No. _____

In The
Supreme Court of the United States

JEFFREY B.C. MOORHEAD,

Petitioner,

v.

GLENDA LAKE, Clerk Of The District Court
Of The Virgin Islands, and
THE HONORABLE MICHAEL A. CHAGARES,
Chief Judge Of The Third Circuit,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The District Court of the Virgin Islands entered a final order suspending petitioner from the practice of law. Petitioner filed a notice of appeal to the Third Circuit pursuant to F.R.App.P. 3. The district court ordered the clerk not to process the appeal, averring the order was not appealable. The clerk did not process the appeal.

Petitioner filed for mandamus relief in the Third Circuit, seeking an order directing the district court clerk to process the appeal. The Third Circuit, including a circuit judge who had sat as a district court judge in the case below, denied mandamus relief for the same reasons, holding the suspension order was not appealable.

The Questions Presented are:

1) Does 28 U.S.C. § 1291 grant lawyers the statutory right to appeal a final order of a district court suspending a lawyer from the practice of law?

2) Can a district court prevent appellate review of its own final decision by directing the clerk of the court not to process a timely notice of appeal filed pursuant to F.R.App.P. 3, which provides that "the clerk *must* promptly send a copy of the notice of appeal . . . to the clerk of the court of appeals"?

3) Did a circuit court judge violate 28 U.S.C. § 47 by determining an issue in a matter as an appellate judge that involved the same issue he had already determined below in the same case while sitting as a district court judge?

PARTIES TO THE PROCEEDING

There are two nominal parties below, the clerk of the District Court of the Virgin Islands, Glenda Lake, who has not processed either of the two notices of appeal filed pursuant to F.R.App.R. 3, and Chief Judge Michael A. Chagares, who entered the order (while sitting as a Judge of the District Court of the Virgin Islands) directing the clerk of the district court to not process the appeal.

RELATED PROCEEDINGS

On February 1, 2022, the Supreme Court of the U.S. Virgin Islands issued a show cause order for reciprocal discipline based solely on the district court's order; a response was filed. That proceeding remains pending at *In Re Jeffrey B.C. Moorhead*, S. Ct. Civ. No. 22-005. The Third Circuit Bar also issued a show cause order on January 27, 2022, based on the district court's order; a response was also filed. That proceeding remains pending at *In Re Jeffrey B.C. Moorhead*, C.A. Misc. No. 22-8005.

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The District Court of the Virgin Islands entered an order on January 25, 2022, suspending petitioner Jeffrey Moorhead from the practice of law for two years. App. 10. The district court entered an order directing the clerk of court not to process petitioner's notice of appeal on January 31, 2022. App. 36. The district court entered an order on February 22, 2022, finding its suspension order was not an appealable order. App. 38.

The Third Circuit denied petitioner's petition for a writ of mandamus on March 4, 2022. App. 2. The Third Circuit denied petitioner's motion for rehearing on March 23, 2022. App. 1.

JURISDICTION

On March 4, 2022, the Third Circuit denied petitioner's petition for a writ of mandamus that was filed pursuant to F.R.App.R. 21. App. 2. On March 23, 2022, the Third Circuit denied petitioner's motion for rehearing. App. 1.

This Court's jurisdiction is based on 28 U.S.C. § 1254(1).

RELEVANT STATUTORY AND RULE PROVISIONS

The relevant statutes (28 U.S.C. § 47 and § 1291) and court rules (F.R.App.P. 3, F.R.App.P. 4, Virgin

Islands District Court Local Rules 7.3 and 83.2(b), and Eastern District of Pennsylvania's Local Rule 83.6 appear in the appendix. App. 115-152.

INTRODUCTION

This is the rare instance that calls for this Court to exercise its supervisory authority over a circuit court. *See* S. Ct. R. 10(a). This case arises out of an attorney discipline proceeding in the U.S. District Court for the Virgin Islands that took multiple inexplicable turns. First, a magistrate judge issued a report that recommended the imposition of serious sanctions on petitioner without first providing petitioner any opportunity to be heard or to contest the charges against him—which were based, in part, on the secret testimony of anonymous witnesses. That report and recommendation plainly violated the local rule requiring the magistrate judge to "afford the attorney the opportunity to be heard." LRCi 83.2(b). Then, the judges of the Third Circuit, sitting en banc, acted as the district court and adopted the report and recommendation—an action that constitutes a "final determination" under the relevant local rule. *Id*.

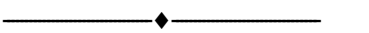
Petitioner filed a timely notice of appeal from that decision, appealing as of right from the district court's "final decision" as permitted by 28 U.S.C. § 1291. But the Chief Judge of the Third Circuit, sitting as a district court judge, directed the clerk of the district court not to process the appeal, reasoning that because the

local rule describes the district court's disciplinary order as a "final determination," the rule prohibits appeals.

Petitioner sought mandamus relief from the refusal to process his appeal, arguing that finality and appealability aren't mutually exclusive (indeed, finality in the district court is ordinarily a prerequisite to appeal), and pointing to many cases in which the Third Circuit has previously reviewed disciplinary orders from the Virgin Islands under this same rule. Finally, the petition was denied by a panel that included one of the very judges that had ruled against him on the same issue in the district court.

The lower court's actions in this case violate several federal statutes, as well as basic norms of due process. Specifically, they violate 28 U.S.C. § 1291, which vests jurisdiction in the appellate courts over all final decisions of district courts. They violate 28 U.S.C. § 47, which provides that no judge may preside over an appeal from an issue he decided. They also violate basic principles of fairness that provide attorneys accused of misconduct with a fair opportunity to respond to the charges before discipline is imposed—and then to obtain unbiased appellate review.

This Court should summarily reverse the decisions below and direct the Third Circuit to direct the district court clerk to process petitioner's appeal from the suspension order, which should then be docketed in the Third Circuit and processed like any appeal.



STATEMENT OF THE CASE

Petitioner has been a member of the bar of the District Court of the Virgin Islands since 1986. The mother of a criminal defendant represented by petitioner filed a complaint based on the petitioner's alleged mishandling of her son's case with the sentencing judge, who referred the matter to the Chief Judge of the District Court for the Virgin Islands, as required by Local Rule (LRCi) 83.2(b). Because petitioner is related to the Chief Judge, the matter was referred to the then-Chief Judge of the Third Circuit, Judge D. Brooks Smith.[1] On October 4, 2021, Judge Smith appointed retired Magistrate Judge Maureen Kelly from the Western District of Pennsylvania to submit a Report and Recommendation pursuant to LRCi 83.2(b). App. 6.

The next day, Magistrate Judge Kelly ordered records of all disciplinary matters involving petitioner over the past five years from the clerk's office. App. 6-7. She then issued her Report on December 3, 2021. App. 67-88. As the Report reflects, she held no hearings on the allegations against petitioner, never even attempting to contact Attorney Moorhead before she issued her Report. Neither did she try to contact the complainant or her son, petitioner's client, or make any attempt to investigate the allegations made in the mother's complaint. Instead, her Report relied upon (1) several unrelated prior sanction orders involving petitioner which had already been resolved, such as

[1] Judge Smith was succeeded as Chief Judge by Judge Michael Chagares on December 4, 2021.

fines for being late to court, and (2) interviews with six unidentified "persons with knowledge," who allegedly opined that petitioner had not "been himself" lately. Her Report contained no citations, nor did it list any rule that petitioner had supposedly violated. She then recommended that petitioner be suspended for 2 years. App. 67-88.

Petitioner filed multiple objections to the Report on December 17, 2021, primarily based on several due process issues, including the failure to comply with LRCi 83.2(b)'s requirement that an accused attorney be given an "opportunity to be heard" *by the presiding magistrate.* App. 89, 91-95, 104, 108. The petitioner also answered the allegations made by the mother, explaining why he believed he had handled her son's case properly, as well as discussing the difficulties often encountered when dealing with the parents of criminal defendants due to the attorney-client privilege. App. 89-91, 95-98. In short, while such complaints are a real concern, they were not unusual, which Magistrate Judge Kelly apparently found so insignificant here that she did not even investigate them, as reflected in her report. App. 67-89, 95, 105.

Petitioner asked that his filing be made in a sealed envelope since unnamed court personnel had been interviewed by the magistrate. Even though it exceeded her scope of authority since she was only charged with issuing a Report, Magistrate Judge Kelly denied the motion, noting that the objections "would be heard by the entire Third Circuit Court of Appeals" (App. 8, 47-50), which was a surprise to counsel, as nothing in the

record reflected that such treatment would be applied. In fact, why would she even know this would be heard by the entire Third Circuit?

The Third Circuit, sitting *en banc* as district court judges, rejected all of petitioner's objections on January 25, 2022, finding that (1) petitioner's written response objecting to the Report was sufficient to satisfy the hearing requirement of LRCi 83.2(b), (2) that the hearsay statements of the unidentified "persons with knowledge" were properly considered, as the rules of evidence did not apply to this proceeding and (3) the failure to investigate the mother's initiating complaint was of no consequence. The *en banc* district court panel then adopted the findings and recommendations of the magistrate, entering a final order suspending petitioner from the practice of law for 2 years. App. 10-34.

On January 27, 2022, petitioner filed a notice of appeal to the Third Circuit pursuant to F.R.App.R.3. App. 35. On January 31st Chief Judge Chagares, sitting as a district court judge, directed the clerk of district court not to process the appeal, stating in part (App. 36-37):

> [Petitioner] has now filed a notice of appeal captioned for the Court of Appeals for the Third Circuit, purporting to seek appellate review of the final determination entered in this administrative proceeding. Rule 83.2 does not set forth procedures for such an appeal. Indeed, Rule 83.2 does not contemplate any availability of further review after a Court has entered a final determination.

> Accordingly, the purported notice of appeal shall be considered as a motion for reconsideration. . . . **In light of this decision, the Clerk of the District Court of the Virgin Islands is directed to refrain from transmitting the purported notice of appeal to the Court of Appeals for the Third Circuit.** (Emphasis added).

Motions for reconsideration are permitted in the Virgin Islands District Court pursuant to LRCi 7.3, but only for limited reasons.[2]

Petitioner then filed a petition for a writ of mandamus in the Third Circuit on February 7, 2022, seeking an order directing the clerk of the district court to process the appeal, as required by F.R.App.P. 3. Petitioner also filed a motion to recuse all Third Circuit judges who sat on the case below pursuant to 28 U.S.C. § 47. App. 41-46.

On that same date, petitioner filed a pleading in the district court in response to the January 31, 2022 order, pointing out that (1) his notice of appeal had divested the district court of jurisdiction and (2) explaining why filing a motion for reconsideration had been contemplated, but then rejected, since it involved raising questions about certain conduct of the *en banc*

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[2] LRCi 7.3(a) allows *a party* to seek reconsideration due to:

(1) an intervening change in controlling law;

(2) the availability of new evidence, or;

(3) the need to correct clear error or prevent manifest injustice.

panel that would be better addressed in the appellate process. App. 47-53.

The same *en banc* panel of district court judges then summarily held on February 22, 2022, that the disciplinary proceeding was "administrative" in nature so that the final order suspending petitioner from the practice of law was not appealable for the same reasons set forth in the January 31st order. App. 38-39.

On February 28th, petitioner then filed a second notice of appeal from this February 22nd order pursuant to F.R.App.P. 3.[3] App. 40.

The Third Circuit, *including Judge Theodore McKee who had sat on the en banc panel at the district court level*, denied the mandamus petition on March 4, 2022, summarily holding (without briefing) that the final order was not appealable, as there was no appeals process provided for in LRCi 83.2(b), stating in part (App. 2-4):

> Here, petitioner asks this Court to direct the Clerk of the District Court of the Virgin Islands to transmit a Notice of Appeal to the Court of Appeals. Petitioner seeks to pursue an appeal of an order of attorney discipline issued on January 25, 2022 by the active Circuit Judges of the Court of Appeals, sitting as the

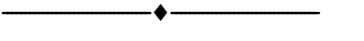
[3] The second notice of appeal was filed as a precaution in case the district court's January 31st order could be construed as ordering a post-trial motion that could then render the first notice of appeal as a nullity pursuant to F.R.App.R. 4, even though a motion for reconsideration is not one of the specific post-trial motions list in F.R.App.R. 4.

> District Court, in accordance with Rule 83.2 of the Local Rules of Civil Procedure of the District Court of the Virgin Islands. See In re: Jeffrey B.C. Moorhead, D.V.I. No. 1:21-mc-00035. Rule 83.2, however, does not authorize appellate review. Rule 83.2 provides that, after notice and opportunity to be heard, a disciplinary matter is "submitted to the Court for final determination." Rule 83.2(b) (emphasis added). A final determination was rendered pursuant to Rule 83.2 and the matter is therefore concluded.

A motion for rehearing was filed on March 11, 2022, pointing out that (1) the final order raised Constitutional due process issues, (2) the Third Circuit had heard similar due process appeals regarding disciplinary actions taken against other Virgin Islands attorneys pursuant to LRCi 83.2(b), and (3) that Judge McKee had improperly ruled on the mandamus petition, as he had ruled below on the same issue in the same case in the district court, which is prohibited by 28 U.S.C. § 47. App. 54-56.

The Third Circuit denied the rehearing without comment on March 23, 2022. App. 1.

To date, the clerk of the district court has yet to process either notice of appeal, nor has either appeal been docketed in the Third Circuit.



REASONS FOR GRANTING THE PETITION

This Court should grant certiorari pursuant to Supreme Court Rule 10(a) and 10(c), as the Third Circuit has "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power," and has also decided important federal questions in ways that conflict with relevant decisions of this Court and the federal court system in general. For the reasons set forth herein, it is respectfully requested that the Supreme Court accept certiorari, vacate the Third Circuit's mandamus orders, and remand this matter with instructions to the clerks of the district court and the Third Circuit to process this appeal.

A. A lawyer has the statutory right pursuant to 28 U.S.C. § 1291 to appeal a final Order of a District Court suspending the lawyer from the practice of law.

This Court's precedents hold that "a party may appeal to a court of appeals as of right from 'final decisions of the district courts.'" *Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 140 S. Ct. 582, 586 (2020) (quoting 28 U.S.C. § 1291); *see also Hall v. Hall*, 138 S. Ct. 1118, 1131 (2018) ("The normal rule is that a 'final decision' confers upon the losing party the immediate right to appeal."); *Gelboim v. Bank of Am. Corp.*, 574 U.S. 405, 407 (2015) ("An unsuccessful litigant in a federal district court may take an appeal, as a matter of right, from a final decision of the district court.") (cleaned up). "A 'final decision' within the meaning of § 1291 is

normally limited to an order that resolves the entire case." *Ritzen Grp.*, 140 S. Ct. at 586; *see also Gelboim*, 574 U.S. at 409 (explaining that "decisions of this Court have accorded § 1291 a practical rather than a technical construction," and that "the statute's core application is to rulings that terminate an action") (quotation marks omitted).

The district court's order suspending petitioner undeniably meets the definition of a final decision: it was the order that concluded the disciplinary proceedings by adjudicating finally and fully, the legal claims at issue. Indeed, the district court repeatedly described its order suspending petitioner as a "final" order, as did the Third Circuit. App. 2-4, 36-38. Moreover, the local rule under which the order was rendered, LRCi 83.2(b), likewise described it as a "final determination."

Nevertheless, the lower courts held that the suspension order was not an appealable final order because LRCi 83.2(b) does not expressly provide for an appeal. That is a facially backwards reading of the rule: the fact that the rule describes the district court's order as a "final determination" indicates that it intended to *facilitate* appeals—not bar them.

Assuming *arguendo* that the lower court correctly interpreted the rule, this Court should summarily reverse because a lower court cannot adopt a procedural rule that is at odds with the text of § 1291.[4] This Court

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[4] Section 1291 provides:

> The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have

explained that it "may use its supervisory authority to invalidate local rules that were promulgated in violation of an Act of Congress," *Hollingsworth v. Perry*, 558 U.S. 183, 196 (2010), and it emphasized that "[t]he Court's interest in ensuring compliance with proper rules of judicial administration is particularly acute when those rules relate to the integrity of judicial processes." *Id*. In *Hollingsworth*, the Court thus invalidated a rule relating to the broadcasting of trials; here, the lower courts interpreted the local rules of the District of the Virgin Islands *to prohibit appeals of a final order*—a far more significant infringement on litigants' rights. This Court should accordingly either hold that the local rule must be construed to permit appeals, or in the alternative hold that the rule is invalid insofar as it prohibits them.

In short, appellate jurisdiction in the federal court is set by statute pursuant to 28 U.S.C. § 1291, not local district court rules. In fact, the Third Circuit has previously held that § 1291 applies to disciplinary matters, holding in *In re Surrick*, 338 F.3d 224, 229 (3rd Cir. 2003):

> The District Court has the inherent authority to set requirements for admission to its bar and to **discipline** attorneys who appear

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jurisdiction of appeals **from all final decisions** of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, **and the District Court of the Virgin Islands**, except where a direct review may be had in the Supreme Court. (Emphasis added.)

> before it. We have jurisdiction to review the final order of the District Court pursuant to 28 U.S.C. § 1291. (Citations omitted).

Surrick involved a lawyer disciplined pursuant to that Eastern District of Pennsylvania's Local Rule 83.6 that is almost identical to LRCi 83.2(b).[5] The *Surrick* holding was cited just last year by another Third Circuit panel, holding in *In re Doherty*, No. 21-1258, 2021 WL 5190865, at *2 (3rd Cir. Nov. 9, 2021):

> A federal district court "has the inherent authority to set requirements for admission to its bar and to discipline attorneys who appear before it." *In re Surrick*, 338 F.3d 224, 229 (3rd Cir. 2003). **We have appellate jurisdiction under 28 U.S.C. § 1291**. . . . (Emphasis added).

Doherty involved the disbarment of a lawyer under the same E.D. Pa. Local Rule, 83.6.

Counsel could not locate a single case in the federal court system that has held to the contrary. In fact, in a series of cases cited in the proceedings below, the Third Circuit has heard and reversed several prior disciplinary orders of the District Court of the Virgin Islands where sanctions were imposed by that court pursuant to LRCi 83.2. For example, in *Saldana v. Kmart Corp.*, 260 F.3d 228, 236 (3rd Cir. 2001), the Third Circuit vacated an order for sanctions against an attorney entered pursuant to LRCi 83.2, first noting:

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[5] Both local rules are in the appendix. Neither states whether final disciplinary orders are or are not appealable, while §1291 allows appeals of all final orders of a district court.

> That [sanctions] opinion issued more than two years after the hearing when the Court invoked Local Rule 83.2 and, in very strong language, sanctioned [the attorney]. . . .

In short, the Third Circuit addressed the merits of the case and then reversed the sanctions for having been issued in violation of the lawyer's due process rights, **a finding it could not have made if the district court's Rule 83.2 order was not appealable**. *See also Adams v. Ford Motor Co.*, 653 F.3d 299, 302 (3rd Cir. 2011) ("We further find that the judge denied Colianni's due process rights by not following the disciplinary procedures outlined in Local Rule 83.2(b) of the District Court of the Virgin Islands and by failing to give Colianni *sufficient notice and an opportunity to be heard* prior to finding misconduct and imposing sanctions."); *In re Tutu Wells Contamination Litig.*, 120 F.3d 368, 379 (3rd Cir. 1997) (noting that D.V.I. R. 83.2 requires "notice and an opportunity to be heard" which the District Court failed to provide to the counsel disciplined in this case).

Like the appellants in these other cases, petitioner raised constitutional due process issues as well as statutory construction issues in his objections to Magistrate Judge Kelly's report. For example, LRCi 83.2(b) expressly requires that "[t]he magistrate judge or the Disciplinary Committee shall afford the attorney the opportunity to be heard." That requirement is distinct from the separate requirement that the attorney be permitted to "submit objections to the report and recommendation" once issued. *Id*.

In summary, if the suspension procedure followed by the district court is deemed appropriate, every federal court in the country could adopt LRCi 83.2(b) and suspend lawyers who appear before them without any appellate review. Such suspensions would then have a ripple effect on the lawyer's other bar admissions, as occurred in this case. While the judges of the district courts mean well, they do make errors, and very occasionally appear to make biased rulings, which is why the federal appellate system was created. Thus, it is a matter of utmost importance to the entire federal bar to make sure such suspensions can be challenged on appeal, as provided in 28 U.S.C. § 1291, rather than risk one's entire career on an unfavorable decision of a district court judge that is not reviewable on appeal.

B. A district court judge cannot prevent appellate review of a final order by directing the clerk not to process the appeal.

In a case cited to the district court in these proceedings, this Court held in *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58, 103 S. Ct. 400, 402, 74 L. Ed. 2d 225 (1982):

> The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.

> This Court further noted in *Griggs, id.* at 59:
>
> In 1979, the Rules were amended to clarify both the litigants' timetable and the courts' respective jurisdictions. The new requirement that a district court "transmit forthwith" any valid notice of appeal to the court of appeals advanced the time when that court could begin processing an appeal. Fed.Rule App.Proc. 3(d).

Thus, once petitioner filed a notice of appeal on January 27, 2022, the district court was divested of jurisdiction. As such, the January 31st order by a "district court judge" directing the clerk of court not to process the appeal improperly interfered with the appellate process required by F.R.App.R. 3.

In this regard, while it may be understandable why a clerk of court may not want to process an appeal once ordered not to do so by a district court judge, Rule 3 of the Federal Rules of Appellate Procedure states as follows:

> (a)(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).
>
> . . .
>
> (d)(1) . . . The clerk **must** promptly send a copy of the notice of appeal and of the docket

> entries—and any later docket entries—to the clerk of the court of appeals named in the notice. . . . (Emphasis added).

Thus, there is no legal mechanism that allows a district court judge to interfere with or stop this appellate process.

Indeed, it would create havoc in the federal appellate system if district court judges were allowed to stop review of their final orders simply by directing their clerks not to process a notice of appeal. To the contrary, whether an order or judgment is appealable is an issue to be determined by the appellate courts, which they are **required** to do.

Thus, it is respectfully submitted that the Supreme Court should make it clear that clerks of district courts must process a notice of appeal as required by F.R.App.P. 3, without regard to any orders to the contrary by a district court judge. Likewise, district court judges should be admonished not to interfere with the clerk's mandatory obligations under Rule 3.

C. 28 U.S.C. § 47 bars a judge from sitting on both the trial court and appellate panel when ruling on the same case (and issue) in each court.

Judge McKee sat as one of the district court judges who made this key jurisdictional ruling on February 22, 2022 (App. 38-39):

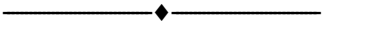
> Rule 83.2 does not set forth procedures for such an appeal. Indeed, Rule 83.2 does not contemplate any availability of further review after a Court has entered a final determination.

Judge McKee then sat on the Third Circuit panel that denied the mandamus petition on March 3rd, again deciding the same key issue as follows: "Rule 83.2, however, does not authorize appellate review." App. 2-4. However, 28 U.S.C. § 47 bars such participation on appeal, stating:

> No judge shall hear or determine an appeal from the decision of a case **or issue** tried by him. (Emphasis added)

Thus, Judge McKee violated § 47 by making this ruling on this same issue, as he had done below.[6]

Again, this violation, which as a practical matter can only be raised in a certiorari petition, also supports granting certiorari pursuant to Rule 10(c), with a summary order vacating the decision below and instructing him from participating further in this matter at the appellate level.



[6] Judge McKee acknowledged the motion to recuse him, but denied it, finding that ruling on the same issue in the same case in denying a mandamus petition did not violate § 47 since it was not technically an appeal. App. 2-4.

CONCLUSION

For the reasons set forth herein, it is respectfully submitted that this Court should grant certiorari, summarily reverse the decision below, and order the Third Circuit to instruct the district court to process petitioner's timely appeal from the order suspending him, and then to decide that appeal using a panel that does not include judges who have previously ruled against petitioner on the merits.

Respectfully submitted,

Dated: April 8, 2022

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

March 11, 2022

No. 22-1235

In re: JEFFREY B.C. MOORHEAD,
Petitioner

(related to D.V.I. No. 1-21-mc-00035)

Present: McKEE, SMITH, and SCIRICA, Circuit Judges

(1) Petition for Panel Rehearing filed by Petitioner Jeffrey B.C. Moorhead

Respectfully,
Clerk

ORDER

The foregoing petition for panel rehearing is hereby DENIED.

By the Court,

s/Theodore A. McKee
Circuit Judge

Dated: March 23, 2022
CJG/cc: Joel H. Holt, Esq.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ECO-032

No. 22-1235

In re: JEFFREY B.C. MOORHEAD,
Petitioner

(related to D.V.I. No. 1-21-mc-00035)

Present: McKEE, SMITH, and SCIRICA, Circuit Judges

(1) Petition for Writ of Mandamus filed by Petitioner Jeffrey B.C. Moorhead

(2) Motion to Recuse All Active Circuit Judges of the Court of Appeals for the Third Circuit filed by Petitioner Jeffrey B.C. Moorhead

Respectfully,
Clerk/CJG

ORDER

(Filed Mar. 4, 2022)

A writ of mandamus is an extraordinary remedy. United States v. Wright, 776 F.3d 134, 145-46 (3d Cir. 2015). We may issue the writ only if a petitioner shows (1) a clear and indisputable abuse of discretion or error of law; (2) a lack of alternative avenue for relief; and (3) a likelihood of irreparable injury. Id. In addition, the writ will issue only if the petitioner demonstrates that his right to the writ is clear and indisputable. In re:

McGraw-Hill Global Education Holdings, LLC, 909 F.3d 48, 56 (3d Cir. 2018). When these standards are met, we may nonetheless decline to issue the writ as a matter of discretion when it is not appropriate under the circumstances. In re: Howmedica Osteonics Corp., 867 F.3d 390, 401 (3d Cir. 2017).

Here, Petitioner asks this Court to direct the Clerk of the District Court of the Virgin Islands to transmit a Notice of Appeal to the Court of Appeals. Petitioner seeks to pursue an appeal of an order of attorney discipline issued on January 25, 2022 by the active Circuit Judges of the Court of Appeals, sitting as the District Court, in accordance with Rule 83.2 of the Local Rules of Civil Procedure of the District Court of the Virgin Islands. See In re: Jeffrey B.C. Moorhead, D.V.I. No. 1:21-mc-00035. Rule 83.2, however, does not authorize appellate review. Rule 83.2 provides that, after notice and opportunity to be heard, a disciplinary matter is "submitted to the Court for final determination." Rule 83.2(b) (emphasis added). A final determination was rendered pursuant to Rule 83.2 and the matter is therefore concluded.

Petitioner presumes that Fed. R. App. P. 3 and related caselaw apply to the purported notice of appeal. In view of the absence of any appeal procedure under Rule 83.2, however, Petitioner has not demonstrated a clear error of law or an indisputable abuse of discretion, nor has he established a clear and indisputable right to issuance of the writ. Moreover, we conclude as a matter of discretion that, even if the standards had been met, such an extraordinary remedy is not

appropriate under the circumstances presented. Accordingly, the foregoing petition for a writ of mandamus is hereby DENIED.

The motion to recuse all active Circuit Judges is hereby DENIED. The motion is unnecessary as to Judges Smith and Scirica, inasmuch as they are not active Circuit Judges. The motion is denied as to Judge McKee. Petitioner relies upon 28 U.S.C. § 47, which provides: "[n]o judge shall hear or determine an appeal from the decision of a case or issue tried by him." This matter is not an appeal. Rather, this is a petition for a writ of mandamus seeking an order directing action by the Clerk of the District Court of the Virgin Islands.

By the Court,

s/Theodore A. McKee
Circuit Judge

Dated: March 4, 2022
CJG/cc: Joel H. Holt, Esq.

APPEAL

District Court of the Virgin Islands
District of the Virgin Islands (St. Croix Division)
CIVIL DOCKET FOR CASE #: 1:21-mc-00035

In Re: J. Moorhead
Assigned to: Chief Circuit Judge Michael A Chagares
Referred to: US Magistrate Judge Maureen P Kelly
Cause: No cause code entered

Date Filed: 09/24/2021

In Re
Attorney Jeffrey B.C. Moorhead

Respondent

Jeffrey B.C. Moorhead
represented by **Jeffrey B. C. Moorhead**
1132 King Street
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340-773-2539
Fax: 340-773-8659
Email: jeffreymlaw@yahoo.com
TERMINATED: 12/14/2021
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Joel H. Holt
Law Offices of Joel Holt
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St Croix, VI 00820
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/04/2021	1	Complaint against Jeffrey B.C. Moorhead, Esq. (VI Bar No. 438) pursuant to LRCI 83.2(b)(d)(2) (Filing fee $ 0.). (Attachments: # 1 Attachment A, # 2 Envelope, # 3 Attachment B, # 4 Envelope) (LDM) (Entered: 09/24/2021)
10/04/2021	2	ORDER (DBS) dated 10/4/2021 referring the matter to Magistrate Judge Maureen P. Kelly of the United States District Court of the Western District of Pennsylvania for investigation and preparation of a report and recommendation. (LDM) (Entered: 10/04/2021)
10/05/2021	3	ORDER (MPK) dated 10/5/2021. In connection with the report and recommendation to be prepared pursuant to Rule 83.2(b) of the Local Rules of Civil Procedure of the District Court of the Virgin Islands, it is necessary to obtain information on all matters in which the District Court of the Virgin Islands has imposed discipline upon Attorney Jeffrey B.C. Moorhead in the past five (5) years. Accordingly, the Clerk is hereby requested to provide by Monday, October 18, 2021: (1) a list of all such matters; (2) a copy of the docket sheet for each matter; and (3) a copy of each order of discipline. (LDM) (Entered: 10/05/2021)

10/18/2021	4	Clerk of Court's Response Order dated October 5, 2021, re 3 Order. (Attachments: # 1 Attachment 1, # 2 Attachment 2, # 3 Attachment 3, # 4 Attachment 4, # 5 Attachment 5, # 6 Attachment 6, # 2 Attachment 7, # 8 Attachment 8) (EMK) (Entered: 10/18/2021)
12/03/2021	5	REPORT AND RECOMMENDATION (MPK) dated 12/3/2021. Objections to R&R due by 12/20/2021. (MA) (Entered: 12/03/2021)
12/14/2021	6	NOTICE of Appearance by Joel H. Holt on behalf of Respondent Jeffrey B.C. Moorhead (Holt, Joel) (Entered: 12/14/2021)
12/16/2021	7	MOTION for leave to File Document Under Seal *[Envelope]* by Respondent Jeffrey B.C. Moorhead. Motions referred to Magistrate Judge Maureen P Kelly. (Holt, Joel) (Entered: 12/16/2021)
12/16/2021	8	ORDER (MPK) dated 12/16/2021 denying 7 Motion to Seal Document.(MA) (Entered: 12/16/2021)
12/17/2021	9	OBJECTION to 5 Report and Recommendations by Jeffrey B.C. Moorhead. (Attachments: # 1 Exhibit 1) (Holt, Joel) (Entered: 12/17/2021)
01/25/2022	10	ORDER AND PUBLIC REPRIMAND (MAC) dated 1/25/2022 approving and adopting 5 Report and Recommendations. (MA) (Entered: 01/25/2022)

01/27/2022	11	NOTICE OF APPEAL as to 10 Order Adopting Report and Recommendations, by Attorney Jeffrey B.C. Moorhead. Filing fee $ 505, receipt number AVIDC-979676. Appeal Record due by 2/24/2022. (Holt, Joel) (Entered: 01/27/2022)
01/31/2022	12	ORDER (MAC) dated 01/31/2021 that the purported notice of appeal shall be considered as a motion for reconsideration. A brief in support of reconsideration must be filed in the above-captioned proceeding within (10) days from the date of this order, on February 10, 2022. In light of this decision, the Clerk of the District Court of the Virgin Islands is directed to refrain from transmitting the purported notice of appeal to the Court of Appeals for the Third Circuit. (MA) (Entered: 01/31/2022)
02/07/2022	13	Response re 12 Order, *To Order Dated January 31, 2022* filed by In Re Attorney Jeffrey B.C. Moorhead. (Attachments: # 1 Exhibit Writ of Mandamus) (Holt, Joel) (Entered: 02/07/2022)
02/22/2022	14	ORDER (MAC) dated 02/22/2022 denying reconsideration. (MA) (Entered: 02/22/2022)
02/28/2022	15	NOTICE OF APPEAL as to 14 Order by Attorney Jeffrey B.C. Moorhead. Filing fee $ 505, receipt number

		AVIDC-986739. (Holt, Joel) (Entered: 02/28/2022)
02/28/2022	16	CERTIFIED MAIL return receipt Re: 10 Order Adopting Report and Recommendations (EMK) (Entered: 02/28/2022)
03/04/2022	17	ORDER (USCA) dated 3/4/2022, the forgoing petition for writ of mandamus is DENIED. (Attachments: # 1 Letter) (TNS) (Entered: 03/04/2022)

DISTRICT COURT OF
THE VIRGIN ISLANDS

Division of St. Croix

No. 1:21-mc-0035

In re: Attorney Jeffrey B.C. Moorhead

COURT ORDER AND PUBLIC REPRIMAND

(Filed Jan. 25, 2022)

PRESENT: CHAGARES, Chief Judge, McKEE, AMBRO, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, and PHIPPS, Circuit Judges

This matter of attorney discipline is before the Court pursuant to Rule 83.2 of the Local Rules of Civil Procedure of the District Court of the Virgin Islands (hereinafter, the "Rules") on the Report and Recommendation of Magistrate Judge Maureen P. Kelly and the objections thereto filed by Attorney Jeffrey B.C. Moorhead, Esquire.[1] For the reasons discussed herein, Judge Kelly's recommendations are approved and

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[1] Attorney Moorhead has been a member of the bar of the District Court of the Virgin Islands since 1988. He is a solo practitioner located on the island of St. Croix. He is engaged in civil and criminal practice and has been a member of this Court's Criminal Justice Act ("CJA") Panel during various periods.

adopted, the objections are overruled, and Attorney Moorhead is hereby suspended from the practice of law before the District Court of the Virgin Islands for a period of two years as set forth below.

I.

On July 30, 2021, Carolyn Patterson sent a letter to the attention of Virgin Islands District Judge Wilma A. Lewis concerning allegations of misconduct on the part of Attorney Moorhead in the course of his representation of her son, Troy Patterson. Carolyn Patterson complained that Attorney Moorhead convinced her and her son to pay him a $10,000 retainer fee without providing adequate representation. She also raised a concern that Attorney Moorhead might similarly take advantage of others in the future. Pursuant to Rule 83.2, Judge Lewis informed Chief District Judge Robert Molloy of the complaint.

Because Chief Judge Molloy is related to Attorney Moorhead, he recused himself from the proceeding. He therefore referred the matter to Chief Judge D. Brooks Smith of the United States Court of Appeals for the Third Circuit.[2] Chief Judge Smith directed that Ms. Patterson's complaint be docketed.

On October 4, 2021, Chief Judge Smith assigned this matter to Magistrate Judge Maureen P. Kelly for

[2] Judge Smith's term as Chief Judge of the Court of Appeals concluded on December 4, 2021. For ease of reference and because he was Chief Judge at the time of the relevant events, he will be referred to herein as Chief Judge Smith.

investigation pursuant to Rule 83.2(b). Magistrate Judge Kelly concluded the investigation and issued her Report and Recommendation on December 3, 2021. Attorney Moorhead was served a copy of the Report and Recommendation and was given 14 days to respond in writing. See Rule 83.2(b). Through counsel, Attorney Moorhead timely filed objections on December 17, 2021. The Report and Recommendation and Attorney Moorhead's objections were then submitted to the Court for consideration.

II.

Although this matter was initiated by the filing of the Patterson complaint, Judge Kelly's investigation revealed that Attorney Moorhead has for many years engaged in concerning behavior in representing clients before the District Court of the Virgin Islands. Court records from the past several years show that Attorney Moorhead has engaged in an ongoing pattern of disregard for filing deadlines, failure to timely appear as directed at court proceedings, and neglect in adequately communicating with clients. Often, when individual judges have issued orders to show cause to address these actions, Attorney Moorhead has compounded the problem by disregarding the show cause orders or by failing to adhere to show cause deadlines. When monetary penalties or removal as appointed counsel are imposed as a sanction, Attorney Moorhead has simply paid the fines and apologized, without appearing to make any effort to change his behavior for the long term.

This pattern gives rise to a great deal of concern. Of even greater concern, within recent months, there has been a significant escalation in Attorney Moorhead's problematic behavior. In the past year, Attorney Moorhead has sent highly unprofessional emails and text messages to clients and their family members using crass and foul language and demonstrating a shocking disregard for his professional obligations to his clients. His inappropriate conduct has extended to his courtroom behavior as well. In one hearing, Attorney Moorhead interrupted the judge, made statements to malign and threaten his client, and ultimately was directed to leave the courtroom. In another hearing, Attorney Moorhead made disparaging comments adverse to his client's interests.

This marked increase in unacceptable behavior has made it clear that Attorney Moorhead is not meeting the high standards required of an attorney admitted to practice before the District Court of the Virgin Islands.

A.

Although the Report and Recommendation and response thereto shall remain sealed, the Court of Appeals endorses and affirms the findings of Magistrate Judge Kelly. Her investigation and findings are summarized briefly herein.

1.

A review of the record in Troy Patterson's criminal proceeding revealed that he initially was represented by CJA counsel. During that time, he entered a guilty plea. See United States v. Troy Patterson, D.V.I. No. 1:19-cr-00016. Just prior to sentencing, on May 19, 2021, Attorney Moorhead entered an appearance as retained counsel. By the next month, on June 25, 2021, Judge Lewis issued an order to show cause directing Attorney Moorhead to explain his repeated failure to adhere to court-ordered deadlines for filing the sentencing memorandum. Attorney Moorhead filed a late response after the show cause response deadline, attributing the missed deadlines to a lack of secretarial staff and problems with his electronic filing password.

During Troy Patterson's sentencing hearing, Attorney Moorhead advised the Court that he had met with Troy for the first time in person for about an hour before the hearing began. On the record, Troy Patterson agreed with Attorney Moorhead's statement that they had sufficient time to meet and that Troy was "happy" to go forward. See Sentencing Transcript 7/27/21 at 13–14.

That same day, shortly after Troy Patterson's sentencing hearing, Judge Lewis conducted a show cause hearing regarding Attorney Moorhead's repeated failure to meet deadlines. At the show cause hearing, Attorney Moorhead reiterated that he has staffing problems. Indeed, he stated that, due to staffing problems and mounting work, he had resigned from the

CJA panel and had stopped accepting cases. See Transcript 7/27/21 at 145–46. He stated, "It's getting completely out of hand, to the point where I'm getting out of the business." Id. at 145. Attorney Moorhead later stated, "I don't know – I don't know what – I'm being brutally honest. I know how I sound. It's been going on for some time. It's very, very frustrating, and it's unhealthy, and I'm not going to let it change me." Id. at 149. Judge Lewis cautioned Attorney Moorhead that meeting court-ordered deadlines is his responsibility and imposed a monetary sanction of $400. She issued a written order memorializing the sanction on July 28, 2021.

Shortly thereafter, on July 30, 2021, Carolyn Patterson wrote the letter to Judge Lewis that initiated this disciplinary proceeding. Ultimately, on July 30, 2021, Judge Lewis sentenced Troy Patterson to a term of 64 months of imprisonment. On August 3, 2021, Troy wrote a letter to Judge Lewis indicating his wish to appeal his sentence and explaining that he had no confidence that Attorney Moorhead would do so on his behalf. According to Troy, Attorney Moorhead "has never accepted my email requests (multiple), and has never attempted to set up a legal call at Guaynabo [Troy's prison]." Troy stated that "other than bloviation, [Attorney Moorhead] applies little effort." Troy therefore requested substitute counsel, although no action was taken on that request. Troy appealed pro se. See C.A. No. 21-2505. The Court of Appeals appointed

Attorney Moorhead as CJA counsel[3] to represent him; Troy did not renew his request for substitute counsel. On November 18, 2021, the Court of Appeals summarily affirmed Troy's judgment and conviction.

2.

Due to concern that Attorney Moorhead's actions in the Patterson matter were reflective of a larger pattern of disregard for court orders and client obligations, Magistrate Judge Kelly also reviewed the records in additional matters, in District Court and other courts, in which discipline was imposed since 2015.[4] Magistrate Judge Kelly observed that, since 2015, Attorney Moorhead has been subject to disciplinary sanctions in at least seven separate court proceedings in addition to the Patterson case, with one additional disciplinary matter that remains pending. He has been assessed monetary fines amounting to a total of $2,750,[5] has been terminated as CJA counsel

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[3] According to the Clerk's Office of the District Court of the Virgin Islands, Attorney Moorhead requested on May 12, 2021, to be removed from the list of CJA attorneys in the Virgin Islands. Chief District Judge Robert Molloy memorialized Attorney Moorhead's removal from the CJA Panel by order of May 25, 2021. It does not appear that the Court of Appeals was notified of the order, however.

[4] Although Magistrate Judge Kelly focused on discipline imposed since 2015, she noted that Attorney Moorhead's disciplinary history extends far earlier than that date.

[5] The Clerk of the District Court advises that, for all cases in the District Court of the Virgin Islands, all monetary sanctions were paid as directed.

prior to the end of a case on at least four different times, and has been directed to write a written apology to one client.

Matters reflecting Attorney Moorhead's poor track record for making court appearances and adhering to court-ordered deadlines include:

(1) People v. Willocks, V.I. Super. Crim. No. 397/2013: $250 fine for missing a court appearance.

(2) United States v. Lang, D.V.I. No. 1:15-cr-00033: $100 fine for a failure to appear. The court granted the defendant's motion for a new attorney.

(3) United States v. Brodhurst, D.V.I. No. 1:15-cr-00032: $100 fine for appearing late. The court granted the defendant's motion for a new attorney.

(4) United States v. Warner, D.V.I. No. 3:18-cr-00023: $200 fine for a failure to appear.

(5) United States v. Biggs, D.V.I. No. 3:07-cr-00060-02 (pending): recommending a fine of $100 for a failure to appear. Attorney Moorhead did not object to the recommendation, but no Court action has been taken upon it.

Three more recent matters require additional discussion, inasmuch as they demonstrate the notable increase in problematic behavior identified by Magistrate Judge Kelly. These matters are:

(1) United States v. Hughes, D.V.I. No. 1:16-cr-00021: Attorney Moorhead was appointed as CJA counsel on September 28, 2016. On December 16, 2019, District Judge Lewis issued an order to show cause to Attorney Moorhead concerning a failure to adhere to two Court deadlines. Attorney Moorhead missed the deadline for responding to the show cause order as well. He never filed a written response.

At the show cause hearing, Attorney Moorhead attributed the missed deadlines to an inability to file electronically, explaining that he did not know how to do so and did not have anyone to assist him. He stated, "This is an isolated event. This has never happened before, and I am very sorry." Transcript 1/10/20 at 5. Judge Lewis did not find Attorney Moorhead's actions reasonable and advised him that he was expected to timely file in the future. On January 13, 2020, she issued a written order imposing a monetary sanction of $150 for failing to comply with court-ordered deadlines.

On January 27, 2021, Attorney Moorhead filed a motion to withdraw from the representation, but did not provide any reason for the motion other than attorney-client privilege. Shortly thereafter, he withdrew the withdrawal motion. By June, however, the defendant filed a motion for new counsel. In it, the defendant alleged a failure to maintain contact and "verbal abuse" by Attorney Moorhead. Mtn. for New Counsel at ¶ 1. He attached copies of text messages from

Attorney Moorhead laden with expletives and insults, including Attorney Moorhead telling the defendant that "You're full of sh--!" and "F--- you." Attorney Moorhead also told the defendant to "get another lawyer" and to "[s]end this to the court!"

On June 3, 2021, Magistrate Judge George Cannon held a hearing on the motion. Attorney Moorhead acknowledged that the text messages were accurate and that he had encouraged his client to file them with the court. Attorney Moorhead did not explain or defend his use of vulgar language in his client communications. Indeed, Attorney Moorhead called his client "a liar" and used foul and threatening language during the hearing itself. Transcript 6/3/21 at 9-10. When Attorney Moorhead did not obey Judge Cannon's order to be quiet, Judge Cannon ultimately had to direct him to leave. Upon exiting the hearing, Attorney Moorhead told his client, "I'll deal with you later." Id. at 12. Judge Cannon responded, "No. Attorney Moorhead, you're not going to deal with her later" and continued with the proceeding. Id. Judge Cannon ultimately granted the motion for new counsel and terminated Attorney Moorhead's representation.

On October 5, 2021, Judge Lewis issued an order to show cause directed to Attorney Moorhead. Citing the profanity-laced text messages and his courtroom behavior, Judge Lewis directed Attorney Moorhead to show cause why he should not be sanctioned for his

"abject disrespect for the Court and the judicial process, and his complete lack of decorum in the courtroom." Order to Show Cause 10/5/21 at 3. Attorney Moorhead filed a short response on October 19. He defended his vulgar language as "protected speech" but apologized "profusely" for his courtroom demeanor.

Judge Lewis held a hearing on the show cause order on November 9, 2021. She ultimately imposed a monetary fine of $1,000 and directed Attorney Moorhead to write a written apology to his former client and file it with the Court. In her written order memorializing the sanction, Judge Lewis described Attorney Moorhead's conduct as "reprehensible" and "inexcusable." Order of Discipline 11/9/21 at 3–4. She concluded that sanctions were necessary because Attorney Moorhead "showed disrespect for the Court and the judicial process; disregard for his professional responsibilities as an officer of the Court and as a Criminal Justice Act-appointed attorney; and a lack of professional decorum." Id. at 3.

(2) Moorhead v. Moorhead, D.V.I. No. 1:19-cv-00009: Attorney Moorhead was retained as counsel for the plaintiff. On July 20, 2020, Magistrate Judge George Cannon issued an order to show cause directing Attorney Moorhead and defense counsel to explain their failure to appear at a pretrial status conference. When Attorney Moorhead did not respond, Judge Cannon issued a second order to show cause. Attorney Moorhead then filed a written response attributing his failure to appear to

his birthday celebration and his failure to timely file a show cause response to his lack of a secretary. On August 4, 2020, Judge Cannon issued a written order imposing a monetary sanction of $200 for failure to appear and to timely respond to the show cause orders.

On June 1, 2021, Magistrate Judge Cannon issued another show cause order, again because both attorneys failed to appear at a status conference. Attorney Moorhead timely filed a response, attributing his failure to appear to its being scheduled on the day after the Memorial Day and that he had "simply overlooked the scheduled Status Conference after the long holiday." Show Cause Response 6/7/21 at ¶ 2. Magistrate Judge Cannon discharged the order to show cause. But on July 9, 2021, Magistrate Judge Cannon issued another order to show cause for Attorney Moorhead's failure to appear at another status conference.

At the show cause hearing, Attorney Moorhead apologized and informed the Court that he "got caught up in gossip with the court staff" and "completely forgot about this hearing." Transcript 6/19/21 at 3. On July 16, 2021, Magistrate Judge Cannon issued a written order imposing a monetary sanction of $100 for the failure to appear. Attorney Moorhead remained on the case, which was closed in October 2021.

(3) United States v. Webster, D.V.I. No. 1:12-cr-00019: On February 8, 2021, Attorney Moorhead was appointed under the CJA to represent the defendant to pursue a compassionate release motion. Attorney Moorhead missed three filing deadlines for briefing on the motion, even though the deadline was extended several times. By May 10, 2021, when briefing had still not been filed, District Judge Lewis issued an order to show cause.

In his response to the show cause order, Attorney Moorhead apologized for missing the deadlines, attributing the missed deadlines to his client's failure to provide him documentation. Shortly thereafter, on May 13, 2021, Attorney Moorhead filed the required brief; it was three pages long and argued that Attorney Moorhead had no knowledge of the defendant's case and had "nothing to add" to the defendant's pro se motions. Def's Supp. Br. for Compassionate Release at ¶ 10–11.

At a show cause hearing on May 13, 2021, Attorney Moorhead again attributed the missed deadlines to his client's failure to provide him documentation. Among other things, Attorney Moorhead informed the Court that his client's motion for compassionate release is "the worst request for a compassionate release that I've ever seen" and opined that his client had "no extraordinary or compelling reasons" warranting relief. Transcript 5/13/21 at 6. In addition, he argued that he had never filed a document electronically and had no knowledge of how to do so, despite the fact

> that documents in the District Court are required to be filed electronically.
>
> On May 14, 2021, Judge Lewis issued a written order imposing a monetary sanction of $250 for missing three Court deadlines without timely filing continuance motions. The following month, by written order of June 15, 2021, Magistrate Judge Cannon observed that Attorney Moorhead had "made disparaging comments adverse to his client's interest" at the show cause hearing and had filed a brief representing that he had "nothing to add." Accordingly, Magistrate Judge Cannon relieved Attorney Moorhead of the representation and directed the appointment of new counsel.

The public court records demonstrate that Attorney Moorhead has engaged in a pattern of gross failure to adequately represent clients by missing court deadlines and court appearances and by failing to engage in appropriate client communication. In addition, Attorney Moorhead's behavior during the past two years has escalated to an extreme level and is entirely unacceptable for a practitioner of law before the District Court of the Virgin Islands. He has mistreated his clients by using abusive, foul, and inappropriate language, he has maligned, threatened, and undermined his own clients by email, by text message, and in open court, he has shown disrespect to judges, and he has disrupted court proceedings. Past imposition of

monetary sanctions and verbal admonishments have had no impact on Attorney Moorhead's behavior.[6]

B.

Attorney Moorhead raises several objections to the Report and Recommendation. He begins by presenting a "global issue" concerning an alleged lack of opportunity to be heard. Obj. 3.

Rule 83.2(b) states: "The Magistrate Judge . . . shall afford the attorney the opportunity to be heard." Magistrate Judge Kelly provided Attorney Moorhead that opportunity by permitting him to be heard on the papers in the form of his objections to the Report and Recommendation prior to its submission to the Court. He argues, however, that the opportunity to be heard must be separate from the opportunity to file objections and must take place in the form of an evidentiary hearing and/or a pre-Report and Recommendation interview.

The objection is overruled. Rule 83.2 makes no reference to an evidentiary hearing requirement or a

[6] In light of the robust public record in this matter, including hearing transcripts, witness interviews were not required. But Magistrate Judge Kelly conducted, via Zoom, interviews with six individuals who have professional knowledge of or interaction with Attorney Moorhead. Because of the small and close-knit legal community in the Virgin Islands and Attorney Moorhead's close family relationship with the Chief Judge of the District Court, the individuals' identities were kept confidential to encourage their candid participation. The interviews confirmed the pattern of behavior that is reflected in the court records.

requirement that the respondent be interviewed by the Magistrate Judge prior to issuance of the Report and Recommendation. By virtue of the Report and Recommendation, Attorney Moorhead was given full notice of the scope of the investigation and the allegations underlying the proposed discipline. Indeed, he makes no argument that he received insufficient notice. He was also given the opportunity to respond in writing to express his reasons why, in his view, discipline should not be imposed. He offers nothing to explain why this written opportunity was insufficient or what additional information he would have presented had he appeared in person.

Importantly, the proposed discipline is based upon Attorney Moorhead's behavior as reflected in public court records that are available to him and that were clearly identified in the Report and Recommendation, not upon the credibility of Carolyn Patterson or any other individual witness. Under these circumstances, the plain text of the Rules and due process do not require anything more. See, e.g., Biliski v. Red Clay Consol. Sch. Dist. Bd. of Ed., 574 F.3d 214, 221–22 (3d Cir. 2009) (holding in the employment context that advance notice of the charges, an opportunity to provide a detailed written response, and the decisionmaker's consideration of that response satisfied due process).

Attorney Moorhead next objects that the Magistrate Judge should have: (1) attempted to verify the accuracy of the allegations raised by Carolyn Patterson beyond reviewing the public record in Troy Patterson's case; and (2) concluded that the record in Troy

Patterson's case "did not warrant a finding of any misconduct on Attorney Moorhead's part." Obj. 6. He therefore "objects to any weight being given to any of Carolyn Patterson's allegations." Obj. 7.

The objection is overruled. The record in the Patterson matter demonstrates that Attorney Moorhead missed numerous court deadlines and was sanctioned by the court. This behavior comprises part of the pattern of behavior that Magistrate Judge Kelly identified as the basis for the imposition of discipline upon Attorney Moorhead. Further exploration of the allegations, including Carolyn Patterson's subjective view of Attorney Moorhead's performance, was unnecessary because those allegations did not form the basis for the imposition of any discipline. They were not given any weight in the Report and Recommendation and are not relied upon in this Order.

Attorney Moorhead next objects that "the only issue for the Magistrate Judge to investigate was whether the unverified allegations made by Carolyn Patterson could be substantiated." Obj. 8. The objection is overruled. Although Magistrate Judge Kelly's investigation was initiated by Carolyn Patterson's complaint, that complaint does not limit the scope of the investigation.

Rule 83.2(b) provides that "[w]hen misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of any attorney admitted or permitted to practice before this Court, shall come to the attention of a judicial officer of this

Court, **whether by complaint or otherwise** . . . the judicial officer shall inform the Chief Judge." (emphasis added). Thus, to the extent Attorney Moorhead suggests that the investigation should have been limited in scope to the four corners of Carolyn Patterson's pro se complaint, that position is rejected as contrary to the Rules. Carolyn Patterson presented a concern that Attorney Moorhead had been acting inappropriately in the course of representing other clients. In addition, it was both necessary and appropriate to confirm whether the behavior reflected in the Patterson record was an isolated incident or indicative of a broader pattern. To that end, Magistrate Judge Kelly directed the Clerk to provide information about Attorney Moorhead's recent disciplinary history. The Clerk's response, which identified an extensive list of cases imposing discipline, was appropriately considered within the scope of the investigation pursuant to Rule 83.2(b).

Attorney Moorhead next objects that consideration of his disciplinary history from 2015 until the present was improper because "not one of the Judges who imposed those fines referred those matters for any further disciplinary considerations pursuant to Rule 83.2 . . . [and] those Judges and magistrates did not consider those 'offenses' to constitute misconduct." This objection is overruled.

First, Attorney Moorhead's position is factually incorrect. One of the Judges who imposed a fine did refer this matter for discipline; specifically, Judge Lewis referred Carolyn Patterson's complaint, which was

submitted to her in the course of the Patterson proceeding, to the Chief Judge of the District Court for resolution pursuant to Rule 83.2. That referral did not occur in a vacuum. Rather, Judge Lewis herself had just imposed discipline upon Attorney Moorhead days earlier for Attorney Moorhead's repeated missed deadlines in that very case. See United States v. Troy Patterson, D.V.I. No. 1:19-cr-00016.

Second, Attorney Moorhead's view of his past actions is inappropriately myopic. A single fine imposed by one judge for a missed deadline in a specific case might not necessarily have been a reason for that particular judge to invoke Rule 83.2. But, in this Court's view, the pattern of behavior – the repeated missed deadlines, the repeated payment of fines without any change in behavior, the escalation in misconduct including the egregious mistreatment of clients – should be considered cumulatively and in context in the course of this administrative proceeding assessing Attorney Moorhead's fitness to practice law before this Court. It has not escaped the Court's attention that Attorney Moorhead has repeatedly, and for many years, taken the apparent approach that paying court-imposed fines is merely a cost of doing business. It is now necessary for this Court to determine whether a more substantial form of discipline is appropriate based upon that years-long course of conduct, particularly given the recent, troubling escalation in misbehavior.

Attorney Moorhead objects that he was not provided the identities of the witnesses whom Magistrate Judge Kelly interviewed or transcripts of those

interviews, suggesting that "anonymous hearsay statements are not a proper evidentiary basis for recommending the suspension of a lawyer from the practice of law." Obj. 12. This objection is overruled. The recommended discipline was based upon the information contained in the public record of the cases that Magistrate Judge Kelly reviewed, not upon any specific witness testimony. Likewise, our decision does not rely upon such witness testimony.

In any event, there are serious confidentiality concerns presented by Attorney Moorhead's request to cross-examine these witnesses. The Virgin Islands is a small, close-knit legal community, and Attorney Moorhead himself is related to the Chief Judge of the District Court. In addition, the record shows that Attorney Moorhead has engaged in threatening, unprofessional, and erratic behavior. Protection of witness identities is warranted in such circumstances. Finally, the rules of evidence do not apply to this disciplinary proceeding. Nothing in Rule 83.2 excludes hearsay or guarantees a right to cross-examination.

Next, Attorney Moorhead objects that his CJA clients "should have some input" into whether he should be removed from their cases. Obj. 13. This objection is overruled. Even apart from the fact that Attorney Moorhead cannot continue to represent clients—CJA or otherwise—if he is suspended from the practice of law, Attorney Moorhead himself has acknowledged his own inability to serve his CJA clients adequately. He chose on May 21, 2021, to resign from the CJA panel, and that decision was memorialized by order of the

District Court on May 25, 2021. The recommendation that Attorney Moorhead be removed as CJA counsel and that substitute counsel be appointed is therefore consistent with both Attorney Moorhead's resignation and the District Court's order removing him from the CJA panel. Indeed, the suggestion that Attorney Moorhead should continue to represent CJA clients when he has been removed from the CJA panel and is therefore ineligible is itself improper. See United States District Court District of the Virgin Islands, Criminal Justice Act Plan (revised 2011) at VI(A) (providing for a panel of attorneys "who are eligible and willing to be appointed to provide representation under the CJA").

Finally, Attorney Moorhead objects that the Report and Recommendation "did not identify any rules, ethical or otherwise, that Attorney Moorhead purportedly violated." Obj. 13. This objection is overruled. Rule 83.2(a)(1) requires that attorneys admitted to practice before the District Court of the Virgin Islands must comply with the Model Rules of Professional Conduct, as adopted by the American Bar Association. Attorney Moorhead is expected, as an attorney admitted to the bar of this Court since 1988, to be thoroughly familiar with these standards. See Rule 83.1(a).

The conduct described in the Report and Recommendation, as set forth in public court documents, includes verbal abuse and threats of clients, taking positions contrary to the client's interest in open court, persistent missed deadlines and court appearances, and ongoing failures to adequately communicate with

clients. Such conduct violates, at a minimum, the following Model Rules:

> Rule 1.1: Competence. A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
>
> Rule 1.3: Diligence. A lawyer shall act with reasonable diligence and promptness in representing a client.
>
> Rule 1.4: Communications. A lawyer shall . . . reasonably consult with the client about the means by which the client's objectives are to be accomplished; [and] keep the client reasonably informed about the status of the matter.
>
> Rule 3.5: Impartiality & Decorum of the Tribunal. A lawyer shall not . . . engage in conduct intended to disrupt a tribunal.
>
> Rule 8.4: Misconduct. It is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice [and to] engage in conduct that the lawyer knows or reasonably should know is harassment.

Attorney Moorhead's actions—as reflected in public court documents—include telling his client that "You're full of sh-- !" and "F--- you," informing the presiding judge that his client's motion is "the worst . . . that I've ever seen," and threatening his client, while before a judge, that "I'll deal with you later." It is disingenuous at best for Attorney Moorhead to claim that such behavior is consistent with the rules of

professional conduct. Client mistreatment in the form of harassment and disrupting a tribunal are both expressly barred. Actively undermining a client's case is inconsistent with the requirement of competent representation. Moreover, although Attorney Moorhead notes in footnote 5 of his objections that "being late for court appearances is not something one generally associates with Attorney *misconduct*," Obj. 8 n.5 (emphasis in original), this Court disagrees. Attorney Moorhead's repeated missed court appearances and filing deadlines reflect a failure of diligence, preparedness, promptness, and interference with the administration of justice.

In short, the pattern of behavior described in the Report and Recommendation constitutes conduct prejudicial to the administration of justice in violation of the Model Rules of Professional Conduct.[7]

III.

Based on the foregoing, the Court concludes that substantial discipline is warranted. Therefore, Jefferey B.C. Moorhead, Esquire is HEREBY immediately suspended from the practice of law before the District

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[7] Although it is not presented as an objection, counsel asserts that the above-captioned matter was not properly sealed at some point, so that "anyone authorized to use this Court's ECF system could access" documents listed on the docket. Obj. 14 n.8. Counsel is incorrect. The Clerk of the District Court of the Virgin Islands has confirmed that the entire proceeding has been sealed since inception and access to all documents has been restricted since that time.

Court of the Virgin Islands for a period of two (2) years. See Rule 83.2(c)(1)(B). The Clerk of the District Court of the Virgin Islands is directed to remove Attorney Moorhead as CJA counsel on any pending matters and to appoint substitute counsel. Attorney Moorhead shall be barred from reapplying to join the CJA panel in St. Croix, St. Thomas, or St. John at any time prior to his reinstatement to the bar of the District Court of the Virgin Islands.

If at the conclusion of the two-year suspension Attorney Moorhead wishes to be reinstated to the practice of law before the District Court of the Virgin Islands, conditions are imposed upon his readmission, as follows:

(1) A comprehensive physical and mental health examination must be conducted by providers to be determined by the Judges of the Court of Appeals, sitting as the District Court of the Virgin Islands, at the time reinstatement is sought to assess Attorney Moorhead's fitness to practice law;

(2) 40 hours of accredited Continuing Legal Education (CLE) must be completed, addressing civil or criminal practice and procedure, legal ethics, professional responsibility, or other relevant topics to be approved by the Judges of the Court of Appeals, sitting as the District Court of the Virgin Islands, at the time reinstatement is sought;

(3) A professional mentor must be selected and approved by the Judges of the Court of

> Appeals, sitting as the District Court of the Virgin Islands, to supervise Attorney Moorhead's practice of law for a period of time to be determined at the time reinstatement is sought.

See Rule 83.2(c)(2).

This order shall be made publicly available and shall constitute a public reprimand of Attorney Moorhead for the actions described herein. See Rule 83.2(c)(1)(C). The Clerk of the District Court of the Virgin Islands shall provide a copy of this order to the Clerk's Office of the Court of Appeals for the Third Circuit, the Supreme Court of the Virgin Islands, and the American Bar Association. See Rule 83.2(e).

For the Court,

s/ Michael A. Chagares
Chief Circuit Judge

Dated: January 25, 2022

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

IN RE: ATTORNEY JEFFREY B. C. MOORHEAD	**Case No. 1:21-mc-0035**

NOTICE OF APPEAL

Jeffery B.C. Moorhead, by counsel, hereby appeals the Court Order entered on January 25, 2022, against him to the United States Court of Appeals for the Third Circuit, making this filing pursuant to F.R. App. R. 3(a), which notice of appeal is timely pursuant F.R. App. R. 4.

Dated: January 27, 2022

Respectfully submitted,

/s/ Joel H. Holt

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Counsel for
Jeffrey B.C. Moorhead

DISTRICT COURT OF
THE VIRGIN ISLANDS

Division of St. Croix

No. 1:21-mc-0035

In re: Attorney Jeffrey B.C. Moorhead

ORDER

(Filed Jan. 31, 2022)

Rule 83.2 of the Local Rules of Civil Procedure of the District Court of the Virgin Islands sets forth the disciplinary rules and procedures applicable to this administrative proceeding. Rule 83.2 provides, among other things, that after notice and an opportunity to be heard, a disciplinary matter is "submitted to the Court for final determination." Rule 83.2(b) (emphasis added).

Attorney Moorhead was provided notice of the grounds for discipline and an opportunity to be heard on the papers in the form of objections. The matter was then submitted to the Judges of the Court of Appeals, sitting as the District Court of the Virgin Islands. By order entered on January 25, 2022, the Judges overruled his objections and issued a final order of discipline and public reprimand pursuant to Rule 83.2.

Attorney Moorhead has now filed a notice of appeal captioned for the Court of Appeals for the Third Circuit, purporting to seek appellate review of the final determination entered in this administrative proceeding. Rule 83.2 does not set forth procedures for such an appeal. Indeed, Rule 83.2 does not contemplate any availability of further review after a Court has entered a final determination.

Accordingly, the purported notice of appeal shall be considered as a motion for reconsideration. A brief in support of reconsideration must be filed in the above-captioned proceeding within ten (10) days from the date of this order, on February 10, 2022. In light of this decision, the Clerk of the District Court of the Virgin Islands is directed to refrain from transmitting the purported notice of appeal to the Court of Appeals for the Third Circuit.

s/Michael A. Chagares
Chief Circuit Judge

Dated: January 31, 2022

DISTRICT COURT OF
THE VIRGIN ISLANDS

Division of St. Croix

No. 1:21-mc-0035

In re: Attorney Jeffrey B.C. Moorhead

ORDER

PRESENT: CHAGARES, Chief Judge, McKEE, AMBRO, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, and PHIPPS, Circuit Judges

Rule 83.2 of the Local Rules of Civil Procedure of the District Court of the Virgin Islands sets forth the disciplinary rules and procedures applicable to this administrative proceeding. Rule 83.2 provides, among other things, that after notice and an opportunity to be heard, a disciplinary matter is "submitted to the Court for final determination." Rule 83.2(b) (emphasis added).

Attorney Moorhead was provided notice of the grounds for discipline and an opportunity to be heard on the papers in the form of objections. The matter was then submitted to the Judges of the Court of Appeals,

sitting as the District Court of the Virgin Islands. By order entered on January 25, 2022, the Judges overruled his objections and issued a final order of discipline and public reprimand pursuant to Rule 83.2.

Attorney Moorhead filed a notice of appeal captioned for the Court of Appeals for the Third Circuit, purporting to seek appellate review of the final determination entered in this administrative proceeding. Rule 83.2 does not set forth procedures for such an appeal. Indeed, Rule 83.2 does not contemplate any availability of further review after a Court has entered a final determination. Accordingly, Chief Judge Chagares ordered that the purported notice of appeal be considered as a motion for reconsideration and directed the Clerk of the District Court of the Virgin Islands to refrain from transmitting the purported notice of appeal to the Court of Appeals for the Third Circuit.

Attorney Moorhead has filed a response stating that he does not wish to pursue reconsideration. Accordingly, upon consideration of Attorney Moorhead's response, reconsideration is hereby DENIED.

For the Court,

s/Michael A. Chagares
Chief Circuit Judge

Dated: February 22, 2022

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

IN RE: ATTORNEY JEFFREY B. C. MOORHEAD	**Case No. 1:21-mc-0035**

NOTICE OF APPEAL

Jeffery B.C. Moorhead, by counsel, hereby appeals the Court Order entered on February 22, 2022, against him to the United States Court of Appeals for the Third Circuit, making this filing pursuant to F.R. App. R. 3(a), which notice of appeal is timely pursuant F.R. App. R. 4.

Dated: February 28, 2022 Respectfully submitted,

/s/ Joel H. Holt

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

In re JEFFREY B. C. MOORHEAD, Petitioner, GLENDA LAKE, ESQ., CLERK Respondent, And HONORABLE MICHAEL A. CHAGARES, Nominal Respondent	Civ. No. 2022-___ Petition for Writ of Mandamus

PETITION FOR A WRIT OF MANDAMUS

This petition for a writ of mandamus is being filed pursuant to Rule 21 of the Federal Rules of Appellate Procedure, which seeks the following relief against Glenda Lake, Respondent, solely in her official capacity as the Clerk of the District Court of the Virgin Islands, for the following reasons, all of which are supported by the referenced Orders or filings as required by F. R.A. P. 21(a)(2)(C):

1. On January 25, 2022, the District Court of the Virgin Islands issued a Court Order, which constituted a final order in the proceeding in question against Jeffrey B.C. Moorhead, the Petitioner in this matter. See Exhibit 1.

2. On January 27, 2022, Jeffrey B.C. Moorhead filed a timely notice of appeal of this Order to this Court pursuant to F.R. App. P. 3, filing it in the District Court as required by F.R. App. R. 3 and paying the required docket fee of $505. See Exhibits 2 and 3.

3. Pursuant to F.R. App. R. 3(d), the Clerk of the District "must promptly send a copy of the notice of appeal and of the docket entries-and any later docket entries-to the clerk of the court of appeals named in the notice." (Emphasis added).

4. On January 31, 2022, the Honorable Michael A. Chagares, the Nominal Respondent, directed the Clerk of the District Court of the Virgin Islands "to refrain from transmitting the purported notice of appeal" to this Court. See Exhibit 4. That Order acknowledged that the January 25, 2022, Order was issued by "the Judges of the Court of Appeals, sitting as the District Court of the Virgin Islands." As such, the January 31, 2022, Order was an Order of the District Court, not the Court of Appeals.

5. However, once a notice of appeal is filed, the District Court is divested from jurisdiction over this case, as noted by this Court in *In Re: Mercedes-Benz Emissions Litig.* 797 F. App'x 695, 968-99 (3d Cir. 2020):

   The post-appeal filings in the District Court do not moot this appeal. Once the Mercedes Manufacturers noticed this appeal, jurisdiction over Andary's and Feller's claims were

divested from the District Court and vested in this Court. *See Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58, 103 S. Ct. 400, 74 L. Ed. 2d 225 (1982); *see also Hudson United Bank v. LiTenda Mod. Corp.*, 142 F.3d 151, 158 (3d Cir. 1998) ('[Jurisdiction that is originally and properly vested in the district court becomes vested in the court of appeals when a notice of appeal is filed."); *Venen v. Sweet*, 758 F.2d 117, 120-21 (3d Cir. 1985).

6. Indeed, whether the January 25th Order is an appealable order is a question of law for this Court, not the District Court, although it should be noted that this Court has routinely heard and disposed of numerous appeals from the District Court of the Virgin Islands where there is a due process challenge to the imposition of sanctions. See, e.,g., *Adams v. Ford Motor Co.*, 653 F.3d 299 (3d Cir. 2011); *Saldana v. Kmart Corp.*, 260 F.3d 228 (3d Cir. 2001); *In Re Tutu Wells Contamination Litigation*, 120 F. 3d 368 (3rd Cir. 1997).

7. To date the Clerk of the District Court, Glenda Lake, the Respondent, has failed to transmit the Notice of Appeal to this Court.

8. As such, because the language in F.R. App. R. 3(d) is mandatory – the "clerk must" send a copy of the notice to this Court for docketing along with other specified documents – it is respectfully requested that this Court issue an Order to the Clerk of the District Court to transmit the notice of appeal (with all other

required documents) forthwith to the Clerk of this Court so the appeal can be docketed.

9. One final point is in order. The Order being appealed was issued under the names of all of the following Third Circuit Judges sitting as District Court Judges (See Exhibit 1):

> CHAGARES, Chief Judge, McKEE, AMBRO, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, and PHIPPS, Circuit Judges

Thus, once this petition has a docket number, a motion to recuse these Judges from ruling on any matters related to this petition will be submitted, as it is their ruling and participation in the matters below that will be the subject of the Petitioner's appeal.

As such, it is respectfully requested that this Court grant this petition for a writ and enter an order directing the Clerk of the District Court to transmit the Notice of Appeal and all other required documents to this Court forthwith.

Dated: February 7, 2022

/s/ Joel H. Holt

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CERTIFICATE OF GOOD STANDING

I have been admitted to the Third Circuit Bar of this Court and am a member in good standing.

/s/ Joel H. Holt

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2022, I caused a true and exact copy of the foregoing to be served on by email and First Class mail on the Respondent as follows:

Glenda Lake, Esq.
Clerk of the District Court of the Virgin Islands
Ron de Lugo Federal Building
5500 Veterans Drive, Rm 310
St. Thomas, VI 00802
glenda_lake@vid.uscourts.gov

Further, I have also served a copy on the Nominal Respondent by First Class Mail, and will file a copy of this petition with the District Court of the Virgin Islands under the case number from which this petition arises to provide further notice to him as well on this same date, as follows:

The Honorable Michael A. Chagares
U.S. Court of Appeals
Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

/s/ Joel H. Holt

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

IN RE: ATTORNEY JEFFREY B. C. MOORHEAD	**Case No. 1:21-mc-0035**

RESPONSE TO ORDER DATED JANUARY 31, 2022

(Filed Feb. 7, 2022)

COMES NOW, Jeffery B.C. Moorhead, by counsel, and hereby responds to this Court's January 31, 2022, Order as follows:

1. Counsel and his client conferred before filing the Notice of Appeal in this matter. The filing of the notice of appeal divested this Court of jurisdiction. As stated in *In Re: Mercedes-Benz Emissions Litig.*, 797 F. App'x 695, 96899 (3d Cir. 2020):

> The post-appeal filings in the District Court do not moot this appeal. Once the Mercedes Manufacturers noticed this appeal, jurisdiction over Andary's and Feller's claims were divested from the District Court and vested in this Court. *See Griggs v. Provident Consumer Disc.* Co., 459 U.S. 56, 58, 103 S. Ct. 400, 74 L. Ed. 2d 225 (1982); *see also Hudson United Bank v. LiTenda Mort. Corp.*, 142 F.3d 151, 158 (3d Cir. 1998) ('[Jurisdiction that is originally and properly vested in the district court becomes vested in the court of appeals when a notice of appeal

is filed."); *Venen v. Sweet*, 758 F.2d 117, 120-21 (3d Cir. 1985).

2. Counsel and his client considered filing a motion for reconsideration, but decided not to file one based on the required standard set forth in LRCi 7.3, which provides in part in subsection (a):

   Such motion shall be filed in accordance with LRCi 6.1(b)(3). A motion to reconsider shall be based on:

   (1) an intervening change in controlling law;

   (2) the availability of new evidence, or

   (3) the need to correct clear error or prevent manifest injustice.

   In this regard, the only possible basis for seeking reconsideration would have been LRCi 7.3(a)(3), as the process leading up to the January 25 Order appears to be based on clear error and is manifestly unjust. Some of the matters considered that could have been raised to support this argument were as follows:

   - Magistrate Judge Kelly never even attempted to investigate the specific charge that gave rise to this proceeding;
   - The day after she was appointed, Magistrate Judge Kelly requested multiple files regarding past matters

regarding Attorney Moorhead and then limited her focus on these files;

- Magistrate Kelly contacted unnamed court employees to seek their opinions about Attorney Moorhead's behavior in general, as opposed to their knowledge of any specific acts of wrongdoing;
- Magistrate Judge Kelly never contacted Attorney Moorhead or any other witnesses except for these unnamed court employees;
- Magistrate Judge Kelly never traveled to the Virgin Islands or held a hearing, as expressly required by LRCi 83.2 before issuing her Report and Recommendations;
- Magistrate Judge Kelly's report contained no citations to any law, nor did it list any specific rules that Attorney Moorhead allegedly violated;
- Magistrate Judge Kelly exceeded her authority by expressly stating in her report that no extension of time would be given to respond to her report beyond the 14 day requirement set forth in LRCi 83.2, even though that directive exceeded the scope of her authority;
- Magistrate Kelly also exceeded her authority when she denied Attorney Moorhead's request to file his response

in a sealed envelope on December 16th, as she was only directed to submit her report and was never appointed as a District Court Judge to rule on other matters or motions;

- Magistrate Kelly's December 16th Order stating that this matter would be heard by all of the Judges of the Third Circuit (which counsel did not believe at the time the Order was issued) revealed that she had had ex parte communications with the Third Circuit, as she could only have known this fact through such ex parte communications, as this information was not contained anywhere in this record.

- The January 25th Order was entered under the names of all of the Judges of the Third Circuit, an extraordinary judicial act, even though there was no designation for any of them to act as District Court Judges of the Virgin Islands;

- The January 25th Order was also entered without a formal hearing as well;

- Moreover, there is no provision in LRCi 83.2 for the Magistrate's report to be reviewed by more than one Judge, nor is there any procedure that permitted such an en banc panel

of Judges to hear this matter (or any similar District Court matter).

3. While the totality of the circumstances would support a finding that these proceedings have been tainted by the foregoing events, so that the January 25th Order should be set aside based upon the "clear error" and/or "manifest injustice" provisions of LCRI 7.3, it was decided not to file such a motion for two reasons. First, the possible appellate issue that these Circuit Judges had no authority to enter the January 25th Order might be subject to a waiver argument. Second, as a practical matter, based on this record, it seems unlikely that the Judges who entered this Order would understand how these highly unusual proceedings, including the lack of proper due process, will be viewed by an objective appellate court and withdraw the January 25th Order.[1] Thus, the decision was made not to seek Rule 7.3 relief.

4. It was also decided that a Notice of Appeal needed to be promptly filed so that a motion to stay the January 25th Order or expedite this appeal could be filed in the Third Circuit.[2]

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[1] Of course, once the appeal is docketed, this Court can still address any issues it wishes to address pursuant to L.A.R. 3.1. If this Court decides to vacate its January 25th Order, it would moot the pending appeal, returning this matter to the District Court.

[2] Counsel is mindful of the requirement that a motion to stay should be first filed in the District Court unless it would be impractical to do so. Under the extraordinary posture of this case, it

5. It was also decided that a motion to recuse the Third Circuit Judges who had ruled on this matter as sitting District Court Judges would be filed once a docket number was assigned to this case.

6. The January 31st Order directing the Clerk to hold the Notice of Appeal further supports the argument that clear error and manifest injustice have occurred here, as a District Court Judge cannot prevent a litigant from seeking relief from his or her Order in the Third Circuit.

7. Indeed, if affirmed on appeal, the holdings in this case would have a profound impact on all lawyers who are practicing before the District Court, as any lawyer could be suspended from the practice of law without a formal hearing based upon the non-appealable rulings of any District Court Judge, whether from this jurisdiction or not, who can make his or her decision without having to follow any standards whatsoever, including the Rules of Evidence.

8. Thus, the appeal of this case now involves matters that impact all lawyers in this jurisdiction admitted to this Court's bar, especially since on Order of suspension from this Court will result in show cause orders in every jurisdiction where the attorney is admitted, as has occurred in this case.

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was decided that seeking such relief directly first from the Third Circuit would be appropriate based in this standard.

9. In short, a lawyer's entire reputation and ability to practice law can be simply terminated by a Judge (who has never even met the lawyer) who finds misconduct without ever holding a formal hearing and without being subject to any legal standards, much less appellate review of the Order, if this Court's current ruling and its suggested position set forth in the January 31st Order are upheld on appeal.

Thus, Attorney Moorhead has not filed a motion to reconsider. He has filed a Notice of Appeal. He has also filed a Petition for a Writ of Mandamus on this same date, attached as Exhibit 1 (without its exhibits), seeking an Order from the Third Circuit directing the Clerk of Court to transmit the Notice of Appeal to the Third Circuit for docketing, as mandated by F.R.A.P. 3(d).

Dated: February 7, 2022

Respectfully submitted,

/s/ Joel H. Holt

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

In re JEFFREY B. C. MOORHEAD, Petitioner, GLENDA LAKE, ESQ., CLERK Respondent, And HONORABLE MICHAEL A. CHAGARES, Nominal Respondent	Civ. No. 2022-1235 Petition for Writ of Mandamus

PETITION FOR PANEL REHEARING OF COURT'S MARCH 4, 2022, ORDER DENYING THE PETITION FOR MANDAMUS

The Petition for a Writ of Mandamus was denied by this Court on March 4, 2022. Pursuant to F. R. App. P. 40, the Petitioner seeks Panel Rehearing of that Order on several grounds.[1] Before addressing each basis for seeking reconsideration, it is necessary to address what has transpired in this matter in the District Court since the Petition was filed, as certain findings

[1] As noted *infra*, the Petitioner does assert that rehearing is required in part due the improper participation of at least one Judge on the Panel, and perhaps two of the Judges, so any rehearing has to be heard by a Panel consisting of at least one new Judge (and perhaps two).

in that Court explain why reconsideration is appropriate here. In this regard, the attached documents explain these events (all in 2022) as follows:

- On February 7th, the Petitioner filed a response to the District Court's January 31st Order, explaining (1) why the January 27th filing of the Notice of Appeal divested the District Court of jurisdiction and (2) explaining what grounds were considered regarding a possible new trial motion and what would be raised on appeal (See Exhibit 1);
- On February 22nd, the District Court entered an Order finding (without any citation) that disciplinary matters entered in accordance to Rule 83.2 of the District Court it were not appealable (See Exhibit 2);
- On February 28th, the Petitioner filed a second Notice of Appeal of the February 22nd Order in the District Court as per F. R. App. 3., which to date has not been transmitted to this Court by the Clerk of Court (See Exhibit 3);
- On March 4th, this Court denied the mandamus petition, finding (without any citation) that disciplinary matters entered in accordance to Rule 83.2 of the District Court it were not appealable (See Exhibit 4).

There are several grounds for seeking reconsideration, each of which will be discussed separately without regard to a specific order of importance, as all are equally important.

I. The District Court's January 25th Order is An Appealable Order

The January 25th Order suspending Jeffrey Moorhead from the practice of law was a final Order of the District Court that is appealable pursuant to F. R. App. P. 3. In this regard, this Court has addressed and reversed several prior determinations by the District Court of the Virgin Islands where sanctions were imposed by that Court pursuant to LRCi 83.2.

For example, in *Saldana v. Kmart Corp.*, 260 F.3d 228, 236 (3d Cir. 2001), this Court vacated an Order for sanctions against Attorney Rohn entered by the District Court pursuant to LRCi 83.2, first noting:

> That [sanctions] opinion issued more than two years after the hearing when the Court invoked Local Rule 83.2 and, in very strong language, sanctioned Rohn by ordering her to attend a legal education seminar on civility in the legal profession, write numerous letters of apology to all whom "she demeaned and insulted by her vulgarity and abusive conduct," apologize to the court reporters present at any of those proceedings, and pay the attorneys' fees and costs associated with bringing the sanctions motion.

In that case, this Court addressed the merits of the case and then reversed the sanctions for having been issued in violation of Attorney Rohn's due process rights, **a finding it could not have made if the District Court's Rule 83.2 Order was not appealable**.

There are several other cases where this Court found the District Court of the Virgin Islands erred by not providing proper notice and an opportunity to be heard *pursuant to LRCi 83.2. See*, *e.g.*, *Adams v. Ford Motor Co.*, 653 F.3d 299, 302 (3d Cir. 2011) ("We further find that the judge denied Colianni's due process rights by not following the disciplinary procedures outlined in Local Rule 83.2(b) of the District Court of the Virgin Islands and by failing to give Colianni sufficient notice and an opportunity to be heard prior to finding misconduct and imposing sanctions."); *In re Tutu Wells Contamination Litig.*, 120 F.3d 368, 379 (3d Cir. 1997) (noting that D.V.I. R. 83.2 requires "notice and an opportunity to be heard" which the District Court failed to provide to the counsel disciplined in this case).

While the District Court in this case asserted that it followed the required due process pursuant to LRCi 83.2, that finding is subject to review on appeal. For example, this District Court held that Attorney Moorhead was:

(1) not entitled to an evidentiary hearing;

(2) not entitled to the benefit of the rules of evidence;

(3) not entitled to advance notice of the charges against him before the Magistrate Judge began to conduct her review of the matter;

(4) not entitled to notice of the exact rules he allegedly violated in having to respond to her Report, as her Report contained no citations and did

not identify a single ethical standard that Attorney Moorhead allegedly violated; and

(5) not entitled to the right to appeal the suspension order.

If in fact LRCI 83.2 has such a low standard of proof before an attorney can be suspended, then an appeal is warranted to determine if such a disciplinary rule itself comports with the required due process, as applied, to take one's livelihood away from him.

As noted in *Adams v. Ford Motor Co.*, 653 F.3d 299, 305 (3d Cir. 2011):

> "[t]he importance of an attorney's professional reputation, and the imperative to defend it when necessary, obviates the need for a finding of monetary liability or other punishment as a requisite for the appeal of a court order finding professional misconduct." (Citations omitted).

Here, Attorney Moorhead's entire livelihood, being a lawyer in the Virgin Islands for the past 40 years, is at stake. Thus, the appellate process is a critical aspect of insuring that appropriate due process has been followed, including an appellate review of any rule that would deprive counsel of this right without notice, an evidentiary hearing, appropriate rules of evidence and an appeals process.[2]

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[2] Indeed, a review of Attorney Moorhead's Objections to the Magistrate's Report and Recommendation ("Report"), attached as Exhibit 5, shows that legitimate issues were raised as to the due

In short, the January 25th Order was a final Order of the District Court, similar to other final LRCi 83.2 orders that this Court has reviewed and reversed. Indeed, it is clearly a final Order as defined by F. R. Civ. P. 54 and is not an interlocutory order. Moreover, this Court has not cited a single case that would make an "administrative" order non-appealable, which in fact is directly contrary to the other cases cited herein.

Thus, it is respectfully requested that this Court reconsider its March 4th Order and grant the Petition for the Writ of Certiorari, so the timely filed Notice of Appeal can be processed with this Court, with all of these issues being addressed on the merits through proper briefing as with any appeal.

II. Judge Mckee Should Have Recused Himself As a Matter of Law

Judge McKee was one of the District Court Judges (sitting by designation) who made the finding in the District Court on February 22, 2022, that disciplinary matters entered in accordance to Rule 83.2 of the District Court were not appealable (See Exhibit 2). As this is a contested ruling, resulting in a second Notice of Appeal being filed, it was a direct violation of 28 U.S.C. §47 for Judge McKee to then sit as a Judge of this Court on the panel that rejected the Petition for a Writ of Mandamus **based on the exact same holding he had already decided as a District Court Judge** –

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process issues in this matter. It should be noted that his filing was sealed below, but is no longer sealed pursuant to LAR 106.1(c)(2).

that disciplinary matters entered in accordance to Rule 83.2 of the District Court were not appealable (See Exhibit 4). Indeed, he was an author of both opinions, affirming his decision entered as a District Court Judge while now sitting as a Third Circuit Judge, which is a direct violation of 28 U.S.C. §47, which provides;

> No judge shall hear or determine an appeal from the decision of a case or issue tried by him.

While Judge McKee claims he was not ruling on "an appeal of the decision of the District Court," this is incorrect, as "Circuit Court" Judge McKee's March 4th ruling did exactly that—it affirmed "District Court" Judge McKee's February 22nd Order by adopting it as this Court's basis for rejecting this Petition. Thus, rehearing of this Court's March 4th opinion is required due to this express statutory violation by Judge McKee.

III. Whether Judge Smith Should Have Participated in the March 4th Ruling That Denied the Petition For Mandamus Needs to be Addressed and Resolved.

Finally, the conduct of Magistrate Judge Kelly leads one to question whether she had any ex-parte communications with any Third Circuit Judge, including Judge Smith. In this regard, Attorney Moorhead's objections to her Report (Exhibit 5) pointed out that she never even attempted to investigate the specific charge that gave rise to this proceeding. Instead, the

day after she was appointed by Judge Smith (Exhibit 6), Magistrate Judge Kelly requested multiple files regarding past matters regarding Attorney Moorhead. See Exhibit 6.

She then limited her focus on these files, never contacting the person who filed the initial complaint against Attorney Moorhead or contacting Attorney Moorhead. See Exhibit 5. Moreover, it is undisputed that Magistrate Judge Kelly's report contained no citations to any law, nor did it list any specific rules that Attorney Moorhead allegedly violated, which would have at least given him notice of the charges against him before he had to respond to her Report. See Exhibit 5.

Magistrate Judge Kelly then exceeded her limited authority by expressly stating in her Report that no extension of time would be given to respond to her report, even though that directive exceeded the scope of her authority to simply issue the Report. She further exceeded her limited authority when she denied Attorney Moorhead' s request to file his response in a sealed envelope on December 16th (Exhibit 7), as she was only directed to submit her Report and was never appointed as a District Court Judge to rule on other matters or motions.

As it relates to her potential contact with Judge Smith, Magistrate Kelly's December 16' Order (Exhibit 7) also stated that this matter would be heard by all of the Judges of the Third Circuit (which counsel did not believe at the time the Order was issued). This

revelation confirmed that she had had ex-parte communications with one or more Judges on the Third Circuit, as she could only have known this fact through such ex-parte communications, as this information was not contained anywhere in the Court record.

This conduct—not investigating the complaint that gave rise to her appointment, not ever communicating with Attorney Moorhead, issuing a Report with no citations, making recommendations without listing any legal standards that had allegedly been violated, issuing Orders beyond her limited authority to only submit a Report and then admitting she had had ex-parte communications with someone who told her the entire Third Circuit would rule on any objections to her Report *en banc—all* raise serious questions as to what ex-parte communications took place between her and other Court personnel, including any Judges, before her Report was issued.

It is noted that Judge Smith took senior status just prior to the issuance of Magistrate Judge Kelly's Report. While it is unknown what, if any, ex-parte communications he may have had with her, if he did have any such communications (which he would know), then he should have recused himself as well pursuant to 28 U.S.C. § 455(b)(1). If he did not have any such communications, this grounds for seeking rehearing is withdrawn.

IV. Conclusion

In conclusion, if the prior Order in this case is allowed to stand, any District Court Judge can avoid being appealed by simply telling the Clerk not to file the appeal, putting the Clerk of Court in an untenable position. Indeed, while "District Court" Judge Chagares directed the Clerk not to process the January 25th Notice of Appeal, the Clerk of Court has still not processed the February 28th Notice of Appeal (over 10 days ago), apparently now making such decisions by herself. In short, absent rehearing, F.R.App.P. 3 becomes subjective—an untenable result for our well established federal jurisdiction.

Indeed, had Judge Moore or Judge Cannon taken the same action in *Saldana, supra*, or *Adams, supra*, Attorney Rohn and Attorney Colianni could never have appealed those rulings and their disciplinary conduct imposed by the District Court would never have been reviewed and reversed, as was done in both cases.

An example helps explain this point. What if the District Court in this case had recognized and distinguished *Saldana* and *Adams* (which were cited by Moorhead *but not addressed by the District Court*), saying those rulings did not apply here since Attorney Moorhead is a black West Indian (which is true), while Attorney Rohn and Attorney Colianni are white continentals (which is also true)—would that ruling not be appealable?

Another example arises from this very case, where Attorney Moorhead raised a statutory construction argument, citing Third Circuit cases, that required Attorney Moorhead to be given a hearing *before* the Magistrate Judge could render her report.[3] See Exhibit 5. The District Court did not even address this issue, as noted in its January 25th Order attached to the initial Petition in this matter. Clearly such legal issues should be subject to review on appeal.

In short, any Order of the District Court imposing disciplinary action resulting in the suspension of one's right to practice law is appealable. The fact that the entire Third Circuit sat *en banc* as District Court Judges in this case creates a situation that may be unpleasant since the Notice of Appeal seeks to ask this Court to now review and reverse their decision, but we live in a democracy of laws, not one where a Judge, no matter how powerful, should be able to prevent such review, as might be expected in countries with lesser (or no) standards that have existed (i.e.,

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[3] Rule 83.2(b) expressly states:

> **The magistrate judge or the Disciplinary Committee shall afford the attorney the opportunity to be heard.**

However, it is undisputed that no such hearing was ever afforded by Magistrate Judge Kelly before (or after) she issued her Report.

Nazi Germany) and still exist (i.e., Russia) around the world.[4]

Dated: March 11, 2022

/s/ Joel H. Holt

Joel H. Holt, Esq.
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340-773-8709
holtvi@aol.com

CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2022, I caused a true and exact copy of the foregoing to be served on by email and First Class mail on the Respondent as follows:

Glenda Lake, Esq.
Clerk of the District Court of the Virgin Islands
Ron de Lugo Federal Building
5500 Veterans Drive, Rm 310
St. Thomas, VI 00802
glenda_lake@vid.uscourts.gov

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[4] Indeed, Counsel's fear of retribution for raising these tough issues is so great, he has now withdrawn from all cases in which he was counsel in the District Court, other than in cases where he already had co-counsel, explaining to the two clients who asked that he did not think it was in their best interest to have him represent them any longer in this Circuit because of this case.

The Honorable Michael A. Chagares
U.S. Court of Appeals
Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

CERTIFICATE OF COMPLIANCE WITH WORD/PAGE LIMITATION

I hereby certify that word count in this Motion For Panel Rehearing is 2546 words, which is less than the word limit set forth in LAR 40 of 3900 words, and is also less than the 15 page limitation.

/s/ Joel H. Holt

CERTIFICATE OF COMPLIANCE

I hereby certify that the Panel's Order is attached as Exhibit 4 to the Petition for Rehearing as required by LAR 40.1

/s/ Joel H. Holt

DISTRICT COURT OF THE VIRGIN ISLANDS
Division of St. Croix

No. 1:21-mc-0035

In re: Attorney Jeffrey B.C. Moorhead
REPORT AND RECOMMENDATION

(Filed Dec. 3, 2021)

Jeffrey B.C. Moorhead, Esquire, has been a member of bar of the District Court of the Virgin Islands since 1988. He is a solo practitioner located on the island of St. Croix. He is engaged in civil and criminal practice, and has been a member of this Court's Criminal Justice Act ("CJA") Panel during various periods. As will be discussed in detail herein, Attorney Moorhead has for many years demonstrated an extremely concerning lack of respect for court procedure and orders. Court records unequivocally show an ongoing pattern of flagrant disregard for filing deadlines, failure to timely appear as directed at court proceedings, and neglect in adequately communicating with clients.

Often, when individual judges have issued orders to show cause to address these actions, Attorney Moorhead compounds the problem by disregarding the orders and/or by failing to adhere to show cause deadlines. Attorney Moorhead's attempts to excuse his actions are generally thin at best, from attributing

missed hearings to weekends spent at parties, to a failure to learn – over the course of many years – to employ the court's electronic filing system or to hire an assistant to help him do so. And when monetary penalties or even removal as appointed counsel are eventually imposed as a sanction, Attorney Moorhead simply pays the fines and apologizes, without appearing to make any meaningful effort to change his inappropriate and disrespectful behaviors.

This ongoing pattern gives rise to a great deal of concern on the part of this Court. And of even greater concern, within recent months, there has been a significant escalation in Attorney Moorhead's problematic and increasingly erratic behavior. In the past year, Attorney Moorhead has sent highly unprofessional emails and text messages to clients and their family members using crass and foul language and demonstrating a shocking disregard for his professional obligations to his clients. His inappropriate conduct has extended to his courtroom behavior as well. In one recent hearing, Attorney Moorhead interrupted the judge, made statements to malign and threaten his client, and ultimately was directed to leave the courtroom. In another recent hearing, Attorney Moorhead made disparaging comments adverse to his client's interests.

Given the recent trajectory of Attorney Moorhead's actions, this Court has significant concern that there may be a serious underlying cause of this escalation, such as a mental or physical health issue or a substance abuse problem. Whatever the cause may be, the

marked increase in unacceptable behavior has made it abundantly clear that Attorney Moorhead is not meeting the high standards required of an attorney admitted to practice before this Court. Accordingly, after a thorough investigation and as set forth below, I recommend that Attorney Moorhead be immediately suspended from the practice of law in this Court.

I. PROCEDURAL HISTORY

On July 30, 2021, Carolyn Patterson sent a letter to the attention of District Judge Wilma Lewis concerning allegations of misconduct on the part of Attorney Moorhead in the course of his representation of her son, Troy Patterson. Pursuant to Rule 83.2 of the Local Rules of Civil Procedure of the District Court of the Virgin Islands (hereinafter, the "Rules"), Judge Lewis informed Chief District Judge Robert Molloy of the complaint.

Because he is related to Attorney Moorhead, Chief Judge Molloy recused himself from the proceeding. He therefore referred the matter to Chief Judge D. Brooks Smith of the United States Court of Appeals for the Third Circuit.[1] Chief Judge Smith directed that Ms. Patterson's complaint be docketed.

On October 4, 2021, Chief Judge Smith assigned this matter to me for investigation and preparation of

[1] Judge Smith's term as Chief Judge of the Court of Appeals concluded on December 4, 2021. For ease of reference and because he was Chief Judge at the time of the relevant events, he will be referred to herein as Chief Judge Smith.

a report and recommendation pursuant to Rule 83.2(b).

II. INVESTIGATION

A. Allegations of the Complaint

As noted above, the complaint in this matter was submitted by Carolyn Patterson, mother of criminal defendant Troy Patterson. *See United States Troy Patterson*, 1:19-cr-00016. In that proceeding, Troy initially was represented by CJA counsel. During that time, he entered a guilty plea. Just prior to sentencing, on May 19, 2021, Attorney Moorhead entered an appearance as retained counsel.

By the following month, on June 25, 2021, Judge Lewis issued an order to show cause directing Attorney Moorhead to explain his repeated failure to adhere to court-ordered deadlines for filing the sentencing memorandum. Attorney Moorhead filed a response three days after the show cause response deadline, attributing the missed deadlines to a lack of secretarial staff and problems with his electronic filing password. Judge Lewis conducted a show cause hearing on July 27, 2021, shortly after Troy Patterson's sentencing hearing concluded.

At the hearing, Attorney Moorhead reiterated that he has staffing problems. Indeed, he stated that, due to staffing problems and mounting work, he has resigned from the CJA panel and has stopped accepting cases. *See* Transcript 7/21/21 at 145-46. He stated, "It's

getting completely out of hand, to the point where I'm getting out of the business." *Id.* at 145. In his rambling remarks, Attorney Moorhead later stated, "I don't know – I don't know what – I'm being brutally honest. I know how I sound. It's been going on for some time. It's very, very frustrating, and it's unhealthy, and I'm not going to let it change me." *Id.* at 149. Judge Lewis cautioned Attorney Moorhead that meeting deadlines is his responsibility and imposed a monetary sanction of $400. She issued a written order memorializing the sanction on July 28 2021.

Shortly thereafter, on July 30, 2021, Carolyn Patterson wrote the letter to Judge Lewis that initiated this disciplinary proceeding. In it, she averred that, while Troy was still being represented by the federal public defenders' office, Attorney Moorhead told her that Judge Lewis "[was] going to put Troy away for life, and that if [she] paid him $10,000 he would represent Troy. . . . He assured [her] he should be able to get Troy off with time served and then house detainment." He told Carolyn, 'it's not what you know but who you know' and mentioned a person who holds a position over [Judge Lewis] so [Carolyn] reluctantly wrote a check for $10,000 on May 16."

Although Carolyn initially was in communication with Attorney Moorhead about his representation of Troy, by July, Attorney Moorhead had not contacted Troy directly. Attorney Moorhead's first and apparently only communication with Troy before sentencing was a 15-minute call on July 22, five days before Troy's scheduled hearing.

As the hearing date approached, although Carolyn contacted Attorney Moorhead repeatedly, she received no response until the evening before the hearing. At 7:45 p.m., she received an email message from Attorney Moorhead. In response to her question as to whether he would be appearing in court the next day, Attorney Moorhead wrote: "No. I'm a thief. Don't speak or look at me when you see me. Don't ever text or call me again. I'm serious." (A copy of this email exchange is appended to Carolyn's disciplinary complaint.) Carolyn avers that Attorney Moorhead's abrupt response took her and Troy by surprise and caused them to panic.

The next day, before the sentencing hearing, Carolyn saw Attorney Moorhead, who "walked by, did not look at [her] or say anything." Attorney Moorhead appeared in Court on Troy's behalf, but because Attorney Moorhead had not met with Troy in advance, Carolyn believes Troy felt he had to "wing it" during the hearing. According to Carolyn, Attorney Moorhead presented a poorly prepared defense, fell asleep during breaks, and acted contrary to Troy's wishes. Carolyn further alleges that Attorney Moorhead did not speak to Troy during the lunch break or assure that Troy had access to a meal. In addition, after the sentencing concluded, Attorney Moorhead failed to assist Carolyn in setting up a power of attorney so that she could help Troy with issues related to his defense.

The transcript reflects that, during the sentencing hearing, Attorney Moorhead advised the Court that he had met with Troy for the first time in person for about

an hour before the hearing began. On the record, Troy agreed with Attorney Moorhead's statement that they had sufficient time to meet and that Troy was "happy" to go forward. *See* Sentencing Transcript 7/27/21 at 13-14.

In sum, Carolyn Patterson complains that Attorney Moorhead misled her and her son by convincing them to pay him a $10,000 fee without providing adequate representation. She raises a concern that Attorney Moorhead might similarly take advantage of others in the future.

Ultimately, on July 30, 2021, Judge Lewis sentenced Troy Patterson to a term of 64 months' imprisonment. On August 3, 2021, Troy wrote a letter to Judge Lewis indicating his wish to appeal his sentence and explaining that he had no faith that Attorney Moorhead would do so on his behalf. According to Troy, Attorney Moorhead "has never accepted my email requests (multiple), and has never attempted to set up a legal call at Guaynabo [Troy's prison]." Troy stated that "other than bloviation, [Attorney Moorhead] applies little effort." Troy therefore requested substitute counsel, although no action was taken on that request.

Troy's appeal was filed pro se and was assigned docket number C.A. No. 21-2505. The Court of Appeals then appointed Attorney Moorhead as CJA counsel[2]

[2] According to the Clerk's Office, Attorney Moorhead requested on May 12, 2021, to be removed from the list of CJA attorneys in the Virgin Islands. Chief District Judge Robert Molloy

to represent him; Troy did not renew his request for substitute counsel. On November 18, 2021, the Court of Appeals summarily affirmed Troy's judgment and conviction.

B. Disciplinary History

It appears that Attorney Moorhead has not previously been subject to discipline pursuant to Rule 83.2. Nonetheless, several judges have imposed discipline upon him pursuant to applicable law and the courts' inherent authority. *See* Rule 83.2(d)(1) ("The remedies for misconduct provided by this rule are in addition to the remedies available to individual judges under applicable law with respect to lawyers appearing before them."). Accordingly, as part of the investigation, I directed the Clerk of the District Court of the Virgin Islands to provide a list of matters in which the District Court of the Virgin Islands has imposed discipline upon Attorney Moorhead within the past five years. The Clerk did so, identifying six matters in addition to the *Patterson* proceeding. In addition, I independently conducted a search and located several additional matters, in District Court and other courts, in which discipline was imposed.

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memorialized Attorney Moorhead's removal from the CJA Panel by order of May 25, 2021. It does not appear that the Court of Appeals was notified of the order.

Court records show that, since 2015,[3] disciplinary sanctions imposed upon Attorney Moorhead include:[4]

(1) *People v. Willocks*, V.I. Super. Crim. No. 397/2013: Attorney Moorhead appeared as retained counsel for the defendant. On February 18, 2015, the Virgin Islands Superior Court held Attorney Moorhead in civil contempt and fined him $250 for missing a court appearance. The Supreme Court of the Virgin Islands

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[3] Although I have focused on discipline imposed since 2015, Attorney Moorhead's disciplinary history goes back far earlier than that date. For instance, more than thirty years ago, on February 20, 1990, Attorney Moorhead was sanctioned $1,200 in counsel fees for falsely claiming that an individual he sought to depose was "extremely ill and dying of cancer" when the individual did not have cancer. In that case, among other things, District Judge Edward Calm found that Attorney Moorhead provided a "lame excuse" for the false information and acted "unreasonabl[y] and willfully in bad faith" by not verifying the information's accuracy before including it in a court filing. *Gov't of V.I. v. Bryan*, D.V.I. No. 89-cv-129. Almost twenty years ago, in 2002, the Court of Appeals for the Third Circuit issued four separate orders to show cause and eventually admonished Attorney Moorhead for missing numerous court deadlines. *United States v. Charles*, C.A. No. 01-2485. After Attorney Moorhead later missed yet another deadline and the Court issued a fifth show cause order, the Court removed him from the case. *Id.* Nearly a decade ago, on November 29, 2012, Bankruptcy Judge Judith Fitzgerald expressed on the record her concern over Attorney Moorhead's "pattern and practice" of missing court hearings. *In re: Innovative Comm'n Co.*, V.I. Bankr. No. 06-30008. These historical examples are illustrative of Attorney Moorhead's longtime practice of flouting court rules, procedures, and deadlines.

[4] Because not all disciplinary orders are public and because the ability to search certain dockets is limited, it is likely that this list is not exhaustive.

upheld the sanction. *In re: Moorhead*, 63 V.I. 689, 2015 WL 6157472 (V.I. Supr. Ct. 2015).

(2) *United States v. Waleed Lang*, D.V.I. No. 1:15-cr-00033: Attorney Moorhead was appointed as defense counsel under the CJA in March 2016. On June 17, 2016, the defendant filed a motion for appointment of new counsel, alleging that Attorney Moorhead had not contacted or met with him.[5] On June 21, 2016, Attorney Moorhead failed to appear at a scheduled Court hearing. The next day, Magistrate Judge George Cannon held a show cause hearing. Attorney Moorhead explained that he had not known about the hearing the day before. Magistrate Judge Cannon imposed a sanction of $100 for the failure to appear and granted the defendant's motion for appointment of substitute counsel, ending Attorney Moorhead's role in the case.

(3) *United States v. Jahraun Brodhurst*, D.V.I. No. 1:15-cr-00032: Attorney Moorhead was appointed as defense counsel under the CJA in April 2016. On June 2, 2017, the defendant filed a motion for appointment of new counsel, alleging that Attorney Moorhead informed him that he didn't have a defense and should request new counsel, and that Attorney Moorhead then stopped responding to him. On June 12, 2017, Magistrate Judge George

[5] The motion was in the form of a letter from the defendant and the clinical services coordinator at a treatment program. It reported that repeated efforts by the defendant and the coordinator to contact Attorney Moorhead were unsuccessful.

Cannon held a hearing on the motion. Attorney Moorhead appeared nearly one hour late; he explained that he had gotten the date of the hearing wrong. Magistrate Judge Cannon fined Attorney Moorhead $100 for appearing late and granted the defendant's motion for a new attorney.

(4) *United States v. Ashley Warner*, D.V.I. No. 3:18-cr-00023: Attorney Moorhead entered an appearance as retained counsel on June 5, 2018. The next day, Attorney Moorhead failed to appear at a scheduled detention hearing and Magistrate Judge Ruth Miller therefore issued a show cause order. In a written response to the show cause order, Attorney Moorhead indicated that the failure to appear was due to an expectation that the defendant was waiving the detention hearing. At the show cause hearing, on June 11, 2018, Attorney Moorhead apologized and recognized that he should have filed a written waiver. Magistrate Judge Miller observed that "you have been here before me within several months for something similar, and it's the Court's feeling you should have a penalty for this." Transcript 6/11/18 at 8. Magistrate Judge Miller therefore imposed a sanction of $200 upon Attorney Moorhead for the failure to appear.

(5) *United States v. Lynell Hughes*, D.V.I. No. 1:16-cr-00021: Attorney Moorhead was appointed as CJA counsel on September 28, 2016. On December 16, 2019, District Judge Wilma Lewis issued an order to show cause to Attorney Moorhead concerning a failure to

adhere to two Court deadlines. Attorney Moorhead missed the deadline for responding to the show cause order as well; he never filed any written response.

At the show cause hearing, Attorney Moorhead attributed the missed deadlines to an inability to file electronically, explaining that he did not know how to do so and did not have anyone to assist him. He stated, "This is an isolated event. This has never happened before, and I am very sorry." Transcript 1/10/20 at 5. Judge Lewis did not find Attorney Moorhead's actions reasonable and advised him that he was expected to timely file in the future. On January 13, 2020, she issued a written order imposing a monetary sanction of $150 for failing to comply with court-ordered deadlines.

On January 27, 2021, Attorney Moorhead filed a motion to withdraw from the representation, but did not provide any reason for the motion other than attorney-client privilege; shortly thereafter, he withdrew the withdrawal motion. By June, however, the defendant filed a motion for new counsel. In it, the defendant alleged a failure to maintain contact and "verbal abuse" by Attorney Moorhead. Mtn. for New Counsel at ¶ 1. He attached copies of text messages from Attorney Moorhead laden with expletives and insults, including Attorney Moorhead telling the defendant that "You're full of sh--!" and "F--- you." Attorney Moorhead also told the

defendant to "get another lawyer" and to "[s]end this to the court!"

On June 3, 2021, Magistrate Judge George Cannon held a hearing on the motion. Attorney Moorhead acknowledged the text messages were accurate and that he had encouraged his client to file them with the court. Attorney Moorhead did not explain or defend his use of vulgar language in his client communications. Indeed, Attorney Moorhead called his client "a liar" and used foul and threatening language during the hearing itself. Transcript 6/3/21 at 9-10. When Attorney Moorhead did not obey Judge Cannon's order to be quiet, Judge Cannon ultimately had to direct him to leave. Upon exiting the hearing, Attorney Moorhead told his client, "I'll deal with you later." *Id.* at 12. Judge Cannon responded, "No. Attorney Moorhead, you're not going to deal with her later" and continued with the proceeding. *Id.* Judge Cannon ultimately granted the motion for new counsel and terminated Attorney Moorhead's representation.

On October 5, 2021, Judge Lewis issued an order to show cause directed to Attorney Moorhead. Citing the profanity-laced text messages and his courtroom behavior, Judge Lewis directed Attorney Moorhead to show cause why he should not be sanctioned for his "abject disrespect for the Court and the judicial process, and his complete lack of decorum in the courtroom." Order to Show Cause 10/5/21 at 3. Attorney Moorhead filed a short

response on October 19. He defended his vulgar language as "protected speech" but apologized "profusely" for his courtroom demeanor.

Judge Lewis held a hearing on the show cause order on November 9, 2021 and ultimately imposed a monetary fine of $1,000 and directed Attorney Moorhead to write a written apology to his former client and file it with the Court. In her written order memorializing the sanction, Judge Lewis described Attorney Moorhead's conduct as "reprehensible" and "inexcusable." Order of Discipline 11/9/21 at 3-4. She concluded that sanctions were necessary because Attorney Moorhead "showed disrespect for the Court and the judicial process; disregard for his professional responsibilities as an officer of the Court and as a Criminal Justice Act-appointed attorney; and a lack of professional decorum." *Id.* at 3.

(6) *Moorhead v. Moorhead*, D.V.I. No. 1:19-cy-00009: Attorney Moorhead was retained counsel for the plaintiff. On July 20, 2020, Magistrate Judge George Cannon issued an order to show cause directing Attorney Moorhead and defense counsel to explain their failure to appear at a pretrial status conference. When Attorney Moorhead did not respond, Judge Cannon issued a second order to show cause. Attorney Moorhead then filed a written response attributing his failure to appear to his birthday celebration and his failure to timely file a show cause response to his lack of a secretary. On August 4, 2020, Judge Cannon

issued a written order imposing a monetary sanction of $200 for failure to appear and to timely respond to the show cause orders.

On June 1, 2021, Magistrate Judge Cannon issued another show cause order, again because both attorneys failed to appear at a status conference. Attorney Moorhead timely filed a response, attributing his failure to appear to its being scheduled on the day after the Memorial Day and that he had "simply overlooked the scheduled Status Conference after the long holiday." Show Cause Response 6/7/21 at 112. Magistrate Judge Cannon discharged the order to show cause. But on July 9, 2021, Magistrate Judge Cannon issued another order to show cause for Attorney Moorhead's failure to appear at another status conference.

At the show cause hearing, Attorney Moorhead apologize and informed the Court that he "got caught up in gossip with the court staff' and "completely forgot about this hearing." Transcript 6/19/21 at 3. On July 16, 2021, Magistrate Judge Cannon issued a written order imposing a monetary sanction of $100 for the failure to appear. Attorney Moorhead remained on the case, which was closed in October 2021.

(7) *United States v. Calieb Webster*, 1:12-cr-00019: On February 8, 2021, Attorney Moorhead was appointed under the CJA to represent the defendant to pursue a compassionate release motion. Attorney Moorhead missed three

filing deadlines for briefing on the motion, even though the deadline was extended several times By May 10, 2021, when briefing had still not been filed, District Judge Wilma Lewis issued an order to show cause.

In his response to the show cause order, Attorney Moorhead apologized for missing the deadlines, attributing the missed deadlines to his client's failure to provide him documentation. Shortly thereafter, on May 13, 2021, Attorney Moorhead filed the required brief; it was three pages long and argued that Attorney Moorhead had no knowledge of the defendant's case and had "nothing to add" to the defendant's pro se motions. Def s Supp. Br. for Compassionate Release at ¶ 10-11.

At a show cause hearing on May 13, 2021, Attorney Moorhead again attributed the missed deadlines to his client's failure to provide him documentation. Among other things, Attorney Moorhead informed the Court that his client's motion for compassionate release is "the worst request for a compassionate release that I've ever seen" and opined that his client had "no extraordinary or compelling reasons" warranting relief. Transcript 5/13/21 at 6. In addition, he argued that he had never filed a document electronically and had no knowledge of how to do so, despite the fact that documents in the District Court are required to be filed electronically.

On May 14, 2021, Judge Lewis issued a written order imposing a monetary sanction of

$250 for missing three Court deadlines without timely filing continuance motions. The following month, by written order of June 15, 2021, Magistrate Judge Cannon observed that Attorney Moorhead had "made disparaging comments adverse to his client's interest" at the show cause hearing and had filed a brief representing that he had "nothing to add." Accordingly, Magistrate Judge Cannon relieved Attorney Moorhead of the representation and directed the appointment of new counsel.

(8) *US v. Biggs*, D.V.I. No. 3:07-cr-00060-02 (pending): Attorney Moorhead is retained counsel for defendant Marc Biggs. On January 11, 2018, Magistrate Judge Ruth Miller issued an order to show cause why Attorney Moorhead missed a Court appearance. A hearing was held on January 23, 2018 and Attorney Moorhead filed a written response the next day, attributing the failure to appear to a lack of airplane flights. Magistrate Judge Miller issued a report and recommendation on January 24, 2018, recommending that Attorney Moorhead be held in contempt and fined $100. Attorney Moorhead did not object to the recommendation, but no Court action has yet been taken upon it. On January 8, 2021, the case was reassigned to District Judge Wilma Lewis.

Thus, since 2015, Attorney Moorhead has been subject to disciplinary sanctions in at least seven separate Court proceedings in addition to the *Patterson* case, with one additional disciplinary matter that

remains pending. He has been assessed monetary fines amounting to a total of $2,750[6], has been terminated as CJA counsel prior to the end of a case at least four different times, and has been directed to write a written apology to one client.

C. Witness Interviews

Because of the robust public record in this matter, including hearing transcripts, extensive witness interviews were not required. I therefore conducted, via Zoom, interviews with six individuals who have professional knowledge of or interaction with Attorney Moorhead.[7] The interviews confirmed the pattern of behavior that is reflected in the court records; namely, that Attorney Moorhead has long had problems with meeting court deadlines, making timely court appearances, successfully e-filing documents, communicating adequately with clients, and the like. The interviews also confirmed that Attorney Moorhead's behavior has been deteriorating in the last two years, most notably in recent months.

Several individuals expressed concern that Attorney Moorhead may be suffering from an impairment of some kind, possibly due to substance abuse, but none

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[6] The Clerk of the District Court advises that, for all cases in the District of the Virgin Islands, all monetary sanctions were paid as directed.

[7] Face to face interviews would have been conducted but, in light of the Covid-19 pandemic, it was determined that video interviews were safer and would provide a comparable opportunity to interview witnesses.

had any concrete information in that regard. No witnesses indicated that Attorney Moorhead has been visibly impaired during courtroom appearances, although one individual observed Attorney Moorhead in an intoxicated state at a business day professional gathering. Another witness observed that Attorney Moorhead's law practice has become increasingly disorganized and haphazard, questioning whether he still maintains a law office at all.

The witnesses uniformly agreed that Attorney Moorhead is failing to meet his professional obligations to his clients and has in recent months been acting in an increasingly extreme, erratic, and concerning manner.

III. RECOMMENDATION

I find that Jeffrey B.C. Moorhead has demonstrated a pattern of gross failure to adequately represent clients by missing court deadlines and court appearances and by failing to engage in appropriate client communication. I further find that Attorney Moorhead's behavior in the past year has escalated to an extreme level and is entirely unacceptable for a practitioner of law before this Court. He has mistreated his clients by using abusive, foul, and inappropriate language, he has maligned, threatened, and undermined his own clients by email, by text message, and in open court, he has shown disrespect to judges, and he has disrupted court proceedings.

History has demonstrated that monetary sanctions and admonishments have had no impact on Attorney Moorhead's behavior. Accordingly, based on the foregoing, I recommend that Attorney Moorhead be publicly reprimanded and immediately suspended from the practice of law before this Court for a period of two (2) years. *See* Rule 83.2(c)(1)(B), (C). I further recommend expressly directing the Clerk to remove Attorney Moorhead as CJA counsel on any pending matters and to appoint substitute counsel.[8] I also recommend that Attorney Moorhead be barred from reapplying to join the CJA panel in St. Croix, St. Thomas, or St. John at any time prior to his reinstatement to the bar of the District of the Virgin Islands.

In addition, I strongly encourage Attorney Moorhead to voluntarily seek professional assistance. Members of the bench and bar expressed genuine concern for his well-being. Although I have no authority to order him to seek a health examination at this time, I hope he will consider doing so voluntarily.

Finally, if at the conclusion of the suspension Attorney Moorhead wishes to be reinstated to the practice of law before the District of the Virgin Islands, I recommend that significant conditions should be imposed upon his readmission, as follows:

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[8] My investigation revealed that although Attorney Moorhead was removed from the CJA panel on May 25, 2021 by order of Chief Judge Molloy, Attorney Moorhead may not have been removed as CJA counsel in all pending cases.

(1) A comprehensive physical and mental health examination should be conducted by providers to be determined by the Court at the time reinstatement is sought to assess his fitness to practice law;

(2) 40 hours of accredited Continuing Legal Education (CLE) should be completed, addressing civil or criminal practice and procedure, legal ethics, professional responsibility, or other relevant topics to be approved by the Court at the time reinstatement is sought;

(3) A professional mentor is selected and approved by the Court to supervise Attorney Moorhead's practice of law for a period of time to be determined at the time reinstatement is sought.

See Rule 83.2(c)(2).

Attorney Moorhead must file any objections to this Report and Recommendation within 14 days. *See* Rule 83.2(b). In light of the pattern of conduct identified herein, no extensions will be permitted. The matter will then be submitted to the Court of Appeals for final determination. *Id.* If objections are not filed within 14 days, the matter will be submitted to the Court on this Report and Recommendation alone.

If the Court of Appeals adopts the recommendations herein, the Clerk of the District Court of the Virgin Islands shall give prompt notice of the order of discipline to the Court of Appeals, the Supreme Court of the Virgin Islands, and the American Bar Association. *See* Rule 83.2(e).

Respectfully submitted,

s/ Maureen P. Kelly
United States Magistrate Judge

Dated: December 3, 2021

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

IN RE: ATTORNEY JEFFREY B. C. MOORHEAD	**Case No. 1:21-mc-0035**

ATTORNEY JEFFREY B.C. MOORHEAD'S OBJECTIONS TO THE RULE 83.2(b) REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE MAUREEN P. KELLY

(Filed Dec. 17, 2021)

On December 3, 2021, U.S. Magistrate Judge Maureen P. Kelly issued a Report and Recommendation (the "Report") regarding Jeffrey B.C. Moorhead pursuant to District Court Local Rule 83.2(b). Attorney Moorhead hereby submits his objections to this Report. For the reasons set forth herein, it is respectfully submitted that the recommendations of the Report should be rejected.

I. The Initiating Complaint

As noted at the outset of the Report, this proceeding was initiated by a July 30, 2021, letter sent by the mother of Attorney Moorhead's client, after the sentencing of her son on May 19, 2021. As described in the Report, this letter generally alleged (1) that Attorney Moorhead made certain promises about the pending sentencing prior to his being retained; (2) that his communications with the mother prior to sentencing were unsatisfactory; and (3) that he failed to follow-up on

certain collateral matters requested by the mother during Attorney Moorhead's representation of her son.

The mother's letter, which was not verified, was then docketed in this case. See Docket Entry #1. On October 4, 2021, Magistrate Judge Kelly was assigned to investigate this matter pursuant to Rule 83.2(b) by Third Circuit Chief Judge Smith. That rule requires an investigation of the allegations of misconduct in the complaint against the attorney which, **if substantiated**, could warrant disciplinary action.

II. The Underlying Criminal Case

While being represented by the U.S. Public Defender, Troy Patterson entered a guilty plea in his pending criminal case, *United States v. Troy Patterson*, 1:19-cr-00016. Before sentencing, Attorney Moorhead was subsequently retained to represent Patterson. As the Report notes:

- At the sentencing hearing, Attorney Moorhead represented to the Court that he had spoken with his client for the first time just before the sentencing hearing.
- Defendant Patterson then acknowledged on the record that he was satisfied with Attorney Moorhead's representation and was ready to proceed with sentencing.
- Thereafter, the Court determined that the sentencing could proceed and imposed a sentence of 64 months.

Troy Patterson pled guilty to both federal and local charges, with a 60 month sentence imposed on the federal charge and an additional 4 months imposed on the local charge. See Exhibit 1. The 60 month sentence was the minimum sentence that could have been imposed on the federal charge, with a much lengthier sentence (up to life imprisonment) being possible due to the serious nature of the charges against him. See Exhibit 1.

As the Report notes, Patterson filed a pro se notice of appeal. As the Report also points out, Attorney Moorhead was appointed counsel for the appeal and that Patterson did not request another lawyer after that appointment. The United States moved to dismiss the appeal, as Patterson waived his right to appeal when he pled guilty. See Exhibit 1. Attorney Moorhead filed an opposition to the motion, pointing out that Patterson could still raise ineffective assistance of counsel on appeal despite his guilty plea. See Exhibit 1. As the Report states, the Government's motion was granted, with the appeal being summarily dismissed by the Third Circuit.

III. Attorney Moorhead's Due Process Objection to the Report

Before addressing each of Attorney Moorhead's specific objections to the Report, there is a global issue that should moot the need to address the specific contents of the Report. In this regard, Attorney Moorhead

was not given the opportunity to be heard as **expressly** required under Rule 83.2(b), which provides:

> When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted or permitted to practice before this Court, shall come to the attention of a judicial officer of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, the judicial officer shall inform the Chief Judge. Thereafter, the Chief Judge or the Chief Judge's designee shall refer the matter to a magistrate judge or a committee designated by the Chief Judge (Disciplinary Committee) for investigation and a report and recommendation. **The magistrate judge or the Disciplinary Committee shall afford the attorney the opportunity to be heard.** The attorney may submit objections to the report and recommendation. Any objections are to be filed with the Court within fourteen (14) days upon filing of the report and recommendation. The matter will then be submitted to the Court for final determination. (Emphasis added).

Moreover, permitting Attorney Moorhead to file his objections after the Report has been issued is **not** giving him the opportunity to be heard. Indeed, it would be superfluous for Rule 83.2 to include the directive that "[t]he magistrate judge or the Disciplinary Committee shall afford the attorney the opportunity to be heard" and then limit that hearing to submitting objections to the final Report recommending disciplinary action, with any objections to the Report being required

within 14 days.[1] *See United States v. Williams*, 917 F.3d 195, 202 (3d Cir. 2019) (A cardinal rule of statutory interpretation is that courts should avoid interpreting a statute in ways that would render certain language superfluous) (citing *TRW Inc. v. Andrews*, 534 U.S. 19, 31, 122 S.Ct. 441, 151 L.Ed.2d 339 (2001). *See also, Gov't Emps. Ret. Sys. of Virgin Islands v. Gov't of Virgin Islands*, 995 F.3d 66, 86 (3d Cir. 2021) ("We typically refrain from reading into statutes words that plainly aren't there) (citing *Romag Fasteners, Inc. v. Fossil, Inc.*, ___ U.S. ___, 140 S. Ct. 1492, 1495, 206 L.Ed.2d 672 (2020).

In short, while Rule 83(b) states that **the Magistrate Judge "shall" afford Attorney Moorhead an opportunity to he heard**, the record is clear that the Magistrate Judge never contacted Attorney Moorhead or tried to interview him, nor did the Magistrate Judge hold an evidentiary hearing as expressly required by Rule 83(b) before issuing the Report.

Of course, notice of the charges against an attorney along with a hearing are the cornerstones of the due process inherent in the disciplinary process. *See*, *e.g.*, *In Re Tutu Wells Contamination Litigation*, 120 F. 3d 368, 418 (3rd Cir. 1997) ("prior to the suspension of an attorney from practicing before the District Court

[1] As will be discussed in the response to the Magistrate Judge's Recommendations, even if a hearing were to be provided after the issuance of this Report, it would not be warranted in this case since there were no findings made to substantiate the claims of misconduct asserted by Carolyn Patterson in her July 30th letter.

of the *Virgin Islands* because of misconduct as defined by local rule, an attorney must be provided "notice and an opportunity to be heard." (Citing D.V.I. R. 83.2(b)(4)(A)). As this Court pointed out in *Adams v. Ford Motor* Co., 653 F.3d 299, 308-09 (3d Cir. 2011):

> An opportunity to be heard is "especially important" where a lawyer or firm's reputation is at stake because sanctions "act as a symbolic statement about the quality and integrity of an attorney's work – a statement which may have a tangible effect upon the attorneys' career."

In *Adams*, this Court reversed the Magistrate Judge's order that described certain alleged misconduct, stating in part, *id.* at 309:

> In addition to the lack of notice, we find that Colianni did not have sufficient opportunity to be heard. Since the judge did not hold an evidentiary hearing, Colianni was not given the chance to present any witnesses to testify on his behalf.

Adams is directly on point to the facts in this matter.

Thus, Attorney Moorhead objects to the Report in its entirely since he was never provided this critical due process safeguard, particularly since a hearing is expressly required by Rule 83.2(b).

IV. Attorney Moorhead's Substantive Objections to the Report

While the lack of the required due process should moot the need to address the remainder of the Report,

Attorney Moorhead hereby submits these additional objections to the Report, which will be presented in the same order followed by the Magistrate Judge in the Report.

A. The "Allegations of the Complaint"

Despite being directed by Chief Judge Smith to investigate Carolyn Patterson's "complaint" – an unverified letter – the Magistrate Judge failed to conduct any such investigation regarding her allegations. In this regard, a review of page 4 of the Report confirms that the Magistrate Judge did nothing more than paraphrase certain portions of that letter, without attempting to verify the accuracy of any of the allegations contained in it.

For instance, there is no suggestion, much less any evidence, in the record that the Magistrate Judge attempted to contact or interview Carolyn Patterson to see if she could verify any of the allegations contained in her letter. Nor is there anything in the record to suggest that she tried to contact any other person, such as Attorney Moorhead, his client (Troy Patterson), the persons Carolyn Patterson claims were present when Attorney Moorhead first met with her, or the U.S. Public Defender's Office that represented Troy Patterson for quite some time before Attorney Moorhead entered his appearance. Indeed, Carolyn Patterson claimed in her July 30th letter that she had problems with U.S. Public Defender's office as well, finally being told not to call them anymore, even though they still

represented her son.[2] Certainly the two persons in that office mentioned in the July 30th letter might be able to provide some helpful information on a one of the key issues Carolyn Patterson complained about – was there any validity to her claims that her son's defense was not properly prepared?[3]

The Magistrate Judge did review the criminal docket and sentencing transcript. However, as noted in the Report, the sentencing transcript completely contradicted the allegations made by Carolyn Patterson regarding what took place in court, as it confirmed that Judge Lewis made certain that Troy Patterson was ready to proceed, wanted to proceed and was properly represented by Attorney Moorhead (as Federal Judges are required to do) before she then proceeded with the hearing and imposed his sentence. A review of the docket in the Third Circuit confirms Attorney Moorhead informed the Court that Troy Patterson had questions about his sentencing, but the appeal was

[2] It is understandable that any parent would want as much communication with their incarcerated child's lawyer as possible. Interviewing the persons in the Public Defender's Office would have been helpful in understanding why lawyers need to be firm in trying to limit such communications. After all, the mother is not the client, so that such communications could inadvertently lead to violations of the attorney-client privilege, or even a waiver of that privilege.

[3] Indeed, the Assistant Public Defender attended the July 27th sentencing hearing, bringing several character letters received by that Office regarding Troy Patterson, which were provided to the Court by Attorney Moorhead. See Exhibit 1.

summarily dismissed without a briefing schedule being entered.

In short, if anything, this review of these criminal proceedings should have resulted in the Magistrate Judge concluding that those portions of Carolyn Patterson's unverified letter were not supported by the record and did not warrant a finding of any misconduct on Attorney Moorhead's part regarding his representation of Troy Patterson in the sentencing phase of his case.

Additionally, while the Report seems to accept as true on page 4 that Attorney Moorhead failed to assist Carolyn Patterson in obtaining a power of attorney from her son, an investigation was not done into this issue either. However, as the July 30th letter noted, albeit in a somewhat confusing manner, Attorney Moorhead's notary seal had expired on April 26, 2021. See Exhibit 1. Thus, he could not notarize the power of attorney until he received his new seal.[4]

Finally, an investigation into the problems associated with criminal lawyers in this jurisdiction being able to communicate with their incarcerated clients would have revealed that this is a serious problem for

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[4] Once the sentencing took place, Troy Patterson was removed from the jurisdiction, so it would have been impossible to notarize his signature regardless of when Attorney Moorhead finally obtained his new notary seal. An interview with Attorney Moorhead would certainly have cleared up any confusion in the July 30th letter on this point. Indeed, delays in obtaining the renewal of one's notary commission is not uncommon in the Virgin Islands. See Exhibit 1.

all counsel and their incarcerated clients. In this regard, incarcerated defendants are held at the federal jail in Guaynabo, Puerto Rico, requiring court appointed counsel to fly to Puerto Rico and then arrange ground transportation to the facility that is some distance from the airport in order to meet with their clients. The COVID-19 restrictions at this facility (like any jail or prison) also must now be taken into account (although communicating electronically is now feasible), so that it is not unusual for incarcerated defendants to complain about communicating with their court appointed lawyers due to these logistical problems.

Thus, Attorney Moorhead objects to any weight being given to any of Carolyn Patterson's allegations in her unverified July 30th letter, as (1) no investigation was ever done into the specific allegations made by her, as directed by Chief Judge Smith; (2) the record in the criminal case, including the sentencing transcript, completely refutes the portions of her letter that relate to the actual sentencing proceedings; and (3) the Magistrate Judge failed to make any findings that would "substantiate" the misconduct alleged by Carolyn Patterson against Attorney Moorhead, as required by Rule 83.2(b).

B. The "Disciplinary History"

At the outset of the Report, specific reference is made to Chief Judge Smith's directive that pursuant to Rule 83.2(b) the Magistrate Judge investigate and

provide a report on Carolyn Patterson's July 30, 2021, letter alleging misconduct of Attorney Moorhead in representing her son. Rule 83.2(b) provides in relevant part:

> **Disciplinary Proceedings.** When . . . **allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney** . . . **permitted to practice before this Court**, shall come to the attention of a judicial officer of this Court, . . . the Chief Judge . . . shall refer the matter to a Magistrate Judge . . . for investigation and a report and recommendation. (Emphasis added).

Thus, the only issue for the Magistrate Judge to investigate was whether the unverified allegations made by Carolyn Patterson could be substantiated. As the Magistrate Judge's investigation was limited to this issue, Attorney Moorhead's unrelated disciplinary history is not even relevant in determining whether Carolyn Patterson's allegations could be substantiated.[5]

Notwithstanding this point regarding the relevancy of any prior sanctions of whether the allegations asserted against Attorney Moorhead by Carolyn Patterson could be substantiated, the contents of the

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[5] If the Magistrate Judge had made findings that substantiated the misconduct alleged in Carolyn Patterson's July 30th letter, then one's history of prior findings of misconduct may have had some relevance to these proceedings, but they are not relevant to the specific investigation assigned to the Magistrate Judge. Indeed, being late for court appearances is not something one generally associates with Attorney *misconduct*.

Report discussing these prior sanction Orders will be briefly addressed.

At the outset it must be first noted that rather than first investigate this claim as directed by Chief Judge Smith on October 4, 2021, the Magistrate Judge immediately requested all court records related to any disciplinary action against Attorney Moorhead since 2015 the very next day, on October 5, 2021. See Docket Entry #3. The Magistrate Judge then proceeded to analyze these prior unrelated (and resolved) orders dealing with a different topic without ever conducting the investigation required by Rule 83(b) to see if the allegations of misconduct asserted by Carolyn Patterson could be substantiated.

Moreover, the most significant point the Report makes is that Attorney Moorhead has never been previously disciplined pursuant to Rule 83.2. Notwithstanding this fact, the Report then references six Orders imposing fines over the six year period since 2015 for missing court appearances and/or deadlines, all of which were paid.[6] The Report also relied upon a

[6] The Report also references a pending case where a fine has been recommended, but not yet imposed. Including this unresolved matter as a basis for sanctions in this case is tantamount to imposing a retroactive sanction for a matter that has not yet been concluded. Moreover, that matter has been pending for quite some time, so no consideration should have been given to it for that reason as well. In this regard, imposing sanctions after a significant delay has been frowned upon in the Third Circuit. *See*, *e.g. Prosser v. Prosser*, 186 F.3d 403, 406 (3d Cir. 1999) (Reversing a Rule 11 sanction, holding that the "exemplary function [of imposing sanctions] is ill served when sanctions are delayed.")

subsequent hearing that took place before Judge Lewis on November 9, 2021, involving a different matter.

As for the fines for missing six court appearances and/or deadlines over a six year period, not one of the Judges who imposed those fines referred those matters for any further disciplinary considerations pursuant to Rule 83.2. In short, it is clear those Judges and Magistrates did not consider those "offenses" to constitute misconduct.

As for the November 9, 2021, hearing, it took place months after Carolyn Patterson had already sent the July 30th letter to Judge Lewis, so it clearly was not relevant to the investigation in trying to substantiate Carolyn Patterson's allegations. Indeed, it is certainly not permissible to consider further sanctions in this case based on that hearing, as there is no evidence in this record that Attorney Moorhead was informed prior to accepting that fine that his acceptance could be used against him in this pending matter, as an attorney is entitled to notice of all sanctions that may be imposed against him at any such hearing. *See*, *Saldana v. Kmart Corp.*, 260 F.3d 228, 236 (3d Cir. 2001) ("[t]he party against whom sanctions are being considered is entitled to notice of the legal rule on which the sanctions would be based, the reasons for the sanctions, *and the form of the potential* sanctions.) (Emphasis added). See *also*, *In Re Tutu Wells Contamination Litigation*, 120 F. 3d 368, 418 (3rd Cir. 1997); *Adams v. Ford Motor Co.*, 653 F.3d 299, 308-09 (3d Cir. 2011).

In summary, Attorney Moorhead's prior court fines are not relevant to whether the allegations of misconduct against him by Carolyn Patterson could be substantiated. As such, Attorney Moorhead objects to any weight being given to any of these sanction Orders in considering the allegations against him in the July 30th letter – the "charging" document – since none of them are relevant to whether the claim of misconduct asserted by Carolyn Patterson could be substantiated. Indeed, several of these Orders were improperly considered for any purpose, as noted. Thus, as no findings were made that substantiated any of Carolyn Paterson's claims, these prior sanction Orders should never have been considered, much less included in this Report.

C. The "Witness Interviews"

The next section of the Report was based on interviews of six unnamed witnesses. These witnesses allegedly stated that Attorney Moorhead has had problems meeting court deadlines, making timely court appearances, successfully e-filing documents, communicating adequately with clients, ***and the like***." (Emphasis added.) Additionally, the Report states that "[t]he interviews also confirmed that Attorney Moorhead's behavior has been deteriorating in the last two years, most notably in recent months. . . ."

There is nothing in the record to indicate who these six witnesses are, how they were selected or whether these statements were under oath (or were

even preserved so they could be reviewed). Indeed, it seems quite unusual to interview employees of this Court about the general character reputation of a lawyer absent that person having directly witnessed a specific act of misconduct by the lawyer. It also seems unfair to put court employees into the position of having to answer such questions (again absent having actually witnessed a specific event), which is probably why their identities have not been disclosed.

Notwithstanding this fact, the Magistrate Judge used these statements to suggest a very serious accusation – that Attorney Moorhead had some kind of mental impairment, possibly drug related. However, no specific incidents of any improper misconduct were provided by any of these unidentified witnesses. To the contrary, the Report concedes on page 12:

- None of these witnesses had any "concrete information" on Attorney Moorhead's alleged impairment;
- None had seen any evidence of Attorney Moorhead being impaired in any way while in Court;[7]

Likewise, the Report did not indicate that the Magistrate Judge inquired into Attorney Moorhead's life outside of the court before concluding he allegedly has

[7] The suggestion that Attorney Moorhead appeared intoxicated at a social event outside of the court setting certainly has no relevance to this investigation. Including such a statement in this Report is curious at best, just like the references to incidents that took place in other cases over years ago, including one over 30 years ago.

some type of impairment, as her investigation was limited to these six witnesses whose knowledge is based on his appearances before this Court.

Thus, Attorney Moorhead is left to responding to these serious accusations of what these anonymous witnesses allegedly reported without the opportunity to verify what was said or, if needed, to cross-examine these statements. Without this basic information, it is unrealistic for Attorney Moorhead to respond to these general assertions contained in this Report. In short, it is respectfully submitted that anonymous hearsay statements are not a proper evidentiary basis for recommending the suspension of a lawyer from the practice of law.

Thus, Attorney Moorhead objects to any weight being given to any of the statements made by these six witnesses, as (1) the witnesses have not been identified, (2) their statements have not been provided to Attorney Moorhead, (3) it is unknown if these statements were under oath, which would be required at a hearing, and (4) it is unrealistic to respond to these general assertions without being able to either verify the accuracy of these statements, as summarized by the Magistrate Judge, or cross-examine these witnesses if needed.

V. Attorney Moorhead's Objections to the Report Recommendations

As this Court held in *Martin v. Brown*, 63 F.3d 1252, 1262 (3d Cir. 1995):

> [t]he party against whom sanctions are being considered is entitled to notice of the legal rule on which the sanctions would be based, the reasons for the sanctions, and the form of the potential sanctions." *Tutu Wells*, 120 F.3d at 379 (citing *Simmerman v. Corino*, 27 F.3d at 58, 64 (3d Cir. 1994)) (emphasis in the original). "[O]nly with this information can a party respond to the court's concerns in an intelligent manner." Id. In other words, a party cannot adequately defend himself or herself against the imposition of sanctions unless he or she is aware of the issues that must be addressed to avoid the sanctions. *Id.*

In this case, the Report did not identify any rules, ethical or otherwise, that Attorney Moorhead purportedly violated upon which the recommendation of suspension from the practice of law was based. See, e.g., *Adams v. Ford Motor Co.*, 653 F.3d 299, 307 (3d Cir. 2011) (the magistrate judge did not specify . . . in the order which subsection of the Model Rule he believed Colianni violated.").

Equally important, this Recommendation section of the Report makes absolutely no reference to any of the misconduct alleged by Carolyn Patterson, which was the sole basis for directing that an investigation take place in order to try to substantiate her claims. Thus, even if Rule 83.2(b) could be read as directing that a hearing could be held after the Report and Recommendation is issued, in this case the Report and Recommendation contains no findings related to the alleged merits of Carolyn Patterson's accusations.

Likewise, the Recommendation that Attorney Moorhead be removed from his CJA appointed cases would prejudice his clients, who should have some input into who they want as their attorney, and possibly disrupt those cases, some of which include visiting Federal District Court Judges currently assigned to those cases by the Third Circuit. In fact, this sanction would also prejudice all of Attorney Moorhead's other clients who have retained him for their pending criminal cases as well.

Most importantly, however, Attorney Moorhead has listed numerous objections to this Report upon which the Recommendation of suspension from the practice of law is based. Thus, Attorney Moorhead objects to these Recommendations based on those deficiencies as well, as set forth herein, which are incorporated into this section by reference.

VI. Conclusion

As this Court held in *Adams, supra* at p. 304:

> "A lawyer's reputation is one of his[/her] most important professional assets." (Citation omitted) (Footnote quoting Shakespeare's *Othello* omitted).

Adams even noted this heightened awareness due to the nature of the small legal community in the Virgin Islands, as well because of the "omnipresent" internet.[8] Recognizing the importance of a lawyer's

[8] When counsel agreed to enter his appearance in this case, he instructed his staff to confirm the file was sealed so that it

reputation, it is respectfully submitted that the Magistrate Judge's Report falls far below the expected standard for imposing any sanction, much less a suspension from the practice of law, based on the applicable law regarding the conduct of such proceedings under Rule 83.2(b). As such, it should be completely rejected by this Court.

Two final comments are in order. First, Carolyn Patterson also filed a grievance with the Virgin Islands Bar Association against Attorney Moorhead as noted in the filing he made with this Court in Troy Patterson's Appeal. **See** Exhibit 1. This appeal is still pending. While that fact is irrelevant to a Rule 83.2 proceeding in this case, it should still be noted that dismissing this proceeding **based on the legal and factual arguments raised herein** will not be the end of her complaint of misconduct against Attorney Moorhead.

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could not be accessed by unauthorized persons. When it was determined that anyone authorized to use this Court's ECF system could access this file, counsel instructed his office to file his Notice of Appearance and then contact the Clerk's Office to make sure the file was in fact sealed, but the Clerk's Office apparently caught this mistake in docketing the Notice of Appearance, as the case is now sealed. Hopefully this docket was not accessed by anyone other than the undersigned counsel before it was completely sealed. Out of an abundance of caution, counsel did move to submit these objections in a sealed envelope so that only the Judge assigned to this case could review it (DE #7), but Magistrate Judge Kelly denied that request, adding (to counsel's surprise) that this matter "will be reviewed by the full Court of Appeals for a final determination" rather than a single Judge. (DE #8)

Second, the undersigned counsel has attempted to raise the arguments set forth herein in a professional manner based on the applicable law and facts. However, on a personal note, counsel has been a colleague of Jeffery Moorhead for over 35 years. While counsel rarely appears before the District Court, so the allegations are certainly surprising to him, he regularly refers criminal and civil matters to Attorney Moorhead (including doing so this year) and has acted as co-counsel with him in other matters (including several civil cases currently pending in the Superior Court). Attorney Moorhead has also been a friend for 35 years as well, whose children were friends of counsel's children. As such, counsel undertook this representation of Attorney Moorhead without charge. However, regardless of the outcome of this matter, he will follow up with Attorney Moorhead to see if he needs any type of assistance and, if so, that he receives it.

Dated: December 17, 2021

Respectfully submitted,

/s/ Joel H. Holt
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Christiansted, VI 00820
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Email: holtvi@aol.com

EXHIBIT 1

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

IN RE: ATTORNEY JEFFREY B. C. MOORHEAD	**Case No. 1:21-mc-0035**

DECLARATION OF JOEL H. HOLT

I, Joel H. Holt, pursuant to V.I. R. CIV. P. 84, as follows:

1. I am counsel of record in the above captioned matter and submit this declaration to support certain factual matters set forth in the Objections to the Report and Recommendation submitted by me on behalf of Attorney Moorhead.

2. Based on the Sentencing Order, which I reviewed, Troy Patterson pled guilty to both federal and local charges in the underlying criminal case, *United States v. Troy Patterson*, 1:19-cr-00016, with a 60 month sentence imposed on the federal charge and an additional 4 months imposed on the local charge, to be served consecutively.

3. Based on the Sentencing Memorandum filed.by the Government that I reviewed for the underlying criminal case, the 60 month sentence was the minimum sentence that could have been imposed on the federal charge, with the maximum sentence being life imprisonment.

4. I reviewed the Third Circuit docket regarding the appeal filed by Troy Patterson and found that the United States moved to dismiss the appeal, as

Patterson waived his right to appeal when he pled guilty, while Attorney Moorhead filed an opposition to the motion, attached as Exhibit A, pointing out that Patterson could still raise ineffective assistance of counsel on appeal despite his guilty plea.

5. I spoke with one of the Public Defenders who had previously worked on Troy Patterson's case, Lisa Browne Williams, who confirmed that she attended the sentencing hearing on July 27th, bringing several "character" letters received by that Office that were provided to the Court by Attorney Moorhead.

6. It is not uncommon for notaries in the Virgin to have delays in getting their commissions renewed, as occurred recently with the notary in my own office.

7. In investigating the issue related to Carolyn Patterson's complaints about the power of attorney from her son, I was able to confirm that Attorney Moorhead's notary seal had expired in April of 2021 (stamp attached as Exhibit B), so he could not have notarized the power of attorney before Troy Patterson left the Virgin Islands after sentencing.

8. As noted in footnote 1 to Exhibit A attached to this declaration, Carolyn Patterson filed a grievance with the Virgin Islands Bar Association against Attorney Moorhead based upon his representation of her son, which I have reviewed. It includes, among other items, the same allegations raised in her July 30th letter. However, I am not involved in

that proceeding at the current time, which is still pending,

I declare under penalty of perjury that the foregoing is true and correct, executed on this 17th day of December, 2021.

/s/ Joel H. Holt
Joel H. Holt

EXHIBIT A

No. 21-2505

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA Appellee, v. TROY PATTERSON Appellant.	)

APPELLANT'S OPPOSITION FOR SUMMARY ACTION ENFORCING THE APPELLATE WAIVER AND TO STAY THE ISSUANCE OF A BRIEFING SCHEDULE IN THE INTERIM

COMES NOW Appellant, by and through Counsel and in support of his Opposition for Summary Action Enforcing the Appellate Waiver and to Stay the Issuance of a Briefing Schedule in the Interim respectfully submits as follows:

1. Appellant timely filed a Notice of Appeal.
2. Appellant *never* waived his right to appeal an illegal sentence.
3. Without the advice of Counsel with whom communication has been impossible during the COVID pandemic, Appellant filed a handwritten pro-se Notice of Appeal from prison on August 3, 2021 and mailed it to the Court.
4. The Notice of Appeal was received by Court and filed on August 9, 2021.
5. Counsel never learned of Appellant's Notice of Appeal until being served with a copy of the notice from the Court.
6. Thereafter, the Court appointed the undersigned to represent Appellant.
7. Appellant is in custody serving his sentence. Counsel has not had any discussions with Appellant since his sentencing hearing on July 29, 2021.
8. Appellee's Motion For Summary Action is fails to address the fact that Appellee never waived his right to appeal an illegal sentence[1].

[1] The Record should reflect that Appellant's mother, Carol Patterson, has filed Disciplinary Complaints against undersigned counsel with the United States District Court and the Disciplinary Counsel of the Virgin Islands Supreme Court. Both filings are under seal. Counsel is uncertain If the filing were made with the approval, consent and direction of Appellant. As far as Counsel is aware, Appellant Is grateful for Counsel's representation of him.

9. Appellant has filed the Transcript Purchase Order and the Criminal Appeal Information Statement with the Court. Additionally, Co-counsel has formally entered an appearance.

10. Since Appellant never waived his right to appeal an illegal sentence, his appeal should proceed. As such, the Court should deny Appellee's Motion for Summary Action and issue a Briefing Schedule as soon as possible.

Date: November 1, 2021

Respectfully submitted,

/s/ Jeffrey Moorhead
Jeffrey Moorhead, Esq.
V.I. Bar No. 438
Attorney for Appellant
1132 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820-4943
Tel: (340) 773-2539
jeffreymlaw@yahoo.com

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court or the United States Court of Appeals for the Third Circuit by using the Appellate CM/ECF System on November 1, 2021. I further certify that all participants in this case are system CM/ECF users and that service will be appealed by Appellate CM/ECF System.

I further certify that a copy was mailed to Appellant at:

Troy Patterson
No. 11053-094
MDC Guaynabo
Metropolitan Detention Center
P.O. Box 2005
Cateno, P.R. 00963-2005

/s/ Jeffrey Moorhead
Attorney for Appellant

EXHIBIT B

JEFFREY B.C. MOORHEAD, ESQ.
LNP-07-17
Commission Expires April 26, 2021
Territory of the U.S. Virgin Islands
District of St. Croix

1. STATUTES

- 28 U.S.C. § 1291 – The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

- 28 U.S.C. § 47 – No judge shall hear or determine an appeal from the decision of a case or issue tried by him.

2. FEDERAL RULES OF APPELLATE PROCEDURE

- Rule 3 – **Appeal as of Right-How Taken**

a) **Filing the Notice of Appeal**.

(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).

. . . .

d) **Serving the Notice of Appeal**.

(1) The district clerk must serve notice of the filing of a notice of appeal by sending a copy

to each party's counsel of record – excluding the appellant's – or, if a party is proceeding pro se, to the party's last known address. When a defendant in a criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant. The clerk must promptly send a copy of the notice of appeal and of the docket entries – and any later docket entries – to the clerk of the court of appeals named in the notice. The district clerk must note, on each copy, the date when the notice of appeal was filed.

- Rule 4 – **Appeal as of Right – When Taken**

a) Appeal in a Civil Case.

(1) *Time for Filing a Notice of Appeal*.

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

. . . .

(4) *Effect of a Motion on a Notice of Appeal.*

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure – and does so within the time allowed by those rules – the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under. Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

(B)

(i) If a party files a notice of appeal after the court announces or enters a judgment – but before it disposes of any motion listed in Rule 4(a)(4)(A) – the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal – in compliance with Rule 3(c) – within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

- Rule 21 – Writs of Mandamus and Prohibition and Other Extraordinary Writs

  (a) **Mandamus or Prohibition to a Court: Petition, Filing, Service, and Docketing**.

  (1) A party petitioning for a writ of mandamus or prohibition directed to a court must file a petition with the circuit clerk and serve it on all parties to the proceeding in the trial court. The party must also provide a copy to the trial-court judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.

  (2)

  (A) The petition must be titled "In re [name of petitioner]."

  (B) The petition must state:

  (i) the relief sought;

  (ii) the issues presented;

  (iii) the facts necessary to understand the issue presented by the petition; and

  (iv) the reasons why the writ should issue.

  (C) The petition must include a copy of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.

(3) Upon receiving the prescribed docket fee, the clerk must docket the petition and submit it to the court.

3. LOCAL RULES OF THE DISTRICT COURT OF THE VIRGIN ISLANDS

- Rule 7.3 – MOTIONS FOR RECONSIDERATION

(a) A party may file a motion asking the Court to reconsider its order or decision. Such motion shall be filed in accordance with LRCi 6.1(b)(3). A motion to reconsider shall be based on:

(1) an intervening change in controlling law;

(2) the availability of new evidence, or;

(3) the need to correct clear error or prevent manifest injustice.

(b) A motion for reconsideration shall state whether it is based upon LRCi 7.3(a)(1), (2) or (3) and shall concisely identify, without argument, the relevant change in controlling law, the new evidence, or the clear error (as applicable). Any argument related to the motion shall be included in the separate memorandum required under LRCi 7.1(c)(1).

(c) A motion for reconsideration shall include the following certification by counsel: "I express a belief, based on a reasoned and studied professional judgment, that the grounds for reconsideration set forth above are present in this case."

(d) *Pro se* litigants need only comply with subsections (a) and (b).

- Rule 83 – ATTORNEYS: DISCIPLINARY RULES AND ENFORCEMENT

(a) Standards for Professional Conduct – Basis for Disciplinary Action.

(1) In order to maintain the effective administration of justice and the integrity of the Court, each attorney admitted or permitted to practice before this Court shall comply with the standards of professional conduct required by the Model Rules of Professional Conduct (the 'Model Rules`), adopted by the American Bar Association, as amended. Attorneys who are admitted or permitted to practice before this Court are expected to be thoroughly familiar with the Model Rules' standards.

(2) Any attorney admitted or permitted to practice before this Court, after notice and an opportunity to be heard, may be disbarred, suspended from practice, reprimanded, or subjected to such other disciplinary action as the circumstances may warrant for misconduct.

(3) Acts or omissions by an attorney admitted or permitted to practice before this Court, individually or in concert with any other person or persons, which violate the Model Rules, shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client

relationship or in the course of judicial proceedings.

(b) Disciplinary Proceedings. When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted or permitted to practice before this Court, shall come to the attention of a judicial officer of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, the judicial officer shall inform the Chief Judge. Thereafter, the Chief Judge or the Chief Judge's designee shall refer the matter to a Magistrate Judge or a committee designated by the Chief Judge (Disciplinary Committee) for investigation and a report and recommendation. The Magistrate Judge or the Disciplinary Committee shall afford the attorney the opportunity to be heard. The attorney may submit objections to the report and recommendation. Any objections are to be filed with the Court within 14 days from the date of filing of the report and recommendation. The matter will then be submitted to the Court for final determination.

(c) Disciplinary Penalties.

(1) An order imposing discipline under this rule may consist of any of the following:

(A) disbarment;

(B) suspension;

(C) public or private reprimand;

(D) monetary penalties, including an order to pay the costs of proceedings; or

(E) if the attorney was admitted *pro hac vice* or has been otherwise permitted to appear, preclusion from, or the placement of conditions on, any further appearances before this Court.

(2) Any suspension or reprimand imposed may be subject to additional specified conditions, which may include continuing legal education requirements, counseling, supervision of practice, or any other condition which the Court deems appropriate.

(d) Powers of Individual Judges to Deal with Contempt or Other Misconduct Not Affected.

(1) The remedies for misconduct provided by this rule are in addition to the remedies available to individual judges under applicable law with respect to lawyers appearing before them. Misconduct of any attorney in the presence of a judge or in any manner with respect to any matter pending before the Court may be dealt with directly by the judge in charge of the matter or, at the judge's option, referred to the Chief Judge, or both.

(2) Nothing in this rule shall limit the Court's power to punish contempt or to sanction counsel in accordance with the

federal rules of procedure or the Court's inherent authority to enforce its rules and orders.

(e) Notice of Disciplinary Action to Other Courts. The Clerk of Court shall give prompt notice of any order imposing discipline under this rule to the Court of Appeals for the Third Circuit, the Supreme Court of the Virgin Islands, and the American Bar Association.

(f) Confidentiality. Unless otherwise ordered by the Court, complaints, grievances, and any files based on them, shall be treated as confidential.

(g) Disbarment or Suspension on Consent While Under Disciplinary Investigation or Prosecution.

(1) Affidavit of Consent. Any attorney admitted or permitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment or suspension, but only by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment or suspension and that:

(A) the attorney's consent is freely and voluntarily given; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of consenting;

(B) the attorney is aware that there is a pending investigation or proceeding involving allegations that grounds exist for the attorney's discipline, the nature of which the attorney shall specifically set forth;

(C) the attorney acknowledges that the material facts so alleged are true; and,

(D) the attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceedings were prosecuted, the attorney could not successfully defend against the charges.

(2) Order of Disbarment or Suspension on Consent. Upon receipt of the required affidavit, the Court may enter an order disbarring or suspending the attorney.

(3) Disclosure. The order disbarring or suspending the attorney on consent shall be a matter of public record. The affidavit required under the provisions of this rule shall not be publicly disclosed, however, or made available for use in any other proceeding except upon order of this Court.

(h) Disbarment or Resignation in Other Courts.

(1) Any attorney admitted to practice before this Court who is disbarred,

disbarred on consent, or resigns from the bar of any Court while an investigation into allegations of misconduct is pending, shall be stricken from the roll of attorneys admitted to practice before this Court, upon the filing of a certified copy of the judgment or order of disbarment or accepting such disbarment on consent, or resignation.

(2) Any attorney admitted to practice before this Court, upon being disbarred, disbarred on consent, or resigning from the bar of any Court while an investigation into allegations of misconduct is pending, shall promptly inform the Clerk of the disbarment, disbarment on consent, or resignation.

(i) Attorneys Convicted.

(1) Felony Convictions.

(A) Conviction in this District. Upon the entry of judgment of a felony conviction against an attorney admitted or permitted to practice before this Court, the Clerk shall immediately notify the Chief Judge of the conviction. The Chief Judge or the Chief Judge's designee shall then immediately issue an order suspending the attorney, regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding as set forth in this Rule. A copy of such

order shall be served upon the attorney.

(B) Convictions in Other Courts. Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted or permitted to practice before this Court has been convicted of a felony in any Court of the United States or of a state, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States, the Chief Judge or the Chief Judge's designee shall enter an order immediately suspending that attorney, regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall be served upon the attorney.

(2) Other Crimes. Upon the filing of a certified copy of a judgment of conviction of an attorney for any crime, the Chief Judge may appoint a Disciplinary Committee for whatever action deemed warranted.

(3) Certified Judgment as Conclusive Evidence. A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the

commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.

(4) Reinstatement Upon Reversal of Conviction. An attorney suspended under the provisions of this rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction has been reversed, but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney.

(j) Discipline Imposed by Other Courts.

(1) When it is shown to this Court that any member of its Bar has been suspended or disbarred from practice in any other court of record, or has been guilty of conduct unbecoming a member of the bar of this Court, the member will be subject to suspension or disbarment by this Court. The member shall be afforded an opportunity to show good cause, within such time as the Court shall prescribe, why the member should not be suspended or disbarred. Upon the member's response to the order to show cause, and after hearing, if requested or ordered by the Court, or upon expiration of the time prescribed fora response, if no response is made, the Court shall enter an appropriate order.

(2) Upon the filing of a certified copy of a judgment or order establishing that an

attorney admitted or permitted to practice before this Court has been disciplined by any court of competent jurisdiction, this Court shall issue forthwith a notice directed to the attorney containing:

(A) a copy of the judgment or order from the issuing court; and

(B) an order directing the attorney to show cause within thirty (30) days after service why disciplinary action should not be taken against the attorney.

(3) The Chief Judge may designate another judge or a Disciplinary Committee to investigate and submit a report and recommendation.

(k) Reinstatement.

(1) After Disbarment or Suspension. An attorney suspended or disbarred may not resume practice until reinstated by order of this Court.

(2) Hearing on Application. Petitions for reinstatement by an attorney who has been disbarred or suspended under this rule shall be filed with the Chief Judge of the Court who shall schedule the matter for consideration by the active district judges of this Court within thirty (30) days from receipt of the petition. In considering the petition for reinstatement, the active district judges shall enter the order they deem appropriate. In considering the petition

for reinstatement, the Court may schedule a hearing.

(3) Burden of Proof. The petitioner shall have the burden of demonstrating by clear and convincing evidence that the petitioner has the moral qualifications, competency and learning in the law required for admission to practice before this Court and that resumption of the practice of law will not be detrimental to the integrity of the bar, the administration of justice, or undermine the public interest.

(4) Conditions of Reinstatement. If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate the petitioner, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment. This list is not intended to be exhaustive.

(l) Duties of the Clerk of Court.

(1) Upon being informed that an attorney admitted or permitted to practice before this Court has been convicted of any crime, the Clerk shall determine whether the Clerk of Court in which such

conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been forwarded, the Clerk shall promptly obtain a certificate and file it with this Court.

(2) Upon being informed that an attorney admitted or permitted to practice before this Court has been subjected to discipline by another court, the Clerk shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court, and, if not, the Clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this Court.

(3) Whenever it appears that any person who is convicted of any crime, disbarred, suspended, censured, disbarred on consent, or otherwise precluded from appearance and practice by this Court, is admitted to practice law in any other jurisdiction(s) or before any other court(s), the Clerk shall promptly transmit to the other court(s) a certificate of the conviction or a certified exemplified copy of the judgment or order of disbarment, suspension, censure, disbarment on consent, or order of preclusion, as well as the last known office and residence addresses of the defendant or attorney.

(4) The Clerk shall, likewise, promptly notify the National Discipline Data Bank

operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this Court.

4. EASTERN DISTRICT OF PENNSYLVANIA'S LOCAL RULE 83.6:

Rule 83.6 Rules of Attorney Conduct

Table of Contents

The United States District Court for the Eastern District of Pennsylvania, in furtherance of its inherent power and responsibility to supervise the conduct of attorneys who are admitted to practice before it, promulgates the following Rules of Disciplinary Enforcement superseding all of its other Rules pertaining to disciplinary enforcement heretofore promulgated.

Rule I – Attorneys Convicted of Crimes.

A. An attorney admitted to practice in this court shall promptly notify the Clerk of this court whenever he or she has been convicted in any court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined. Upon such notification or upon the filing with this court of a certified copy of the judgment of conviction, the court shall enter an order immediately suspending that attorney, whether the conviction resulted from plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, the court may set aside such order when it appears in the interest of justice to do so.

B. The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false

swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime".

C. A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.

D. Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the court shall in addition to suspending that attorney in accordance with the provisions of this Rule, also refer the matter to counsel for the institution of a disciplinary proceeding before the court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

E. Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime," the court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the court; provided, however, that the court may in its discretion make no reference with respect to convictions for minor offenses.

F. An attorney suspended under the provisions of this Rule will be reinstated immediately upon the

filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

Rule II – Discipline or Prohibitions Imposed By Other Courts or Authorities.

A. Any attorney admitted to practice before this court, upon being subjected to public discipline by any other court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, or upon being prohibited from the practice of law for failure to fulfill any continuing legal education requirement, for voluntarily entering into inactive status, or for any other reason, shall promptly notify the Clerk of this court of such action. Placement on inactive status or other action taken for failure to maintain a bona fide office in another jurisdiction shall not be grounds for discipline or other action by this court so long as the attorney maintains a bona fide office in another jurisdiction.

B. Upon notification as required under paragraph A or the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this court has been disciplined by another court or otherwise has been prohibited from the practice of law, the Chief Judge of this court, if he or she deems it

appropriate, shall forthwith issue a notice directed to the attorney containing:

1. a copy of the judgment or order from the other court or authority; and

2. an order to show cause directing that the attorney inform this court within thirty 30 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in (D.) hereof that the imposition of the identical discipline or prohibition by the court would be unwarranted and the reasons therefor.

C. In the event the discipline or prohibition imposed in the other jurisdiction has been stayed there, any reciprocal action imposed in this court shall be deferred until such stay expires.

D. Upon the expiration of thirty (30) days from service of the notice issued pursuant to the provisions of (B) above and after an opportunity for any attorney contesting the imposition of the identical discipline or prohibition to be heard by one or more judges designated by the Chief Judge, this court shall impose the identical discipline or prohibition unless the respondent-attorney demonstrates, or this court finds, that upon the face of the record upon which the discipline or prohibition in another jurisdiction is predicated it clearly appears:

1. that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

2. that there was such an infirmity of proof as to give rise to the clear conviction that this court

could not, consistent with its duty, accept as final the conclusion on that subject; or

3. that the imposition of the same discipline or prohibition by this court would result in grave injustice; or

4. that the misconduct or other basis established for the discipline or prohibition is deemed by this court to warrant substantially different action.

Where this court determines that any of said elements exist, it shall enter such other order as it deems appropriate.

E. In all other respects, a final adjudication in another court or authority that an attorney has been guilty of misconduct or otherwise should be prohibited from the practice of law shall establish conclusively the facts for purposes of a proceeding under this Rule in the court of the United States.

F. This court may at any stage appoint counsel to investigate and/or prosecute the proceeding under this Rule.

G. The judge or judges to whom any proceeding under this Rule is assigned shall make a report and recommendations to the court after the parties have been heard, which will be filed under seal and served on the parties. A party shall serve and file under seal any objections within fourteen (14) days thereafter. Further submissions by any party shall be served and filed under seal within seven (7) days after service of any objections. The court shall then decide the matter; after decision the report and recommendation, any objections, and any

submissions shall be unsealed unless otherwise ordered by the court.

H. Any attorney who is disciplined or otherwise prohibited from the practice of law by a state court or authority may continue to practice in this court if this court decides, in accordance with this Rule, that no discipline or prohibition should be imposed. However, continuance of practice in this court does not authorize an attorney to practice in any other jurisdiction, and no attorney shall hold out himself or herself as authorized to practice law in any jurisdiction in which the attorney is not admitted.

Rule III – Disbarment on Consent or Resignation in other Courts.

A. Any attorney admitted to practice before this court who shall be disbarred on consent or resign from the bar of any other court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, shall, upon the filing with this court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this court and be stricken from the roll of attorneys admitted to practice before this court.

B. Any attorney admitted to practice before this court shall, upon being disbarred on consent or resigning from the bar of any other court of the United States or the District of Columbia, or from the Bar

of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, promptly inform the Clerk of this court of such disbarment on consent or resignation.

Rule IV – Standards for Professional Conduct

A. For misconduct defined in these Rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this court may be disbarred, suspended from practice before this court, reprimanded or subjected to such other disciplinary action as the circumstances may warrant.

B. Acts or omissions by an attorney admitted to practice before this court, individually or in concert with any other person or persons, which violate the Rules of Professional Conduct adopted by this Court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of any attorney-client relationship.

The Rules of Professional Conduct adopted by this court are the Rules of Professional Conduct adopted by the Supreme Court of Pennsylvania, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court after consideration of comments by representatives of bar associations within the state, except that prior court approval as a condition to the issuance of a subpoena addressed to an attorney in any criminal proceeding, including a grand jury,

shall not be required. The propriety of such a subpoena may be considered on a motion to quash.

Rule V – Disciplinary or Other Proceedings against Attorneys.

A. When the misconduct or other basis for action against an attorney (other than as set forth in Rule II) or allegations of the same which, if substantiated, would warrant discipline or other action against an attorney admitted to practice before this court shall come to the attention of a Judge of this court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, the judge shall refer the matter to the Chief Judge who shall issue an order to show cause.

B. Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation the Chief Judge shall set the matter for prompt hearing before one or more judges of this court, provided however that if the proceeding is predicated upon the complaint of a judge of this court the hearing shall be conducted before a panel of three other judges of this court appointed by the Chief Judge.

C. This court may at any stage appoint counsel to investigate and/or prosecute the proceeding under this Rule.

D. This court may refer any matter under this Rule to the appropriate state disciplinary or other authority for investigation and decision before taking any action. The attorney who is the subject of

the referral shall promptly notify this court of the decision of any state court or authority and shall take whatever steps are necessary to waive any confidentiality requirement so that this court may receive the record of that referral.

E. The judge or judges to whom any proceeding under this Rule is assigned shall make a report and recommendation to the court after the parties have been heard, which will be filed under seal and served on the parties. A party shall serve and file under seal any objections within fourteen (14) days thereafter. Further submissions by any party shall be served and filed under seal within seven (7) days after service of any objections. The court shall then decide the matter; after decision the report and recommendation, any objections, and any submissions shall be unsealed unless otherwise ordered by the court.

Rule VI – Disbarment on Consent While Under Disciplinary Investigation or Prosecution.

A. Any attorney admitted to practice before this court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to this court an affidavit stating that the attorney desires to consent to disbarment and that:

1. the attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;

2. the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline the nature of which the attorney shall specifically set forth;

3. the attorney acknowledges that the material facts so alleged are true; and

4. the attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself or herself.

B. Upon receipt of the required affidavit, this court shall enter an order disbarring the attorney.

C. The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon the order of this court.

Rule VII – Reinstatement.

A. After Disbarment or Suspension. An attorney suspended for three months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than three months or disbarred may not resume practice until reinstated by order of this court.

B. Time of Applications Following Disbarment. A person who has been disbarred after hearing or

by consent may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment.

C. Hearing on Application. Petitions for reinstatement under this rule by an attorney who has been disbarred, suspended or otherwise prohibited from the practice of law shall be filed with the Clerk of this court. Upon the filing of the petition, the Chief Judge shall assign the matter for prompt hearing before one or more judges of this court, provided however that if the proceeding was predicated upon the complaint of a judge of this court the hearing shall be conducted before a panel of three other judges of this court appointed by the Chief Judge. The judge or judges assigned to the matter shall promptly schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that the petitioner has the moral qualifications, competency and learning in the law required for admission to practice law before this court and that the petitioner's resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest. In the case where this court has imposed discipline or otherwise taken adverse action identical to that imposed or taken by a state court or authority, any petition for reinstatement in this court shall be held in abeyance until a petition for reinstatement to practice in the state court has been filed and finally decided. Nonetheless, if the petition for reinstatement to practice in the state curt remains pending before the state court or authority for more than a year without a final decision, this court may proceed to consider

and decide the petition pending before it. Whenever the state court renders a final decision, the attorney shall promptly file with this court a copy of said decision including any findings of fact and conclusions of law. After review of the state court decision, this court may reconsider its action upon notice and an opportunity to be heard. This court shall not hold the reinstatement petition in abeyance where the state disciplining or taking other action against the attorney does not provide for reinstatement under the circumstances. If the discipline imposed or other action taken by this court was different from that imposed or taken by the state court or authority, this court will proceed to consider the petition for reinstatement upon receipt.

D. The court may at any stage appoint counsel in opposition to a petition for reinstatement.

E. Deposit for Costs of Proceeding. Petitions for reinstatement under this Rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by the court to cover anticipated costs of the reinstatement proceeding.

F. Conditions of Reinstatement. If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate the petitioner, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by petitioner whose conduct led to the suspension or disbarment. Provided further, that if the petitioner

has been suspended or disbarred for five years or more, reinstatement may be conditioned, in the discretion of the judge or judges before whom the matter is heard, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

G. Successive Petitions. No petition for reinstatement under this Rule shall be filed within one year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

H. The judge or judges to whom any proceeding under this Rule is assigned shall make a report and recommendation to the court after the parties have been heard, which will be filed under seal and served on the parties. A party shall serve and file under seal any objections within fourteen (14) days thereafter. Further submissions by any party shall be served and filed under seal within seven (7) days after service of any objections. The court shall then decide the matter; after decision the report and recommendation, any objections, and any submissions shall be unsealed unless otherwise ordered by the court.

I. Any attorney who is reinstated may practice before this court notwithstanding the refusal or failure of any state court to reinstate said attorney to practice. However, reinstatement to practice before this court does not authorize an attorney to practice in any other jurisdiction, and no attorney

shall hold out himself or herself as authorized to practice law in any jurisdiction in which the attorney is not admitted.

Rule VIII – Attorneys Specially Admitted.

Whenever an attorney applies to be admitted or is admitted to this court for purposes of a particular proceeding, the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

Rule IX – Service of Papers and Other Notices.

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at the address shown in the roll of attorneys of this court or the most recent edition of the Legal Directory. Service of any other papers or notices required by these Rules shall be deemed to have been made if such paper or notice is addressed to the respondent-attorney at the address shown on the roll of attorneys of this court or the most recent edition of the Legal Directory; or the respondent's attorney at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding.

Rule X – Appointment of Counsel.

Whenever counsel is to be appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney this court shall appoint as counsel the disciplinary agency of the Supreme Court of Pennsylvania, or other disciplinary agency having jurisdiction. If no such disciplinary agency exists or such disciplinary agency declines appointment, or such appointment is clearly inappropriate, this court shall appoint as counsel one or more members of the Bar of this court to investigate allegations of misconduct or to prosecute disciplinary proceedings under these rules, provided, however, that the respondent-attorney may move to disqualify an attorney so appointed who is or has been engaged as an adversary of the respondent-attorney in any matter. Counsel, once appointed, may not resign unless permission to do so is given by this court.

Rule XI – Duties of the Clerk.

A. Upon being informed that an attorney admitted to practice before this court has been convicted of any crime, the Clerk of this court shall determine whether the clerk of the court in which such conviction occurred has forwarded a certificate of such conviction to this court. If a certificate has not been forwarded, the Clerk of this court shall promptly obtain a certificate and file it with this court.

B. Upon being informed that an attorney admitted to practice before this court has been subjected to discipline by another court, the Clerk of this court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this court, and if not, the Clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this court.

C. Whenever it appears that any person convicted of any crime or disbarred or suspended or censured or disbarred on consent by this court is admitted to practice law in any other jurisdiction or before any other court, the Clerk of this court shall, within ten (10) days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other court, a certificate of the conviction or a certified exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.

D. The Clerk of this court shall, likewise, promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this court.

Rule XII – jurisdiction.

Nothing contained in these Rules shall be construed to deny to this court such powers as are necessary for the court to maintain control over proceedings conducted

before it, such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure.

Rule XIII – Effective Date.

These rules shall become effective on August 1, 1980, provided that any formal disciplinary proceeding then pending before this court shall be concluded under the procedure existing prior to the effective date of these Rules.

Background of the Proposed Model Federal Rules of Disciplinary Enforcement and Recommendation of the Judicial Conference Committee on Court Administration.

For some years there has been a demonstrated concern by federal judges and the lawyers who practice in the federal courts over the lack of uniform rules of disciplinary enforcement in the federal courts. The American Bar Association through its Standing Committee on Professional Discipline (and its two predecessor committees) has provided the various state courts with a model plan of state court coordinated rules of disciplinary enforcement for their consideration and use. A vast majority of the states have adopted substantially the A.B.A. model plan.

On the federal court side, in 1970 as a result of a previous study, a report of an American Bar Association Committee on Evaluation of Disciplinary Enforcement, headed by the late Justice Tom C. Clark was

issued, and was unanimously approved by the American Bar Association. Following that report, in 1973 the Standing Committee on Professional Discipline of the American Bar Association was created to continue the work in view of the conclusion earlier reached by the Clark Committee that effective disciplinary enforcement in the federal courts requires that professional discipline for the entire federal system be coordinated among the courts which constitute that system and also coordinated with existing state disciplinary agencies within all federal court jurisdictions. The Clark Report highlighted the existing problem of inadequate provision for reciprocal action when an attorney disciplined in one jurisdiction is admitted to practice in another jurisdiction, as well as the problem of discipline of attorneys in federal courts based on prior state court discipline.

On April 17, 1975, as work on a proposed draft of uniform disciplinary rules of procedure progressed under the guidance of the A.B.A. Standing Committee, the Director of the Administrative Office of the United States Courts, the Director of the Federal Judicial Center and others met with the Standing Committee in furtherance of the ongoing study. On July 31, 1975, the Standing Committee forwarded to the Administrative Office of the United States Courts a proposed set of Uniform Guidelines (rules) of Disciplinary Enforcement with the request that they be studied by the Judicial Conference of the United States.

At the direction of the Chief Justice the Committee on Court Administration of the Judicial Conference on

April 11, 1976, accepted the responsibility of studying the Proposed Uniform Rules of Disciplinary Enforcement and the making of appropriate comments and recommendations to the Judicial Conference.

On April 12, 1976, the Committee on Court Administration, through its Subcommittee on Judicial Improvements, sent the Proposed Draft of the Uniform Rules to all federal judges requesting that they study the proposed draft and make such comments, criticisms, and recommendations as they thought appropriate A substantial number of federal judges responded, many with constructive comments and suggestions which are carefully studied by the Subcommittee on Judicial Improvements and sent to the A.B.A. Standing Committee for its study. Thereafter, the Subcommittee met with representatives of the A.B.A. Standing Committee. There resulted a revised proposed draft written in the light of the earlier comments and suggestions. This revised draft was submitted through the committee on Court Administration to the Judicial Conference at its September 23-24, 1976 Session with the recommendation that the judges of the federal courts should have further opportunity to comment on the revised draft and to submit their views.

The Judicial Conference accepted the recommendation of the Committee on Court Administration, broadened it to include all state bar presidents, and directed dissemination of the revised draft to all federal judges and state bar presidents for their study, views and comments. Again, a substantial number of federal judges as well as State bar presidents and state bar

associations responded with comments and suggestions. All of these comments and suggestions were fully considered by the Subcommittee on Judicial Improvements and after consultation with the A.B.A. Standing Committee some additional revisions in the Proposed Uniform Rules were made in the light of those suggestions and comments.

On February 14, 1978, at the midyear meeting of the American Bar Association in New Orleans the Standing Committee presented the currently Revised Proposed Uniform Rules to the House of Delegates of the American Bar Association for its consideration and action. On that same date the House of Delegates approved the Proposed Uniform Rules of Disciplinary Enforcement with several minor suggestions.

At its June, 1978 meeting the Subcommittee on Judicial Improvements reviewed the suggestions made by the A.B.A. House of Delegates, accepted them as strengthening and clarifying the Proposed Uniform Rules and unanimously approved a revised draft incorporating those recommendations.

It is the expressed hope of the Committee and Subcommittee members who have actively participated in the study that the various courts of the United States will choose to adopt these Proposed Rules so as to assure uniformity of procedure in the federal court system on a coordinated basis with the various state systems, as well as to assure an effective and reasonable procedure for needed discipline within the federal system.

Recommendation

The subcommittee on Judicial Improvements unanimously recommends to the Committee on Court Administration that it approve these Revised Proposed Model Federal Rules of Disciplinary Enforcement and in turn recommended to the Judicial Conference of the United States that it approve these Proposed Model Rules and recommend their adoption by the various courts of the United States on an optional basis.