**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF IOWA**
**CENTRAL DIVISION**

GLENN GOLDEN, d/b/a G2 Database Marketing; and G2 DATABASE MARKETING, INC,

Plaintiffs,

vs.

CLEAR ADVANTAGE MARKETING; MARK MCKAMEY; TIM BOLLMANN; HARRY CARSTENSEN; WILD ROSE ENTERTAINMENT, LLP; WILD ROSE CLINTON, LLC; WILD ROSE EMMETSBURG, LLC; DUBUQUE RACING ASSOCIATION, d/b/a Mystique Casino; CLEAR ADVANTAGE MARKETING, INC.; PRAIRIE MEADOWS CASINO, RACETRACK AND HOTEL; and DOES 2-10 AND 11-100,

Defendants.

No. 4:16-cv-00529-JAJ-CFB

**OPINION AND ORDER ON MOTION FOR SANCTIONS AGAINST PLAINTIFF'S COUNSEL FOR UNETHICAL AND UNPROFESSIONAL CONDUCT**

---

The issues now before the court present a pure credibility dispute, although not concerning the merits of the underlying copyright and trade secrets claims, which have settled, but concerning the conduct of the attorneys litigating it. The stakes in this "he said/he said" motion are exceedingly high, because of serious allegations that an attorney engaged in unethical and unprofessional conduct, and because of that attorney's allegations of anti-Semitic animus on the part of his accusers. The respondent attorney also contends that using comments he made "in the heat of battle" as the basis for sanctions would be inappropriate, not least because the opposing attorneys' litigation strategy was "vicious." The respondent attorney's counsel argued that maybe this case got a little sloppy, but no

one got shot, and it ended in settlement, so that it was a success. But rules of ethics and professional conduct would not exist if litigation practice was only about results; they exist, because how we get there also matters.

Thus, it is important to take a moment to distinguish what this case *is* and *is not* about. It *is not* about "salty" language, judging the relative merits and strategy of settlement negotiations, fine-line distinctions in deposition procedures under the Federal Rules of Civil Procedure, or whether it's unethical to threaten discovery sanctions. It also *is not* about any effort to convince anyone about the quality of Iowa lawyering or to demand respect for the ability of Iowa trial lawyers. Unfortunately, this is also a case in which a lawyer misinterpreted "Iowa Nice" lawyering as weak or incompetent. Ultimately, the matter properly noticed for hearing and determination was whether the respondent attorney, not any other attorney or attorneys, engaged in sanctionable conduct, and this Opinion is limited to that question.

This case is before the court on the August 29, 2018, Application For Disciplinary Sanctions Against Jonathan A. Stein [Dkt. No. 361] filed by counsel for defendants, as officers of the court. That Application eventually prompted the court to enter its October 3, 2019, Order To Show Cause Why Attorney Jonathan A. Stein Should Not Be Subjected To Disciplinary Sanctions [Dkt. No. 455] and to hold an evidentiary "show cause" hearing on March 9, 2020. For the reasons stated below, the applicants' August 29, 2018, Application For Disciplinary Sanctions [Dkt. No. 361] is **GRANTED in part**, and respondent attorney Jonathan A. Stein is **PUBLICLY REPRIMANDED** in this published decision for multiple violations of Iowa Rule of Professional Conduct 32:8.4(d).

## *I. INTRODUCTION*

### *A. Context Of The Application For Sanctions*

The applicants assert seven instances in which the respondent attorney allegedly engaged in unethical and unprofessional conduct over a period of several months prior to

a September 18, 2018 mediation in the underlying copyright and trade secrets action. Because those instances of alleged misconduct are more or less discrete—albeit indicative of a pattern of behavior—the court will address the factual background to each instance as it analyzes that instance. Here, the court will focus on the broader context of the litigation in which the instances of alleged misconduct occurred.

Plaintiffs in the underlying litigation, Glenn Golden and G2 Database Marketing, Inc., (collectively Golden), are former clients of respondent attorney Jonathan A. Stein, from California. Golden hired Mr. Stein to litigate a copyright infringement action against several companies and individuals including Clear Advantage Marketing, Inc., Wild Rose Entertainment LLP, Wild Rose Clinton, LLC, Wild Rose Emmetsburg, L.L.C., and Dubuque Racing Association. Mr. Stein originally filed this action on behalf of Golden in Louisiana in November 2015, but it was eventually transferred to this court on September 30, 2016. Mr. Stein was granted permission to appear *pro hac vice* in this matter in the United States District Court for the Eastern District of Louisiana on December 1, 2015, and in this court on October 26, 2016.[1]

For two years following transfer of this action to this court, the parties engaged in discovery, including numerous depositions and exchanges of hundreds of documents. It is fair to say that discovery did not go altogether smoothly. Nevertheless, the parties also had ongoing settlement discussions and planned a private mediation for September 18, 2018. In an Order filed August 7, 2018, a magistrate judge rescheduled the trial to begin April 1, 2019, and ordered that "[a]ll proceedings, including discovery and motion practice, shall be stayed until after the mediation on September 18, 2018." The first mediator selected by the parties had withdrew on August 13, 2018. The defendants then filed a motion on August 14, 2018, requesting a court-sponsored settlement conference. Mr. Stein filed

[1] In addition, Stein was counsel for Golden—and also represented himself—in two bankruptcy actions pending in the Middle District of Florida, Tampa Division, (the Bankruptcy Actions) where two defendants in this action gained bankruptcy protection.

Golden's resistance to that request on August 21, 2018. That same day, Mr. Stein filed a Notice Of Unavailability, indicating that he would be unavailable from August 25 through September 16, 2018, to respond to any motions or matters in relation to the case, citing the court's stay on proceedings pending the mediation. A magistrate judge denied the defendants' request for a court-sponsored settlement conference by Order dated August 28, 2018, but the magistrate judge encouraged the parties to revisit their prior agreement to engage in private mediation.

The next day, August 29, 2018, the defendants' counsel, as officers of the court, filed the Application For Disciplinary Sanctions Against Jonathan A. Stein now before the court, supported by declarations of four defense counsel in this case and other exhibits. On September 12, 2018, Mr. Stein filed on his own behalf his initial Resistance To Defendants' Application For Disciplinary Sanctions Against Mr. Stein, supported by his own declaration. Among other matters, that Resistance provided the court with the first indication that Mr. Stein alleged that some of his accusers had made anti-Semitic comments during some instances of his alleged misconduct. On September 12, 2018, Mr. Stein also filed a Notice of Lien to secure payment of his unpaid attorney's fees from representing Golden. Although the parties to the underlying action were able to agree to pursue the mediation scheduled for September 18, 2018, before a different private mediator, Mr. Stein determined that the circumstances were such that he could not participate on Golden's behalf. Thus, Golden was represented at the mediation by local counsel and another attorney who had been brought into the case some time earlier.

The parties held a successful mediation on September 18, 2018, without Mr. Stein's participation, resulting in a $2 million settlement in the form of a Mediation Agreement.[2]

[2] During the year after settlement of this action, Golden and the settling defendants replaced the Mediation Agreement with a Settlement Agreement with substantially different terms, but with the same $2 million settlement figure. On September 27, 2018, Golden fired Mr. Stein, and the same day, he filed a malpractice action against Mr. Stein alleging professional negligence. Golden

### *B. Relevant Events After The Mediation*

On September 19, 2018, Golden's local counsel filed a Response to Mr. Stein's Resistance To Defendants' Application For Disciplinary Sanctions Against Mr. Stein in which he indicated that, due to allegations in the defendants' Application and Mr. Stein's conduct in keeping local counsel uninformed, local counsel would no longer sponsor Mr. Stein for his *pro hac vice* status. Also on September 19, 2018, the defendants filed their Reply In Support Of Application For Disciplinary Sanctions Against Jonathan Stein, consisting of supplemental declarations of four of the applicants responding to allegations in Mr. Stein's declaration. On September 27, 2018, Golden terminated Mr. Stein as his counsel. On September 30, 2019, Mr. Stein filed on his own behalf his Second Resistance

---

has filed a separate motion for sanctions against Mr. Stein in the malpractice action for repeatedly contacting him directly by email despite Mr. Stein's knowledge that Golden is represented by counsel. The malpractice action is set for trial October 6, 2020. On May 21, 2019, Mr. Stein bought an action against the defendants in this case based on their alleged interference with his recovery of attorney's fees from Golden and their liability for any damages that Golden recovers against him. Mr. Stein voluntarily dismissed that action on November 22, 2019.

There was considerable litigation in all three of the related lawsuits in this court concerning Mr. Stein's lien for attorney's fees and its effect on the settlement in this action. On April 3, 2019, the court entered an Order Approving Final Settlement And Dismissal in this action. That Order was amended and corrected in part by Order filed May 8, 2019.

On May 22, 2019, this action was reassigned to the undersigned. In an Order filed June 20, 2019, in the malpractice action, the court effectively determined the amount of Mr. Stein's lien for attorney's fees. In an Order filed October 3, 2019, in this case, the court directed the defendants to deposit funds from the settlement representing the total of Mr. Stein's lien for attorney's fees into the court's registry and to pay the remaining settlement funds to Golden. The funds were deposited into the court's registry on October 7 and 11, 2019. On October 11, 2019, Golden and the defendants in this action filed a Joint Motion For Order Of Dismissal. By Order filed December 4, 2019, the court overruled Mr. Stein's objections to dismissal and granted the Joint Motion; dismissed with prejudice Golden's action and all claims associated with it; retained subject matter jurisdiction over any matters relating to or arising from the interpretation or enforcement of the parties' settlement agreement and any disputes between any of the parties and Mr. Stein regarding his lien; and retained subject matter jurisdiction over the Application For Disciplinary Sanctions and all ancillary matters arising from it.

Stating New Facts Not Previously Available In Opposition To Defendants' Application For Disciplinary Sanctions.

On October 3, 2019, the court entered an Order To Show Cause Why Attorney Jonathan A. Stein Should Not Be Subjected To Disciplinary Sanctions in which the court set a "show cause" hearing for November 18, 2019. On November 5, 2019, an attorney was granted leave to appear *pro hac vice* to represent Mr. Stein at the "show cause" hearing. The "show cause" hearing was subsequently continued more than once and was eventually set for March 9, 2019. A magistrate judge conducted various status conferences to narrow evidentiary issues and to clarify procedures for the "show cause" hearing, so that it could realistically be completed in the day the undersigned had available for it. *See* February 26, 2020, Order [Dkt. No. 477]. Mr. Stein indicated an intention to present witnesses and other evidence at the "show cause" hearing, while the applicants indicated that they would be present but did not plan to testify. Prior to the "show cause" hearing, Mr. Stein's counsel filed Evidentiary Objections For Show Cause Hearing, an Exhibit List, and a Witness List, all on March 5, 2020; a Trial Brief For Order To Show Cause Hearing, on March 6, 2020; and Supplemental Evidentiary Objections For Show Cause Hearing, on March 7 2020.

At the "show cause" hearing, the court admitted 72 of Mr. Stein's exhibits by agreement of the parties, and the one exhibit on which there was no agreement was never offered. Mr. Stein provided lengthy and detailed testimony in response to his counsel's questions and some questions by the court, but the applicants declined to cross-examine Mr. Stein. Three of the applicants offered professional statements in rebuttal to Mr. Stein's evidence, however. Those professional statements were taken subject to Mr. Stein's objections. Mr. Stein and one of the applicants provided closing arguments. At that point, the matter was deemed fully submitted.

## *II. LEGAL ANALYSIS*

As mentioned, above, the applicants allege that, on seven occasions over a period of several months, Mr. Stein engaged in unethical and unprofessional conduct, which they allege violated Iowa Rule of Professional Conduct 32:8.4(d) and Iowa Standards for Professional Conduct 33.1(1) and (3), 33.2(1), (4), and (22), and 33.3(8). As set out in the Order To Show Cause, the seven violations alleged are the following:

(a) Threatening opposing counsel with physical harm, as set out in Application Exhibit 1;

(b) Threatening opposing counsel with professional ruin, as set out in Application Exhibit 2;

(c) Accusing opposing counsel of impropriety, as set out in Application Exhibit 2;

(d) Threatening an individual party with personal and financial ruin, for which Mr. Stein has already been admonished, as set out in Application Exhibit 3, pgs. 13-19;

(e) Repeatedly disparaging Iowa attorneys with slurs, innuendo, and profanity, as set out in Application Exhibits 1 through 4;

(f) Threatening and attempting to intimidate court reporters, as set out in Application Exhibit 3, ¶¶ 8-9, pgs. 1-8;

(g) Questioning the competence, impartiality, and integrity of a mediator agreed to by the parties, who is a former Justice of the Iowa Supreme Court, as set out in Application Exhibits 1, 4, and 5.

The court will address the factual background to each instance as it analyzes each one. First, however, the court must summarize the authority and standards for imposition of sanctions on an attorney. In doing so, the court will also address some of Mr. Stein's contentions about those standards.

### *A. Applicable Standards*

#### *1. "Inherent power" and "bad faith"*

As the Eighth Circuit Court of Appeals has explained,

> "[T]he district court possesses inherent power 'to manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases." *Adams [v. USAA Cas. Ins. Co.]*, 863 F.3d [1069,] 1077 [(8th Cir. 2017)] (second alteration in original) (quoting *Chambers v. NASCO, Inc*., 501 U.S. 32, 43, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991)). The court's powers include "the ability to supervise and 'discipline attorneys who appear before it' and discretion 'to fashion an appropriate sanction for conduct which abuses the judicial process,' including assessing attorney fees or dismissing the case." *Id*. (quoting *Wescott Agri-Prods., Inc. v. Sterling State Bank, Inc*., 682 F.3d 1091, 1095 (8th Cir. 2012) ).

*Vallejo v. Amgen, Inc*., 903 F.3d 733, 749 (8th Cir. 2018). Moreover,

> "Part of the purpose of the sanctioning power ... is to control litigation and to preserve the integrity of the judicial process." *Nick v. Morgan's Foods, Inc*., 270 F.3d 590, 594 (8th Cir. 2001) (citing *Martin v. DaimlerChrysler Corp*., 251 F.3d 691, 695 (8th Cir. 2001)). "A district court ... abuse[s] its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Adams v. USAA Cas. Ins. Co*., 863 F.3d 1069, 1076 (8th Cir. 2017) (quoting *Plaintiffs' Baycol Steering Comm. v. Bayer Corp*., 419 F.3d 794, 802 (8th Cir. 2005)).

*Vallejo*, 903 F.3d at 747.

Mr. Stein contends that, for a federal court to use its inherent powers to impose discipline, the court must make specific findings that the attorney's conduct was "intentional" and in "bad faith," citing *Roadway Express v. Piper*, 447 U.S. 752, 765-66 (1980). In *Harlan v. Lewis*, 982 F.2d 1255 (8th Cir. 1993), however, the Eighth Circuit Court of Appeals rejected a contention, like Mr. Stein's, that *Roadway* requires an explicit finding of bad faith before any sanctions can be imposed under the court's inherent power.

As the court in *Harlan* pointed out, both *Roadway*, and another Supreme Court case, *Chambers v. NASCO, Inc*., 501 U.S. 32 (1991), "discuss the narrow requirement that a district court *assessing attorneys' fees against a party or its counsel* find that the party had 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Harlan*, 982 F.2d at 1260 (emphasis added) (quoting *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y.*, 421 U.S. 240, 258–59 (1975)). Furthermore, the court explained,

> Although *Roadway* ends with a statement that a finding of bad faith "would have to precede any sanction under the court's inherent powers," the entire opinion discusses only the assessing of attorneys' fees. *Roadway*, 447 U.S. at 767, 100 S.Ct. at 2465. We do not believe *Roadway* extends the "bad faith" requirement to every possible disciplinary exercise of the court's inherent power, especially because such an extension would apply the requirement to even the most routine exercises of the inherent power. *See, e.g., Anderson v. Dunn*, 19 U.S. (6 Wheat) 529, 5 L.Ed. 242 (1821) (discussing the power to "impose silence, respect, and decorum"). We find no statement in *Roadway*, *Chambers*, or any other decision cited by the parties, that the Supreme Court intended this "bad faith" requirement to limit the application of monetary sanctions under the inherent power.

*Harlan*, 982 F.2d at 1260 (footnote omitted). Thus, a court need not find "bad faith" to impose sanctions *other than attorney's fees* for attorney misconduct.

Here, the applicants did not seek attorney's fees as a possible sanction, although they did seek costs and expenses associated with the disciplinary proceedings, assessed against Mr. Stein and not his client, as a possible form of "informal discipline." *See* Defendants' Application For Disciplinary Sanctions, ¶ 14(d). In its Order To Show Cause, the court indicated that it was initiating "informal disciplinary proceedings" against Mr. Stein and did not indicate that it would consider a sanction of attorney's fees. Order To Show Cause at 3. Thus, no finding of "bad faith" is required, here, where attorney's fees are not at issue as a possible sanction. Nevertheless, the court does not exclude the possibility that a finding of "bad faith" could be made or that "bad faith" is implied by

some of the conduct alleged. *See id.* (finding that the district court's order implied a finding of bad faith).

***2. Notice***

As the Eighth Circuit Court of Appeals has also explained,

> It is well established that before sanctions are imposed under a federal rule or the court's inherent power, the intended recipient is to be given "notice that sanctions against her are being considered and an opportunity to be heard." *Plaintiffs' Baycol Steering Comm. v. Bayer Corp.*, 419 F.3d 794, 802 (8th Cir.2005). These requirements also apply when district courts impose sanctions on their own motion, *see, e.g.*, Manual for Complex Litigation § 10.155, although additional process may be due depending on the type and severity of the sanction ultimately imposed, *see Media Duplication Servs., Ltd. v. HDG Software, Inc.*, 928 F.2d 1228, 1238 (1st Cir.1991) (citing *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980)); *see also* Manual for Complex Litigation § 10.155 n.50 (collecting cases).

*Sec. Nat. Bank of Sioux City, IA v. Day*, 800 F.3d 936, 944 (8th Cir. 2015). Specifically,

> Particularized notice may be of critical importance when "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 attorney's career." *In re Prudential Ins. Co. Am. Sales Practice Litig. Actions*, 278 F.3d 175, 191 (3d Cir.2002). Any opportunity to be heard would be of little value without notice of the nature of a potential sanction, for only with that information can a party respond in a cogent way. *See Simmerman v. Corino*, 27 F.3d 58, 64 (3d Cir.1994). The leading authority on sanctions law has pointed out that notice of the type and severity of the sanction being considered "may lead to substantially different (e.g., more detailed [and] differently directed) responses" by the targeted lawyer. *See* Gregory P. Joseph, *Sanctions: The Federal Law of Litigation Abuse* § 17(D)(1)(d), at 388 (5th ed. 1998).

*Sec. Nat. Bank of Sioux City, IA*, 800 F.3d at 944.

Here, Mr. Stein received particularized notice in both the Application and the Order To Show Cause concerning the conduct for which sanctions might be imposed. *Id.* The Application specified the seven instances for which sanctions were sought, provided particularized notice of those instances in the declarations and exhibits attached, and set out the specific Iowa rules and standards that Mr. Stein allegedly violated. The Order To Show Cause, likewise, identified the seven instances, with the citations to the pertinent declarations and exhibits and identification of the Iowa rules and standards at issue. The Application also set out the specific sanctions the applicants were seeking in "informal" disciplinary proceedings, and the Order To Show Cause specified that the proceedings would be "informal" disciplinary proceedings pursuant to Local Rule 83(f)(3)(B). That local rule states, *inter alia*, that suspension or disbarment from practice before this court would *not* be available sanctions in such proceedings. Finally, the "show cause" hearing provided Mr. Stein with a full, fair, and adequate opportunity to be heard in response to the Application. *Id.*

***3. Applicable rules of conduct***

The court turns, next, to the specific formulation of the standards against which Mr. Stein's conduct must be judged. The applicable local rule for *pro hac vice* admission in this district provides, and has provided for many years, that "[b]y asking to be admitted pro hac vice, the lawyer agrees that in connection with the lawyer's pro hac vice representation, the lawyer will submit to and comply with all provisions and requirements of the Iowa Rules of Professional Conduct, or any successor code adopted by the Iowa Supreme Court." LR 83(d)(3) (Rev. July 1, 2018); *see also* LR 83.1(d)(3) (Rev. Dec. 1, 2009) (using identical language). In his *Ex Parte* Motion To Enroll . . . As Co-Counsel Of Record *Pro Hac Vice* For The Plaintiffs in this action, Mr. Stein represented that he "agree[d] to submit to and comply with all provisions and requirements of the rules of conduct applicable to lawyers admitted to practice before the state courts of Iowa in connection with his *pro hac vice* representation in this case." *See Ex Parte* Motion [Dkt. No. 151], 1.

The Application alleges that Mr. Stein violated Iowa Rule of Professional Conduct 32:8.4(d) and Iowa Standards for Professional Conduct 33.1(1) and (3), 33.2(1), (4), and (22), and 33.3(8). Mr. Stein argues, however, that sanctions cannot be based upon any alleged violations of the Iowa Standards for Professional Conduct. Mr. Stein is correct that Iowa Standard of Professional Conduct 33.1(7) expressly states as follows:

> These standards shall not be used as a basis for litigation or for sanctions or penalties. Nothing in these standards supersedes or detracts from existing disciplinary codes or alters existing standards of conduct against which lawyer negligence may be determined.

Iowa Stds. Prof'l Conduct r. 33.1(7). Moreover, the Iowa Supreme Court has noted that "there are no sanctions or penalties for violating the standards" in the Iowa Standards of Professional Conduct. *Iowa Supreme Court Attorney Disciplinary Bd. v. Attorney Doe No. 792*, 878 N.W.2d 189, 193 n.1, 200–01 (Iowa 2016). Thus, in this opinion, like the Iowa Supreme Court in *Doe No. 792*, the court is "only determining whether Attorney [Stein] violated the Iowa Rules of Professional Conduct and not the standards." *Id*. at 193 n.1.

Nevertheless, the Iowa Supreme Court Grievance Commission has explained that "the standards 'should serve as the basis for any lawyer's interaction with the Court and other members of the profession.'" *Id*. at 193 n.1 (quoting the Commission). Thus, this court will not simply ignore the standards that the applicants allege Mr. Stein violated. The court will use those standards for guidance when deciding whether particular conduct violated the Iowa Rules of Professional Conduct.

The specific Iowa Rule of Professional Conduct that the Applicants allege Mr. Stein violated is Rule 32:8.4(d). Rule 32:8.4(d) states that "[i]t is professional misconduct for a lawyer to ... engage in conduct that is prejudicial to the administration of justice." Iowa R. Prof'l Conduct 32:8.4(d). As the Iowa Supreme Court has explained, "This rule is intended to prohibit conduct 'that has an undesirable effect—some interference with the operation of the court system.'" *Iowa Supreme Court Attorney Disciplinary Bd. v. Noel*, 933 N.W.2d

190, 204 (Iowa 2019) (quoting *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Weiland*, 885 N.W.2d 198, 212 (Iowa 2016)).

Mr. Stein contends that, to avoid legal error, before the court can find a violation of this rule, the court must find that his conduct "hampered the efficient and proper operation of the courts" or "resulted in additional court proceedings or caused court proceedings to be delayed or dismissed," citing *Iowa Supreme Court Attorney Disciplinary Board v. Dolezal*, 841 N.W.2d 114, 124 (Iowa 2013). Mr. Stein mistakes circumstances in which a violation *may* be found for circumstances that *must* be found to find a violation.

As the Iowa Supreme Court has explained,

> "There is no precise test for determining whether an attorney's conduct violates the rule [32:8.4(d)]." *Weiland*, 885 N.W.2d at 212. In general, acts that are prejudicial to the administration of justice "hamper[ ] the efficient and proper operation of the courts or of ancillary systems upon which the courts rely." *Id*. (quoting *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Monroe*, 784 N.W.2d 784, 788 (Iowa 2010)). "We have consistently held an attorney's misconduct causing prolonged or additional court proceedings violates this rule." *[Iowa Supreme Ct. Att'y Disciplinary Bd. v.] Capotosto*, 927 N.W.2d [585,] 589 [(Iowa 2019)]. This is true because such proceedings waste "valuable judicial and staff resources." *Id*. (quoting *[Iowa Supreme Ct. Att'y Disciplinary Bd. v.] Van Ginkel*, 809 N.W.2d [96,] 103 [(Iowa 2012)]).

*Iowa Supreme Court Attorney Disciplinary Bd. v. Goedken*, No. 19-1740, 2020 WL 739363, at *7 (Iowa Feb. 14, 2020). The *Goedken* decision makes clear that the "general" standard for "conduct that is prejudicial to the administration of justice," in violation of Rule 32:8.4(d) is that the conduct "hamper[ ] the efficient and proper operation of the courts or of ancillary systems upon which the courts rely." *Id.* Examples of conduct that meets this standard, in turn, include conduct "causing prolonged or additional court proceedings." *Id.*

The earlier decision in *Dolezal*, on which Mr. Stein relies, is not to the contrary. There, the Iowa Supreme Court explained, "'An attorney's conduct is prejudicial to the

administration of justice when it violates the well-understood norms and conventions of the practice of law *such that it hampers the efficient and proper operation of the courts or of ancillary systems upon which the courts rely*.'" *Dolezal*, 841 N.W.2d at 124 (emphasis added) (quoting *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Rhinehart*, 827 N.W.2d 169, 180 (Iowa 2013)). The Iowa Supreme Court then identified examples of conduct violating this standard, stating, "Our prior cases have repeatedly held that an attorney violates rule 32:8.4(d) 'when his misconduct results in additional court proceedings or causes court proceedings to be delayed or dismissed.'" *Id.* (quoting *Rhinehart*, 827 N.W.2d at 180).

Moreover, the Iowa Supreme Court has repeatedly stated that "there is no typical form of conduct" that violates Rule 32:8.4(d). *Noel*, 933 N.W.2d at 204 ("[T]here is no typical form of conduct that prejudices the administration of justice" (citation omitted)); *Iowa Supreme Court Attorney Disciplinary Bd. v. Caghan*, 927 N.W.2d 591, 606 (Iowa 2019) (citations omitted). Other kinds of conduct that violate Rule 32:8.4(d) include "assertions" that "clearly made the underlying litigation unnecessarily complicated and contributed to a needless expenditure of court resources." *Caghan*, 927 N.W.2d at 606. Conduct may also "hamper the efficient and proper operation of the courts" by "'violating the well-understood norms and conventions of the practice of law.'" *Noel*, 933 N.W.2d at 204 (quoting *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Silich*, 872 N.W.2d 181, 191 (Iowa 2015)); *Dolezal*, 841 N.W.2d at 124.

Contrary to Mr. Stein's contention that the court must find that he acted "intentionally," specifically, that he intended to prejudice the administration of justice, the Iowa Supreme Court has found that an attorney's negligent conduct that needlessly expends judicial resources is a violation of Rule 32:8.4(d). *See Capotosto*, 927 N.W.2d at 589. Furthermore, intent may be inferred from various factors. As the Iowa Supreme Court has explained, "Intent is shown for the purpose of a disciplinary proceeding 'where the evidence shows that the actor intends the natural and logical consequences of his or her acts' by a convincing preponderance of the evidence." *Iowa Supreme Court Attorney*

*Disciplinary Bd. v. Hamer*, 915 N.W.2d 302, 324 (Iowa 2018) (*quoting Iowa Supreme Ct. Att'y Disciplinary Bd. v. Kress*, 747 N.W.2d 530, 538 (Iowa 2008)). Also, the Eighth Circuit Court of Appeals has explained, "The district court 'has substantial leeway to determine intent through consideration of circumstantial evidence, witness credibility, motives of the witnesses in a particular case, and other factors.'" *Davis v. White*, 858 F.3d 1155, 1160 (8th Cir. 2017) (quoting *Morris v. Union Pac. R.R.*, 373 F.3d 896, 901 (8th Cir. 2004)).

With these standards in mind, the court turns to consideration of the seven instances in which Mr. Stein allegedly violated Rule 32:8.4(d).

### *B. Application Of The Standards*

#### *1. Threatening opposing counsel with physical harm*

The first instance of misconduct by Mr. Stein alleged by the applicants is "[t]hreatening opposing counsel with physical harm." As set out in the Affidavit of Joshua J. McIntyre, this first instance of alleged misconduct occurred during a deposition of Mr. Golden:

> 4. I began my examination of Mr. Golden on the morning of March 29, 2018. During my examination, a disagreement arose over Plaintiffs' designation as Attorneys' Eyes Only of documents that Plaintiffs had deposited on file with the U.S. Copyright Office. Mr. Stein requested a break, during which he again requested that I step aside to discuss settlement. Rather than explore settlement, Mr. Stein began to instruct me on how to take a deposition. I informed Mr. Stein I would continue my examination as appropriate under the Federal Rules and he could make his objections on the record. Mr. Stein then stepped forward towards me and physically threatened me, stating he would "beat [my] fucking ass."

Application For Sanctions, Exh. 1; Resp.'s Hrg. Exh. 33.

Mr. Stein's testimony at the "show cause" hearing painted a different picture, although he agrees that he and Mr. McIntyre had a conversation in private during a break

in Mr. Golden's deposition and that he "explained to [Mr. McIntyre] why his—the structure of his questions was improper and how to fix it."[3] According to Mr. Stein, "[U]unfortunately, and this is entirely my mistake, I went into a little bit too much detail about what was wrong and what was needed to correct it." Mr. Stein testified that Mr. McIntyre "got offended" and said, "I don't need a kike lawyer telling me how to take a deposition. And he looked me dead in the eye and he meant every word."

Mr. Stein testified that, because he is Jewish, he "was instantly angry." He testified that he responded, but "certainly not physically," by telling Mr. McIntyre "I was going to beat his ass in court at trial" or "in court," and "then I followed up, I said I'm going to embarrass you in front of the judge, I'm going to embarrass you in front of the jury, I'm going to embarrass you with all those lawyers that you think are your friends." Mr. Stein denied intending to threaten physical harm to Mr. McIntyre or making any gestures or physical actions that might be considered physically threatening. On the other hand, he admitted to using profanity, including saying "beat his ass" and that he thought he "put the f word in there." Mr. Stein admitted such language was inappropriate, but that he was "very angry" at "being called a kike." Mr. Stein testified that he did not believe anyone else was aware of what passed at the time, although he asserted that Mr. McIntyre returned to the deposition room and went back on the record without him or his client present. Indeed, Mr. Stein testified that neither he nor his client returned to the deposition room for several hours; instead, they sat outside, despite several requests from other attorneys to continue the deposition. The deposition was completed the following day without further incident.

At the "show cause" hearing, Mr. McIntyre offered the following statement, under oath, concerning this incident:

[3] All quotations in this decision are from the rough real time transcript provided to the court immediately following the "show cause" hearing, so they appear without page citations.

> In rebuttal to Mr. Stein's testimony concerning our meeting at the deposition, he recounted that his statement to beat my fucking ass was incorporated [in] a discussion that it would include being in court in front of the jury. No such statement was made. It was the threat, period.
>
> As recited in my declaration, it was included with a step forward to my person. His representation that we were rough[ly] between the witness stand and Your Honor is accurate. So his physical step was in very close proximity to my person.
>
> At that point in time, we did go make a record, offered Mr. Stein the opportunity to do so. He declined.

First, the court finds that, while Mr. Stein was no doubt sincerely invested in his version of events, his version is not credible. On more than one occasion during the "show cause" hearing, Mr. Stein attempted to endow certain comments allegedly made by others with particular drama, as when he related that Mr. McIntyre "looked me dead in the eye and he meant every word" when Mr. McIntyre purportedly made an anti-Semitic comment. Mr. Stein's allegation that Mr. McIntyre used an anti-Semitic slur is not credible. On the other hand, the court easily accepts that, not only was Mr. McIntyre offended by Mr. Stein's "schooling" of him on deposition techniques, but that Mr. Stein was offended at Mr. McIntyre's failure to knuckle under to criticism from a self-described "well-known Los Angeles litigator." Resp.'s Exh. 33, p. 5 (03/22/18 email from Stein to McIntyre). Mr. Stein admits to using profanity and inappropriate language on this occasion, and the court finds that testimony entirely credible, because it is consistent with other evidence of such conduct. *See also* Affidavit of Mr. Bower, ¶ 3 ("When things did not go his way, [Mr. Stein] regularly raises his voice and uses profanity."), Application, Exh. 2; Resp.'s Hrg. Ex. 34; Hrg. Testimony of Mr. Stein (admitting that, "on several occasions," he had raised his voice and used profanity). Considering all the evidence, the court also finds credible Mr. McIntyre's testimony that Mr. Stein's profane comment was coupled with a physically threatening movement and lacked any expression at the time of Mr. Stein's

supposed meaning that he would "beat his fucking ass" *in court*, which the court frankly believes is a post hoc amendment.

Second, the court finds that Mr. Stein's conduct on this occasion "violate[d] the well-understood norms and conventions of the practice of law" by using profane and abusive language to opposing counsel and physically threatening him. *Noel*, 933 N.W.2d at 204; *Dolezal*, 841 N.W.2d at 124; *see also* Iowa Std. Prof'l Conduct r. 33.1(1) (stating, *inter alia*, "A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms"); *id*. r. 33.2(1) (stating, *inter alia*, "We will treat all other counsel, parties and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications."). Such conduct was also "prejudicial to the administration of justice" within the meaning of Rule 32:8.4(d), in that it "hampered the efficient and proper operation of the courts or of ancillary systems upon which the courts rely." *Dolezal*, 841 N.W.2d at 124; *see also* Iowa Std. Prof'l Conduct r. 33.1(3) ("Conduct that may be characterized as uncivil, abrasive, abusive, hostile or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully and efficiently. Such conduct tends to delay and often to deny justice."). Specifically, the operation of the courts relies on the fair and efficient taking of depositions. Mr. Stein's attempt to intimidate opposing counsel as to his manner of conducting the deposition—and as to being in Mr. Stein's presence—showed intent to prejudice the administration of justice, because a "'natural and logical consequences of his . . . acts'" was to hamper the efficient and proper completion of the deposition. *Hamer*, 915 N.W.2d at 324 (quoting *Kress*, 747 N.W.2d at 538). Such conduct "clearly made the underlying litigation unnecessarily complicated," *see Caghan*, 927 N.W.2d at 606, and Mr. Golden's deposition was, in fact, disrupted by Mr. Stein's conduct.

Therefore, the court finds that Mr. Stein did engage in this first instance of misconduct and that such misconduct violated Iowa Rule of Professional Conduct 32:8.4(d).

***2. Threatening opposing counsel with professional ruin***

The second instance of misconduct by Mr. Stein alleged by the applicants is "[t]hreatening opposing counsel with professional ruin." This allegation is based on the Affidavit of David T. Bower.

Mr. Bower averred, in pertinent part,

> 8. In the course of an approximately 30 minute meeting [on October 31, 2017], Mr. Stein informed me that one of the Defendants, Mark McKamey, had committed fraud on the Bankruptcy Court in Florida and directly accused myself and my law firm of participating in the alleged fraud.
>
> 9. Mr. Stein advised me that as a result of my handling of this case, my client would likely sue its insurer for bad faith and would sue my law firm for malpractice.
>
> 10. Mr. Stein advised me that he had gotten several "young" attorneys like myself "bounced" from their law firm, and that would likely happen to me.
>
> 11. I told Mr. Stein that our meeting was over and requested that he leave our offices. I escorted him to the elevator in our building, thanked him for coming in, and shook his hand.

Aff. of Mr. Bower, ¶¶ 8-11, Application Ex. 2; see also Resp.'s Hrg. Exh. 34. On November 1, 2017, the day after this meeting, Mr. Bower sent Mr. Stein an email in which he stated, among other things, "I terminated our meeting after about 30 minutes because it was apparent the only reason you had requested a meeting was to threaten me personally, including making allegations of bankruptcy fraud, 'flaying people alive', references to malpractice, and threats that you would get me 'booted' from my law firm." Resp.'s Hrg. Exh. 13 (Nov. 1, 2017, email from Bower to Stein, 1st para.).

Again, Mr. Stein's testimony at the "show cause" hearing paints a different picture, not least because he testified that Mr. Bower "threw [Mr. Stein] out of the office" after about half an hour. Mr. Stein testified that, at the time of the meeting, he had evidence that Mr. McKamey was committing bankruptcy fraud and that it was his "understanding, at the

time, the work of the lawyers presenting the documents to the bankruptcy [court] was being financed by Mr. Bower, his firm, and his client. And this was an understanding I developed from Mr. McKamey's attorney in New Orleans." Shortly after this statement, Mr. Stein acknowledged asking Mr. Bower if he was involved with this bankruptcy fraud, and that he said no, he wasn't.

Mr. Stein then testified,

> What did I say? I said, listen, this guy McKamey is going to really have a tough time. I mean, you know, bankruptcy fraud, there's a civil bankruptcy fraud and then there's a criminal bankruptcy fraud, but either way, you're really in big trouble if you're in the bankruptcy court and subject to this court's jurisdiction and this is shown to be the case. I mean, that's a really big problem.
>
> Which would mean that somewhere along the way of the McKamey Clear Advantage bankruptcy, somewhere along the way, it was all going to fall apart. And when it fell apart, it wasn't just going to fall apart for those defendants, it might fall apart for anybody such as the Wild Rose defendants who seem to, you know, be financing the work that, you know, was filed by this law firm in Tampa.

Mr. Stein testified that he explained to Mr. Bower that the bankruptcy court was likely to "flay" Mr. McKamey alive, meant figuratively, and that Mr. McKamey "would bring down whoever was associated with him," if his fraud was discovered, but that he, Mr. Stein, never suggested that he would "flay" anyone alive.

Mr. Stein then stood by his description in an email to Mr. Bower dated November 2, 2017, as "exactly the way" he had raised issues of malpractice and any reference to getting Mr. Bower booted from his firm during the October 31, 2017, meeting, but then conceded, "Well, not exactly but less succinctly" than in the email. The pertinent part of Mr. Stein's November 2, 2017, email states the following:

> **Third**, you acknowledged that if [Mr. Bower's client] lost at trial, it would pay out of pocket, something it can afford to do. I pointed out that, in many cases, it is "standard operating

> procedure" for a client forced to come out of pocket when a case fails to settle within policy limits, to state two causes of action in a new lawsuit of its own.
>
> **The first cause of action is for bad faith against the insurer. My limited understanding of Iowa law is that such a cause of action would be well-stated.**
>
> **The second cause of action is for breach of fiduciary duty against the law firm, based on two allegations—the law firm kept the case going to enhance fees to the firm; and the law firm favored its relationship with the insurer over its relationship with the client [].**
>
> **In the case that the second cause of action is well-stated against the law firm, many firms choose to enhance their survival rates by jettisoning the partner(s) in charge of the failed litigation effort. Or they do so to meet covenants in a merger agreement with a national law firm at a later date.**
>
> **Fourth**, I was pleased to hear that your firm did not participate in [Bankruptcy] fraud in the McKamey [Bankruptcy], which appears rife with fraud. A nondischargeability complaint is being written but is not yet filed.
>
> I accepted you[r] point that arguments you raised for the first time after the McKamey [Bankruptcy], which are supported factually only by the fraudulent parts of the McKamey [Bankruptcy], are coincidence.

Resp.'s Exh. 13 (Nov. 2, 2017, email from Stein to Bower) (bold and underlining in the original).

When asked why he had laid out this "story" to Mr. Bower in the October 31, 2017, meeting, Mr. Stein answered that his "intent was to make him focus on something the same way I had," expecting that Mr. Bower would (1) tell Mr. Stein to let him worry about it; (2) say that insurance coverage was too small for his firm to worry about; or (3) say, ok, got it, that's a point to consider. Mr. Stein denied that he was saying that he would get Mr. Bower "booted" from his firm and asserted that he had never tried to get him "booted" from his firm.

Mr. Stein then testified about the circumstances in which Mr. Bower "threw" him out of his office:

> In other words, I've never in 36 years, I can't recall an incident, and I shouldn't say never, I just can't recall an incident where I've ever been thrown out of opposing counsel's offices. I mean, literally escorted to the door.
>
> * * *
>
> Okay. So we were meeting at [his] law offices. He's on one side of this oversized conference table, I'm on the other, so you know.
>
> We're talking, and I tell him my story, which is just as this e-mail has been written about what happens when you exceed, you know, policies of underinsured clients. And he said, "Okay, that's it." Got up out of his chair, walked around the conference room table, which is one of these big oversized tables, and quite literally grabbed the back of my chair and pulled it up.
>
> Now, it wasn't forcible. It wasn't like he's forcible. I could have made it forcible by just sitting in my chair. But I kind of had a sense of what he was doing. I mean, why would a guy sit—grab the back of your chair and pull it?
>
> So I stood up, he pulled out the chair. He put his arm on my back, again, not forceful, not threatening, not "I'm going to beat you up if you don't do this," but extended his arm so he's got one arm in the back, one arm extended, this way. And he guides me to the elevator. He makes a ceremony out of pushing the button. Elevator comes. Again, hand on the back, other hand gesturing, this way, into the elevator (indicating). He leans in, again, with ceremony, pushes the button, and looks at me dead in the eye and, as the doors are closing, with the sense of drama, he says, "What a Jew."

In rebuttal, Mr. Bower offered a professional statement under oath. As to the part of that statement most pertinent, here, Mr. Bower stated the following:

> I stand on the statements I made in my declaration about what took place at that meeting. I won't rehash those remarks. I will note that Mr. Stein's testimony was false with regard to

> the following. At the conclusion of that meeting, I told Mr. Stein this meeting is over. I had felt very insulted and threatened. I said it in a calm tone of voice. I told Mr. Stein that per my firm's policy I could not leave opposing counsel unattended in a conference room; however, if he needed some time, that would be fine. The best of my recollection is I offered if he needed to use the phone, that would be fine.
>
> He told me no, I don't need to. As I recall, he had only a notebook. He stood up, we went to the door. I never touched his chair, I never laid a hand on the man, nor did I raise my voice.
>
> I walked with him to our elevator well, I shook his hand. He said something to me to the effect of don't let an opportunity like this slip by you, and he left.
>
> I've been accused now publicly in court of making a comment, I believe it was—what was the comment, something relating to him being a Jew. That is absolutely false and it is nonsense. It didn't happen. I have never—I have never in my life made a comment like that to anyone.
>
> One of our dearest friends is Jewish. My next door neighbors are Israeli Jews whose daughter was in my house yesterday. That is a false statement. It's a lie. And I deny it unequivocally.
>
> That's all I have.

Again, the court finds that Mr. Stein's version of events is not credible. This is another occasion during the "show cause" hearing where Mr. Stein attempted to endow Mr. Bower's alleged anti-Semitic comment with particular drama, just as he did Mr. McIntyre's alleged anti-Semitic comment. Indeed, Mr. Stein again testified that Mr. Bower's alleged anti-Semitic comment, like Mr. McIntyre's, was made while Mr. Bower "looked [Mr. Stein] dead in the eye." This time, Mr. Stein also attributed dramatic flourish to Mr. Bower's actions and even expressly asserted that the anti-Semitic comment was made "with the sense of drama." Considering all the evidence and the factors relevant to credibility of witnesses, Mr. Stein's allegation that Mr. Bower used an anti-Semitic slur is not credible. The court also finds, from both Mr. Stein's and Mr. Bower's

descriptions of the meeting on October 31, 2017, and Mr. Stein's follow-up email, that Mr. Stein was plainly accusing Mr. Bower and his firm of misconduct and threatening Mr. Bower with professional ruin, not merely giving them a heads up to the possibility that Mr. McKamey was engaged in wrongdoing from which they might want to distance themselves.

Second, the court finds that Mr. Stein's conduct on this occasion "violate[d] the well-understood norms and conventions of the practice of law" by accusing Mr. Bower and his firm of wrongdoing. *Noel*, 933 N.W.2d at 204; *Dolezal*, 841 N.W.2d at 124; *see also* Iowa Std. of Prof'l Conduct r. 33.2(1) ("We will not, absent good cause, attribute bad motives or improper conduct to other counsel or bring the profession into disrepute by unfounded accusations of impropriety."). Mr. Stein asserted that he had clear evidence of bankruptcy fraud by Mr. McKamey, but the court notes that Mr. McKamey was not denied a discharge in bankruptcy. More importantly, at best, Mr. Stein's accusation that Mr. Bower and his firm were involved in Mr. McKamey's wrongdoing was based on Mr. Stein's "understanding," rather than well-founded evidence, where none was presented to the court. The court finds that the accusation of wrongdoing by Mr. Bower was unfounded and the implicit but clear threat to his professional reputation and employment were improper and intended as a litigation "gambit." Such conduct was also "prejudicial to the administration of justice" within the meaning of Rule 32:8.4(d), in that it "hampered the efficient and proper operation of the courts or of ancillary systems upon which the courts rely." *Dolezal*, 841 N.W.2d at 124. Specifically, the administration of justice relies on fair conduct of counsel, rather than attempts, like Mr. Stein's, to intimidate opposing counsel with allegations of wrongdoing. Mr. Stein's conduct also showed intent to prejudice the administration of justice, in that a "'natural and logical consequences of his . . . acts'" was to hamper the efficient and proper progress of the litigation. *Hamer*, 915 N.W.2d at 324 (quoting *Kress*, 747 N.W.2d at 538); see also Iowa Std. Prof'l Conduct r. 33.1(3) ("Conduct that may be characterized as uncivil, abrasive, abusive, hostile or

obstructive impedes the fundamental goal of resolving disputes rationally, peacefully and efficiently. Such conduct tends to delay and often to deny justice."). Such conduct "clearly made the underlying litigation unnecessarily complicated" and interfered with settlement and other interactions of counsel. *See Caghan*, 927 N.W.2d at 606.

Therefore, the court finds that Mr. Stein did engage in this second instance of misconduct and that such misconduct violated Iowa Rule of Professional Conduct 32:8.4(d).

***3. Accusing opposing counsel of impropriety***

There is substantial overlap between the applicants' second allegation of misconduct, above, and their third allegation of misconduct, involving "[a]ccusing opposing counsel of impropriety." This allegation also relies on Mr. Bower's affidavit, including the part discussed, above, as well as the following:

> 13. Recently, Mr. Stein has begun to threaten sanctions against my clients and my firm for discovery-related issues that have not been discussed for almost one year.
>
> * * *
>
> 21. Mr. Stein sent me an email after our conversation [on July 20, 2018] accusing me of taping our phone calls and that I could "end up in jail" for such conduct. (Exhibit A). I have never recorded a phone conversation with Mr. Stein or any other attorney.

Aff. of Mr. Bower, Application, Exh. 2; Resp's Hrg. Exh. 34.

The email to which Mr. Bower referred, sent from Mr. Stein to Mr. Bower on July 25, 2018, has as the subject "NO TAPE RECORDINGS." Resp.'s Hrg. Exh. 34, p.3. It then states, in its entirety, the following:

> I have sometimes wondered at your phraseology in our phone calls. It sounds like you are taping phone conversations with me at times.
>
> To memorialize my prior comments, in California you can end up in jail for taping a lawyer's phone calls. You have no

> authority to tape your phone calls to me and I never agree to have my phone calls taped by you or other attorneys.
>
> In closing, recognize that over 90% of your phone calls are to me while I am in California, specifically Santa Barbara or LA.

Resp.'s Hrg. Exh. 34, p.3.

At the "show cause" hearing, Mr. Stein testified that "throughout the litigation, [he] had to threaten sanctions to get compliance with discovery from Mr. Bower. I can't recall any compliance that was not made without a threat of sanctions." He then described in detail what he perceived to be sanctionable incidents in the course of discovery. Mr. Stein maintained that "the only reason I threatened sanctions is if there was sanctionable conduct, and it had to be done not just mistakenly." When asked if he accused Mr. Bower of taping his telephone call, Mr. Stein responded,

> Yes. No, no, I didn't accuse him. I asked him. And I let him know that, you know, you may think it's okay in Iowa on your side of the phone line in Iowa, but it's not okay because on my side of the phone line in California and in that case California penal codes apply. There's specific case law you cannot take a Californian in California from out of state. That will—that is within the long arm jurisdiction.

Mr. Stein's exchange with counsel on this matter continued, as follows:

> Q. And did you have evidence that he was taping your call?
>
> A. No. That's why I asked him. I didn't accuse him. I asked him. And he said no, and I took him at his word.
>
> Q. Did you—
>
> A. We didn't discuss it more than once.
>
> Q. Did you file a criminal complaint with the Santa Barbara police concerning—
>
> A. No.
>
> Q. —taping phone call?
>
> A. My goodness, no.

> Q. Did you ever think anyone else was taping your phone calls in Iowa in this case?
>
> A. I don't know. I just, you know, I would say the application seems to have a couple quotes in there that I don't know how you remember word for word, and yet they are quoted word for word instead of saying he said to the effect of. So many of them are wrong, which may indicate that they weren't being taped, but I don't know how you get that many quotes into a declaration without a tape recorder.
>
> Q. But you had no evidence of it?
>
> A. No.
>
> Q. And you're not accusing anyone of it?
>
> A. No.
>
> Q. And you never accused anyone of it?
>
> A. No. And when I raised the point with Mr. Bower, he said no, I took him at his word.

The court concludes that Mr. Stein's threats of discovery sanctions, while not to be encouraged, were not so far out of the ordinary as to form a basis for any disciplinary sanctions. Moreover, either the parties were able to resolve their discovery disputes, or the court resolved them for the parties, so that the court will not consider further allegations concerning threats of discovery sanctions as the basis for disciplinary sanctions.

On the other hand, the court finds that Mr. Stein made completely unfounded accusations that one of the defense attorneys was recording his telephone calls. It seems to the court as though Mr. Stein was either expressing a lifelong, deep-seated concern about privacy, or he was making sure that the statements he made in telephone calls could not be independently corroborated. And those calls, parts of which are set out, below, in § II.B.5, beginning on page 30, were terrible. The court finds that, far from a polite request that no telephone conversations between counsel would be recorded, which *might* be a reasonable discussion of ground rules for interactions of counsel, Mr. Stein accused Mr. Bower of recording his telephone calls, with a less than subtle hint of criminal consequences for

doing so, and he all but admitted as much in both his hearing testimony and his July 25, 2018, email.

As was the case with the accusations of participation in bankruptcy fraud, discussed in the previous subsection, the court finds that Mr. Stein's accusations of taping telephone calls "violate[d] the well-understood norms and conventions of the practice of law" by accusing Mr. Bower and his firm of wrongdoing. *Noel*, 933 N.W.2d at 204; *Dolezal*, 841 N.W.2d at 124; *see also* Iowa Std. of Prof'l Conduct r. 33.2(1) ("We will not, absent good cause, attribute bad motives or improper conduct to other counsel or bring the profession into disrepute by unfounded accusations of impropriety."). Mr. Stein admitted that he had no foundation for accusations that Mr. Bower or anyone else was taping his telephone calls. Again, the court finds that the accusation of taping telephone calls, like the allegation of participating in bankruptcy fraud, was not only unfounded, but that Mr. Stein clearly, even if implicitly, threatened criminal penalties for doing so. Such conduct was also "prejudicial to the administration of justice" within the meaning of Rule 32:8.4(d), in that it "hampered the efficient and proper operation of the courts or of ancillary systems upon which the courts rely." *Dolezal*, 841 N.W.2d at 124. Again, the administration of justice relies on fair conduct of counsel, rather than attempts, like Mr. Stein's, to intimidate opposing counsel with allegations of wrongdoing. Mr. Stein's conduct also showed intent to prejudice the administration of justice, in that a "'natural and logical consequences of his . . . acts'" was to hamper the efficient and proper progress of the litigation. *Hamer*, 915 N.W.2d at 324 (quoting *Kress*, 747 N.W.2d at 538). Such conduct "clearly made the underlying litigation unnecessarily complicated," delayed settlement, and hampered the interactions of counsel to achieve a prompt and fair resolution of the case. *See Caghan*, 927 N.W.2d at 606.

Therefore, the court finds that Mr. Stein did engage in the third instance of misconduct and that this misconduct violated Iowa Rule of Professional Conduct 32:8.4(d), as to accusations of taping telephone calls.

***4. Threatening an individual party with personal and financial ruin***

The fourth allegation of misconduct is "[t]hreatening an individual party with personal and financial ruin." The applicants acknowledge that Mr. Stein has already been admonished for this conduct, albeit by a different court. Specifically, while this case was still in the Eastern District of Louisiana, a magistrate judge held a hearing on a motion to compel filed by Mr. Stein on behalf of Golden. *See* Application, Exh. 3, marked p. 11 (Aff. of Mr. Critelli, Exh. B); Resp.'s Hrg. Exh. 35. In pertinent part, the magistrate judge stated,

> Now that I've had a chance to read [a deposition], I think it was unnecessarily contentious. And what I want to do is, for the benefit of the lawyers vis-à-vis this motion, and for the future litigation of this case, I want to make some comments about what I have perceived in my review of the papers as well as the depositions to this point and urge you all to take my comments to heart, and I'll give you an opportunity to respond.

*Id*. at marked p. 13:18-25. Turning to the conduct of Mr. Stein referenced by the applicants, here, the magistrate judge stated,

> Also troubling to me is what was attached to the defendant's response where you [*i.e.*, Mr. Stein] threatened the defendant [Mr. Bollman], through counsel, with financial and professional ruin if he failed to engage in settlement discussions. That's Document 35-11.

*Id*. at marked p. 15:10-14.

At the "show cause" hearing, Mr. Stein testified that he believed that the magistrate judge had "dealt with everything" of concern to him, despite an applicant's declaration that "made it sound as if somehow there remained some reason to sanction a guy after he's already been in front of a judge and has taken care of everything, and his way of taking care of it was to grant both of my motions." Mr. Stein pointed to the first paragraph of the transcript of the hearing before the magistrate judge quoted above as meaning that his comments were to "the lawyers in the room, not just me," to guide future behavior. He also asserted, at first, that he did not know what the magistrate judge was talking about in

the second paragraph of the transcript quoted above. Nevertheless, he then testified in detail about what he had said to Mr. Bollman's counsel. He characterized that conversation as conveying information well known to anyone who has worked in or with people in the gaming industry. That information was that, if someone were found to have stolen intellectual property, state regulators would take their license, and they would not be able to get licensed in any other state, either. Mr. Stein asserted that the defendant's counsel did not respond by accusing Mr. Stein of making a threat to his client, but simply that he would "look into that."

This court concludes that it is inappropriate to impose sanctions for conduct that another judge has already addressed but found insufficient to warrant any sanction beyond an admonition. The court does find, however, that this incident is relevant evidence in these proceedings, because it suggests that the kinds of threats that Mr. Stein made to Mr. Bower, and the somewhat different threats made to Mr. McIntyre, were not isolated incidents, but part of a pattern demonstrating Mr. Stein's typical litigation practice, as well as his penchant for lecturing opposing counsel on what they should do.

Thus, although the court concludes that the fourth allegation of misconduct does not constitute a violation of Rule 32:8.4(d) warranting sanctions, the court does find it illuminating.

***5. Disparaging treatment of Iowa attorneys***

The fifth allegation of Mr. Stein's misconduct is described by the applicants as "[r]epeatedly disparaging Iowa attorneys with slurs, innuendo, and profanity." Although the applicants point to all four affidavits attached to their Application in support of this allegation, the court finds it sufficient to focus on the incident described in Mr. Bower's affidavit, as it was explored in detail in Mr. Stein's testimony at the "show cause" hearing.

That incident was described by Mr. Bower as follows:

> 14. I had a phone conference with Mr. Stein on July 20, 2018 to meet and confer about various issues. We then had discussions about mediation and settlement.

> 15. He went on a tirade that there is something in the water in Iowa that makes Iowa Lawyers think we are smart and clever, but in reality, it makes us "f****** stupid."
>
> 16. Mr. Stein referred to Mr. McIntyre, counsel for Defendant DRA, as a "little neo-nazi f***" and that talking to him is a "waste of fucking time."
>
> 17. He told me that talking to Nick Critelli, counsel for Wild Rose, was a "waste of f****** time."
>
> 18. I tried to engage Mr. Stein in general discussions about finding a way to have a productive mediation. He told me to come back to him when "you have something other than f****** bulls***."
>
> 19. He told me that "I get the same s*** from all you f****** Iowa Lawyers" and that Iowa lawyers are "f****** stupid".
>
> 20. He repeatedly asked me if I thought he was "f****** stupid", and told me (for the umpteenth time in this case) that he went to Harvard and Penn and has tried cases all throughout the country.

In the "show cause" hearing, in response to these allegations, Mr. Stein testified that, at the time he received the call from Mr. Bower, he was in a "bad mood" after news of a professional disappointment. He then had the following exchange with his counsel:

> Q. And so during this phone call, he says that he, meaning you, Mr. Stein, went on a tirade, that there's something in the water in Iowa that makes lawyers think we are smart and clever but in reality makes them f stupid. Do you see that? Did you say anything like that?
>
> A. Which would --
>
> Q. Paragraph 15?
>
> A. Paragraph 15. Let me just read it for a second. Well, let me respond piece by piece.
>
> Q. Yeah?
>
> A. Did I go on a tirade? Yes, I was. I let it rip. I let it rip. I'd really had it. And, you know, I was feeling a natural sense that, you know, I just lost this job of the future to take

> care of a case in the past, a case which should have settled seven times over because it's clear the liability was proven back in Louisiana. I was not in a good mood. I went on a tirade. I knew I was on a tirade, and I didn't care. I let it rip. And I was wrong to do so, but I let it rip.
>
> Q. When you say you let it rip, what do you mean?
>
> A. Used the f word a lot. And I got emotional and said a few things that I don't think I would have said any other day.
>
> Q. And did you tell Mr. Bower where you were?
>
> A. No. No. I told him what I thought.
>
> Q. Right.
>
> A. Which is a very different thing.

In response to a question about whether he said anything "about the water" in the conversation with Mr. Bower, Mr. Stein admitted that he did, then launched into a long explanation of his view that liability of the defendants was clear and that their failure to give a number concerning how much insurance coverage was left was ridiculous, before returning to the substance of the question. When he did return to the question pending, he answered as follows:

> And what I meant by there must be something in the water was not a reference to Iowa attorneys as a class, it was a reference to Mr. Bower, Mr. Critelli, and the client, who they said it came from. So that's what I was saying, there must be something in the water that the three of you have drunk to be as puerile as to not give me a number but insist that I limit myself to the insurance policy. How can I limit myself to a policy of two million minus expenses without knowing how much the expenses are, especially when it was obvious they were quite large.
>
> Q. Did you ever tell him you thought all Iowa lawyers were stupid?
>
> A. No. Absolutely not.
>
> Q. Do you believe that?

A. No. Never have.

The questioning and testimony then turned to the comment about Mr. McIntyre that Mr. Bower attributed to Mr. Stein:

> Q. In the next paragraph, it says that you referred to Mr. McIntyre as a little neo-Nazi f and said talking to him was a waste of time.
>
> Do you see that?
>
> A. Which paragraph?
>
> Q. The next paragraph, paragraph 16.
>
> A. That's right. And I did say that, and I'm sorry to say those—say, but, yes, that's exactly what I said. I called him a little neo-Nazi f, that's exactly right.
>
> Q. And why did you—
>
> A. And I also called him a waste of f time. It's incorrect to do so, but I did.
>
> Q. And why did you do that?
>
> A. Because I was—I was on a rip. I decided to let it rip, and I was just going to let him see what it looked like when Jon Stein was letting it rip.
>
> Q. Okay. And the neo-Nazi thing, where did that come from?
>
> A. That came from my client, Glenn Golden.
>
> Q. And how did that come about?
>
> A. He said he found a list of people [i]n the neo-Nazi party, and he didn't know if this was the same guy, but it had the same name. I never questioned him on it. I probably should have.

Mr. Stein's counsel then showed Mr. Stein an email from Mr. Golden, Resp. Hrg. Exh. 24, and the following discussion ensued:

> Q. And this is an e-mail exchange between you and Mr. Golden; is that right?
>
> A. Yes.

> Q. And if you turn to the—actually the very last sentence of it.
>
> A. Which—
>
> Q. The very last sentence on page 2 of Exhibit 24.
>
> A. Okay. The one that says "kick ass in D b q?
>
> Q. Yes.
>
> A. Kick ass in D b q. Make that [neo-]Nazi lawyer squirm.
>
> Q. And did you understand that Mr. Golden was referring to Mr. McIntyre?
>
> A. Yes.
>
> Q. And that's because you had had prior conversations with him—
>
> A. Yes.
>
> Q. —about what you had said, you don't know if he's the same guy or not, but—
>
> A. Yes. But it doesn't change how wrong I was to use that kind of language to another member of the Iowa bar without solid proof of something that I had not gotten solid proof of. So it doesn't mean that I wasn't wrong to call him a neo-Nazi whatever. It's a serious thing to say, but it's absolutely everybody's first right amendment to do whatever they want to do in that situation.

Mr. Stein's exchange with counsel then returned to other specific statements attributed to Mr. Stein by Mr. Bower:

> Q. What did you mean when you said it's a waste of time to talk to Mr. McIntyre?
>
> A. Well, because he—we had gone around and around on settlement and never gotten anywhere.
>
> Q. Okay. And then in the next paragraph, he references that you said that he should come back when he has something other than f-ing bull.
>
> A. What paragraph.

Q. Paragraph 18 of Exhibit 34.

A. Let me just get back to 34.

Q. That's Mr. Bower's declaration.

A. It's paragraph 18?

Q. Yes. It said I tried to engage Mr. Stein in general discussion about finding a way to—

A. I did say that. I did say if you have something other than f-ing bullshit. And this is—this is, again, this is a settlement discussion. It has nothing to do with emotion. It's the heat of the battle, and I was letting it rip after this terrible [unrelated personal] phone call.

And what the bull referred to was the same idea of we have to have a policy limit settlement but we're not going to tell you how much we've burned off the 2 million, but you do have to agree in advance; otherwise, we can't go further forwards settlement to this unknown number.

Q. And then you say—

A. And that's what I characterize as f-ing—as bull.

Q. Yeah. And then in paragraph 19, you say I get the same from all you blank—f-ing Iowa lawyers, and that Iowa lawyers are f-ing stupid.

A. No. Absolutely did not say either of those two.

Q. He did say in—he says he repeatedly asked me if I thought he was f-ing stupid.

A. That, I did say because that is how I would point out that we were arguing at a level that was beneath the level of lawyers' discourse.

Q. And that—

A. You must think I'm stupid if you think I would believe that.

Q. And you said that a fair amount of times?

A. Yes. Well, I said that especially when things got repetitive. They kept, you know, coming back, oh, well, you can't find out that information, but you do have to agree to the

> two million. Yes, there have been expenses but we can't tell you that but unless you agree we can't go any further and then around and around like a—like some loop.
>
> Q. And then he says that you went to Harvard and Penn and tried cases throughout the country.
>
> A. I don't recall that. I don't recall that. Because I may—I tried to avoid mentions of Harvard and Penn. I did mention many times that I tried cases throughout the country to let people know that, you know, come on, this guy's been seen a variety of circumstances. What you're saying is unique to Iowa maybe is something that he's seen another variation of in somewhere else, and I had local counsel to guide me for Iowa.

Counsel asked Mr. Stein what was different about the case, because it was in Iowa. Mr. Stein responded:

> A. No. What was different was the viciousness of the lawyers. . . .
>
> * * *
>
> But I can't think of a case since 1997 where I've seen people that got so vicious over a simple, you know, it's a theft of a computer program. I mean, this is not—it's hard stuff, you know, scènes à faire is a difficult doctrine, but, my goodness it's just a case, and it was all covered by insurance. I mean, we had triggered 17—you know, I bent over backwards to trigger $17 million worth of insurance, a $2 million settlement should not be what you're willing to go gladiator over and fight to the death. That's what was unique about it, not that it was in Iowa.

In this testimony, Mr. Stein corroborated most of the allegations of improper conduct toward opposing counsel, and the court finds the allegations to which he did not admit entirely credible, considering all the evidence in the case. Mr. Stein alleges that he was called a kike and subjected to other anti-Semitic comments. Counsel for the defendants credibly denied those remarks. However, Mr. Stein admitted calling a defense lawyer a neo-Nazi. It is ironic that, although any Jewish person would be justifiably offended by anti-Semitic remarks, Mr. Stein would accuse his opponents of being

something equally offensive. Furthermore, at times, Mr. Stein was apologetic, but at another time, he claimed the First Amendment right to do whatever he wanted to do under the circumstances. Mr. Stein also called the defense lawyers "vicious," but the only thing he could point to as demonstrating their "viciousness" was their refusal to quickly settle a $2,000,000 case on his terms. This, too, suggests a willingness to disparage opposing counsel without any justification, sufficient or otherwise.

The court also notes that, in a portion of his testimony not quoted, above, Mr. Stein took delight in testifying that a prominent Iowa attorney drank two-and-a-half bottles of wine at a business dinner. The court waited anxiously to determine what the point was that Mr. Stein was trying to make. The court expected that maybe it was relevant to an assessment of competing versions of what was said at that dinner meeting. It never came. So the court is left with the impression that Mr. Stein took delight in using the witness stand in an effort to diminish the reputation of an outstanding practitioner. Such conduct was consistent with Mr. Stein's disparagement of opposing counsel set out in more detail, here, as the basis for sanctions.

There can be no doubt that, as to this allegation of misconduct, Mr. Stein's conduct "violate[d] the well-understood norms and conventions of the practice of law" by using profane and abusive language to opposing counsel and otherwise disparaging them. *Noel*, 933 N.W.2d at 204; *Dolezal*, 841 N.W.2d at 124; *see also* Iowa Std. Prof'l Conduct r. 33.1(1) (stating, *inter alia*, "A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms"); *id.* r. 33.2(1) (stating, *inter alia*, "We will treat all other counsel, parties and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications."). Such conduct was also "prejudicial to the administration of justice" within the meaning of Rule 32:8.4(d), in that it "hampered the efficient and proper operation of the courts or of ancillary systems upon which the courts rely." *Dolezal*, 841 N.W.2d at 124; *see also* Iowa Std. Prof'l Conduct r. 33.1(3) ("Conduct that may be

characterized as uncivil, abrasive, abusive, hostile or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully and efficiently. Such conduct tends to delay and often to deny justice."). Specifically, the operation of the courts relies on professionalism and courtesy within an adversarial system. Mr. Stein's abusive and profane harangues of opposing counsel, in an apparent attempt to intimidate them into acceding to his wishes, showed intent to prejudice the administration of justice, because a "'natural and logical consequences of his . . . acts'" was interference with the efficient progress of the case. *Hamer*, 915 N.W.2d at 324 (quoting *Kress*, 747 N.W.2d at 538). Such conduct "clearly made the underlying litigation unnecessarily complicated," interfered with settlement, and interfered with the interactions of counsel to achieve an efficient and fair resolution of the case. *See Caghan*, 927 N.W.2d at 606.

Therefore, the court finds that Mr. Stein engaged in this instance of misconduct and that this misconduct violated Iowa Rule of Professional Conduct 32:8.4(d).

***6. Threatening and attempting to intimidate court reporters***

The penultimate allegation of Mr. Stein's misconduct is "[t]hreatening and attempting to intimidate court reporters." That allegation is based on Mr. Stein's interactions with two court reporting firms. The first instance is summarized in the affidavit of Nick Critelli, as follows:

> 8. On June 25, 2018, I received a call from Court Reporter Gretchen Thomas. She was extremely upset and reported that she had just had a threatening phone call from Jonathan Stein. I advised her to memorialize her interchange in an affidavit, which she did on June 26, 2018. In her email accompanying the affidavit she stated: "His behavior has been beyond concerning, and beyond anything we have ever experienced in over 40 years of practice. If Mr. Stein were in Nebraska, I would be physically concerned as well." See Exhibit A: Affidavit of Gretchen Thomas.

Aff. of Mr. Critelli, ¶ 8, Application Exh. 3; Resp.'s Hrg. Exh. 35.

In her own affidavit, Application Exh. 3, pp. 1-4; Resp.'s Hrg. Exh. 35, Gretchen Thomas avers that, in a telephone conversation with Geoffrey Thomas, in May 2018, Mr. Stein "ask[ed] to negotiate the deposition rates, hurl verbal abuse, and behave in a most unprofessional manner throughout numerous telephone calls, all of which was concerning enough by our staff to prompt a payment hold on all work until paid," and that such behavior had occurred again, later. *Id*. at 2. Specifically, she averred that, during a telephone conversation on June 25, 2018, between Mr. Stein and Mr. Thomas, when Mr. Thomas requested payment for everything before the firm provided a transcript of a specific deposition, Mr. Stein responded as follows:

> He began cursing and threatening [Mr. Thomas]. He said that he "hated dealing with ass holes in the Midwest" and "I was making a huge fucking mistake." He then proceeded to say that "he has only had to do this three other times, but if he had to do it a fourth he would make this a huge fucking problem for us."

Aff. of Gretchen Thomas, at p. 2. Ms. Thomas asserted that this kind of statement continued for several minutes and resumed in another call after a break of five minutes. p. 2-4. She averred that, in yet another call that day, this time with her, her contemporaneous notes indicate that Mr. Stein said,

> [W]hy don't I end the call before I use more bad language because we don't know who he is, and that he has a stellar reputation of over 30 years, an, if we continue to give HIM a hard time, "Boy oh boy, you have a surprise coming later." It sounded very threatening. Once again suggested that because we are in Omaha, " . . . By somebody in Omaha" we have no credibility, and we just don't know him, know his reputation or what he can do . . . and he then hung up.

Aff. of Gretchen Thomas, p. 4.

There is also an email string relating to Mr. Stein's June 2018 billing dispute with the Thomases' firm. *See* Aff. of Gretchen Thomas, pp. 5-8; Resp.'s Hrg. Exh. 25 (including one less email from Mr. Stein to Ms. Thomas and/or Mr. Thomas). In the first of these

emails, Mr. Stein comments, "You have attempted to hold 'ransom' all reporter depos and transcripts until payment in full, even though I have not had a chance to review your invoices or the accuracy of the transcripts, exhibits pdfs and videotapes in even the most cursory fashion." Aff. of Gretchen Thomas at p. 5. Subsequent emails include assertions by Mr. Stein that he was being "ransom[ed] for money"; complaints that the firm's failure to provide the transcript was costing him additional expert witness fees and his time at $660 per hour, because of the firm's "extortionate approach" for the "ransom of any one transcript"; and complaints that the firm was "extorting" and "ransoming" him. *Id*. at 6-8.

Mr. Stein had another dispute with the Thomases' firm in July 2018 concerning production of accessible video files of videotaped depositions, reflected in another email string including emails between Mr. Stein and Kelsey Hakes and between Mr. Stein and the Thomases. *See* Resp.'s Hrg. Exh. 26. After a series of emails reflecting attempts to get the files transferred to Mr. Stein, Mr. Stein emailed Ms. Hakes a message stating, in part, "I have spent thousands of dollars trying to make up for your firm's lack of technical ability to handle large files. That would be you." *Id*. at 3. The email string concludes with Mr. Stein's email to Mr. Thomas, copying Ms. Thomas, in which Mr. Stein states, in part, "I have spent about 10 hours of my time trying to get T&T to perform competently. You[r] comments do not make the effort any more worthwhile, and fly in the face of your mother's representations that we would 'move on.'" *Id*. at 1.

At the "show cause" hearing, Mr. Stein's response to the allegation that he threatened and attempted to intimidate court reporters as it relates to the Thomases was to assert that he did not have a problem with court reporters, but with the practices of the business that provided them. He then engaged in a lengthy explanation of the basis for the billing dispute and why he was right to complain. The court finds it telling that, when asked to explain who the Thomases were, Mr. Stein responded with irrelevant ad hominem observations, as follows:

> A. [Geoff] Thomas was the son, and Gretchen Thomas was the mother. And over the course of dealing with them, I very much got the sense that [Geoff] Thomas may have been a guy that was difficult to employ in the business environment. He just seemed like he was emotionally off balance. Not in a negative way towards me, but just I got the sense I was talking to somebody with, you know, some handicaps about getting tasks done during the day.
>
> And Mrs. Thomas, his loving mother, was the Gretchen Thomas.

When asked if he ever threatened Ms. Thomas physically, Mr. Stein responded,

> A. My goodness, no. No. And she—and I don't know where she gets this. . . .

After a digression, Mr. Stein returned to the question posed, as follows:

> . . . I never thought that Ms. Thomas was a person that would be extremely upset and reported that she had just had a threatening phone call. The phone call was not threatening, other than saying I think you, Ms. Thomas, are trying to extort me for monies that are not due for your services and that I will then be billing on to my client, who relies on me to make sure those bills are all fair and appropriate, which this was not.
>
> And what she said in response was, "you're correct in all the criticisms that you said." Yes, we are double-charging you on the hours, yes, we are billing you for lunch hours, yes, we are charging master card rates of 3.8 percent on an amount of 13,971, but we're not going to do anything about it, and if you want any transcripts at all from us, you better pay every penny.
>
> How does that turn into my threatening phone calls to her?

The applicants allege that Mr. Stein also behaved improperly toward another court reporter, Stephanie J. Cousins of Huney-Vaughn Court Reporters. The affidavit of Mr. Critelli summarizes that instance, as follows:

> 9. On July 19, 2018 I was taking depositions in a non-related case with Court Reporter Stephanie J. Cousins of Huney-Vaughn Court Reporters, the court reporter for the

> deposition of plaintiff Glenn Golden. Like court reporter Gretchen Thomas, Cousins she [sic] advised that Mr. Stein was foul-mouthed and threatened her to remove certain portions of the transcript which contained a record concerning physical threats made by Mr. Stein towards attorney Josh McIntyre. She refused and referred the matter to the owner Mr. Melvin Vaughn who offices in our building. I discussed the matter with Mr. Vaughan who corroborated Ms. Cousins. They refused Mr. Stein's demand to delete the McIntyre record portion of the deposition but did agree to Stein's demand to mark it Attorneys' Eyes Only.

Aff. of Mr. Critelli, ¶ 8, Application Exh. 3; Resp.'s Hrg. Exh. 35. Although Mr. Stein testified about his interactions with Ms. Cousins and her firm at the "show cause" hearing, the court finds it unnecessary to consider whether those interactions amounted to misconduct or warrant discipline, because of the relative paucity of evidence supporting this allegation of misconduct. Moreover, there is more than sufficient evidence supporting the allegation of misconduct toward court reporters, as it relates to the Thomases, to find a violation.

The court finds that Mr. Stein engaged in harassing and abusive conduct toward the Thomases and threatened them with serious consequences that he claimed he could bring down on them because of his reputation and his standing in the legal profession. Mr. Stein's own exhibits demonstrate that he was abusive to the court reporters. Matters concerning charges for their services should have been addressed by Mr. Stein when he engaged the court reporting firm. Furthermore, his comments when asked to explain who the Thomases were are disparaging and demonstrate a contemptuous attitude toward them, lending further support to the court's finding that Mr. Stein's conduct toward the court reporters prior to September 18, 2018, was also disparaging and contemptuous. Certainly, the attribution of profane and abusive comments to Mr. Stein is credible, in light of his similar conduct toward others in independent circumstances.

As to this allegation of misconduct, Mr. Stein's conduct "violate[d] the well-understood norms and conventions of the practice of law" by using profane and abusive

language to court reporters and otherwise disparaging them. *Noel*, 933 N.W.2d at 204; Dolezal, 841 N.W.2d at 124; *see also* Iowa Std. Prof'l Conduct r. 33.1(1) (stating, *inter alia*, "A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms"); *id*. r. 33.3(8) (stating, "We will act and speak civilly to court attendants, clerks, court reporters, secretaries and law clerks with an awareness that they too are an integral part of the judicial system."). Whether Mr. Stein's conduct was directed at the Thomases and Ms. Hakes while they were actually reporting or videotaping depositions or directed at them as business owners and operators is beside the point, because in either capacity, they are integral parts of the judicial system, just as the court attendants, clerks, secretaries, and law clerks are an integral part of the judicial system, even if they are not actually in court. Such conduct was also "prejudicial to the administration of justice" within the meaning of Rule 32:8.4(d), in that it "hampered the efficient and proper operation of the courts or of ancillary systems upon which the courts rely." *Dolezal*, 841 N.W.2d at 124. Specifically, the operation of the courts relies on court reporters and videographers completing their work without interference, abuse, or intimidation from attorneys or others. Mr. Stein's abusive and profane harangues and threats of dire consequences for crossing him, in an apparent attempt to intimidate the Thomases and Ms. Hakes into acceding to his wishes, showed intent to prejudice the administration of justice, because a "'natural and logical consequences of his . . . acts'" was interference with the efficient reporting of depositions and production of transcripts. *Hamer*, 915 N.W.2d at 324 (quoting *Kress*, 747 N.W.2d at 538). Such conduct "clearly made the underlying litigation unnecessarily complicated" for persons integral to the judicial system, even when they were not acting in court at the time of the conduct. *See Caghan*, 927 N.W.2d at 606.

Therefore, the court finds that Mr. Stein engaged in this instance of misconduct and that this misconduct violated Iowa Rule of Professional Conduct 32:8.4(d) as to Mr. Stein's conduct toward the Thomases and Ms. Hakes.

### *7. Questioning the competence, impartiality, and integrity of a mediator*

The last allegation of misconduct by Mr. Stein is "[q]uestioning the competence, impartiality, and integrity of a mediator agreed to by the parties, who is a former Justice of the Iowa Supreme Court." This allegation is based, in the first instance, on the following part of Mr. McIntyre's affidavit:

> 12. From August 3 to 13, 2018, I exchanged emails and phone calls with former Iowa Supreme Court Justice David Baker, who the parties had engaged as mediator. On August 9, Justice Baker emailed Mr. Stein and myself with recommended settlement terms in an effort to establish compromise between Plaintiffs and DRA. Mr. Stein responded shortly thereafter that those terms were declined by plaintiffs as "non-starter."
>
> 13. On Monday, August 13, 2018, Justice Baker called to inform me he would be withdrawing as mediator due to the conduct of Mr. Stein.

Aff. of Mr. McIntyre, ¶¶ 12-13, Application, Exh. 1; *see also* Resp.'s Hrg. Exh. 33. This allegation is also based on the Declaration of David Luginbill, which states, in pertinent part, as follows:

> 1. I was the defense attorney primarily responsible for arranging and scheduling the September 18, 2018 mediation with David Baker.
>
> 2. On August 13, 2018, I received the withdrawal letter from David Baker, the mediator previously agreed to by all parties.
>
> 3. Subsequently, I returned a call from David Baker and spoke directly with him. David Baker confirmed that the part referred to in his e-mail who questioned his "competence, impartiality and integrity," was Jonathan Stein.

Aff. of Mr. Luginbill, ¶¶ 1-3, Application Exh. 4; *see also* Resp.'s Hr.g Exh. 36.

The August 13, 2018, letter from Justice Baker to counsel, to which both Mr. McIntyre and Mr. Luginbill refer in their affidavits, states the following:

> Thank you for asking me to serve as Mediator in your case. Since accepting this engagement, I have had some preliminary discussions with two of the parties. From those discussions, I have come to the belief that one of the parties questions my competence, impartiality and integrity. Under Iowa Court Rule 11.3(2), "a mediator should not act with partiality or prejudice based on any participant's personal characteristics, background, values and beliefs, or performance at a mediation, or any other reason. This I do not believe I can do. Under these circumstances, Iowa Court Rule 11.3(3) requires that "if at any time a mediator is unable to conduct a mediation in an impartial manner, the mediator shall withdraw." I am, therefore, withdrawing from this mediation.
>
> Should you determine that mediation is still appropriate, I would recommend court sponsored mediation pursuant to Local Rule 72B.

Application, Exh. 5; Resp.'s Hrg. Exh. 37.

At the "show cause" hearing, Mr. Stein's Exhibit 27 was offered and admitted. It shows an email string concerning settlement discussions between Golden and Dubuque Racing Association, which Mr. Stein testified that he forwarded to Justice Baker on August 3, 2018. Mr. Stein testified that the settlement situation was "a mess," and "[s]o I asked [Justice] Baker, would you take over this mess and bring it—bring this baby home." It is not clear in what context Mr. Stein asked Justice Baker that, because his email to Justice Baker in Exhibit 27, states, "Below is an email chain showing the status of negotiations with DRA, the Dubuque Racing Association which owns Q Casino fka Mystic Casino. I will call at 700 am sharp Pacific." Exh. 27, 1.

Mr. Stein then had the following exchange with his counsel at the "show cause" hearing:

> Q. And did you have further discussions with Justice Baker about this particular settlement?
>
> A. Yes, I did.

Q. Okay. And let's turn to Exhibit 59. And had you agreed that Justice Baker would be involved in pre-mediation caucuses with the parties?

A. Yeah. We had had—I talked to Dubuque Racing Association about that and also Justice Baker took an active hand in making sure that the September 18th would do well, you know, all the normal details you attend to in mediation. And the reason this e-mail is worth looking at is it shows me falling in line with the rest of the attorneys of addressing that Justice Baker professionally.

Q. And as far as you knew, at least as of August 9th, things were going along in the normal process?

A. Absolutely.

Q. And if we could turn back, I'm sorry to bounce around, did something come up to you as to a question you had for Justice Baker about how the negotiations were proceeding?

A. Yeah.

Q. Can you explain that, the issue that you—

A. Well, it's laid out in an e-mail, but before the e-mail, I was on the phone with Justice Baker, and he was discussing the position of Dubuque Racing Association, and the way he discussed it, you know, mediators will, you know, parrot what they've been told, and that's very helpful and that's what they're there for is to sometimes parrot things.

But he basically informed me that they were right and I was wrong on a point of law that I had researched carefully enough to establish that I was quite right. And that really raised some suspicions in my mind of what exactly is going on here with the sole mediator, you know, recommended by Defendants. I'd done some due diligence, but I hadn't really done a lot.

And he addressed it in a manner that did not distance himself from what I saw as clear misrepresentations of law and clear misrepresentations of the effect of provisions in the settlement agreement that would simply lead to new litigation. We would settle one litigation with Dubuque, and two years later we would be locked in a second litigation with Dubuque,

but this one over what's the meaning of X, Y, Z in the settlement agreement.

And the lack of distance between Justice Baker's position, even when I criticized this stuff, and their position kind of raised my eyebrows.

Q. So let's turn to Exhibit 29. I think that's the e-mail you just mentioned. There's two e-mails, and I want to focus on the bottom e-mail on Exhibit 29.

A. Right.

Q. And that's the e-mail that you were just talking about?

A. August 13th, yeah. This is August 13th at 11:25 a.m. Of course, that's pacific time.

Q. Right. And at the bottom, you have a question, and third I sought assurances from you that typical mediation rules are applicable to this SD I A case.

A. Okay.

Q. Is that—

A. So—

Q. Those are the questions you said you raised, right?

A. So what I did is I had three bolded paragraphs. The first one is a technical question on language for the DRA settlement. Remember, we are on settlement agreement draft No. 8. The second was the Wild Rose out of pocket issue, and the idea of—that Wild Rose would probably have to go out of pocket and Mr. Critelli's, you know, ongoing opposition.

Then the third was I sought assurances from you that a typical mediations rule are applicable to the SD I A case. Number one, the mediator would distance himself from any efforts to, quote, fool plaintiffs, and, number two, the mediator would scrupulously avoid any ex parte communications with the court. In other words, he wouldn't be on the phone saying something that he had implied in his comments to me, something that, as I said, raised my eyebrows. He might get on the phone with the judge involved, who I think was Wolle at

> that point. And talk to him, and I said, wait a second, you know, that's not how I'm used to doing things, and, you know, you're not supposed to talk to the judge about things in mediation. You know, there's an absolute privilege, you know, if the cone of silence. It's an absolute privilege. Settlement is not an absolute privilege, mediation is.
>
> And so I asked him to simply reaffirm those two things.
>
> Q. Did you get a call from Justice Baker in response to your August 13th e-mail?
>
> A. No. I thought that the response would be, no, not a problem here, you know, here's the response to number one, [here's] the response to No. 2, here's the response to No. 3. Not a problem here. And I thought I might even get a chatty phone call, oh, yeah, nothing to worry about, Jonathan.
>
> And instead, 18 minutes later, 18 minutes later, he quit.

The August 13, 2018, email from Mr. Stein to Justice Baker to which Mr. Stein referred in the testimony, above, states the following:

> We discussed two tasks, and I wanted to see if we can schedule an "update" phone call later this week:
>
> **First, the DRA settlement.** I sent you the "sample language" that you requested. Has it been presented?? The response??
>
> **Second, Wild Rose "out-of-pocket".** I stated that Plaintiffs' main goal for the mediation would be a settlement with WR-Carstensen-Bollmann (not a universal settlement for a "princely sum"). This is impossible without Wild Rose going out of pocket, beyond their $2MM in cannibalized insurance policies. Absent an assurance that Wild Rose "will bring their checkbook", the mediation does not make sense financially for Plaintiffs.
>
> **And third, I sought assurances from you that typical mediation rules are applicable to this SDIA case:** (i) the mediator would distance himself from any effort to "fool" Plaintiffs; and (ii) the mediator would scrupulously avoid any ex parte communications with the Court.
>
> When is convenient to your schedule to address these 3 points??

Resp.'s Hrg. Exh. 29.

At the "show cause" hearing, Mr. Stein stated his surprise not only that Justice Baker withdrew, but that he did so just 18 minutes after he received Mr. Stein's email. Mr. Stein eventually sent Justice Baker an email saying, "I'm sorry to see you quit." Resp.'s Hrg. Ex. 29. Mr. Stein explained at the hearing,

> But I chose the word quit to show what had happen. He had decided to quit. Because I had done nothing more than ask him to confirm something that a simple, yeah, sure, no problem would have confirmed.

At the hearing, Mr. Stein's testimony concerning Justice Baker continued, as follows:

> Q. Did you publicly in any way question the partiality or confidence of Judge Baker—Justice Baker?
>
> A. No. I had nothing to question. I asked him a question as to do I have a problem here. I asked him a question do I have a problem that I worded, I just seek assurances from you on 1 and 2, right?
>
> Distance yourself from efforts to fool the plaintiffs, which is exactly what was going on with Mr. McIntyre; and, number two, that you would scrupulously avoid ex parte communications with the Court, because he implied that he might just pick up the phone and call the judge, when he spoke with me about this, which was part of the eyebrow raising that generated this e-mail.
>
> And instead of getting no problem, he quit within 18 minutes, and when I got around to it, I said I'm sorry to see you quit.
>
> Q. And after that, did you have any concerns about Justice Baker's conduct following his quitting?
>
> A. Until I received the application, where I saw my mediation communications with him in that application—remember, mediation communications is supposed to be the cone of silence. It's absolutely privileged. Nobody's supposed to find out about it. Then or after the fact. And I was upset to

> see that, in fact, it end up in an application right in front of the trial judge.

Mr. Stein did eventually clarify that that the "application" in which his "mediation communications with [Justice Baker]" appeared was the defendants' August 14, 2018, Joint Motion Requesting Court-Sponsored Settlement Conference [Dkt. No. 355], in which Justice Baker's withdrawal letter was incorporated. That Joint Motion does not quote or attach any correspondence or communication from Mr. Stein.

Mr. Stein then testified the presence of Justice Baker's withdrawal letter in the Joint Motion "in my opinion, it was outrageous. I wasn't going to use the word outrageous in a letter to Justice Baker, but I thought it was outrageous that his letter would appear in a court filing." Mr. Stein testified that was the reason he sent Justice Baker an email on August 15, 2018, which states the following:

> Attached is the recent filing by defendants in the matter which you mediated and then withdrew.
>
> **The court filing appears to purposely violate the mediation privilege of Plaintiffs. <u>Your letter may have been written to be used in such a filing, and you may have participated and cooperated with an apparent violation of Plaintiffs' mediation privilege.</u>**
>
> Can you clarify whether it was your intent to further defendants[']  case before the Court by participating and cooperating with this violation of Plaintiffs' mediation privilege??
>
> Please respond in writing. As you are no longer mediator, this email and your response are <u>not</u> intended to be covered by the mediation privilege.

Resp.'s Hrg. Exh. 30 (bold and underlining in original).

The subject matter of Mr. Stein's August 13, 2018, email to Justice Baker, Resp.'s Hrg. Exh. 29, might have been appropriate if it were an effort to educate the *client* about the ground rules of mediation, including the impartiality of the mediator and the importance of confidentiality surrounding the mediation. But that's not what was taking place, as

Mr. Stein was demanding assurances that the mediator would not attempt to "fool" the plaintiffs and that the mediator would "scrupulously" avoid *ex parte* communications with the court. A mediator receiving a communication in which he is asked to affirm that he will not engage in a fraud on one of the parties is a communication that should cause any mediator to be concerned about going forward.

The allegation about Justice Baker in Mr. Stein's August 15, 2018, email, Resp.'s Hrg. Exh. 30, is offensive and unprofessional because it is absolutely unfounded, having been completely derived from the fact that Justice Baker's appropriate letter resigning from mediation, Resp.'s Hrg. Exh. 37, was included in the defendants' motion for court-sponsored mediation. That letter disclosed no "mediation privileged" information, because it did not identify Mr. Stein as the party whose conduct prompted Justice Baker's withdrawal, and the court was already well aware of the anticipated September 18, 2018, mediation and had stayed case deadlines pending that mediation.

Thus, the court finds that Mr. Stein's questioning of Justice Baker's intent to abide by mediation rules and Mr. Stein's accusations of misconduct by Justice Baker "violate[d] the well-understood norms and conventions of the practice of law." *Noel*, 933 N.W.2d at 204; *Dolezal*, 841 N.W.2d at 124; *see also* Iowa Std. of Prof'l Conduct r. 33.2(1) ("We will not, absent good cause, attribute bad motives or improper conduct to other counsel or bring the profession into disrepute by unfounded accusations of impropriety."). Mr. Stein had no reasonable foundation either for questioning Justice Baker or for accusing him of misconduct. Such conduct was also "prejudicial to the administration of justice" within the meaning of Rule 32:8.4(d), in that it "hampered the efficient and proper operation of the courts or of ancillary systems upon which the courts rely." *Dolezal*, 841 N.W.2d at 124. The administration of justice, and of litigation generally, depends more and more on mediation as the ultimate resolution or as an essential step in the process toward resolution of legal disputes, such that mediation is plainly an "ancillary system" upon which the courts—and parties—rely. Mr. Stein's conduct also showed intent to prejudice the

administration of justice, in that a "'natural and logical consequences of his . . . acts'" was that they would cause a reasonable mediator to withdraw thus hampering the efficient and proper progress of the litigation. *Hamer*, 915 N.W.2d at 324 (quoting *Kress*, 747 N.W.2d at 538). Such conduct "clearly made the underlying litigation unnecessarily complicated" by impeding the settlement process, which resulted in unnecessary time and expense. *See Caghan*, 927 N.W.2d at 606.

Therefore, the court finds that Mr. Stein engaged in this last instance of misconduct and that this misconduct violated Iowa Rule of Professional Conduct 32:8.4(d).

***8. Additional matters***

Mr. Stein asserted various defenses to the misconduct allegations against him. In its analysis of each incident that the court found violated Iowa Rule of Professional Conduct 32:8.4(d), above, the court has already rejected Mr. Stein's claims that he did not have a sanctionable "intent" and that the conduct at issue did not prejudice the administration of justice. Another of Mr. Stein's defenses is that he objects to the timeliness of the request for sanctions. The court does not believe that the applicants can be criticized for not complaining immediately to either Mr. Stein or the court, because any reasonable attorney would hope the incidents in question were just isolated aberrations that could be ignored in the interest of moving forward. Sometimes delay gives time for a pattern to develop. It did here.

Mr. Stein also asserted that his conduct was justified, because he was right. His refusal to recognize at the time that his conduct was unacceptable and avoid it, even if he was right about the substance of the matters at issue at the time, is one of the differences between acting within or failing to act within "the well-understood norms and conventions of the practice of law." *Noel*, 933 N.W.2d at 204; *Dolezal*, 841 N.W.2d at 124; *see also* Iowa Std. Prof'l Conduct r. 33.1(1) (stating, *inter alia*, "A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense

of those terms"). Mr. Stein's inability to restrain himself is a root problem leading to his violations of Iowa Rule of Professional Conduct 32:8.4(d).

Mr. Stein also asserted that some of his conduct was justified, because it was in response to anti-Semitic comments and, indeed, that the Application was substantially motivated by anti-Semitism. Because this motion presents a pure credibility dispute, with exceedingly high stakes, and includes counter-allegations of totally unacceptable anti-Semitic conduct by members of the bar, the court must be vigilant to resolve this case not on the reputation of individuals, but on the evidence presented at the hearing. The evidence of Mr. Stein's misconduct came from independent sources: the lawyers, the court reporters, judges, and the mediator. The court finds that Mr. Stein gave false testimony, as to the incidents involving comments by Mr. Bower and Mr. McIntyre, and about an incident in which he was allegedly called "a greedy Jew," but which had never been directly attributed to Mr. Luginbill until the "show cause" hearing.

The court finds it curious that, in an April 29, 2018, letter to counsel purportedly recapping the third round of settlement negotiations, Mr. Stein claimed, "At Mr. Golden's deposition, Mr. Stein was subjected to comments from one counsel that he interpreted as anti-Semitic." Resp.'s Hrg. Exh. 20, p. 3. As the court observed at the "show cause" hearing, Mr. Stein chooses his words well, and why would he need to "interpret" anything as anti-Semitic if someone used the word "kike" to describe him? Mr. Stein's explanation that he chose that phrase as a matter of "diplomacy" in the hope of moving the case toward settlement simply rings hollow, in light of the other evidence in the record. Thus, the court believes Mr. Bower, Mr. Luginbill, and Mr. McIntyre and does not believe Mr. Stein. Mr. Stein's testimony is not corroborated. The defense lawyers' testimony is. Mr. McIntyre did not call Mr. Stein a "kike." Mr. Luginbill did not call him "a greedy Jew." Finally, Mr. Bower did not tell Mr. Stein that he is "such a Jew."

Therefore, because the court has found multiple violations of Iowa Rule of Professional Conduct 32:8.4(d), the court turns to the appropriate sanction.

### *C. The Appropriate Sanction*

If the court chose only "informal" disciplinary proceedings under LR. 83(g)(3)(B), the applicants requested that the court impose the following sanctions upon Mr. Stein:

> (a) that his LR 83 sponsoring Iowa attorney Brad Schroeder monitor and be responsible for Mr. Stein's behavior and participate in all court appearances, depositions, hearings, and mediations and that he be included in all telephone calls and meetings and on all correspondence whether electronic or otherwise;
>
> (b) that Mr. Stein fully comply with Chapter 33 of the Iowa Supreme Court Rules;
>
> (c) that any further violation by Mr. Stein will result in formal discipline under LR 83(g)(3)(C); and
>
> (d) that the costs and expenses associated with these proceedings be assessed against Mr. Stein and not his client.

The applicants also requested that the court initiate "formal" disciplinary proceedings. At the "show cause" hearing, the representative of the applicants admitted that the sanctions requested in the original application are largely moot, however, because the case is dismissed. The representative did, however, reiterate the applicants' request that the court initiate "formal" disciplinary proceedings.

Mr. Stein argued that, because the applicants let the issue of his allegedly sanctionable conduct go for so long before complaining, this case has settled, and he is not representing any client in a case in Iowa (although he is acting *pro se* in other litigation in this court), that no purpose would be served by imposing sanctions in this case. He also asserted that, because he hopes never to see any of these attorneys again, no "therapeutic" purpose would be served by sanctions. Mr. Stein suggested that imposition of any sanctions would be appealed and likely reversed and might create a "messy" situation in which it might appear that the court was putting a finger on the scales in the remaining

litigation in this court in which Mr. Stein is a party. Finally, Mr. Stein pointed out that he had apologized for some of his behavior, but none of the applicants had apologized for any of their behavior.

As the court noted, above, the Eighth Circuit Court of Appeals has explained that the district court's "inherent powers" to discipline attorneys who appear before it includes the "discretion 'to fashion an appropriate sanction for conduct which abuses the judicial process,' including assessing attorney fees or dismissing the case." *Adams*, 863 F.3d at 1077 (*Wescott Agri-Prods., Inc.*, 682 F.3d at 1095). Here, where the sanctions are based on violations of Iowa Rule of Professional Conduct 32:8.4(d), the court finds it appropriate to "fashion an appropriate sanction" by looking at the standards for determining appropriate sanctions that the Iowa Supreme Court has imposed for violations of that rule.

As the Iowa Supreme Court has explained, when it finds a violation of Rule 32:8.4(d),

> "We craft appropriate sanctions based upon each case's unique circumstances," *[Iowa Supreme Court Attorney Disciplinary Board v.] Kennedy*, 837 N.W.2d [659,] 673 [(Iowa 2013)] (quoting *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Kallsen*, 814 N.W.2d 233, 239 (Iowa 2012)), but we also "try to achieve consistency with prior cases involving similar misconduct," *[Iowa Supreme Ct. Att'y Disciplinary Bd. v.] Stansberry*, 922 N.W.2d [591,] 598 [(Iowa 2019)]. We consider several factors, including
>
> > [t]he nature of the violations, the attorney's fitness to continue in the practice of law, the protection of society from those unfit to practice law, the need to uphold public confidence in the justice system, deterrence, maintenance of the reputation of the bar as a whole, and any aggravating or mitigating circumstances.
>
> *[Iowa Supreme Ct. Att'y Disciplinary Bd. v.] Turner*, 918 N.W.2d [130,] 152 [(Iowa 2018)] (alteration in original) (quoting *[Iowa Supreme Ct. Att'y Disciplinary Bd. v.] Morse*, 887 N.W.2d [131,] 143 [(Iowa 2016))]. We also consider aggravating and mitigating circumstances. *[Iowa Supreme Ct.*

> *Att'y Disciplinary Bd. v.] Barry*, 908 N.W.2d [217,] 227 [(Iowa 2018)].

*Noel*, 933 N.W.2d at 205.

Here, the court concludes that the "nature of the violations" is serious, not only in and of themselves, but because they continued despite an admonition by another federal judge concerning similar conduct, and because of the sheer number of violations, which have a cumulative impact. *Id.* "The need to uphold public confidence in the justice system, deterrence, [and] maintenance of the reputation of the bar as a whole," *id.*, are every bit as important to this court as to any other. As to "deterrence," it is clear that the prior admonition by a federal judge, even though it was made on the record, was insufficient to curtail Mr. Stein's improper conduct, so that a more substantial sanction is required now. Similarly, Mr. Stein's conduct is the kind that could well undermine public confidence in the judicial system and the reputation of the bar as a whole, if left unchecked or subjected to too slight a sanction to stop it.

The court has also considered Mr. Stein's assertions that any sanction should be mitigated by delay in the assertion of misconduct, the provocations to which he was subjected, and the fact that the incidents involve conduct "in the heat of battle." In the court's view, none of these circumstances significantly mitigates the kind of sanction to be imposed, because of the impropriety of Mr. Stein's conduct, not least because the court finds his assertions of provocation not to be credible. Although the court is clearly authorized to impose a sanction for conduct which abuses the judicial process up to and including assessing attorney fees or dismissing the case, *Adams*, 863 F.3d at 1077, the court finds such sanctions inappropriate in this case, where the underlying litigation has been resolved, despite Mr. Stein's conduct.

Therefore, having weighed the evidence and all pertinent factors, the court concludes that the appropriate sanction is a public reprimand in a published decision. Such a sanction carries more weight than the on-the-record admonition previously imposed in federal court in Louisiana, which Mr. Stein too easily shrugged off. Also, because of its

dissemination and longevity, it should also make clear this court's, the bar's, and society's opprobrium of such conduct impeding and prejudicing the administration of justice.

## *III. CONCLUSION*

Upon the foregoing,

**IT IS ORDERED** that

1. The applicants' August 29, 2018, Application For Disciplinary Sanctions [Dkt. No. 361] is **GRANTED in part**, as explained in this opinion;

2. Respondent attorney Jonathan A. Stein is **PUBLICLY REPRIMANDED** for the multiple violations of Iowa Rule of Professional Conduct 32:8.4(d) found in this opinion; and

3. This opinion shall be submitted for publication in the usual reporter or reporters for Federal District Court opinions.

**DATED** this 30th day of March, 2020.

JOHN A. JARVEY, Chief Judge
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA