March 1, 2023

VIA EMAIL

Anthony R. Wynne, Esq.
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State of New York Grievance Committee
399 Knollwood Road, Suite 200
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Re: Matter of Carol W. Most, Esq.
File No. W-1735-22

Dear Mr. Wynne:

By way of introduction, I am the Complainant in the above-referenced attorney complaint ("Complaint"). I am a 1995 graduate of New York University Law School, a former Assistant U.S. Attorney in the Eastern District of New York, and a former Special Counsel to the Governor of New York. I take very seriously the allegations in this Complaint, the response, and your Committee's solemn obligation to investigate. To the extent the Committee needs additional or clarifying information from me, I remain available to provide it.[1]

I. Introduction

For the reasons set forth herein, the Committee should not dismiss this matter pursuant to 22 NYCRR Part 1240. Rather, in order to protect the public, maintain the integrity and honor of the legal profession, and deter others from committing similar misconduct, it should "authorize a formal disciplinary proceeding as set forth in section 1240.8." *See* 22 NYCRR § 1240.7(d)(2)(vi). The likelihood of ongoing harm justifies the initiation of an immediate disciplinary proceeding under § 1240.8, in order to "protect the public in its reliance upon the integrity and responsibility of the legal profession." *See, e.g., Matter of Guiliani*, 00491-2021 (1st Dept. May 3, 2021); *Matter of Nearing*, 16 A.D.2d 516, 518 (1st Dept. 1962).

Because a court of law has issued specific written findings of attorney misconduct by respondent Carol Most ("Respondent" or "Most"), there exists more than the minimal "probable cause" needed in 22 NYCRR § 1240.7(d)(2)(vi) to conclude that Most's wrongdoing in this case is so egregious and presents such a high risk of danger to other similarly-situated parents, children, and members of the public as to warrant the Committee's immediate review and action. The courts within this state have relied on Most for decades to effectively represent the most vulnerable clients of all: young children. Unaware of her gross misconduct, they will and do continue to do so, in both the First and Second Judicial Departments, where she continues to

[1] For instance, should the Committee wish to see the full briefing that resulted in Carol Most's ("Most") removal for "cause" from the Divorce Action, *Kassenoff v. Kassenoff*, 58217/19, and denial of her application for fees, I am happy to provide it. It contains specific support for Judge Susan Capeci's findings.

represent children and others, as confirmed by the resume she supplied as Exhibit 1 to her Affidavit, dated February 6, 2023 ("Most Affidavit").

In all my years of practicing law, I have never come across an attorney who so blatantly and cavalierly broke the ethical rules and who showed such disdain for them as Most did in my case. Given how high the stakes were – that my children's right to a mother and my right to parent my three girls were so severely prejudiced by Most's misconduct – and the likelihood of ongoing misconduct by Most, the Committee must protect the public at large. Most has not expressed an ounce of contrition in her response to this Complaint, confirming that she remains a danger.

II. Most's Wrongdoing Is So Extensive As To Merit Immediate Discipline

Because Most's misconduct is pervasive, repeatable,[2] grounded in dishonesty, and self-serving -- and exacerbated because she is an experienced attorney -- she presents a danger to the public at large, meriting discipline.[3] Additionally, her ethical wrongdoing, in part set forth below but explained in excruciating detail in the supporting affidavits (and exhibits) that resulted in her removal and denial of fees for violations of the Rules of Professional Conduct ("RPC"), *attached* as **Exhibits "2"-"4"** *sans exhibits*, has been conclusively established by a court of law. Judge Capeci removed Most for "cause" on October 4, 2022 ("Removal Order") and then, in a Decision & Order dated November 14, 2022 ("Fees Order"), *see* **Exhibit "5"**, which was previously provided to this Committee, entirely denied her fee application for over $113,000 for the period of time from October 21, 2020 through September 30, 2021. Specifically, Most was found to have violated the Rules of the Chief Judge, 22 NYCRR § 7.2[b] and RPC Rule 1.11, *inter alia.* "Violation of the Rules of Professional Conduct in and of themselves necessarily means that there is harm to the public." *Guiliani*, *supra,* at 26 (*citing Matter of Nearing,* 16 A.D.2d at 516).

The fact that the Supreme Court has already made findings of gross ethical misconduct against Most differentiates this matter from one in which a complainant carries a burden of proving the misconduct. Judge Capeci already had the occasion – over the course of two hearing days on June 16, 2022 and August 12, 2022, during which Most testified on direct and cross-examination as well as numerous court conferences and court filings – to observe the demeanor and assess the credibility of Most before rendering her orders removing her and denying her application for fees. As such, Judge Capeci was in the best position to make the findings she did and her findings should be afforded "great weight". *See, e.g. In re Payne*, 707 F.3d 195 (2nd Cir. 2013); *In re Somers*, 50 A.D.2d 396, 397, 378 N.Y.S.2d 703 (1st Dept. 1976) (giving "great

[2] In the last few years, Most was appointed Attorney for the Children in numerous custody cases, mostly on a "private pay" basis, which qualifies her for higher hourly rates. *See*: https://iapps.courts.state.ny.us/fiduciary/search/AppointmentResultsPage?11

[3] *See, e.g. In re Adler,* 2022 NY Slip Op. 6857 (3d Dept. 2022) (noting the "dishonest or selfish motive behind" Respondent's actions and that "Respondent's conduct is further exacerbated by his long tenure as an attorney" in effectuating discipline).

weight to the findings of the referee, who had the first-hand opportunity to judge [the witnesses] and to evaluate the testimony adduced").

Most has failed to carry her burden of credibly opposing the Supreme Court's findings against her. Her barely 5-page skeletal Affidavit in opposition to the Complaint fails to create a "controverted issue as to whether there has been misconduct" because it is conclusory and vague. *See, e.g., Guiliani, supra,* at 8; *S.J. Capelin Assoc. v. Globe Mfg. Corp.*, 34 N.Y.2d 338, 342 (1974) (plaintiff failed to raise issues of fact where affidavit only provided bald, conclusory assertions). For instance, she does not describe any of the screening measures she purports to have undertaken in connection with the onboarding of former Assistant District Attorney ("ADA") Christine Paska to her law firm. Nor does she deny having orchestrated my arrest on January 26, 2022 and subsequent prosecution. Nor has she since produced the emails that she withheld (and purposefully altered with "black outs") at hearing. Nowhere does she deny that it was Paska who had been the lead prosecutor from the Westchester County District Attorney's Office ("DA") against me and that she was aware of that fact. And tellingly, she does not offer a single sworn statement from another witness in support of her defense. In short, she does not effectively deny the charges and findings against her.

Most's wrongdoing is grounded in dishonesty, which under the RPC, includes the "broad" "prohibition against false statements", "misleading statements, as well as affirmatively false statements." *Guiliani, supra* (*citing Matter of Antoine,* 74 A.D.3d 67, 72 (1st Dept. 2010). The instances of dishonesty here are too numerous to list but are recounted in detail in the affidavits and exhibits in support of Most's disqualification and papers in opposition to her fees. The Rules also "concern conduct both inside and outside the courtroom." *Guiliani, supra* (*citing Matter of Coyne,* 136 A.D.3d 176 (1st Dept. 2016)). For illustrative purposes, Most's urging of the Larchmont Police Department and the DA to falsely investigate and prosecute me in January 2022, her email correspondence with the Father (and cover up of it) evidencing an "unusual alignment" with him,[4] and her alignment with the therapists whom she hand-selected at exorbitant cost in order to report in accordance with her positions – all of which occurred "outside the courtroom" --are therefore probative of her misconduct. Additional examples of Most's misconduct are listed below, many of which evidence violations of RPC Rules 3.3, 4.1 and 8.4:

- She "minimized her contact with the ADA investigating the matter, Ms. Paska, who she later hired, in her Affirmation in opposition to this motion, stating: 'I had no interaction with the children and the D.A.'s office' (see NYSCEF Doc, 2623)". Removal Order at 8. The Supreme Court's finding in this regard amounts to a violation of RPC Rules 3.3, 4.1, and 8.4. *See Guiliani, supra,* at 5.
- She repeatedly violated the witness/advocate rule, Rule 7.2 of the Rules of the Chief Judge. *See, generally,* Removal Order.
- She used "*ad hominem*" attacks, which included "non-record facts and hearsay" against me in order to prejudice me unfairly and unethically before the Court as "mentally ill," "dangerous" and "gaslighting". Removal Order at 4, 15.

[4] This finding comes directly from Judge Capeci's Fees Order at 5.

- She deliberately and admittedly spoliated evidence, produced to the Court, by "blacking it out" and deleting it, in order to conceal her wrongdoing and that of the Father. Fees Order at 5.
- She misused "substitution of judgment" for three bright and articulate young girls, in order to suppress their reports of abuse by their Father, "substitut[ing] her judgment for them at an earlier point when they had expressed that they wanted to live with their mother. Removal Order at 12.
- She advanced the interests of the Father (her *de* facto client) over those of her own clients, the Children, to their detriment
- She tried to manipulate a report written by the Children's therapist, Dr. McGuffog, in order to protect the Father from credible allegations of abuse
- She hand-selected therapists for the Children whose goal was to "reprogram" them to learn to live without their Mother, rather than to help heal them from a traumatic divorce
- She exhibited religious and ethnic bias against the Mother
- She lied to the Court when explaining why the oldest daughter ran away in a taxi to her my house by suggesting it was "truancy" rather than escape from abuse
- She helped to orchestrate my false arrest on January 26, 2022 and my subsequent false prosecution, for which all charges were dismissed outright on March 16, 2022
- She "never disclosed the hiring of th[e] former Assistant District Attorney [Paska] to the Court, or to the mother". Fees Order at 4.
- She concealed from the Court and me her relationship with Dr. Marc Abrams, wherein she was paying him as an expert in another case at the same time that he was appointed as a so-called "neutral" forensic custody evaluator in my divorce case
- She repeatedly protected the Father in the Divorce Action, by spoliating evidence to help him, excusing and minimizing his wrongdoing, and taking extreme and unwarranted "no contact" positions against me vis-à-vis the Children
- She suppressed credible evidence of domestic abuse by the Father and prevented it from being given to the Children's therapists
- She underreported her approved income from cases in which she had been appointed as an AFC in order to be appointed to new cases for which she would otherwise be ineligible
- She failed to "implement any screening procedures in her office" when hiring former ADA Paska. Fees Order at 4.
- She pressured my Children to act as witnesses against me after my false arrest, by encouraging them to go to the DA, in order to further the interests of the Father
- She recruited Paska from the Westchester Co. DA's Office at the same time Paska was prosecuting me, likely in a *quid pro quo* arrangement
- During the pendency of my Divorce Action, she attempted to re-panel Dr. Abrams after he had been removed from the Forensic Custody Evaluators Panel in August 2021; she knew that he had been removed from the Panel based on my complaint of wrongdoing in the Divorce Action

Because Most's misconduct – which reaches into so many different aspects of the practice of law -- was undertaken from June 2019 until just a few months ago, it is much more concerning than an isolated act on a single occasion. *See Guiliani, supra,* at 30 ("[t]his is not a

situation where the uncontroverted misconduct consisted of only a few isolated incidents"). Nor is it explainable as negligence or mistake. It therefore warrants immediate response by this Committee.

III. Judge Capeci Was Not Required To Refer This Matter To This Committee

Most's response to this complaint – that aspects of it lack fundamental seriousness because Judge Capeci "did not see a reason to refer this matter to the Committee"[5] – is shockingly misguided for at least two reasons: (1) Judge Capeci knew that I had already collectively referred all of these issues to at least two attorney oversight bodies (*i.e.*, the Office of Attorneys for Children ("AFC Panel") and the Office of the Inspector General ("OIG")); and (2) Judge Capeci took swift,[6] extraordinary and appropriate action – *i.e.*, emergency removal of Most *without hearing*[7] -- to safeguard the Children. Not only had I made clear in numerous contexts before the Court that my various complaints against Most were pending, Judge Capeci herself removed Most for "cause" and entirely denied her fee application for over $113,000.

Judge Capeci was acutely aware – over the course of at least 9 months -- that I had referred this matter to appropriate oversight bodies, obviating the need for the Court to do so as well. For instance, on February 10, 2022, I attached my complaint to the Office of Attorneys for Children (made on September 14, 2021) in my court-filed affidavit in support of Most's removal, at ¶ 4. *See* NYSCEF Doc. No. 2047, **Exhibit "6"**. Then, on April 13, 2022, I advised Judge Capeci that my complaint to the AFC Panel was undergoing a *de novo* review per Justice LaSalle. *See* NYSCEF Doc. No. 2243, **Exhibit "7"**. Then again on May 31, 2022, I told the Court that the AFC Panel complaint was *sub judice*, despite Most's false assertion that the grievance "was denied." *See* NYSCEF Doc. No. 2328, **Exhibit "8"**. Again, on July 12, 2022, I reminded the Court that Most "is facing claims of unethical behavior before the Office for Attorneys for Children." *See* NYSCEF Doc. No. 2404, **Exhibit "9"**.

Therefore, it is of no moment that this matter was not referred by Judge Capeci directly to this Committee, when she knew that I had reported the misconduct and was continually supplementing my reports of it.

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[5] *See* letter dated February 3, 2023 from Deborah Scalise ("Letter"). Most's Letter contradicts her own statements in first claiming that a *sua sponte* referral was made by Judge Capeci of this matter (Letter at 2 – "there is no Complainant (since the matter was referred *Sua Sponte* to the Committee by the Court)") and then later saying that no such referral was made (*id.* at 3 – "Notably, Judge Capeci did not see a reason to refer this matter to the Committee"). Her counsel "corrected" the contradiction in a subsequent Letter and email dated February 27, 2023, in which she stated that there was a "drafting error" in her report that the Court had issued a *sua sponte* referral.

[6] My motion to remove Most was filed in early September and the Court rendered its Removal Order on October 4, 2022.

[7] To be clear: the hearing held on June 16, 2022 and continued on August 12, 2022 at which Most testified as the only witness was directed to Most's fee application, not a hearing as to her misconduct.

IV. This Matter Is Too Serious and Extensive to Await the Protracted Appellate Process

Most's request for this Committee to await the processing of her appeals of Judge Capeci's Removal and Fees Orders to the Appellate Division for the Second Judicial Department is nothing more than gamesmanship. Alarmingly, Most appears to be undertaking a strategy at the appellate level which is designed to protract the proceedings there – and, in turn, here. Despite being required to perfect her appeal of the Removal Order by February 6, 2023, on February 24, 2023 (weeks *after* the perfection date expired), Most requested a belated enlargement of time to perfect. She provided no reason for the request. The clear requirement under 22 NYCRR § 670.3[b][3] is that "good cause" must be shown, but as set forth in my counsel's opposition to her application, Most provided no "cause" whatsoever. *See* **Exhibit "10".**

Most's delay tactics are obvious. She hopes that this Committee will "stay" its own investigation of her wrongdoing pending the appeals. Where, however, misconduct is likely to be continued, and there is a clear danger to the public from the ethical violations, a "stay" is not appropriate. *Guiliani, supra,* at 26 (*citing Matter of Nearing,* 16 A.D.2d at 516) ("Violation of the Rules of Professional Conduct in and of themselves necessarily means that there is harm to the public"). Additionally, awaiting a decision from the appellate courts could be years in the making, while Most would be left to continue her misconduct. It is well-known that the Appellate Division for the Second Department has been the busiest court in the country since at least 2021.

Moreover, the appeals by Most of the Removal and Fees Orders address narrower issues than those raised here. For instance, whether Most violated RPC Rules 3.3, 4.1 and 8.4 is fairly at issue here, as are the questions of her financial alignment with the Father and her financial motivation for engaging in unethical conduct. Accordingly, the appellate forum is not the appropriate place to fully adjudicate Most's wrongdoing.

V. *Sua Sponte* Collateral Investigations Are Justified On These Facts

In addition, pursuant to 22 NYCRR § 1240.7(a)(1), this Committee is empowered to *sua sponte* authorize an investigation into related misconduct by, for instance, Most's law firm (Most & Schneid, P.C.) as well as Christine Paska and Ms. Most's partner, Mr. Adam Schneid. And it should. As the Divorce Court made clear, Schneid – the only other partner at the law firm with Most -- failed to set up appropriate screens at the law firm when secretly onboarding Paska as an attorney there. He also altogether concealed from the Divorce Court and from me and my counsel, at hearing in the Summer of 2022 wherein he acted as Most's counsel, the fact of Paska's hiring in July 2022 by trying to avoid answering the question: "[h]ow many lawyers are in the firm?" (**Exhibit "11"**, Tr. at 30-31). In overruling Schneid's objection, Judge Capeci noted his evasion: "The number of lawyers is the inner works? . . . We just spent five minutes on a question that should have been easy for anybody to answer. Overruled." *Id.* Thereafter, in her Fees Order, Judge Capeci commented precisely on this in saying that Most:

> "had never disclosed the hiring of this former Assistant District Attorney [Paska] to the Court, or to the mother, even during the course of this hearing, where she was specifically questioned as to how many associates were in her firm and when the last one was hired. She did not implement any screening procedures in her office to prevent disclosure of any confidential information regarding the mother from this associate."

See Fees Order at 4 (NYSCEF Doc. No. 2802). Schneid also spoliated evidence produced to the Court on behalf of his client, Most, in "blacking out" and withholding emails and texts that would have otherwise reflected very negatively on Most and her "unusual alignment" with the Father. Most clearly testified that "Adam Schneid" is "in charge of IT" at the law firm. **Exhibit "11"** at 32-33.

Similarly, Paska failed to obtain a written consent from the DA when she joined Most & Schneid, P.C., which is arguably a violation of Rule 1.11 of the New York RPC. *See* NYSCEF Doc. No. 2674, **Exhibit "12"**. She also failed to rebut the presumption of shared "confidential information" from the government under Rule 1.11(c). *See, e.g., Essex Equity Holdings U.S. v. Lehman Bros., Inc,,* 909 N.Y.S.2d 285, 29 Misc.3d 371 (N.Y. Co. Sup. Ct. 2010). Indeed, the Court found that:

> "there is also a substantial risk that Ms. Paska, as the ADA who prosecuted the wife for violating the order of protection in this matrimonial case, was privy to confidential information regarding the wife and/or the parties."
>
> "The situation described above, where the former ADA who prosecuted the wife is now employed as an associate by the AFC in the matrimonial case, has resulted in an appearance of impropriety under the circumstances of this case."

Removal Order at 11. Moreover, Paska arguably concealed her own pursuit of a job at Most's law firm from me, while prosecuting me and thereafter, creating "an apparent conflict of interest and an appearance of impropriety." *See* Removal Order at 9.

Accordingly, both Paska[8] and Schneid's actions and omissions merit additional investigation by the Committee in relation to Most's misconduct.

VI. Most Makes Several False Factual Assertions That Warrant Correction

Most's response to the Complaint contains several material misstatements for which I offer correction here. First, she claims that I made a complaint to the New York State Commission on Judicial Conduct against Justice Nancy Quinn Koba. I did no such thing, and her misrepresentation in this regard is sanctionable. As to Judge Lubell, in November 2021, this judge recused himself *sua sponte* in the Divorce Action soon after he had presided over the wedding of Dr. Marc Abrams, the disgraced and de-paneled "neutral" court-appointed forensic evaluator, and after specifically finding there was "strong support" in the record for his recusal.

[8] Bizarrely, despite her close and insidious connect to Most, Paska acted as the notary of Most's February 6, 2023 affidavit.

Second, it is alleged that I made "multiple complaints [against] Marc Abrams with the Second Department," which is not true. I made only one complaint against him there, in the Summer of 2021, which was sufficiently credited as to result in the removal of Dr. Abrams from the Panel of Forensic Custody Evaluators in the First and Second Judicial Departments on August 24, 2021. *See* **Exhibit "13"**. That is: my complaint – not "complaints" -- against Abrams was fully vindicated. Third, Most misleads this Committee by saying that my complaint against her to the Office of Attorneys for Children ("the AFC Panel") was "dismissed." The complaint against her, which was first made in September 2021 and supplemented several times thereafter with additional information, remains very much open. Indeed, I have received the attached correspondence suggesting that a decision from the AFC Panel is imminent. *See* **Exhibit "14"**.

With the above, Most has apparently opened herself up to additional charges of wrongdoing by making these new false assertions about the status of collateral proceedings. Her Affidavit confirms that she has "provided the factual basis for Ms. Scalise's letter." Most Affidavit at ¶ 2. As the Court stated in *Guiliani, supra*, "[i]t is considered a false and misleading statement under the Rules of Professional Conduct to misrepresent the status of a pending proceeding, whether in or out of court." *Id.* at 13 (*citing Matter of Zweig*, 117 A.D.3d 96 (1st Dept. 2014) and other cases). Most should be held accountable for these new false assertions.

There are additional mischaracterizations worth noting. Fourth, Most asserts that I have "[a]ttempted to malign and/or disqualify two of the children's therapists." Both of these therapists, Dr. Adler and McGuffog, were hand-selected by Most over my objection and paid astronomical sums of money – with an hourly rate of $600 and $466, respectively. I did not try to "disqualify" either. Dr. McGuffog resigned from seeing my oldest daughter on about June 22, 2022, of her own accord, and I brought suit against Dr. Adler,[9] which has survived a motion to dismiss and is now proceeding on fraudulent concealment grounds before Judge David Zuckerman. As set forth in my complaint therein, Most orchestrated the retention of the Children's therapists in order to use them as witnesses against me in the divorce proceedings.

Fifth, Most mischaracterizes her reputation as "unblemished" when it is far from it. In lawsuits filed in 2013 in Westchester Supreme Court, for instance, she was credibly accused by her former law firm partner, Marcia E. Kusnetz, of misappropriating hundreds of thousands of dollars in law firm funds. *See* **Exhibit "16".** The matter was secretly settled, but this Committee is empowered to learn the circumstances around the settlement and the underlying allegations of quasi-criminal activity. Additionally, she was identified in the attached lawsuit brought by Stephanie Treanor, who made allegations eerily similar to my own about Most. *See* **Exhibit "17".** Sixth, Most argues now for the first time that she implemented a "screen" when onboarding Paska. Judge Capeci's Fees Order found exactly the opposite. Fees Order at 4. Seventh, Most's opposition stands in complete contradiction to Judge Capeci's explicit finding that the Children "had expressed that they wanted to live with their mother" but that -- at that time -- Most "had consistently taken a position advocating against the mother in terms of her visitation with the children and had [] substituted her judgment for them". Removal Order at 12. Most's claim that the positions she took "were based on their wishes" is specious, as confirmed by Judge Capeci. Not once did Most advocate for my Children to live with me when they said they wanted to.

[9] *Kassenoff v. Adler*, 67296/21 (Westchester Co. Sup. Ct.). *See* attached complaint, **Exhibit "15"**.

VI. Conclusion

The damage created by Carol Most's years-long misconduct – which nearly severed a bond between a mother and her children -- cannot easily be undone. It has long-lasting effects that have deeply injured the psyches of three young girls, who were made witnesses against their own mother by Most. While I work to restore my relationship with the girls now, Most has done incalculable damage.

My family was ripped apart and my daughters lost their primary caregiver at the hands of Most, who was motivated by something other than helping her own clients. Most is a predator, who made money hand-over-first to promote the interests of the "monied" spouse in my case, the Father, who has paid her handsomely throughout the litigation. She was willing to commit gross ethical misconduct in order to achieve her financial goals. For the reasons set forth above, disciplinary action must be taken against her. Without a doubt, she is a danger to the public because she continues to have access to vulnerable clientele and both a motive and propensity to take advantage of them.

Respectfully submitted,

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