BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,	:	No. 32 DB 2017
v.	:	Attorney Reg. No. 74824
STACY PARKS MILLER, Respondent	:	(Centre County)

PETITION FOR DISCIPLINE

Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, and Anthony A. Czuchnicki, Disciplinary Counsel, files this Petition for Discipline, and charges Respondent, Stacy Parks Miller, with professional misconduct in violation of the Rules of Professional Conduct as follows:

1. Petitioner, whose principal Office is located at the Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, PA 17106, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter "Pa.R.D.E."), with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent, Stacy Parks Miller was born on March 20, 1969, was admitted to practice law in Pennsylvania on December 19, 1994, has a registered public address of 102 South Allegheny Street, Room 404, Bellefonte, Centre County, Pennsylvania 16823, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania. At all times relevant hereto, Respondent was the District Attorney of Centre County.

CHARGE I

The "Ex Parte" Matters

A. The Cluck Matter

3. On February 1, 2013, Respondent sent an email to: the Honorable Judge Bradley Lunsford; his secretary; his law clerk; and Christopher Sheffield, Esquire, defense counsel for Justin Cluck, relating to a criminal prosecution. See Commonwealth v. Cluck, CP-14-CR-0001714-2006 (Centre Co.).

4. The subject of the email was "Justin Cluck."

5. The email stated:

> We would ask that you strike the portion of the Order that sets bail in this matter. The Commonwealth was NEVER heard on that issue and wishes to be heard. While it was set for last time, we never addressed it.
>
> This issue was never litigated and the Court cannot set bail without hearing from us on the factors. This is a Felony 1 Rape case and there has [n]ever been ANY proffer regarding any of the factors and the Commonwealth has points to make for bail, including likelihood of conviction.
>
> We would ask for a hearing to be heard and wish to alert our victim so she can also be present. Thank you.

(emphasis in original).

6. On the same day, in response to her email, Judge Lunsford replied, only

to Respondent, stating: "Good point. Probably should have brought him back here first for that hearing. We'll schedule one in."

7. In response to his email, Respondent replied ex parte to Judge Lunsford, without copying Attorney Sheffield.

8. In this email, Respondent argued that Judge Lunsford should "rescind the order."

9. Specifically, the email stated:

> Will u [sic] rescind that order so we can deal with it then? He is still in. He has not been let out yet as your order just came through. Otherwise, we [sic] will walk out. You have no idea where he will go etc. U [sic] don't even have a supervised bail eval!

10. Respondent communicated ex parte with Judge Lunsford during Cluck, while not authorized to do so by law or court order.

11. On the same day, in response to her email, Judge Lunsford replied, only to Respondent, stating: "He is already gone."

12. By communicating ex parte with Judge Lunsford, Respondent sought to influence him by legally prohibited means.

13. By communicating ex parte with Judge Lunsford, Respondent engaged in conduct which undermines the integrity of the criminal justice system and is prejudicial to the administration of justice.

14. Respondent knowingly communicated ex parte with Judge Lunsford; this is evidenced by:

a. the drastic difference in formality in the second email in comparison to the first;

b. the action requested was directed at a single individual, 'U' e.g.

Judge Lunsford;

c. Respondent failed to correct the error at any point in time; and

d. Respondent failed to inform Attorney Sheffield at any point in time that ex parte communication had occurred; rather, she perpetuated the ex parte communications.

15. By failing to inform Judge Lunsford that his initial communication was ex parte, Respondent knowingly assisted Judge Lunsford in conduct that is a violation of the applicable Rules of Judicial Conduct.

16. By Supplemental Request for Statement of Respondent's Position (Form DB-7A) dated June 8, 2015, Petitioner advised Respondent of its concerns arising from, *inter alia*, the ex parte communication that had occurred between her and Judge Lunsford.

17. On June 18, 2015, Respondent's attorney filed her verified response to the Form DB-7A (DB-7A Answer), in which Respondent stated, *inter alia*: "It is denied that [Respondent] intended to communicate with Judge Lunsford *ex parte* or that she realized at the time that Judge Lunsford had left off of the e-mail chain the other counsel of record."

18. Respondent, in connection with this disciplinary matter, knowingly and/or recklessly made a false statement of material fact.

B. The Horan Matter

19. On April 21, 2014. Patrick Horan filed a Petition for Writ of Mandamus, pro se, against Respondent. In Re: Patrick Horan, CP-14-MD-0000651-2014 (Centre Co.).

20. On May 8, 2014, Judge Lunsford scheduled a Hearing to determine the propriety of the writ.

21. On May 14, 2014, Respondent sent an email solely to Judge Lunsford.

22. The subject of the email was "Horan v. DA Stacy Parks Miller."

23. Respondent's email stated:

> Are you serious? Scheduling a hearing with me and a pro se inmate on a [w]rit of mandaum [sic] making me answer to him about the complaints he filed about guards? Giving him a teleconference face to face making me report to him?

24. Respondent communicated ex parte with Judge Lunsford during Horan, while not authorized to do so by law or court order.

25. Respondent's email also included two caselaw citations to further convey Respondent's point, evidencing Respondent's intention to influence Judge Lunsford's decision.

26. By communicating ex parte with Judge Lunsford, Respondent sought to, and in fact did, influence him by legally prohibited means.

27. On the same day, in response to Respondent's email, Judge Lunsford replied, only to Respondent, stating: "Ok. Thanks for clearing that up. I'll cancel the hearing."

28. Thereafter, on June 2, 2014, Judge Lunsford denied the Petition for Writ of Mandamus in Horan, with prejudice.

29. By communicating ex parte with Judge Lunsford, Respondent engaged in conduct which undermines the integrity of the criminal justice system and is prejudicial to the administration of justice.

30. By failing to inform Judge Lunsford that his communication was ex parte,

Respondent knowingly assisted Judge Lunsford in conduct that is a violation of the applicable Rules of Judicial Conduct.

31. By Form DB-7A dated June 8, 2015, Petitioner advised Respondent of its concerns arising from, *inter alia*, the ex parte communication that had been sent from Respondent to Judge Lunsford relating to Horan.

32. In Respondent's verified DB-7A Answer dated June 18, 2015, Respondent admitted the violation, and further stated:

> [Respondent] recognizes and admits that the May 14, 2014, e-mail was sent *ex parte* and in error. Although there was no way for [Respondent] to have e-mailed Mr. Horan, [Respondent] never should have sent the e-mail to Judge Lunsford.... [T]he e-mail with the information provided was sent in frustration and should have been included in a proper motion that was filed and served in accordance with the Pennsylvania Rules of Criminal Procedure.

(emphasis added).

C. The Shirk Matter

33. On May 12 and 13, 2014, a jury trial took place before the Honorable Jonathan Grine in Commonwealth v. Shirk, CP-14-CR-182-2013 (Centre Co.).

34. During the trial, Brian Manchester, Esquire, defense counsel for Mr. Shirk, presented the testimony of Dr. Randall Tackett, a pharmacologist, challenging evidence of Mr. Shirk's blood alcohol level.

35. On behalf of the Commonwealth, Respondent introduced Dr. Harry Kamerow, a pathologist at Mount Nittany Medical Center, to dispute the validity of Dr. Tackett's findings.

36. During closing, Attorney Manchester included argument which calculated Mr. Shirk's blood alcohol content based upon the number of alcoholic beverages he had

allegedly consumed.

37. On May 13, 2014, Mr. Shirk was found guilty and released on bail pending sentencing scheduled for July 7, 2014, by Judge Grine.

38. On May 14, 2014, at 8:55 a.m., Respondent began text messaging with Judge Grine.

39. In total, fifteen messages were sent by Respondent to Judge Grine between 8:55 and 9:45 a.m.

40. These messages were deleted from Respondent's phone on an unknown date.

41. The first thirty characters of each message were recovered from Respondent's phone's internal storage by ODC through digital forensic analysis.

42. Only Respondent's outgoing messages were recovered.

43. Of the fifteen messages sent by Respondent to Judge Grine, six specifically related to the Shirk matter:

a. at 9:02: "You laughed when Kamerow told ...";

b. at 9:03: "U laughed!!";

c. at 9:05: "Yes agreed. You didn't bust ou[t] ...";

d. at 9:15: "Calculations adding and subtra[cting] ...";

e. at 9:16: "Wonder what that poor kids fam[ily] ..."; and

f. at 9:17: "As part of restitution you sho[uld] ...."

44. Respondent communicated ex parte with Judge Grine during Shirk, while not authorized to do so by law or court order.

45. By communicating ex parte with Judge Grine, Respondent sought to, and

in fact did, influence him by legally prohibited means.

46. By communicating ex parte with Judge Grine, Respondent engaged in conduct which undermines the integrity of the criminal justice system and is prejudicial to the administration of justice.

47. On July 7, 2014, a sentencing Hearing was held in Shirk.

48. At the Hearing, additional argument was presented by both the defense and the Commonwealth.

49. The Commonwealth's argument was presented by Respondent.

50. Respondent's argument called Dr. Tackett "wholly incredible" and emphasized Dr. Kamerow's medical opinion.

51. On July 7, 2014, Judge Grine sentenced Mr. Shirk to a minimum of three years in prison; the sentence did, in fact, include a requirement of restitution.

D. The Best Matter

52. On May 19, 2014, a motion *in limine* Hearing (Rape Shield Hearing) took place at 1:00 p.m. before Judge Lunsford as a pretrial matter in Commonwealth v. Best, CP-14-CR-1772-2013 (Centre Co.).

53. The Rape Shield Hearing occurred the day before the jury trial was to begin.

54. The purpose of the Rape Shield Hearing was to determine whether the defense would be permitted to pierce the rape shield exclusion during the trial.

55. The Rape Shield Hearing was held as scheduled, and it is believed, and therefore averred, concluded at approximately 1:24 p.m.

56. During the Rape Shield Hearing, Assistant District Attorney Nathan Boob

stated, "So not only does the DNA then match from the vaginal swab of Mr. Best but also the penal swab has indicia of her presence there as well." (emphasis added).

57. Respondent sent two text messages to Judge Lunsford between 1:26 and 1:27 p.m.

58. These messages were deleted from Respondent's phone on an unknown date.

59. The first thirty characters of each message were recovered from Respondent's phone's internal storage by ODC through digital forensic analysis.

60. Only Respondent's outgoing messages were recovered.

61. The 1:27 p.m. message to Judge Lunsford began "Vag swab. Oh he said inducia..[.]"

62. This text message copied ADA Boob in the correspondence, but did not include opposing counsel.

63. It is believed and therefore averred that in her "group" text message Respondent was referring to ADA Boob's statement during the Hearing.

64. Respondent communicated ex parte with Judge Lunsford during Best, while not authorized to do so by law or court order.

65. By communicating ex parte with Judge Lunsford, Respondent sought to, and in fact did, influence him by legally prohibited means.

66. By communicating ex parte with Judge Lunsford, Respondent engaged in conduct which undermines the integrity of the criminal justice system and is prejudicial to the administration of justice.

67. On the same date, Judge Lunsford entered an Order at 4:16 p.m. granting

the Commonwealth's motion, precluding attempts to pierce the rape shield exclusion.

68. By Request for Statement of Respondent's Position (Form DB-7) dated January 21, 2015, Petitioner advised Respondent of its concerns arising from, *inter alia*, the text messaging that had occurred between her and Judge Lunsford.

69. Petitioner also made a request for the production of: "all text messages sent between you ... and Judge ... Lunsford[,]" prior to ODC independently obtaining the content of Respondent's text messages.

70. On February 27, 2015, Respondent's attorney filed her verified response to the Form DB-7 (DB-7 Answer), in which Respondent stated, *inter alia*:

> With respect to the text messaging at issue, ... [w]hile [Respondent] knows that none of the text messaging that was sent as between her and Judge Lunsford involved any pending criminal matter, she acknowledges that, with hindsight, she wishes she had not communicated with Judge Lunsford in that manner at all. [Respondent] did not make any false statements, and she did not engage in any fraud or misrepresentation to the Court. [Respondent] never intended to influence the judiciary or to influence the Court improperly. Nevertheless, as the text messaging was not improper *ex parte* communication with the Court and was not used to influence the Court, [Respondent] did not violate the Rules of Professional Conduct.
>
> ***
>
> As for the text messaging itself, [Respondent] did not use that communication in any way with respect to pending criminal matters.

(emphasis added).

71. Respondent, in connection with this disciplinary matter, knowingly and/or recklessly made a false statement of material fact.

72. Respondent failed to comply with Petitioner's request for any messages sent by her to Judge Lunsford.

73. Specifically, in Respondent's verified Answer dated February 27, 2015,

Respondent stated, *inter alia*: "we do not have access to any of the text messages at issue." (emphasis added).

74. Respondent's statement is directly contradicted by the fact that Respondent should have, and in fact did have, access to the county-owned work phone, work computer, and work iPad, as well as her personal phone.

75. Respondent, in connection with this disciplinary matter, failed to respond to a lawful demand for information from Petitioner.

76. By Supplemental Request for Statement of Respondent's Position (Form DB-7A-2) dated June 16, 2016, Petitioner revisited its concerns arising from, *inter alia*, the text messages that had been sent by Respondent to Judge Lunsford; in the DB-7A-2, Petitioner specifically quoted the text message, stated in ¶ 61.

77. On August 1, 2016, Respondent's attorney filed her verified response to the Form DB-7A-2 (DB-7A-2 Answer), in which Respondent stated, *inter alia*:

> [Respondent] has no independent recollection of sending two (2) text messages to Judge Lunsford (or anyone else) for that matter. On the contrary, [Respondent] does remember a group text in which she later learned that Judge Lunsford may have been included on the list, but she has no recollection that he was the intended recipient for the referenced texts.

(emphasis added).

78. Respondent, in connection with this disciplinary matter, knowingly and/or recklessly made a false statement of material fact.

79. Respondent's knowledge of Judge Lunsford being included in the text message is evidenced by Respondent's use of "he," referring to ADA Boob's statements during the Rape Shield Hearing, rather than directing the statement to ADA Boob (which would have been stated as "you").

E. The McClure Matter

80. On October 30, 2014, a Hearing was held on a Motion for Recusal filed by Bernard Cantorna, Esquire, on behalf of his client, Jalene McClure. See Commonwealth v. McClure, CP-14-CR-1778-2012 (Centre Co.).

81. At issue was, *inter alia*, whether evidence existed which would warrant Judge Lunsford's recusal from the matter.

82. The Motion stated: "Judge ... Lunsford is a personal friend of [Respondent], lead counsel in the above-captioned case, outside the bounds of a professional courthouse relationship. ... That personal friendship includes text messaging, telephone calls, social media contact and social interactions outside of the courthouse." (emphasis added).

83. During the Hearing, Respondent stated: "In terms of the rest of the allegations [*inter alia*, Respondent's text messaging], I am not dignifying them. He has to bring forth proof before this Court goes any further, and, notably, I expected him not to because there is none." (emphasis added).

84. By making a false and/or misleading statement, Respondent engaged in professional misconduct by engaging in conduct involving, dishonesty, deceit, and misrepresentation.

85. Judge Lunsford also made the statement: "There are no text messages between me and these two. I swear to God. ... There are no e-mails -- well you are going to find e-mails because we are always attached on e-mails but you are not going to find any e-mail that is inappropriate that relates to this trial or any trial whatsoever. They're not there." (emphasis added).

86. Respondent failed to correct Judge Lunsford's false statement.

87. Respondent, thereafter, also stated that "the false appearance of impropriety is manufactured by ease, an innuendo, a rumor put in a motion.... It's a charade...." (emphasis added).

88. Respondent engaged in professional misconduct by engaging in conduct involving, dishonesty, deceit, and misrepresentation.

89. Respondent made these statements in open court only five months after the ex parte communications in Horan and Best.

90. Respondent knew that Judge Lunsford's claim with respect to text messages was false, as she and he regularly sent each other text messages. In addition to the specific examples discussed, Respondent sent Judge Lunsford 9 text messages during the month of October 2014, and 89 between May 2014 and October 2014.

91. In the course of representing the Commonwealth in McClure, Respondent knowingly and/or recklessly made a false statement of material fact in open court.

92. Respondent knowingly assisted Judge Lunsford in conduct that is a violation of the applicable Rules of Judicial Conduct.

93. By Form DB-7 dated January 21, 2015, Petitioner advised Respondent of its concerns arising from, *inter alia*, the allegedly false statements made during the Hearing in McClure by both her and Judge Lunsford.

94. In Respondent's verified Answer dated February 27, 2015, Respondent stated, *inter alia*: "It is admitted that [Respondent] did not correct Judge Lunsford. It is denied that she had any reason to believe that she needed to correct him." (emphasis

added).

95. Respondent, in connection with this disciplinary matter, knowingly and/or recklessly made a false statement of material fact.

96. By Form DB-7A dated June 8, 2015, Petitioner revisited its concerns arising from, *inter alia*, the allegedly false statements made during the Hearing in McClure by both her and Judge Lunsford.

97. In Respondent's verified DB-7A Answer dated June 18, 2015, Respondent stated, *inter alia*: "[Respondent] did not correct Judge Lunsford because, at the time, she had no reason to believe that what Judge Lunsford was stating was incorrect. [Respondent] had no recollection of the Horan e-mail or the fact that her last e-mail in the Cluck matter excluded counsel of record." (emphasis added).

98. Respondent, in connection with this disciplinary matter, knowingly and/or recklessly made a false statement of material fact.

99. By Form DB-7A-2 dated June 16, 2016, Petitioner, again, revisited its concerns arising from, *inter alia*, the allegedly false statements made during the Hearing in McClure by both her and Judge Lunsford.

100. In Respondent's verified DB-7A-2 Answer dated August 1, 2016, Respondent stated, *inter alia*:

> the only issue before the Court during the McClure hearing was whether there had been text messaging between ADA [] Boob and Judge Lunsford ... [Respondent] had no recollection of any text messaging in the Best matter and such texts were not *ex parte* communications.... By way of further response, all such statements remain true.

(emphasis added).

101. Respondent, in connection with this disciplinary matter, knowingly and/or

recklessly made a false statement of material fact.

F. The Hoy Matter

102. On November 21, 2014, a Hearing was held on a Motion to Recuse and Supplemental Motion to Recuse filed by Public Defender Patrick Klena, Esquire, on behalf of his client, Michele Hoy. See Commonwealth v. Hoy, CP-14-CR-83-2012 (Centre Co.).

103. At issue was, *inter alia*, whether evidence existed which would warrant Judge Lunsford's recusal from the matter.

104. The Motion stated: "62 text messages have been exchanged between [Judge Lunsford] and [Respondent]."

105. During the Hearing, Respondent stated: Attorney Klena "has no indication and he has no evidence or proof to suggest that any communications between my office and your office are ex parte.... Never has this Court had ex parte conversations about any cases ...." (emphasis added).

106. Respondent engaged in professional misconduct by engaging in conduct involving, dishonesty, deceit, and misrepresentation.

107. Respondent made these statements in open court only six months after the ex parte communications in Horan and Best.

108. In the course of representing the Commonwealth in Hoy, Respondent knowingly and/or recklessly made a false statement of material fact in open court.

109. By Form DB-7 dated January 21, 2015, Petitioner advised Respondent of its concerns arising from, *inter alia*, the false statements made during the Hearing in Hoy.

110. In Respondent's verified Answer dated February 27, 2015, Respondent stated, *inter alia*: "to [Respondent]'s understanding, none of the text messages were improper *ex parte* communications with the Court."

111. Respondent, in connection with this disciplinary matter, knowingly and/or recklessly made a false statement of material fact.

112. By Form DB-7A dated June 8, 2015, Petitioner revisited its concerns arising from, *inter alia*, the allegedly false statements made during the Hearing in Hoy.

113. In Respondent's verified DB-7A Answer dated June 18, 2015, Respondent stated, *inter alia*: "When [Respondent] made the statement during the argument in the Hoy matter, she had no recollection of the Horan e-mail or the fact that her last e-mail in the Cluck matter excluded counsel of record. [Respondent] never intended to make a false statement or to mislead anyone."

114. Respondent, in connection with this disciplinary matter, knowingly and/or recklessly made a false statement of material fact.

115. By her conduct as set forth in Paragraphs 3 through 114, Respondent violated the following Rules of Professional Conduct:

a. RPC 3.5(a) A lawyer shall not ... seek to influence a judge ... by means prohibited by law;

b. RPC 3.5(b) A lawyer shall not ... communicate ex parte with [a judge] during the proceeding unless authorized to do so by law or court order;

c. RPC 4.1(a) In the course of representing a client a lawyer shall not knowingly ... make a false statement of material fact or law to a third person;

d. RPC 8.1(a) [A] lawyer in connection with a disciplinary matter shall not knowingly make a false statement of material fact;

e. RPC 8.1(b) [A] lawyer in connection with a disciplinary matter shall not ... knowingly fail to respond to a lawful demand for information from ... disciplinary authority;

f. RPC 8.4(c) It is professional misconduct for a lawyer to ... engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

g. RPC 8.4(d) It is professional misconduct for a lawyer to ... engage in conduct that is prejudicial to the administration of justice; and

h. RPC 8.4(f) It is professional misconduct for a lawyer to ... knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

CHARGE II

The "Britney Bella" Matter

A. The Creation and Use

116. On or about May 16, 2011, Respondent created a fictitious Facebook account under the name of "Britney Bella."

117. In creating the fictitious account, Respondent utilized photos from around the internet of attractive, buxom, scantily-clad, young girls in order to enhance the page's allure.

118. The account also indicated that "Britney Bella" was a Pennsylvania State University drop-out who had moved to the State College area from Pittsburgh, in order to portray a connection to the local community.

119. Respondent's intention was to utilize the account to "friend" defendants and/or witnesses, to obtain information from their personal Facebook accounts, which would have otherwise been private.

120. On May 17, 2011, Respondent sent an email to the Assistant District Attorneys in her office, as well as the office secretarial staff, stating that she had "made

a [F]acebook page that is fake for us to befriend people and snoop. Her name is Britney Bella.... Use it freely to masquerade around [F]acebook. Please edit it ... to keep it looking legit .... Use it to befriend defendants or witnesses if you want to snoop." (emphasis added).

121. By Form DB-7 dated January 21, 2015, Petitioner advised Respondent of its concerns arising from, *inter alia*, the "Britney Bella" Facebook account.

122. In Respondent's verified Answer dated February 27, 2015, Respondent stated, *inter alia*: "[Respondent] has not located the described email and does not believe that she would have used language in the nature described [in the Form DB-7]."

123. In order to support the legitimacy of the "Britney Bella" Facebook account, in Respondent's verified Answer dated February 27, 2015, Respondent alleged, *inter alia*: the "Britney Bella" Facebook account constituted a "proper law enforcement operation" which "lacked active ongoing interaction with the targets of the investigation," and that the "Britney Bella Facebook account's "exclusive purpose" was "to facilitate the self-identification of sellers of illegal and highly dangerous synthetic drugs and paraphernalia." (emphasis added).

124. Respondent's verified Answer dated February 27, 2015, alleged that, specifically, "three stores were raided, the owners were later prosecuted, and two [stores] were put out of business as a result."

125. Based upon Respondent's statements, the "stores" that the "Britney Bella" Facebook account would have been "tracking and targeting" were raided in or about February 2012.

126. However, the account remained active and was utilized after February

2012 to search for, and connect to, individuals who had no connection to drug-related activity.

127. Respondent, in connection with this disciplinary matter, knowingly and/or recklessly made a false statement of material fact.

128. By employing the "Britney Bella" Facebook account, Respondent personally engaged in conduct that was dishonest and deceitful.

129. By sending the aforementioned email providing access to the "Britney Bella" Facebook account to her staff, Respondent induced her staff to make misrepresentations and/or act dishonestly or deceitfully.

130. By providing access to the "Britney Bella" Facebook account to her staff, Respondent knowingly assisted her staff to make misrepresentations and/or act dishonestly or deceitfully.

131. Through the use of the "Britney Bella" Facebook account, Respondent violated the Rules of Professional Conduct through the misrepresentations and/or dishonest or deceitful acts of her staff.

132. While having direct supervisory authority over her nonlawyer administrative staff, Respondent failed to make reasonable efforts to ensure that their conduct was compatible with her professional obligations.

133. To the contrary, Respondent ordered, and with the knowledge of the specific conduct, endorsed use of the "Britney Bella" Facebook account by her nonlawyer administrative staff.

134. While exercising managerial authority over her nonlawyer administrative staff, and knowing of the conduct at a time when its consequences could be avoided or

mitigated, Respondent failed to take reasonable remedial action.

135. By employing the "Britney Bella" Facebook account, Respondent engaged in conduct which undermines the integrity of the criminal justice system and is prejudicial to the administration of justice.

B. The Hill Matter

136. On or about May 29, 2012, a criminal matter was initiated against Samuel Hill in Centre County. See Commonwealth v. Hill, MJ-49305-CR-157-2012 (Centre Co.).

137. Mr. Hill's matter was not drug related. See Commonwealth v. Hill, CP-14-CR-1161-2012 (Centre Co.).

138. Mr. Hill was:

a. arrested relating to an incident which occurred May 5, 2012;

b. charged with simple assault and harassment on May 29, 2012;

c. represented by Attorney Klena before the Magisterial District Court;

d. represented by Attorney Klena before the Centre County Court of Common Pleas;

e. became a friend of the "Britney Bella" Facebook account on or about August 29, 2012;

f. pled guilty, and was sentenced on November 15, 2012.

139. In dealing on behalf of the Commonwealth, utilizing the false "Britney Bella" Facebook account, with an individual being prosecuted, Respondent and/or an attorney acting on her behalf and under her supervision, implied disinterest in Mr. Hill's

matter.

140. Respondent reasonably should have known that, by connecting to Mr. Hill through the use of the "Britney Bella" Facebook account, Mr. Hill misunderstood her role in the matter, and Respondent failed to make reasonable efforts to correct the misunderstanding.

C. The McClure Matter

141. On or about September 11, 2012, a criminal matter was initiated against Jalene McClure in Centre County. See Commonwealth v. McClure, MJ-49302-CR-282-2012 (Centre Co.).

142. Contrary to Respondent's position as stated in ¶ 123, Ms. McClure's matter was not drug-related, and Ms. McClure's charges were initiated approximately eight months after the "exclusive purpose" of the "Britney Bella" Facebook account would have concluded. See Commonwealth v. McClure, CP-14-CR-1778-2012 (Centre Co.).

143. Ms. McClure was:

a. arrested relating to an incident which occurred August 18, 2010;
b. charged with various offenses relating to the injury of an infant under her care and supervision at a day care center she ran out of her home on September 11, 2012;
c. represented by Attorney Cantorna before the Magisterial District Court; and
d. represented by Attorney Cantorna before the Centre County Court of Common Pleas.

144. Respondent's verified Answer dated February 27, 2015, alleged that:

> To the best of [Respondent]'s knowledge and understanding, and based upon a review of the "friend request" section of the Facebook profile in question ... individuals became "friends" of the Britney Bella profile on his or her initiative, not due to any invitation sent by anyone on behalf of the Britney Bella profile.

(emphasis added).

145. On November 9, 2012, the same date Ms. McClure's criminal case was transferred from the Magisterial District Court to the Court of Common Pleas, the "Britney Bella" Facebook account was utilized to search Facebook for Ms. McClure and all three of her sons, Nathan, Cody, and Lukas.

146. At an unknown date, presumptively the same date of the search, "Friend Requests" were sent from the "Britney Bella" Facebook account to, at a minimum, Ms. McClure and Cody.

147. Friend Requests were sent from the "Britney Bella" Facebook account, evidenced by Petitioner's review of the "Britney Bella" Facebook page's "Sent Friend Requests" List, contrary to Respondent's position.

148. Respondent, in connection with this disciplinary matter, knowingly and/or recklessly made a false statement of material fact.

149. Ms. McClure and Cody did not accept the friend request sent from the "Britney Bella" Facebook account.

150. In dealing on behalf of the Commonwealth – with witnesses, individuals under investigation, and/or individuals being prosecuted – through the use of the false "Britney Bella" Facebook account, Respondent and/or an attorney acting on her behalf and under her supervision, implied disinterest in the matters.

151. Respondent reasonably should have known that the unrepresented

persons Respondent was connecting to through the use of the "Britney Bella" Facebook account misunderstood her role in the matter, and Respondent failed to make reasonable efforts to correct the misunderstanding.

152. Besides Mr. Hill and Ms. McClure, Petitioner has been able to identify 27 individuals who are "Friends" of the "Britney Bella" Facebook account and who have criminal records which are not drug related.

153. Besides those individuals included in ¶ 152, Petitioner has been able to identify an additional 8 individuals who are "Friends" of the "Britney Bella" Facebook account and who have criminal records which are drug related.

154. Notwithstanding the number of individuals with criminal records who are "Friends" of the "Britney Bella" Facebook account, Petitioner has been able to identify an additional 4 individuals who are "Friends" of the "Britney Bella" Facebook account who are relatives of those individuals with criminal records.

155. Petitioner has been able to identify 2 individuals who were sent friend requests by the "Britney Bella" Facebook account, while active criminal cases were open against them.

156. By her conduct as set forth in Paragraphs 116 through 155, Respondent violated the following Rules of Professional Conduct:

a. RPC 4.3(a) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested;

b. RPC 4.3(c) When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter,

the lawyer should make reasonable efforts to correct the misunderstanding;

c. RPC 5.3(b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer;

d. RPC 5.3(c)(1) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if ... the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved;

e. RPC 5.3(c)(2) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if ... the lawyer ... has comparable managerial authority over the person, and in either case knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action;

f. RPC 8.1(a) [A] lawyer in connection with a disciplinary matter shall not knowingly make a false statement of material fact;

g. RPC 8.4(a) It is professional misconduct for a lawyer to ... violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

h. RPC 8.4(c) It is professional misconduct for a lawyer to ... engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and

i. RPC 8.4(d) It is professional misconduct for a lawyer to ... engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, Petitioner prays that your Honorable Board appoint, pursuant to Rule 205, Pa.R.D.E., a Hearing Committee to hear testimony and receive evidence in support of the forgoing charges and upon completion of said Hearing to make such findings of fact, conclusions of law, and recommendations for disciplinary action as it may deem appropriate.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Paul J. Killion
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VERIFICATION

I, Anthony A. Czuchnicki, Disciplinary Counsel, verify that the statements made in the foregoing Petition for Discipline are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Anthony A. Czuchnicki