

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE MATTER OF JUAN T. LIZAMA, ASSOCIATE JUDGE OF THE SUPERIOR
COURT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

SUPREME COURT NO. 2007-SCC-0029-JDA

SLIP OPINION

Cite as: 2008 MP 20

Decided December 17, 2008

Bruce A. Bradley, Special Ethics Prosecutor, Guam, for the Commonwealth Judiciary.
Steven M. Newman, Saipan, Northern Mariana Islands, and F. Randall Cunliffe, Guam, for
Associate Judge Juan T. Lizama.

BEFORE: MIGUEL S. DEMAPAN, Chief Justice

DEMAPAN, C.J.:

¶ 1 Before this Court are the findings and recommendations of Richard H. Benson, the appointed investigating judge, regarding judicial disciplinary procedures against Juan T. Lizama, Associate Judge of the Commonwealth Superior Court.¹ This Court has jurisdiction pursuant to the Commonwealth Rules of Judicial Disciplinary Procedure. This Court approves the ethics prosecutor's recommendations regarding summary disposition and imposes sanctions on Judge Lizama as specified later in this opinion.

I

¶ 2 The events giving rise to this disciplinary action stem from Judge Lizama's conduct during and immediately following disqualification proceedings brought against him in *In re the Estate of Angel Maliti*, Civ. No. 97-0369 (NMI Super. Ct.). Certain separately represented heirs of the Maliti estate alleged Judge Lizama was biased and moved to disqualify him from presiding over the estate's probate proceedings. Associate Judge David A. Wiseman was assigned to hear the motion to disqualify Judge Lizama. Shortly thereafter, in July 2006, Judge Lizama wrote a letter to Presiding Judge Robert C. Naraja. Judge Lizama stated that Judge Wiseman previously shared his belief that one of Judge Lizama's rulings in the Maliti case was unfounded. Judge Lizama suggested the disqualification motion be reassigned to a different judge because, in his view, "Judge Wiseman's statement and other comments to me on this case may create an appearance of bias." Judge Lizama also sent a copy of the letter to Judge Wiseman.

¶ 3 Despite Judge Lizama's protests, the Presiding Judge did not reassign the disqualification motion. Judge Wiseman then found the motion meritorious and disqualified Judge Lizama from further participation in the Maliti case. Shortly thereafter, in March 2007, Judge Lizama wrote another letter to the Presiding Judge, this time accusing Judge Wiseman of misconduct. Judge Lizama indicated that Judge Wiseman discussed the disqualification motion with members of the public while it was still pending, improperly heard the motion, and, in granting disqualification, used "language . . . beyond that of other recusal opinions issued by the Superior Court . . . that unnecessarily degraded a member of the Judiciary." Judge Lizama attached a copy of his 2006 letter, and sent copies of both to Judge Wiseman and to each of the six attorneys appearing in the Maliti case.

¶ 4 Disturbed by the allegations of misconduct, the Presiding Judge forwarded copies of Judge Lizama's 2006 and 2007 letters to the Chief Justice of the Supreme Court. The Presiding

¹ Judge Lizama retired from the bench effective May 24, 2008.

Judge specifically expressed his concern over the claims of improper communications between judges and the public, as well as “the conduct leading up to, during, and following the [disqualification] proceedings” This Court treated the letter as a disciplinary complaint and appointed an investigative judge to examine the letters, receive additional evidence as needed, and recommend whether formal disciplinary proceedings were warranted, either against Judge Lizama or Judge Wiseman.

¶ 5 The investigative judge interviewed and received testimony from Judge Wiseman, Judge Lizama, and the person with whom Judge Wiseman allegedly discussed the then-pending motion to dismiss Judge Lizama. The investigative judge also heard legal arguments regarding the propriety of Judge Wiseman’s conduct and Judge Lizama’s 2006 and 2007 letters. During the course of the investigation, Judge Lizama admitted that his allegations concerning Judge Wiseman’s discussions about pending cases with members of the public were not based on personal knowledge, but were instead based on “‘hearsay,’ ‘suspicion,’ and ‘surmise.’” Supplemental Investigative Report (“SIR”) ¶ 7. Consequently, the investigative judge determined that there was insufficient evidence to proceed against Judge Wiseman on a charge of improper communications. Judge Lizama’s conduct, however, was more damning.

¶ 6 Judge Lizama admitted that he sent the 2006 and 2007 letters to the Presiding Judge, Judge Wiseman, and the six attorneys appearing in the Maliti probate case, but denied that doing so was improper. The investigative judge then ordered Judge Lizama to support his claim by filing a memorandum defending his conduct. Judge Lizama complied and filed a memorandum, but his memorandum was virtually void of legal authority indicating the 2006 and 2007 letters were proper. Rather, Judge Lizama justified his 2006 and 2007 letters by arguing his conduct was necessary to vindicate a wrong perpetrated upon the court, the parties to the Maliti probate estate, the general public, and, most troublingly, himself. Judge Lizama’s own language readily demonstrates his whistle-blower mindset:

Rather than violating the Code, I sought to remedy what was in my eyes (1) a recusal decision that had become tainted with Judge Wiseman’s personal feelings about me; and (2) the prospect of my replacement by a judge who was admittedly biased against one of the attorneys in the Malite case. Alerting the Malite counsel under such circumstance [sic] was not disseminating confidential information to the public, especially because what I disclosed was not confidential.

. . . .

When Judge Wiseman failed [to recuse himself], I felt it was my duty to disclose my July 17, 2006 letter to Judge Naraja stating that Judge Wiseman had expressed an opinion that the administrator’s counsel did not deserve to receive the contingent fee of \$1.138 million. Despite the passage of nine months, neither judge ever responded to my letter or made any effort (other than discussing the

matter among themselves) to remedy the situation. Thus, it was up to me to alert counsel as to the problem. To stand by silently would have betrayed the public confidence in the integrity and impartiality of the judiciary, in violation of Cannon [sic] 2 (A).

....

Also questionable is Judge Wiseman's choice of timing in releasing the order recusing me. After [the Supreme] Court denied the writ of mandamus [in the Maliti probate case], jurisdiction of the case returned to me. In fact, I was asked to sign a stipulation made by the parties. Nevertheless, I was prepared to self-recuse, as statements in the [Supreme] Court's order made it difficult for me to continue presiding over the case I believe self-recusal is the best way to preserve judicial integrity. When I recused myself from [presiding over a previous case], Judge Wiseman agreed that *sua sponte* self-recusal was the best manner for handling such a situation. I was deprived of this opportunity, however, as Judge Wiseman issued his order of recusal shortly after the writ denial.

....

Following the release of the recusal order, Judge Wiseman held a status conference with the *Malite* counsel and the press to re-discuss the issue of my qualifications. As there was not yet a written order re-assigning the case to Judge Wiseman, the status conference appeared to be no more than an opportunity to berate me in front of the press.

What Judge Wiseman said to me regarding [counsel not deserving the \$1.138 million contingency fee] was not imparted during an in-chambers conference. It was a personal opinion stated off the cuff. Given the appearance of impropriety created by the casual and careless comment, I saw no reason to keep it confidential.

Nevertheless, I did not feel the need to make public Judge Wiseman's statement. As Cannon [sic] 2(A)(6) provides, "A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control." I did not alert the press. I simply told the lawyers in the case, and did so only after nine months of no response from Judge Wiseman or Judge Naraja.

SIR, App. B ¶¶ 1-10 (footnotes omitted).

¶ 7 The investigative judge found that Judge Lizama's conduct likely violated Commonwealth Code of Judicial Conduct Canons 1, 2(A), 3(A)(4), and 3(A)(6), and Commonwealth Rules of Judicial Disciplinary Procedure 6(a)(1) and 6(a)(4). Consequently, the investigative judge recommended the matter to this Court for a formal disciplinary proceeding. *See Com. R. Jud. Disc. P. 17.*

¶ 8 On October 1, 2007, this Court initiated the current action against Judge Lizama by filing the notice of formal proceedings, which instructed Judge Lizama to answer the charges raised by

the investigative judge.² On January 29, 2008, the appointed ethics prosecutor moved for summary disposition, arguing that Judge Lizama admitted many of the material facts during the investigatory stage, and that only legal issues remained.

II

¶ 9 In judicial misconduct proceedings, the investigative judge’s findings are considered and given their due regard. Nonetheless, this Court is not bound by the findings. Because this Court has the sole power to impose sanctions in judicial misconduct proceedings, *see* Com. Disc. R. 34, we are obligated to render an independent judgment on the charges. In the present case, the investigative judge found that Judge Lizama’s conduct likely violated Commonwealth Code of Judicial Conduct Canons 1, 2(A), 3(A)(4), and 3(A)(6), and Commonwealth Rules of Judicial Disciplinary Procedure 6(a)(1) and 6(a)(4).³ We therefore review each of these charges.

Ex Parte or Other Communication

¶ 10 Canon 3(A)(4) of the Commonwealth Code of Judicial Conduct states, in pertinent part: “A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding.” Canon 3(A)(4) disallows two forms of communication. A judicial proceeding or order is *ex parte* “when it is taken or granted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested.” *Harris v. United States*, 738 A.2d 269, 277 n.13 (D.C. 1999). As a rule of fairness, it includes any communication of information that a judge or attorney knows or should know would be of interest to opposing counsel. An otherwise proper communication becomes a prohibited *ex parte* communication when matters relevant to a proceeding circulate among fewer than all the parties who are legally entitled to be present or notified of the communication.

¶ 11 The letters Judge Lizama sent in 2006 and 2007 violate Canon 3(A)(4). In his 2006 letter, Judge Lizama claims that Judge Wiseman previously expressed his disagreement with

² Com. R. Jud. Disc. P. 18 requires the investigative judge to file a notice of formal proceedings. However, the Commonwealth Rules of Judicial Discipline were not in effect when the investigative judge in the current matter was appointed. Instead, the investigative judge’s duties were outlined in this Court’s order appointing him. Although largely similar to those responsibilities stated in the rules, our order appointing the investigative judge required him to report to this Court regarding the likelihood of ethical violations, but did not authorize him to initiate formal proceedings before this Court.

³ The ethics prosecutor filed an amendment to the notice of formal proceedings on February 7, 2008 alleging that Judge Lizama also violated Canon 3(D)(c). However, in this Court’s order appointing the investigative judge, we did not charge him with investigating Judge Lizama’s alleged violation of Canon 3(D)(c), nor did the investigating judge consider such an allegation. Without the benefit of such an investigation, we decline to adjudicate this matter.

Judge Lizama's order granting attorney fees in the Maliti case. Judge Lizama argued that Judge Wiseman's expressed disapproval gave rise to an appearance of bias. Judge Lizama therefore recommended that the disqualification motion be reassigned. Had Judge Lizama discontinued this course of action and simply dropped the matter after sending his 2006 letter, perhaps we could give him the benefit of the doubt and interpret his actions as a reasonable attempt to protect the integrity of the judiciary. However, Judge Lizama instead sent a copy of the letter to Judge Wiseman. In so doing, Judge Lizama abandoned his role as impartial arbiter of the law and improperly thrust himself into the role of advocate in that he urged Judge Wiseman to recuse himself from the disqualification motion. By advocating a position in a pending case, Judge Lizama engaged in *ex parte* communication. See *Roberts v. Comm'n on Judicial Performance*, 33 Cal.3d 739, 747 (Cal. 1983) (stating that when a judge defended his judgment to an appellate judge sitting in review, he engaged in "inexcusable *ex parte* communication" that was part of a course of conduct demonstrating "an impermissible personal involvement in litigation").

¶ 12 Furthermore, Judge Lizama's allegation of bias was premised on a private conversation he had with Judge Wiseman. Judge Lizama makes no mention of any witnesses to the conversation, and no one other than Judge Lizama alleges that Judge Wiseman was biased. Thus, Judge Lizama must have assumed that his own concerns regarding Judge Wiseman's impartiality justified the 2006 letter. Without any credible evidence supporting Judge Lizama's claim of bias, we must not only reject the allegation, but also question his motivation in sending the letter. Under the facts before us, it is difficult to interpret Judge Lizama's letter as a good faith attempt to uphold judicial integrity. Rather, in seeking to influence the outcome of a pending case, his actions constituted an improper *ex parte* communication in violation of Canon 3(A)(4).

¶ 13 More troubling still is Judge Lizama's 2007 letter in which he (1) discussed and attached his 2006 letter; (2) alleged Judge Wiseman mishandled the disqualification motion and improperly discussed it with members of the public; and (3) copied the letter to all parties, including all six of the attorneys appearing in the Maliti case. In so doing, Judge Lizama abandoned his obligations as an impartial arbiter, as he clearly advocated a position in a pending case. This is problematic in several respects. As a preliminary matter, the 2007 letter constituted an improper *ex parte* communication. Although the 2007 letter, which was sent to all parties, was not an *ex parte* communication in the traditional sense, it was a "communication[] concerning a pending . . . proceeding." Com. C. Judic. Cond. Canon 3(A)(4). The Commonwealth Rules of Civil Procedure provide that a party to a case has ten days to move the court for a rehearing. Com. R. Civ. P. 59(b). However, Judge Lizama sent the letter eight days after Judge Wiseman issued the order disqualifying him from the case, and thus, before the motion to disqualify him

was fully disposed. *See Roberts*, 33 Cal.3d at 744 (stating that a communication made before expiration of the time for rehearing constituted an impermissible *ex parte* communication). Moreover, Judge Lizama’s letter serves as an egregious example of “impermissible personal involvement in the litigation” and “improper advocacy,” as he input his personal opinions and beliefs into a pending case while advocating a position. *Id.* at 747. Therefore, we find that Judge Lizama improperly engaged in *ex parte* and other communication concerning a pending proceeding in violation of Canon 3(A)(4).

Public Comment

¶ 14 Canon 3(A)(6) of the Commonwealth Code of Judicial Conduct states that a “judge should abstain from public comment about a pending or impending proceeding in any court” In *In re White*, a judge who presided over earlier stages of a case moved the court to appoint a special prosecutor by her written motion and appearance in court. 264 Neb. 740, 745-48 (2002). The Court determined this was improper public comment, stating “[a] matter is public if it is open and available to all, i.e., accessible to everybody.” *Id.* at 754; *see also Broadman v. Comm’n on Judicial Performance*, 18 Cal.4th 1079, 1104 (1998) (finding judge’s interview with media in which he explained and justified his rulings constituted public comment).

¶ 15 In sending his March 2007 letter, Judge Lizama violated Canon 3(A)(6) of the Commonwealth Code of Judicial Conduct. In 2007, Judge Lizama wrote a letter to the Presiding Judge accusing Judge Wiseman of misconduct. Judge Lizama also attached his 2006 letter, and sent copies of both to Judge Wiseman and to each of the six attorneys appearing in the Maliti case. By sending his letter to each of the attorneys appearing this highly-publicized case, Judge Lizama knew, or shown have known, that his allegations of misconduct would become known to the public.

¶ 16 Moreover, the issue of public comment implicates not only the nature of the comment, but also the nature of the audience. In *White*, the Nebraska Supreme Court relied, at least in part, on the judge’s intent to “force an appeal . . . which would undoubtedly represent a substantial interference with a fair trial or hearing.” *Id.* at 753. Although the language of Nebraska’s public comment canon⁴ is different from the Commonwealth’s – Nebraska specifically prohibits public comment “that might reasonably be expected to interfere substantially with a fair trial or hearing”

⁴ Nebraska’s public comment canon states:

A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to interfere substantially with a fair trial or hearing. . . . This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge is a litigant in a personal capacity.

– the import of Canon 3(A)(6) is similar. Since Canon 3(A)(6) prohibits “public comment *about a pending or impending proceeding* in any court,” rather than public comment in general, the prohibition is directed at comment that might influence a proceeding’s outcome.

¶ 17 Judge Lizama’s 2007 letter constituted the type of comment that is likely to interfere with the outcome of the motion for his disqualification. Indeed, Judge Lizama’s justification in sending the letter evinces a desire to influence, if not interfere, with the motion, as he indicated that his actions were “appropriate to keep the proceedings transparent in the eyes of the *Maliti* counsel and their clients.” SIR, App. A ¶ 7. In fact, Judge Lizama indicated that he intended his 2007 letter to notify the various attorneys of Judge Wiseman’s alleged bias so they could act on it. SIR, App. B ¶ 3. After his 2006 letter went unanswered, Judge Lizama stated that “it was up to me to alert counsel as to the problem. To stand by silently would have betrayed the public confidence in the integrity and impartiality of the judiciary” *Id.* Considering Judge Lizama’s actions, as well as his stated motivations, it is clear that he intended his comments to not only reach the public but also to impact the outcome of the motion for his disqualification, which was still pending. Thus, we find that Judge Lizama violated Canon 3(A)(6).

Impugning the Integrity of the Judiciary

¶ 18 Canon 1 of the Commonwealth Code of Judicial Conduct states that “[a] judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so the integrity and independence of the judiciary may be preserved.” Canon 2(A) states that “[a] judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Canons 1 and 2(A) are inextricably bound to all other provisions in the Commonwealth Code of Judicial Conduct, in that “[a] judge who fails to conform his conduct to the minimum standards of other Canons of the Code, is, by definition, in violation of the general requirements of Canons 1 and 2(A).” *In the Matter of Kellam*, 503 A.2d 1308, 1310 (Me. 1986).

¶ 19 Because Judge Lizama violated Canons 3(A)(4) and 3(A)(6) of the Commonwealth Code of Judicial Conduct, we find that he also violated Canons 1 and 2(A). In the letters sent to the six *Maliti* attorneys, Judge Lizama criticized the Presiding Judge for appointing the recusal judge, and then criticized the recusal judge for both taking the case, in spite of his alleged bias, and reaching an allegedly improper result. In publicly disseminating unfounded allegations regarding a member of the judiciary involved in a pending case, while at the same time advocating a position in that case, Judge Lizama undermined the judicial process and damaged the reputation of the judicial system as a whole. Judge Lizama placed his own concerns and opinions above well-established court rules and, in so doing, unnecessarily impugned the integrity of a fellow

judge. Judge Lizama’s conduct is significant, as the “reputation in the community of an individual judge necessarily reflects on that community’s regard for the judicial system.” *Gonzalez v. Comm’n of Judicial Performance*, 33 Cal.3d 359, 377 (Cal. 1983). Thus, we find that Judge Lizama failed to maintain the integrity and independence of the judiciary, and failed to promote public confidence in the integrity and independence of the judiciary.⁵ *See id.* at 377 (stating that judge violated Canon 2(A) by making unflattering remarks about his fellow judges “in chambers [and] at staff gatherings [that] may become public knowledge and thereby diminish the hearer’s esteem for the judiciary”); *Ryan v. Comm’n on Judicial Performance*, 45 Cal.3d 518, 545 (1988) (stating that judge’s conduct in telling an offensive joke to attorneys in his chambers “was just as improper as if he had told the joke from the courtroom bench”).

Sanctions

¶ 20

In judicial misconduct proceedings, this Court is the trier of fact, and we alone possess the power to impose sanctions. Com. R. Jud. Dis. P. 34. Pursuant to the Commonwealth Rules of Judicial Disciplinary Procedure, we may dispose of claims of judicial misconduct by (1) dismissing the complaint; (2) privately informing the judge that his or her conduct may be

⁵ Although the Commonwealth Rules of Judicial Disciplinary Procedure were not yet adopted at the time Judge Lizama disseminated the 2006 and 2007 letters, Rule 6(a)(1) is so closely related to Canons 1 and 2(A) of the Commonwealth Code of Judicial Conduct that it is worth discussing in relationship to Judge Lizama’s conduct. Rule 6(a)(1) states that the grounds for judicial discipline includes “[w]illful misconduct in office, including misconduct which, although not related to judicial duties, brings the judicial office into disrepute or is prejudicial to the administration of justice” Willful misconduct may be found when a judge “(1) engage[s] in conduct that is unjudicial and (2) committed in bad faith, (3) while acting in a judicial capacity.” *Broadman*, 18 Cal.4th at 1091.

As a preliminary matter, Judge Lizama was not acting as a private citizen when he disseminated the letters. Rather, since Judge Lizama commented on a legal matter pending before him, wrote the letters on official court letterhead, signed the letters as an associate judge, and disseminated the letters to all parties in the case, we find that he improperly acted in his official capacity as a Commonwealth judge. *See Dodds v. Comm’n on Judicial Performance*, 12 Cal.4th 163, 173 (Cal. 1995) (stating that a judge acts in a judicial capacity when “performing one of his ‘judicial functions,’ i.e., one of the varied functions generally associated with his position as judge, whether adjudicative or administrative in nature”) (citation omitted).

As we have already discussed, Judge Lizama violated the Commonwealth Code of Judicial Conduct in disseminating his letters. In so doing, he also engaged in unjudicial conduct. *See Dodds*, 12 Cal.4th at 173 (1995). Moreover, because Judge Lizama interfered with the judicial process by intervening in a pending case and advocating a particular position – all while charging a fellow judge with judicial misconduct based on what he later admitted was “hearsay,” “suspicion,” and “surmise” – a reasonable inference of bad faith may be drawn. “[A] judge’s reckless or utter indifference to whether judicial acts being performed exceed the bounds of the judge’s prescribed power is a state of mind properly characterized as bad faith.” *Broadman*, 18 Cal.4th at 1092 (stating that a judge acts in bad faith when he or she “(1) perform[s] a judicial act for a corrupt purpose (which is any purpose other than the faithful discharge of judicial duties), or (2) perform[s] a judicial act with knowledge that the act is beyond the judge’s lawful judicial power, or (3) perform[s] a judicial act that exceeds the judge’s lawful power with a conscious disregard for the limits of the judge’s authority”). Therefore, Judge’s Lizama’s conduct also constituted a violation of Rule 6(a)(1) of the Commonwealth Rules of Judicial Disciplinary Procedure. Nonetheless, because the Rules were not yet adopted at the time of his conduct, we do not take this violation into account in our issuance of sanctions.

“violative of the standards of judicial conduct;” (3) “[p]roposing professional counseling or assistance for the judge;” or (4) ordering sanctions. Com. R. Jud. Dis. P. 33. When sanctions are warranted, we may (1) order that the judge be suspended; (2) impose limitations or conditions on the judge’s judicial duties; (3) publicly reprimand or censure the judge; (4) impose a monetary fine; and (5) require that the judge pay for the costs and expenses associated with the judicial misconduct proceeding. Com. R. Jud. Dis. P. 34.

¶ 21 We hold that Judge Lizama violated Canons 1, 2(A), 3(A)(4), and 3(A)(6) of the Commonwealth Code of Judicial Conduct. In light of Judge Lizama’s conduct, we find that sanctions are warranted. Therefore, before Judge Lizama resumes the practice of law, he must: (1) take the Multistate Professional Responsibility Examination and achieve a passing score in this jurisdiction, and (2) reimburse the judiciary for the costs of this disciplinary action.

III

¶ 22 For the foregoing reasons, we hold that Judge Lizama violated Canons 1, 2(A), 3(A)(4), 3(A)(6) of the Commonwealth Code of Judicial Conduct. Accordingly, Judge Lizama is ordered to take and successfully pass the Multistate Professional Responsibility Examination, and reimburse the judiciary for the cost of investigating and prosecuting this disciplinary action before he may resume the practice of law.

SO ORDERED this 17th day of December 2008.

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**IN THE MATTER OF JUAN T. LIZAMA, ASSOCIATE JUDGE OF THE SUPERIOR
COURT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

SUPREME COURT NO. 2007-SCC-0029-JDA

JUDGMENT

Having considered the parties' arguments, and pursuant to its SLIP OPINION issued this date, the Supreme Court:

Orders Juan T. Lizama to take and successfully pass the Multistate Professional Responsibility Examination and reimburse the judiciary \$4,444.65¹ for the cost of investigating and prosecuting this disciplinary action before he may resume the practice of law.

ENTERED this 17th day of December, 2008.

/s/

JONATHAN R. GRAYSON
Clerk of the Supreme Court

¹ An itemized list of costs is available for inspection at the Clerk of Court's office.