanahan, Jr., In re Criminal Contempt of Leah P. Macia, No. 19-0944 (12/7/20).

C. Admitted Violations of the Rules of Professional Conduct

Respondent's statements to the Court on July 31, 2019, regarding the "guaranteed bed" and the nature of the treatment plan were false statements of fact. Respondent was made aware of the false nature of her statements to the tribunal on the same date when she was advised, in person, by the PARC East staff person that no bed was available for her client. Respondent did not inform the Court of the lack of immediate availability for treatment placement for her client. Because Respondent made a false statement of fact to the Court and failed to take any remedial measures to correct the false statement of material fact, she admits that she has violated Rule 3.3(a)(1) of the Rules of Professional Conduct. Because the Court determined that Respondent's false statements

to the Court and her subsequent failures to take remedial measures to correct the same threatened to obstruct or interrupt the administration of justice, Respondent was found in direct criminal contempt of court in violation of West Virginia Code §61-5-26[1] and she admitted that she violated Rules 8.4(b) and 8.4(d) of the Rules of Professional Conduct.

II. SUMMARY OF ARGUMENT

Based on false statements she made to the Circuit Court during her appearance on behalf of a criminal defendant, Respondent was ultimately convicted of criminal contempt of court pursuant to West Virginia Code § 61-5-26. Respondent's conduct not only violated a duty owed to her client, but also to the legal system and the public. Her conduct caused harm to both the legal system and her client. After considering the impact and effect of the mitigating and aggravating factors, to satisfy the goals of the disciplinary system, ODC recommends a suspension be imposed with a term of probation and a requests Respondent to issue a written apology acknowledging the wrongfulness of her conduct to the Circuit Court.

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[1] **§61-5-26. Contempt of court; what constitutes contempt; jury trial; presence of defendant.**

The courts and the judges thereof may issue attachment for contempt and punish them summarily only in the following cases: (a) Misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice; (b) violence or threats of violence to a judge or officer of the court, or to a juror, witness, or party going to, attending or returning from the court, for or in respect of any act or proceeding had, or to be had, in such court; (c) misbehavior of an officer of the court, in his official character; (d) disobedience to or resistance of any officer of the court, juror, witness, or other person, to any lawful process, judgment, decree or order of the said court. No court shall, without a jury, for any such contempt as is mentioned in subdivision (a) of this section, impose a fine exceeding $50, or imprison more than ten days. But in any such case the court may impanel a jury (without an indictment or any formal pleading) to ascertain the fine or imprisonment proper to be inflicted, and may give judgment according to the verdict. No court shall impose a fine for contempt, unless the defendant be present in court, or shall have been served with a rule of the court to show cause, on some certain day, and shall have failed to appear and show cause.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to Rule 19 of the Rules of Appellate Procedure, this Honorable Court's Order set this matter for oral argument to take place during the January 2022 Term of Court.

IV. ARGUMENT

A. STANDARD OF PROOF

In lawyer disciplinary matters, a *de novo* standard of review applies to questions of law, questions of application of the law to the facts, and questions of appropriate sanction to be imposed. Roark v. Lawyer Disciplinary Board, 207 W. Va. 181, 495 S.E.2d 552 (1997); Committee on Legal Ethics v. McCorkle, 192 W. Va. 286, 452 S.E.2d 377 (1994). The Supreme Court of Appeals gives respectful consideration to the Lawyer Disciplinary Board's recommendations as to questions of law and the appropriate sanction, while ultimately exercising its own independent judgment. McCorkle, 192 W. Va. at 290, 452 S.E.2d at 381. Substantial deference is to be given to the Lawyer Disciplinary Board's findings of fact unless the findings are not supported by reliable, probative, and substantial evidence on the whole record. McCorkle, Id.; Lawyer Disciplinary Board v. Cunningham, 195 W. Va. 27, 464 S.E.2d 181 (1995).

ODC and Respondent stipulated to the facts of his misconduct and that her conduct violated Rules 3.3(a)(1), 8.4(b) and 8.4(d) of the Rules of Professional Conduct. This Court has recognized that, "where the parties enter into stipulations of fact, the facts so stipulated will be considered to have been proven as if the party bearing the burden of proof has produced clear and convincing evidence to prove the facts so stipulated." Syl. Pt. 4, in part, Matter of Starcher, 202 W. Va. 55, 501 S.E.2d 772 (1998).

The Supreme Court of Appeals is the final arbiter of formal legal ethic charges and must make the ultimate decisions about public reprimands, suspensions or annulments of attorneys' licenses to practice law. Syl. Pt. 3, Committee on Legal Ethics v. Blair, 174 W.Va. 494, 327 S.E.2d 671 (1984); Syl. Pt. 7, Committee on Legal Ethics v. Karl, 192 W.Va. 23, 449 S.E.2d 277 (1994).

B. ANALYSIS OF SANCTION UNDER RULE 3.16 OF THE RULES OF LAWYER DISCIPLINARY PROCEDURE

Rule 3.16 of the Rules of Lawyer Disciplinary Procedure states when imposing sanction after a finding of lawyer misconduct, unless otherwise provided in these rules, the Court or Board shall consider the following factors: (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession; (2) whether the lawyer acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of any aggravating or mitigating factors.

The Circuit Court specifically found that Respondent's statements were reckless and irresponsible. The Supreme Court in affirming the contempt conviction found that she acted intentionally. Respondent's conduct was an imminent threat of interruption to the administration of justice and the potential harm was significant. The Court specifically found that her misconduct "threatened to 'obstruct or interrupt the administration of justice,' as the defendant was granted probation at the dispositional hearing and was permitted to enroll in treatment program at which he lacked a placement. While harm to the legal system and the legal profession resulting from Respondent's false statements to the Court by Respondent is difficult to ascertain by traditional methods, it is evident the misconduct resulted in the waste of judicial resources, the diminished confidence in the administration of justice, and damage to the public's confidence in lawyers.

A review of the extensive record in this matter indicates that Respondent has transgressed all four factors set forth in Jordan. Office of Disciplinary Counsel v. Jordan, 204 W.Va. 495, 513 S.E.2d. 722 (1998).

1. Whether Respondent has violated a duty owed to a client, to the public, to the legal system or to the legal profession.

In determining the nature of the ethical duty violated, the standards assume that the most important ethical duties are those obligations which a lawyer owes to clients. Those include the duty of diligence and candor to the tribunal. In addition to duties owed to clients, lawyers also owe duties to the legal system. Lawyers are officers of the court and must abide by the rules of substance and procedure which shape the administration of justice. Lawyers must always operate within the bounds of the law and cannot engage in any improper conduct. Lawyers owe a fundamental obligation of truth to the legal system. Further, Respondent has admitted that her conduct violated a duty owed to her client, the legal system and the public.

2. Respondent acted intentionally, knowingly or negligently.

The most culpable mental state is that of intent, when the lawyer acts with the conscious objective or purpose to accomplish a particular result. The next most culpable mental state is that of knowledge, when the lawyer acts with conscious awareness of the nature or attendant circumstances of his or her conduct, both without the conscious objective or purpose to accomplish a particular result. The least culpable mental state is negligence, when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Respondent acted knowingly in proffering to the Court that she had arranged for a treatment placement for her client that she, in fact, had not arranged. The evidence in this case establishes by clear and

convincing proof that Respondent knowingly misrepresented information to the Court which ultimately resulted in a detrimental result for her client.

3. The amount of actual or potential caused by the lawyer's misconduct.

Injury is harm to a client, the public, the legal system, or the legal profession which results from a lawyer's misconduct. The level of injury can range from "serious" injury to "little or no" injury. A reference to "injury" alone indicates any level of injury greater than "little or no" injury. "Potential injury" is the harm to a client, the public, the legal system or legal profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct.

Respondent's conduct was an imminent threat of interruption to the administration of justice and the potential harm was significant. The Court specifically found that her misconduct "threatened to 'obstruct or interrupt the administration of justice,' as the defendant was granted probation at the dispositional hearing and was permitted to enroll in treatment program at which he lacked a placement. While harm to the legal system and the legal profession resulting from Respondent's false statements to the Court by Respondent is difficult to ascertain by traditional methods, it is evident the misconduct resulted in the waste of judicial resources, the diminished confidence in the administration of justice, and damage to the public's confidence in lawyer.

4. The existence of any aggravating factors.

Aggravating factors are considerations enumerated under Rule 3.16 of the Rules of Lawyer Disciplinary Procedure for the Court to examine when considering the imposition of sanctions. Elaborating on this rule, the *Scott* court held "that aggravating factors in a lawyer disciplinary proceeding 'are any considerations, or factors that may justify an increase in the degree of discipline to be imposed.'" Lawyer Disciplinary Board v. Scott, 213 W.Va. 209, 216, 579 S.E.2d

550, 557(2003) *quoting ABA Model Standards for Imposing Lawyer Sanctions,* 9.21 (1992). Pursuant to 9.22 of the Standards for Imposing Lawyer Sanctions, the following factors should be considered as aggravating factors: 1. substantial experience in the practice of law; and 2. criminal contempt is criminal in nature, but because it has no statutory maximum sentence, it is not classified as a felony or a misdemeanor, but is *sui generis*. The HPS found that the facts do not support that the conviction should be equated to a felony, but is more similarly aligned to a misdemeanor offense.

5. The existence of any mitigating factors.

In addition to adopting aggravating factors in Scott, the Court also adopted mitigating factors in a lawyer disciplinary proceedings and stated that mitigating factors "are any considerations or factors that may justify a reduction in the degree of discipline to be imposed." Lawyer Disciplinary Board v. Scott, 213 W.Va. 209,216, 579 S.E.2d 550, 557 (2003) *quoting ABA Model Standards for Imposing Lawyer Sanctions*, 9.31 (1992)[2]. It should be clear that mitigating factors were not envisioned to insulate a violating lawyer from discipline. Pursuant to 9.32 of the Standards for Imposing Lawyer Sanctions, the following factors should be considered as mitigating factors: 1. absence of a prior disciplinary record; 2. acceptance of responsibility and

[2] The Scott Court held that mitigating factors which may be considered in determining the appropriate sanction to be imposed against a lawyer for violating the Rules of Professional Conduct include: (1) absence of a prior disciplinary record; (2) absence of a dishonest or selfish motive; (3) personal or emotional problems; (4) timely good faith effort to make restitution or to rectify consequences of misconduct; (5) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (6) inexperience in the practice of law; (7) character or reputation; (8) physical or mental disability or impairment; (9) delay in disciplinary proceedings; (10) interim rehabilitation; (11) imposition of other penalties or sanctions; (12) remorse; and (13) remoteness of prior offenses.

cooperative attitude with ODC during disciplinary proceedings; 3. evidence of good character and reputation; 4. imposition of other penalties or sanctions; and 5. remorse.

V. SANCTION

The Rules of Professional Conduct state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Syl.pt. 3, in part, Committee on Legal Ethics v. Tatterson, 173 W.Va. 613, 319 S.E.2d 381 (1984), *cited in* Committee on Legal Ethics v. Morton, 186 W.Va. 43, 45, 410 S.E.2d 279, 281 (1991). The principle purpose of attorney disciplinary proceedings is to safeguard the public's interest in the administration of justice. Syl. Pt. 3, Daily Gazette v. Committee on Legal Ethics, 174 W.Va. 359, 326 S.E.2d 705 (1984); and Syl. pt. 2, Lawyer Disciplinary Board v. Hardison, 205 W.Va. 344, 518 S.E.2d 101 (1999). "A sanction is to not only punish the attorney, but should also be designed to reassure the public confidence in the integrity of the legal profession and deter other lawyers from similar conduct." Syl. Pt 2, Committee on Legal Ethics v. White, 189 W.Va. 135, 428 S.E.2d 556 (1993);. Syl. pt 3, Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 S.E.2d 234 (1987); Syl. pt. 5, Committee on Legal Ethics v. Roark, 181 W.Va. 260, 382 S.E.2d 313 (1989); Syl pt. 3, Lawyer Disciplinary Board v. Friend, 200 W.Va. 368, 489 S.E.2d 750 (1997); and Syl pt. 3, Lawyer Disciplinary Board v. Keenan, 208 W.Va. 645, 542 S.E.2d 466 (2000).

The HPS recommendation of serving thirty days of the one-year suspension falls woefully short of serving the purposes of the disciplinary process. Indeed, the conviction for criminal contempt is a serious offense that has resulted in the annulment of a lawyer's license as it is a criminal act that reflected adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer. *See* Lawyer Disciplinary Board v. Askin, 203 W. Va. 320, 507 S.E.2d 683 (1998). In Askin, the

Court imposed disbarment based upon the criminal contempt conviction[3] arising from the lawyer's refusal to testify in a criminal trial about cocaine transactions with defendants, two of whom were his clients. Askin refused to answer questions despite the federal court's grant of immunity. Askin was thereafter charged with criminal contempt, and he pled guilty to one count of criminal contempt. He was sentenced to seven months incarceration, to be followed by three years of supervised release. The federal court during sentencing specifically found that Askin had obstructed justice and committed a felony. The Supreme Court reasoned that Askin's criminal contempt conviction offended "the essence of the integrity of the legal system." Lawyer Disciplinary Board v. Askin, 203 W. Va. 320, 323, 507 S.E.2d 683, 686 (1998).

While the mitigation evidence and the facts in this case do not support that Respondent be disbarred for her offense, the HPS recommendation of serving a month of a one-year suspension fails to recognize the severity of her offense and is inconsistent with cases that involve candor to the Court violations without a conviction of criminal contempt by the Court. For example, this Court suspended a lawyer for one year who intentionally removed a narrative section from a doctor's report and then provided the redacted report to an administrative law judge and the *pro se* litigant. *See* Lawyer Disciplinary Bd. v. Smoot, 228 W.Va. 1, 716 S.E.2d 491 (2010). And, in Lawyer Disciplinary Board v. Busch, 233 W.Va. 43, 754 S.E.2d 729 (2014), the Court imposed a three-year suspension on a prosecuting attorney for making false representations to a circuit judge and to opposing counsel in two separate criminal cases. In Munoz, this Court imposed a ninety-

[3] The Court also found that Askin failed to maintain complete records of trust account monies, commingled funds, and failed to pay client money in his possession promptly to an investigator.

day suspension with automatic reinstatement, due, in part,[4] to Munoz's false statements to a magistrate judge and making false statements during the disciplinary process. The Munoz Court stated:

> As succinctly stated in Astles' Case, 134 N.H. 602, 594 A.2d 167 (1991), "[n]o single transgression reflects more negatively on the legal profession than a lie." Id. at 170. The honor of practicing law "does not come without the concomitant responsibilities of truth, candor and honesty.... [I]t can be said that the presence of these virtues in members of the bar comprises a large portion of the fulcrum upon which the scales of justice rest." Jones' Case, 137 N.H. 351, 628 A.2d 254, 259 (1993) (quotation omitted). "Respect for our profession is diminished with every deceitful act of a lawyer." Disciplinary Counsel v. Fowerbaugh, 74 Ohio St.3d 187, 658 N.E.2d 237, 239 (1995).

See Lawyer Disciplinary Board v. Munoz, 240 W. Va. 42, 51, 807 S.E.2d 290, 299 (2017).

IV. CONCLUSION

Respondent's representations to the Court were "reckless and irresponsible" and "threatened to obstruct justice." State v. McClanahan *(In re Criminal Contempt of Court of Macia)*, No. 19-0944, 2 (W. Va. Dec. 7, 2020). A suspension of Respondent's privilege to practice law is more than appropriate, and based upon the mitigating factors, Respondent's law license should be suspended for a period of one (1) year. Respondent should be ordered to serve ninety (90) days with remainder of the suspension to be held in abeyance for probation with supervised practice by an experienced lawyer. If she has not already done so, Respondent should issue a written apology to the Circuit Court Judge acknowledging her misconduct. Finally, Respondent should bear the costs of the disciplinary proceedings.

[4] Munoz was also guilty of violations for his failure to communicate with clients and failure to expedite litigation.

Respectfully submitted,
The Office of Disciplinary Counsel
By Counsel

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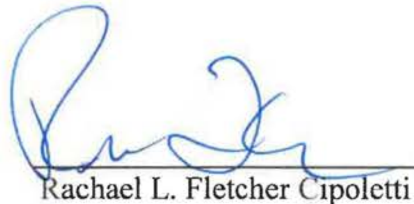
CERTIFICATE OF SERVICE

This is to certify that I, Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 1st day of December, 2021, served a true copy of the foregoing **"Brief of the Office of Lawyer Disciplinary Counsel"** upon Jeffrey A. Foster, counsel for Respondent Leah Perry Macia, by mailing the same via United States Mail with sufficient postage, to the following address:

Jeffrey A. Foster, Esquire
200 Capitol Street
Charleston, West Virginia 25301



Rachael L. Fletcher Cipoletti