ADVANCE SHEET HEADNOTE
September 8, 2025

2025 CO 51

No. 24SA263, *In re Stanley* — Attorney Discipline — Judicial Disqualification — Rules of Professional Conduct — Colo. RPC 5.1(b) — Colo. RPC 8.4(a) — Colo. RPC 8.4(d) — Attorney Sanctions

In this attorney discipline case, the supreme court considers whether the Presiding Disciplinary Judge ("PDJ") should have disqualified himself from former elected District Attorney Linda Stanley's attorney discipline proceeding. The court also reviews the hearing board's ("the Board") finding that Linda Stanley violated Colo. RPC 5.1(b) and Colo. RPC 8.4(a) and (d) and the sanction imposed by the Board.

The court holds that the PDJ was not required to disqualify himself from the entirety of Stanley's proceedings. The court reverses the Board's finding that Stanley violated Colo. RPC 5.1(b) but affirms the Board's findings that she violated Colo. RPC 8.4(a) and (d) and concludes that the sanction of disbarment is proper.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2025 CO 51

Supreme Court Case No. 24SA263
Original Proceeding in Discipline
Appeal from the Presiding Disciplinary Judge, 23PDJ41

In the Matter of Attorney-Respondent:

Linda Stanley.

Judgment Affirmed in Part and Reversed in Part
en banc
September 8, 2025

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JUSTICE HOOD delivered the Opinion of the Court, in which **JUSTICE GABRIEL**, **JUSTICE HART**, and **JUSTICE BERKENKOTTER** joined.
JUSTICE SAMOUR, joined by **CHIEF JUSTICE MÁRQUEZ**, dissented.
JUSTICE BOATRIGHT did not participate.

JUSTICE HOOD delivered the Opinion of the Court.

¶1 In this attorney discipline matter, a majority of a hearing board ("the Board") determined that Linda Stanley should be disbarred based on her violations of Colorado Rules of Professional Conduct ("Colo. RPC") 3.6(a), 3.8(f), 5.1(b), 8.4(a),[1] and 8.4(d) while acting in her capacity as the elected District Attorney ("DA") for Colorado's Eleventh Judicial District.

¶2 Stanley appeals (1) the Board's determination that she violated Rules 5.1(b), 8.4(a), and 8.4(d); (2) the sanction of disbarment; and (3) the Presiding Disciplinary Judge's ("PDJ") denial of her motions requesting that he disqualify himself from her case. We reverse as to the Board's Rule 5.1(b) decision but otherwise affirm the Board's judgment, including the sanction of disbarment.

I. Facts and Procedural History

¶3 In early 2021, Stanley was elected as the DA for the Eleventh Judicial District, which encompasses Fremont, Chaffee, Park, and Custer counties. In that role, and as relevant to this attorney discipline proceeding, Stanley was responsible for investigating and prosecuting three cases, which we will refer to as "the Morphew Case" and "the Jacobs and Crawford Cases."

[1] Colo. RPC 8.4(a) (2019) was amended on November 16, 2023, redesignating subsection (a) as subsection (a-1). Because the complaint in this matter was filed before the effective date of the amendment, all citations in this opinion are to the former version of the rule.

A. The Morphew Case

¶4 Suzanne Morphew went missing in 2020, triggering a multi-agency investigation into her disappearance that lasted nearly a year and drew significant media attention. In May 2021, Suzanne Morphew's husband, Barry Morphew, was arrested for her murder.

¶5 Stanley assigned one of her veteran prosecutors to lead what proved to be a highly complex and fraught prosecution. Stanley made several controversial public statements about the Morphew Case while it was pending. Those statements and Stanley's supervision of the prosecution team are discussed in greater detail below.

¶6 Judge Ramsey Lama presided over the bulk of the subsequent proceedings. Because of some adverse rulings and the resulting perception that Judge Lama was biased against them, the prosecution team hoped to force his recusal from the case. In April 2022, weeks before the Morphew Case was scheduled for trial, Stanley initiated an investigation into Judge Lama based on unfounded rumors that he'd committed domestic abuse. Although that investigation yielded no basis to seek Judge Lama's recusal, Stanley's decision to pursue it remains at issue here.

¶7 Later that month, Stanley moved to dismiss the charges against Barry Morphew without prejudice. Judge Lama granted the motion and dismissed the case.

B. The Jacobs and Crawford Cases

¶8 In May 2023, Stanley charged William Henry Jacobs with crimes related to the death of a ten-month-old child in his care. Stanley also charged the child's mother, Brooke Crawford, with related crimes.

¶9 While these cases were pending, Stanley participated in a recorded interview with Sean Rice, an investigative reporter with KRDO News Channel 13 Investigates in Colorado Springs. In the interview, Stanley made disparaging statements about Jacobs and Crawford. KRDO subsequently aired a story with clips from the interview, focusing on Stanley's commentary. KRDO also published an accompanying article which contained some of Stanley's statements related to the two cases. Due to Stanley's statements, discussed in more detail below, the trial courts dismissed the Jacobs and Crawford Cases in the spring of 2024.

C. Stanley's Attorney Discipline Proceeding

¶10 In July 2022, several months after the trial court dismissed the Morphew Case, the Office of Attorney Regulation Counsel ("OARC") initiated a formal investigation into Stanley's conduct and later asked the PDJ for an interim suspension of Stanley's law license. The PDJ recommended suspension in a report to this court, which we denied. Ultimately, OARC filed a complaint against Stanley with the Office of the PDJ. In the complaint, OARC asserted seven

claims—five alleging misconduct related to the Morphew Case and two alleging misconduct related to the Jacobs and Crawford Cases. Stanley moved twice to disqualify the PDJ, but the PDJ denied both motions.

¶11 Three members comprised the Board: PDJ Bryon M. Large, attorney Sherry A. Caloia, and non-attorney citizen Melinda M. Harper. After a nine-day hearing in 2024, the Board issued a divided, written opinion addressing each of OARC's claims. The Board's findings on six of those claims are relevant to this appeal:

1. The Board unanimously found that two of the public statements Stanley made about the Morphew Case violated Colo. RPC 3.6(a), which prohibits lawyers who are participating or have participated in the investigation or litigation of a matter from making extrajudicial statements that they know or reasonably should know will be publicly disseminated and will likely prejudice an adjudicative proceeding in that matter.
2. The Board unanimously found that three of Stanley's public statements in the Morphew Case violated Colo. RPC 3.8(f), which prohibits prosecutors in a criminal case from making statements that will likely heighten "public condemnation of the accused."
3. A majority of the Board found that, in her supervision of the Morphew Case prosecution team, Stanley violated Colo. RPC 5.1(b) (requiring a

supervisory lawyer to "make reasonable efforts to ensure that the other lawyer[s] conform[] to the Rules of Professional Conduct") but not Colo. RPC 5.1(a) (requiring a partner or supervisory lawyer "in a law firm" to ensure the firm has measures in place to ensure the other lawyers conform to the rules).

4. A majority of the Board found that Stanley, by conducting an investigation into Judge Lama, violated both Colo. RPC 8.4(a) (explaining that it is professional misconduct for a lawyer to violate or attempt to violate the rules or to do so through the acts of another) and Colo. RPC 8.4(d) (explaining that it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice").
5. The Board unanimously found that Stanley violated Colo. RPC 3.6(a) for statements she made in the KRDO interview while the Jacobs and Crawford Cases were pending.
6. The Board unanimously found that Stanley also violated Colo. RPC 3.8(f) for making the same statements.

Based on these findings, a majority of the Board concluded that disbarment was the appropriate sanction. Stanley appeals.[2]

[2] Stanley presents the following seven issues for our review:

II. Jurisdiction and Standard of Review

¶12 This court "exercises jurisdiction over all matters arising under the Rules Governing the Practice of Law," and we have "plenary power to review any determination made in [an attorney discipline] proceeding . . . and to enter any order in such a proceeding." C.R.C.P. 242.2. In exercising this authority, we

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1. Should PDJ Bryon Large have been disqualified from hearing Linda Stanley's case?
2. Whether it was proven by clear and convincing evidence that claim IV, alleging a violation of Colo. RPC 5.1(b), was committed as determined by the majority Hearing Board opinion, or whether there was no violation as determined by the dissenting opinion?
3. Was it error to refuse to allow the Appellant's expert witness, Matthew Durkin, to render an expert opinion?
4. Whether it was proven by clear and convincing evidence that claim V, alleging a violation of Colo. RPC 8.4(a) and Colo. RPC 8.4(d), was committed as determined by the majority Hearing Board opinion, or whether there was no violation as determined by the dissenting opinion?
5. Whether claim V, alleging a violation of Colo. RPC 8.4(a) and Colo. RPC 8.4(d), should be dismissed because it violates the separation of powers doctrine, and is void for vagueness, or alternatively whether no sanction should be imposed because the claim presents a matter of first impression?
6. Was it error to restrict the cross examination of former Judge Lama concerning the basis of various adverse rulings and as to his prior testimony at the interim suspension hearing?
7. Whether disbarment as ordered by the majority Hearing Board opinion was warranted, or whether a lesser sanction, as recommended by the dissenting opinion, should be imposed?

review the Board's conclusions of law de novo and its findings of fact for clear error. C.R.C.P. 242.33(c); *accord In re Abrams*, 2021 CO 44, ¶ 13, 488 P.3d 1043, 1050.

III. Analysis

¶13 We break our analysis into four parts. In Part III.A, we discuss whether the PDJ should have disqualified himself. In Part III.B, we consider whether the Board erred by finding that Stanley violated her duty to supervise under Rule 5.1(b). In Part III.C, we review whether the Board erred by finding that Stanley violated Rule 8.4(a) and (d) in her investigation of Judge Lama. In Part III.D, we evaluate whether the Board's sanction of disbarment is appropriate.

A. Disqualification

¶14 Stanley asserts that the PDJ should have disqualified himself from presiding over her disciplinary proceeding. In support, Stanley cites Colorado's rules governing judicial disqualification and the Due Process Clauses of the United States and Colorado Constitutions.

¶15 "We examine the disqualification issue de novo." *People v. Julien*, 47 P.3d 1194, 1197 (Colo. 2002).

¶16 Before presenting additional background and analysis, we acknowledge that this case presents a close call on whether the PDJ should have recused himself. On these unique facts, however, we conclude that disqualification from the entirety of Stanley's case wasn't required.

1. Additional Background: Disqualification

¶17 Stanley initially moved to disqualify the PDJ during OARC's investigation and again during this proceeding, asserting allegations of bias and prejudice. The PDJ denied both motions. We address the allegations she raises on appeal.[3]

¶18 Most of Stanley's allegations arise from circumstances that occurred before Large was appointed as PDJ in June 2022. For consistency, we refer to Judge Large throughout this opinion as the "PDJ," including when referencing his activities before he was appointed to that office.

¶19 Stanley alleges that the following facts establish a high likelihood that the PDJ has actual bias against her.

¶20 *First*, the PDJ formerly worked as assistant regulation counsel for OARC where, as Stanley describes it, he "investigated and aggressively prosecuted" Stanley in a previous two-year-long attorney discipline matter concerning her improper withdrawal from a client's case when she was in private practice. That matter culminated in 2018 with Stanley's stipulation to a public censure.

[3] Stanley made several additional arguments in her earlier motions for disqualification that she doesn't raise on appeal. We deem those arguments abandoned, so we will not address them. *See People v. Smith*, 2024 CO 3, ¶ 18, 541 P.3d 1191, 1195 ("Abandonment . . . typically arises from a party's decision not to pursue or reassert a claim that the party had raised previously.").

¶21 *Second*, while at OARC, the PDJ was a colleague of the lead prosecutor in Stanley's current disciplinary proceeding, Erin Robson Kristofco, for four years. And, the PDJ was supervised throughout Stanley's prior disciplinary matter by the head of OARC, Jessica E. Yates, who also participated directly in Stanley's current disciplinary proceeding.

¶22 *Third*, Stanley argues that a material relationship between the prior disciplinary matter and the present proceeding was created because the Board majority weighed the public censure as an aggravating factor when deciding her sanction in the present case—though the PDJ recused himself from deciding that part of the sanction. Stanley argues this material relationship necessitated the PDJ's recusal, so his votes in the current proceeding should either be discounted or a new disciplinary hearing should be held with a different board and PDJ. It is this third argument that creates the "close call" in this case, as we discuss below.

2. Code of Judicial Conduct and Rules of Civil Procedure

¶23 Stanley first argues that Colorado's rules governing judicial disqualification required the PDJ's disqualification. We disagree.

¶24 Disqualification of a PDJ is governed by several intersecting canons, statutes, and rules. The Colorado Rules of Civil Procedure provide that, in attorney discipline matters, the PDJ "must refrain from taking part in a proceeding in which a similarly situated judge would be required to disqualify."

C.R.C.P. 242.6(d). Further, "[a] judge shall be disqualified in an action in which" the judge "is interested or prejudiced, or has been of counsel for any party." C.R.C.P. 97.

¶25 The Colorado Code of Judicial Conduct ("C.J.C.") imposes additional requirements. It states that "[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." C.J.C. 1.2. The provision of the Code most relevant here requires a judge to disqualify himself "in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to" instances when "[t]he judge has a personal bias or prejudice concerning a party . . . or personal knowledge of facts that are in dispute in the proceeding," C.J.C. 2.11(A)(1), or when the judge "served as a lawyer in the matter in controversy," C.J.C. 2.11(A)(5)(a).

¶26 To support disqualification, the moving party must "'state facts from which it may reasonably be inferred that the judge has a bias or prejudice that will prevent [the judge] from dealing fairly' with the party seeking recusal." *Johnson v. Dist. Ct.*, 674 P.2d 952, 956 (Colo. 1984) (quoting *People v. Botham,* 629 P.2d 589, 595 (Colo. 1981)). Mere "opinions or conclusions, unsubstantiated by facts supporting

a reasonable inference of actual or apparent bias or prejudice," are legally insufficient. *S.S. v. Wakefield*, 764 P.2d 70, 73 (Colo. 1988).

¶27 As we've noted in the criminal context, there's no "per se rule requiring disqualification in every instance in which a presiding judge, as a former prosecutor, brought unrelated . . . charges against the defendant in the past." *People v. Flockhart*, 2013 CO 42, ¶ 52, 304 P.3d 227, 238. Instead, we require the moving party to present "facts demonstrating some material relationship between the two proceedings, or facts showing that the past prosecution is relevant to the current case." *Id.*

¶28 We conclude that Stanley failed to demonstrate that the PDJ should have been disqualified from the entirety of her disciplinary proceeding.

¶29 To start, a judge's friendship or relationship with a former coworker or supervisor will warrant disqualification only if it is "so close or unusual that a question of partiality might reasonably be raised." *Schupper v. People*, 157 P.3d 516, 520 (Colo. 2007). The mere fact of having been coworkers, without evidence of more, doesn't rise to this level. *See id.*

¶30 And while we agree with Stanley's argument on appeal that the Board's consideration of her prior public censure as an aggravating factor in her sanction in *this* case created a material relationship between the two proceedings, *see Flockhart*, ¶ 52, 304 P.3d at 238, the PDJ abstained from that part of the Board's

sanction. Caloia and Harper had sole discretion to decide whether to consider Stanley's prior discipline as an aggravating factor and what weight, if any, to give it. Moreover, that earlier proceeding was not factually connected to the merits of this one. *See id.* at ¶¶ 50, 53, 304 P.3d at 238–39.

¶31 Therefore, we conclude that the PDJ didn't violate Colorado's rules governing judicial disqualification by refusing to disqualify himself from the entire proceeding.

3. Due Process

¶32 Stanley next argues that the Due Process Clauses of the United States and Colorado Constitutions required the PDJ's disqualification. We disagree.

¶33 The Due Process Clause of the United States Constitution requires "a fair trial in a fair tribunal." *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876 (2009) (alteration omitted) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)); *see also* U.S. Const. amend. XIV, § 1. The Colorado Constitution's Due Process Clause guarantees the same, Colo. Const. art. II, § 25, and both constitutions require recusal "when the judge has 'a direct, personal, substantial, pecuniary interest' in" the case, *Sanders v. People*, 2024 CO 33, ¶¶ 27–28, 549 P.3d 947, 952 (quoting *Caperton*, 556 U.S. at 876).

¶34 "To ensure a fair trial before an impartial judge," both constitutions employ "an objective standard that asks 'not whether a judge harbors an actual,

subjective bias, but instead whether, as an *objective* matter, "the average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias.'"'" *Id.* at ¶ 29, 549 P.3d at 952 (quoting *Williams v. Pennsylvania*, 579 U.S. 1, 8 (2016)). Allegations of bias must be more than "merely theoretical." *Id.* at ¶ 36, 549 P.3d at 953.

¶35 Here, Stanley's assertion of a risk of bias is merely theoretical. She argues that the PDJ's past employment with OARC and his previous prosecution of her prejudiced him against her. But the facts she avers do not indicate that the PDJ had a "direct, personal, substantial, or pecuniary interest" in Stanley's current case, *id.*, nor do they raise an objective potential for bias. And regarding the PDJ's potential interest in Stanley's prior discipline, the PDJ didn't participate in the Board's decision to consider that aggravating factor in its sanction here.

¶36 For these reasons, we conclude that the PDJ didn't violate Stanley's right to due process by declining to recuse himself from her current disciplinary proceeding in its entirety.

B. Supervision in the Morphew Case

¶37 The Board determined that Stanley violated Colo. RPC 5.1(b) based on her handling of the Morphew Case. Rule 5.1(b) requires that a lawyer who has "direct supervisory authority over another lawyer shall make reasonable efforts to ensure

that the other lawyer conforms to the Rules of Professional Conduct." Before diving into Stanley's challenges, we first provide additional background.

1. Additional Background: Supervision of the Prosecution Team

¶38 The prosecution of the Morphew Case was fraught with discovery obstacles, procedural errors, and staffing challenges.

¶39 The prosecution team struggled to provide appropriate and timely discovery. When Barry Morphew was arrested in May 2021, the Chaffee County Sheriff's Office ("CCSO") sent a substantial quantity of disorganized data from its investigation to Stanley's office. Because Crim. P. 16 requires the prosecution to provide the defense with discovery within twenty-one days of receipt, Stanley's office simply provided the data to the defense in the condition in which it received it. This later created confusion because the discovery lacked customary page numbering, commonly known as Bates labeling. The confusion grew worse as more discovery poured in. And in July 2021, Chief Judge Patrick Murphy (the first judge to preside over the Morphew Case) found that the prosecution had committed multiple discovery violations.

¶40 By the time the prosecution submitted their expert disclosures in February 2022, Judge Lama was presiding over the case. Judge Lama found, and the prosecution conceded, that the prosecution's expert disclosures didn't comply with Crim. P. 16 or the case management order. In March 2022, Judge Lama

excluded several prosecution expert witnesses as a sanction for a pattern of discovery violations. The pattern continued, and Judge Lama ultimately excluded most of the prosecution's expert witnesses.

¶41 Although Stanley and others worked to recruit experienced personnel to work on the case, the prosecution's roster changed significantly over the course of the Morphew Case:

- At the outset, Senior Deputy DA Jeffrey Lindsey served as lead counsel with the assistance of one subordinate deputy DA. Lindsey, who'd been a prosecutor since 1997, also ran the Chaffee County felony docket during this time. He resigned from the DA's office in October 2021, later citing Stanley's lack of support and involvement as the Morphew Case ballooned. Stanley didn't designate a new team lead.
- In June 2021, Stanley asked Tom Raynes, executive director of the Colorado District Attorneys' Counsel ("CDAC"), for support, but that was initially fruitless. Raynes suggested Stanley look for help from current and former prosecutors.
- In July, Mark Hurlbert (a former elected DA in the Fifth Judicial District) agreed to join the team. At the time, he handled correctional facility homicide cases for the Eleventh Judicial District on a contract basis.

Hurlbert had worked for nearly thirty years as a prosecutor and had tried approximately twenty first-degree-murder cases.

- In August, Daniel Edwards (a former assistant attorney general, deputy DA, public defender, and magistrate) joined the team as its motions attorney. Edwards had just retired from the Attorney General's Office where he worked in the homicide assistance unit of the criminal justice section. Edwards had practiced criminal law for over four decades, including two decades as a prosecutor, and had tried around sixty homicide cases. Edwards resigned in February 2022, citing, in part, frustration with the prosecution team.
- In October, Stanley and Raynes arranged for personnel from the Fourth Judicial DA's Office to help organize discovery.
- In November, Stanley hired Robert Weiner to assist the prosecution team part time. Weiner had been a prosecutor for the First Judicial District for twenty years before joining a law firm.
- Lastly, in March 2022, Stanley and Raynes persuaded the Eighteenth Judicial District to lend Deputy DA Grant Grosgebauer to the Morphew Case. Grosgebauer had worked in that judicial district since 2016 and had participated in multiple first-degree-murder prosecutions.

¶42 Notwithstanding the combined experience of this team, the discovery and expert-disclosure issues festered. In April 2022, Stanley moved to dismiss the charges against Barry Morphew without prejudice, explaining, in part, that the exclusion of critical expert testimony prevented the prosecution from ethically moving forward with the case.

¶43 At Stanley's disciplinary hearing, the Board considered testimony from career prosecutor Stan Garnett on the Rule 5.1(b) violation. Garnett opined that, in supervising the Morphew Case prosecution team, Stanley failed to (1) ensure that the early discovery issues were remedied; (2) designate lead counsel after Lindsey's departure, causing "chain of command confusion"; and (3) remedy the expert-witness-endorsement issues, which were "fundamental" to the case.

2. Violation of Colo. RPC 5.1(b)

¶44 The Board majority largely adopted Garnett's list of shortcomings. The majority found that, although not every team needs a single lead counsel, Stanley failed to provide accountability or to clearly delineate spheres of responsibility. These failures, the majority concluded, constituted a violation of Rule 5.1(b).

¶45 Stanley makes two counterarguments. First, she argues that she put together a team of experienced prosecutors to handle the Morphew Case. Second, she asserts that the majority's determination that she violated Rule 5.1(b) was

based on the prosecution team's discovery and expert-disclosure violations under Crim. P. 16, not on any violation of the Rules of Professional Conduct.

¶46 We conclude that Stanley didn't violate Rule 5.1(b) and agree with the reasoning of Board Member Caloia in her dissent as to this claim. Caloia noted that Stanley, by her own admission, was relatively inexperienced in the prosecution of serious felonies, and the Morphew Case was her first high-profile murder case. So, Stanley put capable, experienced attorneys in charge of prosecuting the Morphew Case and then relied on them to do their jobs. Moreover, the problems that plagued the prosecution "were items that were attended to by all of the lawyers involved." We agree that neither the prosecution's discovery and expert-disclosure issues nor the team's failure to resolve these issues to the trial court's satisfaction amounted to ethical deficiencies on Stanley's part.

¶47 Although Garnett explained how Stanley, as the elected DA, could have more effectively supervised the prosecution of this complex murder case, Rule 5.1(b) doesn't require superior leadership. Instead, it simply requires that a supervising attorney make "reasonable efforts to ensure" that the lawyers she supervises are adhering to the Rules of Professional Conduct. And here, the Board failed to properly account for Stanley's recruitment of highly experienced prosecutors for this team. Stanley reasonably delegated the day-to-day case

management to those attorneys, each of whom had significant experience litigating serious felonies and, therefore, the ability to meet their ethical obligations under the rules. Stanley also recruited additional personnel to help manage the large volume of discovery, which should have further facilitated the subordinate lawyers' compliance with the rules.

¶48 This is not to say that recruiting experienced counsel and other assistance removed her supervisory duties. Rather, Stanley's actions constituted reasonable efforts to ensure that the day-to-day case management would be handled properly by seasoned prosecutors. True, Stanley could have, and perhaps should have, done more to guide the team once she became aware of the magnitude of certain problems. But the highly qualified team she put in place also had an obligation to organize themselves effectively and should have been able to navigate the day-to-day challenges presented even by this complex case.

¶49 Thus, we reverse the PDJ's determination that Stanley violated Colo. RPC 5.1(b). Stanley exhibited a lack of experience and a failure to rise to the challenge as well as others might have, but those shortcomings did not constitute a violation of Rule 5.1(b). Consequently, we need not address Stanley's additional challenges to the Board's conclusion that she violated Rule 5.1(b).[4]

[4] In her appeal, Stanley argues that it was error for the PDJ to prohibit her proffered expert witness, Matthew Durkin, to testify in her defense as to the Rule 5.1(b) violation. Assuming without deciding that Stanley is correct, we do not address

C. Investigation into Judge Lama

¶50 The Board found that Stanley's investigation into Judge Lama, based on unfounded rumors of prior domestic abuse, violated Colo. RPC 8.4(a) and (d). Stanley contends that the evidence was insufficient to support this finding. She also contends that the Board should have dismissed the claim alleging these violations because enforcing these rules violates the separation-of-powers doctrine and because the rules are unconstitutionally vague as applied to her decision to investigate Judge Lama. Lastly, she asserts in the alternative that, because the claim presents an issue of first impression, she shouldn't be sanctioned for her violation.

¶51 Again, some additional background will be helpful before we address the merits of her challenges.

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this issue because we reverse the Board's finding of a Rule 5.1(b) violation for other reasons.

Likewise, Stanley argues that it was error for the PDJ to limit the cross-examination of Judge Lama at the disciplinary hearing about his adverse rulings in the Morphew Case. Stanley asserts that this testimony was also relevant to her defense of the Rule 5.1(b) claim. Again, we need not address this issue because Stanley prevails on her Rule 5.1(b) claim anyway. The only other basis Stanley raises for this line of questioning is that it was relevant to Judge Lama's credibility. However, the PDJ permitted Stanley's attorney to thoroughly cross-examine Judge Lama on a broad range of topics, providing ample opportunity for the panel to properly assess the witness's credibility. Therefore, we perceive no abuse of discretion.

1. Additional Background: Investigation into Judge Lama

¶52 The Morphew Case prosecution team viewed Judge Lama's adverse discovery and expert-disclosure rulings as serious setbacks. The team was also upset that Judge Lama excluded any evidence of domestic violence.

¶53 After a hearing in which Judge Lama granted a motion to exclude several of the prosecution's expert witnesses, Hurlbert stated in the team's group text that Judge Lama was "messing with us again." Two days later, Stanley texted the group a link to a change.org petition that called for an investigation into and removal of Judge Lama from the Morphew Case because Judge Lama had excluded "any testimony regarding Domestic Abuse/Violence," and because Judge Lama's former spouse was "an advocate of Suzanne Morphew and victims of Domestic abuse" and belonged to the same gym as Barry Morphew. In response, Hurlbert suggested moving to recuse Judge Lama. Stanley agreed, texting that she wasn't sure of the validity of the petition's content, but she'd "heard this rumor before," and "it could DEFINITELY explain why [Judge Lama] hates us so much." Another attorney responded that they should "go after him! . . . We need to confirm asap." Stanley told the group she would "get an investigator on it," but cautioned that "[a]nyone can start a petition [on change.org]. So[,] we don't know if any of it is true. The only way to know is to talk to his ex-wife."

¶54 The team was also aware that Judge Lama's former spouse was a board member of the Alliance Against Domestic Abuse; was an advocate of missing persons, including Suzanne Morphew; and knew Barry Morphew's then-girlfriend.

¶55 Stanley and Weiner asked CCSO Commander Alex Walker if he had an employee who could investigate an allegation of prior domestic abuse by Judge Lama. Walker refused. He later testified that he encouraged Stanley to use an independent investigator for this purpose. Stanley then asked Kirby Lewis at the Colorado Bureau of Investigation ("CBI"), who also declined. Lewis told Stanley that the CBI didn't want to invite the appearance of a conflict given that it was already heavily involved in the Morphew Case.

¶56 Finally, Stanley instructed Andrew Corey, a criminal investigator for her office, to interview Judge Lama's former spouse to see whether Judge Lama had mentioned anything that would bias him in the Morphew Case and whether there had been domestic abuse in their relationship. Corey met with Judge Lama's former spouse for about twenty to thirty minutes at her workplace. She informed Corey that Judge Lama was always highly professional, never discussed the Morphew Case, and never engaged in any type of domestic abuse. After Corey's interview, Stanley texted her team that there was "[n]othing there"; the allegations

were "[a]ll rumors"; and the investigation was "a no-go," to which Hurlbert responded, "Bummer."

¶57 A few days later, Judge Lama learned from his former spouse that someone in law enforcement had approached her for an interview and had questioned her about him, their marriage, whether he was abusive, and whether he had talked to her about the Morphew Case. Judge Lama was concerned that the interview was connected to a conspiracy theorist who'd made a threatening YouTube video. It wasn't until after Judge Lama granted the motion to dismiss the Morphew Case that he learned it was Stanley, rather than someone connected to the threatening YouTube video, who'd orchestrated the interview.

2. Violation of Colo. RPC 8.4(a) and (d)

¶58 Rule 8.4(a) provides that "[i]t is professional misconduct for a lawyer to . . . violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another." And Rule 8.4(d) prohibits lawyers from "engag[ing] in conduct that is prejudicial to the administration of justice."

¶59 In considering whether an attorney's conduct violates these rules, we may consult the American Bar Association's ("ABA") Standards for Criminal Justice. *See In re Att'y C*, 47 P.3d 1167, 1171 (Colo. 2002) (relying on the ABA Standards for Criminal Justice, Crim P. 16, and Colo. RPC 3.8(d) in adopting a materiality

standard for a Rule 3.8(d) violation); *Domingo-Gomez v. People*, 125 P.3d 1043, 1049 (Colo. 2005) (relying in part on the ABA Standards for Criminal Justice to analyze a prosecutor's alleged misconduct during closing arguments). Those standards advise prosecutors to "protect against the use of false allegations as a means of harassment or abuse that may impact the independence of the judiciary" and to investigate judicial officers only on a "reasonable belief" that the judicial officer "has engaged in criminal conduct." ABA Standards for Criminal Justice: Prosecutorial Investigations § 26-3.2(a), (d) (Am. Bar Ass'n, 3d ed. 2014) ("Prosecutor Standards"). They also advise prosecutors to take "reasonable steps to assure the independence of any investigation of a judge before whom the prosecutor's office practices." *Id.* at § 26-3.2(f).

¶60 The Board majority concluded that Stanley violated Colo. RPC 8.4(a) and (d). It reasoned that she did so by engaging a subordinate to investigate unfounded rumors that Judge Lama had domestically abused his former spouse. More specifically, the Board majority found that Stanley attempted to prevent Judge Lama from continuing to preside over the Morphew Case because Stanley didn't like his rulings in that case.

¶61 For several reasons, we agree that Stanley violated Rule 8.4(a) and (d).

¶62 *First*, the change.org petition didn't supply a reasonable belief that Judge Lama had engaged in criminal activity or had a conflict of interest that warranted

investigation. Stanley even acknowledged as much in the text exchange with her team, noting that the petition was created by a YouTuber who was unlikely to be a "credible source." Stanley didn't provide any other basis for the investigation. Rather, it appears her decision to launch the investigation was prompted by Judge Lama's adverse rulings and a desire to oust him.

¶63 *Second*, Stanley's use of an investigator from her own office created the appearance of attempting to influence or intimidate Judge Lama. Stanley even admitted at her disciplinary hearing that using her own office for the interview could "appear somewhat malicious or devious." Former Colorado Attorney General John Suthers, testifying as an expert for OARC, opined that a prosecutor must show "complete independence" when investigating a judge presiding over an open case. Suthers also testified that CDAC has a process for Colorado prosecutors to follow in such circumstances, which includes appointment of a special prosecutor. Stanley never contacted CDAC nor consulted the Prosecutor Standards despite knowing that these resources were available.

¶64 *Third*, Stanley was on notice that the investigation could prejudice the administration of justice when CCSO Commander Walker refused to investigate because he believed there was no merit to the rumor, and she was again on notice when the CBI refused because it was worried about an appearance of impropriety.

¶65 Thus, we affirm the Board's determination that Stanley engaged in conduct prejudicial to the administration of justice through a subordinate, violating Rule 8.4(a) and (d).

3. Constitutionality of the Rules

¶66 We review de novo the constitutionality of the Rules of Professional Conduct. *See In re Estate of Rabin*, 2020 CO 77, ¶ 16, 474 P.3d 1211, 1216.

a. Separation of Powers

¶67 Stanley contends that her decision to interview Judge Lama's former spouse was within her prosecutorial discretion, so her decision was protected by the separation-of-powers doctrine. We disagree.

¶68 The Colorado Constitution divides state government into legislative, executive, and judicial departments. Colo. Const. art. III. Those charged with the exercise of power belonging to one department "shall [not] exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted." *Id.*

¶69 District attorneys are members of the executive branch. *People v. Dist. Ct.*, 527 P.2d 50, 52 (Colo. 1974). They have "broad discretion 'to determine who shall be prosecuted and what crimes shall be charged,'" and these decisions "'may not be controlled or limited by judicial intervention.'" *People in Int. of J.A.L.*, 761 P.2d 1137, 1139 (Colo. 1988) (quoting *People v. Dist. Ct.*, 632 P.2d 1022, 1024 (Colo. 1981)).

¶70 Even so, "[t]he regulation of attorneys is within this court's exclusive domain: 'Article VI of the Colorado Constitution grants the Colorado Supreme Court jurisdiction to regulate and control the practice of law in Colorado.'" *Coffman v. Williamson*, 2015 CO 35, ¶ 44, 348 P.3d 929, 941 (quoting *Unauthorized Prac. of Law Comm'n v. Grimes*, 654 P.2d 822, 823 (Colo. 1982)); *see also* Colo. Const. art. VI, § 21. And *all* attorneys authorized to practice law in Colorado are "governed by the Rules Governing the Practice of Law, including the Colorado Rules of Professional Conduct." C.R.C.P. 242.1(b).

¶71 So, while a prosecutor's decisions regarding whom to prosecute are an exercise of executive branch authority, those decisions remain circumscribed by the ethical rules promulgated by this court. *See In re Pautler*, 47 P.3d 1175, 1179, 1182 (Colo. 2002). And a prosecutor's "responsibility to enforce the laws in [her] judicial district grants [her] no license to ignore . . . the Code of Professional Responsibility." *People v. Reichman*, 819 P.2d 1035, 1039 (Colo. 1991).

¶72 This is not to say that the judicial branch could never violate the separation-of-powers doctrine by intervening in a DA's decisions. For example, we've held that "a judge does not have the power to charge an individual with violation of a criminal statute." *J.A.L.*, 761 P.2d at 1139. Similarly, a prosecutor's choice of charges is protected from judicial intervention. *People v. Lovato*, 2014 COA 113, ¶ 46, 357 P.3d 212, 224. But prosecutors may not exercise their prosecutorial

discretion *in a manner* that violates the Rules of Professional Conduct. *See, e.g.*, *Pautler*, 47 P.3d at 1176, 1182; *Reichman*, 819 P.2d at 1039.

¶73 Here, the Board's conclusion that Stanley violated Rule 8.4(a) and (d) by launching the investigation into Judge Lama was an exercise of the judiciary's authority to regulate attorney conduct, not an encroachment on a prosecutor's executive-branch authority to make prosecutorial decisions in criminal cases. Thus, the Board's determination didn't violate the separation-of-powers doctrine.

b. Vagueness

¶74 Stanley contends that Colo. RPC 8.4(a) and (d) are unconstitutionally vague as applied here because the language of the rules doesn't provide fair notice that Stanley's decision to investigate Judge Lama was prohibited. We disagree.

¶75 "Because disciplinary rules are promulgated for the purpose of guiding lawyers in their professional conduct, 'the central consideration in resolving a vagueness challenge should be whether the nature of the proscribed conduct encompassed by the rule is readily understandable to a licensed lawyer.'" *In re Kleinsmith*, 2017 CO 101, ¶ 33, 409 P.3d 305, 310–11 (quoting *People v. Morley*, 725 P.2d 510, 516 (Colo. 1986)). If the rule clearly applies to the challenger's conduct, the challenge must fail. *Bd. of Educ. v. Wilder*, 960 P.2d 695, 704 (Colo. 1998).

¶76 The language of Rule 8.4(d) encompasses a broad range of misconduct. And although it doesn't precisely detail all conduct that could be prejudicial to the administration of justice, a licensed attorney would readily understand that the rule prohibits a DA from investigating a judge who is presiding over a matter that the DA's office is prosecuting—without a reasonable belief that the judge had engaged in criminal wrongdoing—with the goal of disqualifying the judge from that case. Rule 8.4(a) also clearly prohibits a lawyer from violating the rules through the actions of another, as Stanley did when she instructed her office's investigator to interview Judge Lama's former spouse. We therefore hold that Colo. RPC 8.4(a) and (d) aren't unconstitutionally vague as applied to Stanley's conduct.

4. First Impression

¶77 In the alternative, Stanley asks us to refrain from imposing a sanction if we affirm the Board's conclusion that she violated Colo. RPC 8.4(a) and (d) because enforcing the rules in this scenario presents a matter of first impression. However, as OARC points out, the PDJ has found misconduct under Rule 8.4(d) in a range of circumstances, and while none of those circumstances were identical to Stanley's, application of the rule here doesn't present an issue of first impression. *See People v. Chambers*, 154 P.3d 419, 423, 427–28 (Colo. O.P.D.J. 2006) (finding a Rule 8.4(d) violation when the DA interfered in a civil collections suit by calling a

party and implying that her office had an interest in the case); *People v. Trogani*, 203 P.3d 643, 652 (Colo. O.P.D.J. 2008) (finding a Rule 8.4(d) violation when criminal defense counsel engaged in "judge shopping" by making misleading statements to one judge about the status of a case before another judge); *People v. Raines*, 510 P.3d 1089, 1096 (Colo. O.P.D.J. 2022) (finding Rule 8.4(d) violations when an assistant DA attempted to sabotage a plea deal and requested a warrant for the defendant's failure to appear despite knowing the defendant misunderstood the obligation).

¶78 Moreover, Stanley's reliance on our holding in *Attorney C* to support her first-impression argument is misplaced. In *Attorney C*, we explained for the first time that (1) Colo. RPC 3.8(d) requires a prosecutor to disclose exculpatory evidence before *any* critical stage and (2) to violate the rule, the prosecutor must have acted with intent. 47 P.3d at 1174. We declined to impose sanctions in that case "because the rule was unclear [and so the attorney] could not have had an intent to withhold the evidence" before the critical stage at issue. *Id.*; *see also In re Sather*, 3 P.3d 403, 415–17 (Colo. 2000) (concluding that sanctions weren't warranted because (1) we hadn't previously clarified that the rule applied to the specific type of client funds at issue and (2) the attorney didn't *knowingly* fail to comply with that requirement).

¶79 But here, in determining that Stanley violated Rule 8.4(d) by authorizing the investigation into Judge Lama, the Board didn't articulate a novel standard or broaden the scope of the rule. Rule 8.4(d) is clear as applied to Stanley's conduct. Stanley attempted to change the outcome of the Morphew Case by interfering with a judge's personal life, conduct that falls squarely under Rule 8.4(d)'s prohibitions. And Stanley's use of her office's investigator to violate Rule 8.4(d) squarely violates Rule 8.4(a)'s prohibition on violating the rules through the acts of another. Therefore, we reject Stanley's first-impression argument.

D. Appropriateness of the Sanction

¶80 Finally, we turn to Stanley's challenge to the Board-imposed sanction of disbarment. Despite our decision to reverse the Board in part, we affirm the sanction.

1. Additional Background: Extrajudicial Statements

¶81 Stanley doesn't appeal the Board's determination that she violated Colo. RPC 3.6(a) and Colo. RPC 3.8(f). Nonetheless, because these violations factor into the appropriateness of the sanction, we discuss them here.

¶82 Rule 3.6(a) prohibits an attorney from making extrajudicial statements they know or reasonably should know will be publicly disseminated and "will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter" related to matters that they are or were investigating or litigating.

Rule 3.8(f) prohibits a prosecutor from making extrajudicial statements "that have a substantial likelihood of heightening public condemnation of the accused," unless those statements "are necessary to inform the public of the nature and extent of the prosecutor's action and . . . serve a legitimate law enforcement purpose."

¶83 The Board determined that Stanley violated one or both of these rules in four instances.

a. The Press Conference

¶84 After Barry Morphew was arrested in May 2021, Stanley appeared at a press conference. When a journalist asked whether Barry Morphew was cooperating with the investigation and whether he was questioned about the location of his wife's body, Stanley responded: "[Barry Morphew] was taken into custody and when asked questions he said he wanted a lawyer and all questioning ended."

¶85 The Board determined that this statement violated both Rule 3.6(a) and Rule 3.8(f).

b. Messages with Mike King

¶86 Around the time of her election, Stanley began communicating with Mike King, host of the YouTube show, "Profiling Evil." The show's purpose is to expose predatory behaviors and educate people about how predators select victims. The two built a friendly relationship. In the summer of 2021, King privately messaged

Stanley, "I have a new video coming on Barry [Morphew] and I laud you. . . . You good?" Stanley replied, "I'm great! Thanks!! We got him. No worries." King never published these messages.

¶87 The Board concluded that Stanley's statement, "We got him. No worries," violated Rule 3.8(f).

c. "Profiling Evil": Appearance and Public Comments

¶88 On August 30, 2021, shortly after a preliminary hearing in the Morphew Case, Stanley appeared on an episode of King's "Profiling Evil" show. In the episode, Stanley discussed various procedural and technical issues in the Morphew Case. She also voiced irritation that some of King's audience members questioned whether there was probable cause to arrest Barry Morphew.

¶89 After the show, Stanley publicly responded in the comment section to a number of those audience members, many of whom she demeaned or personally attacked. One commenter, with the username @Gian-Luc Brasseur, questioned the strength of the prosecution's case against Barry Morphew and suggested Stanley drop the case until better evidence was found. Stanley publicly posted her reply to @Gian-Luc Brasseur's comment, writing:

> [T]he judge explained why he was going to take time with it. He actually should because there was a lot of evidence admitted. I'm curious how long you've been a criminal law attorney since you like to think that you know it. Look this up: Dante Lucas. Convicted in Pueblo, Colorado (right next to my jurisdiction) less than a year ago for First Degree Murder!! Guess what?? No DNA. No Body, No

> murder weapon, No "smoking gun" as you say. But here's the clincher! He was the last one to see Kelsey alive!! And Barry [Morphew] was the last one to see Suzanne [Morphew] alive (as we stated in the prelim). Those items you listed may be important to you, but not for others[.] (PS Dylan Redwines [sic] father was also just recently convicted of first degree murder in the death of his son. Same scenario. Didn't have any of the laundry list of items that you think are required for a conviction.[)] I can come up with plenty more. Just let me know.

Due in part to these statements, Judge Lama granted defense counsel's motion to change the trial venue from Chaffee County to Fremont County. Stanley later testified about this comment, reasoning that she was entitled to defend herself from personal attacks and that she posted as a private citizen and not as the elected DA.

¶90 The Board concluded that Stanley's comment to @Gian-Luc Brasseur violated both Rule 3.6(a) and Rule 3.8(f).

d. KRDO Interview

¶91 The following year, in July 2023 when Stanley was working on the Jacobs and Crawford Cases, KRDO investigative reporter Sean Rice approached her and requested an interview. Stanley agreed, and they talked off the record in her office for about an hour.

¶92 After the initial hour, Stanley agreed to be recorded, and Rice's colleague set up a tripod and video camera. Stanley accepted a wireless microphone, which she

clipped to her lapel. The recorded portion of the interview was just under thirty minutes.

¶93 The footage began with Stanley reading from Jacobs's juvenile record on her computer, commenting that Jacobs had "fondled" his own mother as a juvenile and had an "awful" and "violent past," which included assaults and incarceration. Stanley noted that Jacobs was currently twenty-two and had committed this juvenile offense in 2017, "so if you do the math." (The Board later interpreted these remarks as Stanley implying that Jacobs was quite young at the time of the juvenile offense.)

¶94 Stanley then opined on Crawford's motives and character, wondering how a mother could leave her baby with someone she allegedly had just met. Stanley remarked that she wouldn't let anyone meet her children, and that if someone had touched her children, she would "have went and killed them." Stanley also remarked that Jacobs had recently been released from police custody, predicting: "He's gonna be gone. He knows what's going on. He's no dummy to this process and what's happening, and he knows what he did."

¶95 KRDO aired a story on August 1, 2023, with video clips of Stanley's interview, citing "explosive new details." The story included the following transcript:

> Rice: Hey Bart, twenty-one-year-old Williams, William Jacobs is accused of shaking and killing a baby he was watching

inside a Motel 6 room in May. District Attorney Linda Stanley says she feels so strongly about this case she is tapping herself as the lead prosecutor in the case of a baby death she says was completely avoidable.

Stanley: I think she saw a live-in babysitter. Now she can just really pound out the hours, right? She's got a live-in babysitter now. She doesn't have to worry about anything, right?

Rice: District Attorney Linda Stanley is speaking about Brooke Crawford, the Cañon City mom charged with child abuse resulting in death. Her ten-month-old son, Edward, was left in the care of William Jacobs back in May. Police say Jacobs told detectives he shook and slapped the baby on the back to get him to breathe.

Stanley: I just had so many buzzers going off when they said the boyfriend was watching him.

Rice: While police investigated the case, the baby died at Children's Hospital. That's when DA Stanley's office upgraded Jacobs's child abuse charges to first degree murder.

Stanley: There's no witnesses. There's no nothing. There's . . . a whole lot of things indicative of prior—a prior incident with that baby.

Rice: Prior abuse that Stanley says is the direct result of Jacobs having direct access to a child he didn't care about. She says the pair moved into a Motel 6 room together mere days after meeting one another. The DA tells 13 Investigates the criminal evidence points to a relationship where the child was not their first priority.

Stanley: Without the caring factor, without the love factor, then it's—the baby's a pain in the ass.

Rice: The DA says just before the baby was killed, Jacobs had been released from a youth correctional facility. She says

> Jacobs was previously convicted of a sex crime and assault.
>
> Stanley: I mean, I'm going to be very blunt here. He has zero investment in this child. Zero. He is watching that baby so he can get laid. That's it. And have a place to sleep. I'm sorry to be that blunt, but honest to God that's what's going on.

KRDO posted an accompanying written article on its website entitled, "Fremont Co. District Attorney believes accused baby killer got with baby's mom just to 'get laid.'"

¶96 Stanley later testified that when she learned of the KRDO story the day after it aired, she was horrified, shocked, and felt sick to her stomach, and she authorized her attorney to contact Rice to tell him the conversation was off the record. At her disciplinary hearing, Stanley insisted that her statements were made off the record, that she was entitled to make those statements off the record without violating any Rules of Professional Conduct, and that her statements were only likely to heighten the condemnation of Jacobs or Crawford if they were made public. On December 18, more than 160 days after the story aired and more than a month after OARC filed its complaint against Stanley, Stanley contacted Rice to ask him to take the video and article off the website.

¶97 As a result of these comments, the presiding judges over the Crawford and Jacobs Cases independently granted defense counsels' motions to dismiss under the doctrine of outrageous governmental conduct.

¶98 The Board determined that Stanley's statements to KRDO violated both Rule 3.6(a) and Rule 3.8(f).

2. The Board's Sanctions Analysis

¶99 A disciplinary board "always has discretion in determining the appropriate sanction for attorney misconduct," *In re Att'y F.*, 2012 CO 57, ¶ 15, 285 P.3d 322, 325, and should consider the appropriate sanction on a case-by-case basis, *id.* at ¶¶ 18–20, 285 P.3d at 326–27. Still, "we have consistently recognized the ABA Standards . . . as the guiding authority for selecting the appropriate sanction to impose for lawyer misconduct." *In re Roose*, 69 P.3d 43, 46–47 (Colo. 2003); *see also* Annotated Standards for Imposing Lawyer Sanctions (Ellyn S. Rosen, ed., Am. Bar Ass'n, 2d ed. 2019) ("ABA Standards"). The ABA Standards recommend that, once misconduct has been established, a board considering what sanction to impose should examine "(a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors." ABA Standards § 3.0. The Board did so here.

¶100 *First*, the Board considered which duties Stanley had violated. It determined that Stanley's extrajudicial statements were "in derogation of her duties to the legal system" and a misuse of her public office. The Board further

concluded that Stanley "violated her duties to the legal system by launching an investigation of Judge Lama."

¶101 *Second*, the Board considered Stanley's mental state as to each violation. It concluded that Stanley acted:

- negligently under Rules 3.6(a) and 3.8(f) during the press conference after the arrest of Barry Morphew;
- knowingly under Rules 3.6(a) and 3.8(f) in her text to King: "We got him. No worries";
- knowingly under Rule 3.8(f) and recklessly under Rule 3.6(a) during the KRDO interview;
- intentionally under Rules 3.6(a) and 3.8(f) in her response to @Gian-Luc Brasseur;
- knowingly under Rule 8.4(a) and (d) for "fail[ing] to ensure that the interview of [Judge Lama's former spouse] did not create the appearance that the district attorney's office was attempting to influence or intimidate Judge Lama"; and
- intentionally under Rule 8.4(a) and (d) "by trying to find reasons to remove Judge Lama from the Morphew [C]ase."

¶102 *Third*, the Board described the harm that resulted from these violations, finding that Stanley's derogatory remarks about the Crawford and Jacobs Cases

"inflicted significant reputational harm on the defendants," violated the defendants' due process rights, and harmed Coloradans because they led to the dismissal of both cases. Stanley's extrajudicial statements in the Morphew Case imperiled Barry Morphew's constitutional right to an impartial jury and harmed Chaffee County citizens when, based on these remarks, the trial was transferred to Fremont County, depriving Chaffee County citizens of the opportunity to adjudicate the case and triggering a resource-intensive and logistically challenging venue move. The Board concluded that Stanley's extrajudicial statements in all three cases "seriously undermined the integrity of the criminal justice system and eroded public confidence in fair judicial proceedings."

¶103 The Board also reasoned that Stanley's conduct harmed the criminal justice system when she "directed her own employee to conduct a baseless investigation into the personal life of a judge who was slated to preside over" a high-profile trial her office was prosecuting. This conduct also "threatened to interfere with the integrity of the legal process" to gain an advantage in litigation and personally harmed Judge Lama.

¶104 Before turning to the fourth step—consideration of aggravating or mitigating factors—the Board reviewed the ABA Standards' presumptive sanctions. The Board determined that section 5.22 of the ABA Standards applied to Stanley's Rule 3.6(a) and Rule 3.8(f) violations. Section 5.22 states that

"[s]uspension is generally appropriate when a lawyer in a[] . . . governmental position knowingly fails to follow proper procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process." But the Board determined that Stanley's Rule 8.4(a) and (d) violations fell under section 5.21 of the ABA Standards, which recommends disbarment

> when a lawyer in a[] . . . governmental position knowingly misuses the position with the intent to obtain a significant benefit or advantage for [herself] or another, or with the intent to cause serious or potentially serious injury to a party or to the integrity of the legal process.

¶105 The Board began its analysis of whether the presumptive sanctions were appropriate in this case by considering disbarment, since "[t]he ultimate sanction imposed should at least be consistent with the sanction *for the most serious instance of misconduct* among a number of violations." Preface to the ABA Standards, at xx (emphasis added).

¶106 *Finally*, the Board then evaluated whether there were any aggravating or mitigating circumstances and the weight to give each. *See* ABA Standards § 9.1. While mitigating circumstances "may justify a reduction in the degree of discipline to be imposed," *id.* at § 9.31, aggravating circumstances "may justify an increase in the degree of discipline to be imposed," *id.* at § 9.21. The Board found the following eight aggravating circumstances and explained the weight it afforded each:

1. Stanley had been previously disciplined in 2018, which the Board gave "moderate aggravating weight."[5] *See id.* at § 9.22(a).
2. Some of Stanley's extrajudicial statements were fueled by selfish motives, which the Board gave "modest weight in aggravation." *See id.* at § 9.22(b).
3. Stanley engaged in a pattern of misconduct over two years, issuing several improper extrajudicial statements about open cases, despite repeated warnings from colleagues, judges, and others. *See id.* at § 9.22(c). The Board simply stated that this factor "aggravates [Stanley's] underlying behavior," without specifying the weight.
4. Stanley committed "three distinct types of misconduct" in the Morphew Case, which the majority gave "limited weight." *See id.* at § 9.22(d).
5. Stanley never acknowledged wrongful conduct; "recognize[d] that her actions exhibited poor judgment"; nor expressed any awareness of or concern about her conduct's effects on the Morphew, Crawford, and Jacobs Cases, her team, the judicial system, or Coloradans. *See id.* at § 9.22(g). The Board gave this circumstance heavy aggravating weight.
6. The Board concluded that the citizens of the Eleventh Judicial District were vulnerable victims of Stanley's conduct. They depended on Stanley to carry

[5] As explained above, the PDJ abstained from finding or weighing this factor.

out an important law enforcement function in the district, but she betrayed their trust. *See id.* at § 9.22(h) cmt. at 479 (noting that "[c]ourts have . . . applied [section] 9.22(h) in cases where the misconduct impacts third parties," including litigants in the case of a magistrate's misconduct; a judge, the judge's law clerks, and their families in the case of a lawyer's misconduct; and law firm partners in the case of another partner's financial misconduct); *see also In re Hickox*, 57 P.3d 403, 406 (Colo. 2002) (deferring to a hearing board's conclusion regarding a victim's vulnerability because it's a question of fact). The Board gave this circumstance modest aggravating weight.

7. Stanley had around a decade of experience as an attorney but had only recently become an elected DA when the misconduct began, so the Board gave this circumstance "only minimal weight." *See* ABA Standards § 9.22(i); *see also People v. Rolfe*, 962 P.2d 981, 983 (Colo. 1998) (concluding that ten years in legal practice qualifies as substantial experience).

8. Stanley was a public official, assuming "an even greater responsibility to the public than . . . other lawyers." (Quoting *People v. Groland*, 908 P.2d 75, 77 (Colo. 1995) (concluding that an attorney's status as a deputy district attorney constituted an aggravating factor).) *See* ABA Standards § 9.22 cmt.

at 485–86 (including an additional category for "Other Aggravating Factors"). The Board gave this circumstance "average weight."

The Board declined to weigh Stanley's proposed mitigating factors and found no other mitigating factors.[6]

¶107 The Board then concluded that, although "disbarment is the most extreme form of discipline available, . . . given the totality of [Stanley's] misconduct, the many circumstances that aggravate her misconduct, and the grave injury she caused, imposing disbarment is an important step in rebuilding the public's trust and confidence in prosecutors and the criminal justice system." In justifying this sanction, the Board also relied on the fact that, as the elected DA, Stanley was "the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." (Quoting *Berger v. United States*, 295 U.S.

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[6] As relevant to our opinion, Stanley proposed these mitigating factors:

- absence of dishonest or selfish motive (ABA Standards § 9.32(b));
- remorse (ABA Standards § 9.32(l));
- timely good faith effort to rectify consequences of misconduct (ABA Standards § 9.32(d));
- delay in disciplinary proceeding (ABA Standards § 9.32(j)); and
- remoteness of prior offenses (ABA Standards § 9.32(m)).

The PDJ abstained from deciding whether to apply section 9.32(m) of the ABA Standards.

78, 88 (1935).) Stanley lost sight of this imperative and, the Board reasoned, Colorado's legal profession could no longer "rely on [Stanley's] sense of integrity, probity, or righteousness to protect the public interest or to faithfully pursue justice for the citizens of the State of Colorado." The Board therefore concluded that Stanley "must be disbarred."

3. Review of the Sanction

¶108 We will affirm a hearing board's sanction against an attorney unless it "is based on clearly erroneous findings of fact or erroneous conclusions of law, bears no relation to the conduct, is manifestly excessive or insufficient in relation to the needs of the public, or is otherwise unreasonable." *Att'y F.*, ¶ 15, 285 P.3d at 325; *accord* C.R.C.P. 242.33(c); *Roose*, 69 P.3d at 46.

¶109 We affirm the Board's sanction of disbarment for the following reasons.

¶110 *First*, over the course of two years, Stanley abused her position as elected DA, seriously impeding the rights of defendants, the right to justice for alleged victims, and the right of Coloradans to adjudicate the guilt or innocence of alleged perpetrators of serious crimes. Her conduct harmed the criminal justice system, the judicial system, and the public's trust in a fair system.

¶111 *Second*, Stanley repeatedly violated the public's trust and the rights of those engaged with the judicial system. "The legal profession serves clients, courts and the public, and has special responsibilities for the quality of justice administered

in our legal system." C.R.C.P. Chs. 18–20 Preamble. Because the legal profession is largely self-regulated, *id.*, and because this court has exclusive jurisdiction over attorney discipline matters, we have the duty to protect the public from the harms of attorneys, *Coffman*, ¶ 47, 348 P.3d at 942.

¶112 *Third*, the Board's conclusion that neither suspension nor a lesser sanction would be adequate is reasonable. The Board appropriately imposed the sanction commensurate with the most serious violations (here, Stanley's violation of Colo. RPC 8.4(a) and (d)) and in light of the many aggravating factors. *See* Preface to the ABA Standards, at xx; *cf. Pautler*, 47 P.3d at 1184 (affirming a three-month suspension instead of disbarment for conduct that could warrant either when the "mitigating factors . . . outweigh[ed] the aggravating factors"). And the Board's findings that Stanley committed these violations knowingly, intentionally, and in violation of her duties to the legal system and to her public office—which resulted in harm to the criminal justice system, the integrity of the legal process, and personally to a sitting judge and his family—are supported by the record.

¶113 We conclude that disbarment is neither excessive nor insufficient and is reasonable in light of Stanley's misconduct. Therefore, we affirm the Board's sanction of disbarment.[7]

IV. Conclusion

¶114 We conclude that the PDJ did not err by refusing to disqualify himself from the entirety of Stanley's disciplinary proceeding. We also reverse the Board's determination that Stanley violated Colo. RPC 5.1(b), but we otherwise affirm the PDJ's judgment and affirm the sanction of disbarment.

JUSTICE SAMOUR, joined by **CHIEF JUSTICE MÁRQUEZ**, dissented.

[7] Our conclusion that Stanley didn't violate Colo. RPC 5.1(b) makes no difference here because the sanction remains consistent with Stanley's most serious violation. *See* Preface to the ABA Standards, at xx.

JUSTICE SAMOUR, joined by CHIEF JUSTICE MÁRQUEZ, dissenting.

¶115 The allegations brought by the Office of Attorney Regulation Counsel ("OARC") against Linda Stanley are rather serious, and she may well deserve to be disbarred. Nevertheless, I cannot join the majority opinion because I conclude that the Presiding Disciplinary Judge (the "PDJ") was required to recuse under the circumstances of this case. And contrary to the majority, I do not believe this is a "close call." Maj. op. ¶¶ 16, 22.

¶116 Consider these undisputed facts:

- While previously working at OARC, the PDJ personally investigated and prosecuted Stanley in a prior disciplinary proceeding (the "prior proceeding"), a two-year-long attorney discipline matter concerning her improper withdrawal from a client's case while in private practice. In that prior proceeding, the PDJ deposed Stanley for three and a half hours, interviewed witnesses, authored an investigation report, drafted a complaint, and prosecuted the matter to its completion. Stanley was publicly censured at the end of the prior proceeding in 2019, just a handful of years before the current case was filed.
- The prior proceeding was a matter in dispute in this case: OARC specifically relied on it to urge the disciplinary hearing board (the "Board") to impose the most aggravated sanction available (disbarment),

and Stanley opposed OARC's reliance on the prior proceeding as an aggravating factor.

- The PDJ nevertheless denied two requests to recuse by two separate attorneys at different junctures in this case. In response to the first of those requests, OARC, aware of both the PDJ's substantial involvement in the prior proceeding and the prior proceeding's relevance in this case, acknowledged that it had no basis to oppose Stanley's request to recuse.
- Instead of recusing, the PDJ addressed the appearance of impropriety by simply abstaining from taking part in the Board's decisions regarding whether to consider the prior proceeding as an aggravating factor, and if so, how much weight to give it.
- The PDJ, without considering the prior proceeding at all, reached the same conclusion as Melinda Harper, one of the two Board members who did consider the prior proceeding as an aggravating factor and determined that it deserved moderate weight: Both the PDJ and Harper decided that disbarment was the appropriate sanction. Conversely, even after considering the prior proceeding as an aggravating factor and according it moderate weight, Sherry Caloia, the third Board member, concluded that suspension, not disbarment, was the appropriate

sanction. Stanley was ultimately disbarred by two votes to one, with one of the two votes being cast by the PDJ.

¶117 Under these circumstances, an objective member of the public could reasonably doubt the PDJ's impartiality. As such, these facts clearly give rise to an appearance of impropriety requiring recusal from the case.[1]

¶118 Significantly, the majority admits as much. *Id.* at ¶¶ 25, 27, 30. The majority concedes (1) that the Board's consideration of Stanley's prior proceeding as an aggravating factor meant that the prior proceeding was materially related to this case, and (2) that Colorado law requires recusal under these circumstances. *Id.* But the majority ultimately affirms Stanley's disbarment, reasoning that the PDJ's abstention from participating in a portion of the proceedings was up to scratch. *Id.* at ¶ 30. In my view, though, the PDJ's halfway approach to addressing the appearance of impropriety was inappropriate.

¶119 The majority does not identify any provision in the Colorado Code of Judicial Conduct ("C.J.C.") or our rules of procedure (civil or criminal) permitting a partial recusal in this type of situation. Nor did my research unearth any such

[1] Stanley also pursued recusal based on the PDJ's former professional association with one of the attorneys representing OARC in this case. Because I see no justification for recusing on that basis, I limit my dissent accordingly.

authority. Once the PDJ concluded there was an appearance of impropriety, he should have recused from the entirety of the case—no ifs, ands, or buts.

¶120 The majority downplays the concern about the appearance of impropriety in this case by stressing that it affected only the sanction portion of the hearing. *Id.* at ¶ 30. In the majority's own words, "that earlier proceeding was not factually connected to the merits of this one." *Id.* But OARC's position on Stanley's first recusal request belies the majority's attempt to understate the importance of the prior proceeding. To avoid the appearance of impropriety, OARC could have simply withdrawn its reliance on the prior proceeding as an aggravating factor. It chose instead to stand firm by that reliance and to inform the PDJ that it had no basis to oppose Stanley's request to have him recuse.

¶121 Consistent with OARC's position, my review of the record reflects that this case was as much about the appropriate sanction—in the event of a finding of misconduct—as it was about the "merits" of the case—i.e., whether Stanley violated the Colorado Rules of Professional Conduct. Both were hotly contested questions, and the sanction-related decision was arguably the most difficult one and presented the closest call. And, in any event, the PDJ didn't recuse from the entirety of the sanction phase—the phase of the case that *was* "factually connected" to the prior proceeding. *Id.* The PDJ's recusal from a portion of the sanction phase of the case finds no support in Colorado law.

¶122 The facts of this case presented compelling reasons for the PDJ to recuse from the entirety of the case, not just a portion of it. As we explained nearly a half a century ago, "[c]ourts must meticulously avoid any appearance of partiality, not merely to secure the confidence of the litigants immediately involved, but [also] 'to retain public respect and secure willing and ready obedience to their judgments.'" *People v. Dist. Ct.*, 560 P.2d 828, 831–32 (Colo. 1977) (quoting *Nordloh v. Packard*, 101 P. 787, 790 (Colo. 1909)). Consequently, we must concern ourselves not only with "the actuality of fairness" but also with the "appearance of fairness." *Id.* at 831. Even when judges have no actual bias or prejudice, if their participation in a case gives rise to an appearance of partiality, they must recuse because any such appearance undermines the integrity and reputation of the judiciary and erodes the trust of the litigants and the public in our courts. *See id.*; *People in Int. of A.G.*, 262 P.3d 646, 650 (Colo. 2011); *People in Int. of A.P.*, 2022 CO 24, ¶ 27, 526 P.3d 177, 183. As we admonished in *District Court*, "a trial judge must scrupulously avoid any appearance of bias or prejudice." 560 P.2d at 833.

¶123 These principles are reflected in the C.J.C. and our civil and criminal rules of procedure.[2] All three sets of rules speak about *recusal or disqualification*—none contemplates *partial* recusal or *partial* disqualification.

[2] Stanley separately maintains that the Due Process Clauses of the United States and Colorado Constitutions required the PDJ to recuse. Because I conclude that

¶124 The C.J.C. provides that "[a] judge . . . shall avoid . . . the appearance of impropriety." C.J.C. 1.2. More specifically, C.J.C. 2.11(A) states that "[a] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned." This encompasses, but is not limited to, situations when the judge "has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding." C.J.C. 2.11(A)(1).

¶125 The Colorado Rules of Civil Procedure are slightly less expansive in setting forth similar requirements. Under these rules, judges "shall be disqualified" when they are "interested or prejudiced, or [have] been of counsel for any party, . . . or [are] so related or connected with any party or his attorney as to render it improper for [them] to sit on the . . . proceeding." C.R.C.P. 97. Either actual bias or the appearance of bias requires disqualification under C.R.C.P. 97. *See Johnson v. Dist. Ct.*, 674 P.2d 952, 956 (Colo. 1984).[3]

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the PDJ erred under our state rules, I do not address Stanley's constitutional contentions.

[3] The criminal rules are similar to the civil ones. Under Crim. P. 21(b)(1)(IV), (b)(3), a judge must enter an order "disqualifying himself or herself" when "[t]he judge is in any way interested or prejudiced with respect to the case, the parties, or counsel." *See also* § 16-6-201(1)(d), C.R.S. (2024) (using almost identical language). And, as with C.R.C.P. 97, an appearance of bias suffices to require disqualification under Crim. P. 21. *See Dist. Ct.*, 560 P.2d at 833.

¶126 A PDJ is governed by each of these sets of rules to the same extent as any other judge. As C.R.C.P. 242.6(d) provides, a PDJ "must refrain from taking part in a proceeding in which a similarly situated judge would be required to disqualify." *See also* C.R.C.P. 242.7(d) (same).

¶127 I recognize that the PDJ may be called upon to hear cases brought against defendants he prosecuted in the past for misconduct. Of course, he's not required to recuse from all those cases. We've made clear that there is no rule demanding the automatic recusal of a judge from a case involving a defendant the judge prosecuted in an unrelated matter before taking the bench. *People v. Flockhart*, 2013 CO 42, ¶ 52, 304 P.3d 227, 238. However, where, as here, it is undisputed that there are facts demonstrating a material relationship between an earlier proceeding prosecuted by the judge and the pending case, or facts establishing the relevance of such an earlier proceeding in the pending case, recusal is "invariably required." *Id.*; *see also People in Int. of C.Y.*, 2018 COA 50, ¶ 19, 417 P.3d 975, 979 (same).

¶128 The division's decision in *C.Y.*, a dependency and neglect case, though not entirely on point, is instructive. There, during a termination hearing regarding mother's parental legal relationship with two of her children, the judge realized that she'd previously served as the guardian ad litem ("GAL") for another of mother's children (an "older child") in a dependency and neglect case more than

a decade earlier. *C.Y.*, ¶ 4, 417 P.3d at 977. When the judge disclosed this to the parties, mother immediately asked her to recuse from the case to avoid an appearance of impropriety, but the judge denied the request. *Id.* at ¶ 5, 417 P.3d at 977. The judge reasoned that her recusal was not necessary because (1) she had no specific recollection about mother or the prior case, (2) she'd stopped serving as GAL in the prior case before the termination hearing, and (3) there was no conflict between previously representing the older child's best interests and presiding over mother's ongoing termination hearing. *Id.*

¶129 Following the termination of her rights, mother appealed the judge's refusal to recuse. *Id.* at ¶ 1, 417 P.3d at 977. In analyzing the issue, the division noted that the judge, in her role as GAL, had advocated for the older child during the adjudication and dispositional stages of the earlier case, and such advocacy had included taking a position adverse to mother at one point. *Id.* at ¶¶ 17–18, 417 P.3d at 978. Moreover, the minute orders from the termination hearing in the previous case indicated that the GAL "was in agreement with the termination." *Id.* at ¶ 18, 417 P.3d at 978. And while no one disputed that the judge had stopped acting as the older child's GAL before the termination hearing, the minute orders reflected otherwise. *Id.* at ¶ 17, 417 P.3d at 978.

¶130 The division concluded that the judge had reversibly erred in ruling that there was not an appearance of impropriety necessitating her recusal. *Id.* at ¶ 10,

417 P.3d at 978. In so doing, it distinguished *Flockhart*, where we held that a trial judge was not required to recuse from a criminal case simply because he had previously prosecuted the defendant in an unrelated matter. *C.Y.*, ¶ 19, 417 P.3d at 979 (citing *Flockhart*, ¶¶ 48, 51–52, 304 P.3d at 238–39). The division explained that, in contrast to *Flockhart*, mother's earlier case was relevant to the termination proceeding that was the subject of the appeal. *C.Y.*, ¶ 20, 417 P.3d at 979. Specifically, in determining whether to terminate mother's parental rights, the juvenile court was statutorily required to consider whether: (1) on two or more prior occasions, a child in mother's physical control had been adjudicated dependent or neglected; and (2) on one or more prior occasions, mother's parent-child legal relationship had been terminated. *Id.* Not surprisingly, the Arapahoe County Department of Human Services and the GAL both had urged the court to rely on the prior case in considering these two factors, and the court had done so in making its corresponding findings. *Id.* at ¶ 23, 417 P.3d at 979.

¶131 Here, as in *C.Y.*, the PDJ took a position in an earlier proceeding adverse to the party moving for recusal in the pending case. In fact, this case is more concerning than *C.Y.* in some respects because the PDJ did more than advocate against Stanley in the prior proceeding—he personally investigated her (including by deposing her) and decided to bring charges against her before prosecuting her. Further, as in *C.Y.*, the earlier proceeding was relevant to the pending case because

OARC relied on the prior proceeding in seeking a harsher sanction, and the Board, in turn, relied on that proceeding in imposing such a sanction. The two cases were clearly materially related, and while the PDJ acted as investigator and prosecutor in the first one, he acted as presiding judge in the second one. Colorado law establishes that these circumstances create an appearance of impropriety requiring the judge's recusal.

¶132 The majority's conclusion that the PDJ's decision to remain on the case is nevertheless acceptable is troubling. According to the majority, the PDJ was justified in declining to recuse because he "abstained from that part of the Board's sanction" that dealt with the prior proceeding, thereby giving the other two Board members "sole discretion to decide whether to consider Stanley's prior discipline as an aggravating factor and what weight, if any, to give it."[4] Maj. op. ¶ 30. I respectfully disagree.

¶133 To begin, by law, Stanley was entitled to have a Board made up of *three* members consider her *entire* case—not most of her case or even ninety-nine percent of her case—and one of the Board members had to be the PDJ. C.R.C.P. 242.7(c). And, under the rules, when the PDJ "has been disqualified," the PDJ's clerk must choose a "presiding officer" from a "Hearing Board pool" of Colorado

[4] The PDJ also abstained from deciding whether, as Stanley contended, the prior proceeding was sufficiently remote in time as to warrant mitigating weight.

lawyers, and that presiding officer is then "empowered . . . to take all actions normally entrusted" to the PDJ. C.R.C.P. 242.6(d). Yet, part of the sanction phase of this case was admittedly decided by only two Board members, and neither of those two members was the PDJ or a "presiding officer" chosen in accordance with the C.J.C. Caloia and Harper, alone, determined in their sole discretion that Stanley's prior proceeding (1) should be considered an aggravating factor, (2) deserved "moderate aggravating weight," and (3) was not so remote in time as to be entitled to any mitigating weight. I am unaware of any authority permitting this type of two-member Board procedure without the PDJ or a presiding officer, and the majority cites none.

¶134 But not only does the majority fail to square the PDJ's partial recusal procedure with the rule requiring a three-member Board that includes the PDJ or a presiding officer, it overlooks the appearance of impropriety that the PDJ's makeshift procedure engendered. And the governing standard to determine whether such an appearance requires recusal is not a demanding one: It asks simply whether someone *might* reasonably doubt the PDJ's impartiality. *A.G.*, 262 P.3d at 650. Unfortunately, in this case, the answer is a resounding *yes*.

¶135 Think about some of the questions the procedure used here raises:

- Why should the litigants and the public trust the sanction imposed (the harshest sanction available) when there was a deviation from the rule

requiring a three-member Board that includes the PDJ or a presiding officer?

- How exactly did the deliberations related to Stanley's sanction work, since Caloia and Harper considered the prior proceeding, but the PDJ abstained from doing so? Put differently, how did the three members of the Board decide whether disbarment was the appropriate sanction given that two of them considered a moderately weighted factor that the other member could not take into account at all?
- Under the circumstances of this case, is it realistic to expect the litigants and the public to have confidence in the PDJ's vote for disbarment, which did not take Stanley's prior proceeding into account, when Caloia rejected disbarment and voted for suspension even after considering the prior proceeding and according it moderate aggravating weight?
- In determining that Stanley's prior proceeding was sufficiently reliable to be considered and accorded moderate aggravating weight, did Caloia and Harper feel pressure to avoid offending their fellow Board member, since he'd personally investigated and prosecuted that case? In the same vein, did Caloia and Harper improperly defer to the PDJ's conclusions in the prior proceeding either because of his position as a judicial officer in

this case or because of his significant involvement in the prior proceeding?

- Did Caloia or Harper feel pressure to reach a consensus on whether to consider the prior proceeding, and if so, how much aggravating and mitigating weight to assign to it, because they knew there was not a third vote available to break a tie? And relatedly, did the PDJ have a plan for this contingency when he decided to partially recuse before the hearing, and if so, what did he communicate about it to Caloia and Harper?[5]

¶136 In raising these questions, I want to be clear that I cast no aspersions on the PDJ. Recusal issues can be very difficult to navigate, and I have no doubt that the PDJ acted in good faith as he attempted to fulfill his role. What's more, I have no reason to believe that he harbored any actual bias. But the fact remains that the circumstances gave rise to an *appearance* of impropriety, which, in turn, now invites the litigants and the public to reasonably question the PDJ's impartiality and fairness and to distrust the outcome in this case.

¶137 We live in a cynical world in which parts of the public are skeptical of judges, which means that the perception of impartiality and fairness is more important than ever—certainly, as important as impartiality and fairness

[5] Despite approving partial recusals by the PDJ moving forward, the majority doesn't explain what he should do in the future to plan for this contingency.

themselves. As judges, and as the guardians charged with protecting the rule of law, we cannot allow our actions to adversely affect the public's confidence in our courts.

¶138 I reiterate that Stanley may well deserve to be disbarred. But that's neither here nor there. Regardless of the egregious nature of the allegations brought against her, before her livelihood as an attorney in this state is permanently taken away, she's entitled to a proceeding conducted in front of a tribunal whose impartiality and fairness cannot reasonably be doubted or even questioned. Where, as here, a judicial proceeding is tainted by an appearance of partiality, we cannot reasonably expect the litigants and the public to have faith in the legitimacy of the final judgment.

¶139 Because the PDJ's "impartiality might reasonably be questioned," C.J.C. 2.11(A), and "a trial judge must scrupulously avoid any appearance of bias or prejudice," *Dist. Ct.*, 560 P.2d at 833, I would conclude that the PDJ reversibly erred by failing to recuse from the entirety of this case. Even if, as the majority believes, this was a close call, the PDJ still should have recused to avoid an appearance of impropriety. Accordingly, I would reverse and remand for a new disciplinary hearing in front of a presiding officer selected from the Hearing Board pool.

¶140 For the foregoing reasons, I respectfully dissent.